United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *106th* CONGRESS, FIRST SESSION

Vol. 145 WASHINGTON, TUESDAY, MAY 4, 1999 *No. 63*

Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have promised, ''In quietness and trust shall be your strength.''—Isaiah 30:15. For a brief moment we retreat into our inner world, that wonderful place called prayer, where we find Your strength. Here we escape from the noise of demanding voices and pressured conversations. With You there are no speeches to give, positions to defend, or party loyalties to push. In Your presence we can simply be. You love us in spite of our mistakes and give us new beginnings each day. We thank You that we can depend upon You for guidance in all that is ahead of us today. Particularly we ask for Your guidance on the vote on the war powers resolution concerning our involvement in Kosovo.

Now, Father, we realize that this quiet moment in which we have placed our trust in You has refreshed us. We are replenished with new hope. Now we can return to our outer world with greater determination to keep our priorities straight. Today is a magnificent opportunity to serve You by giving our very best to the leadership of our Nation. In the name of our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader is recognized.

Mr. LOTT. I thank the Chair.

SCHEDULE

Mr. LOTT. This morning the Senate will resume consideration of S.J. Res. 20, with a brief statement by Senator MCCAIN. Following Senator MCCAIN, the majority leader will be recognized to make a motion to table S.J. Res. 20. Before I speak, however, and make that motion, I believe Senator DASCHLE will use leader time to make some remarks, too. So Senator MCCAIN will speak, Senator DASCHLE, and I will speak and make a motion to table S.J. Res. 20. Therefore, the first rollcall vote of the day will occur at approximately 9:45.

If S.J. Res. 20 is tabled, the Senate will immediately begin debate on S. 900, the financial services modernization bill, under the provisions agreed to last night by unanimous consent. It is hoped that significant progress will be made on the banking bill, and therefore Senators can expect further rollcall votes today.

We do have one complicating factor. We have also had another natural disaster to strike our country, this time in Oklahoma. The Senators from Oklahoma feel the necessity, understandably, to go to Oklahoma, and we will have to take that into consideration in how we schedule votes. I will consult with the Democratic leader about that timing.

The Senate will be in recess for the weekly party caucus luncheons from 12:30 to 2:15. I thank my colleagues for their attention. I believe Senator MCCAIN is ready to speak.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ALLARD). Under the previous order, the leadership time is reserved.

DEPLOYMENT OF U.S. ARMED FORCES TO THE KOSOVO REGION OF YUGOSLAVIA

The Senate resumed consideration of the joint resolution, which reads as follows:

S.J. RES. 20

Whereas the United States and its allies in the North Atlantic Treaty Organization are conducting large-scale military operations against the Federal Republic of Yugoslavia (Serbia and Montenegro); and

Whereas the Federal Republic of Yugoslavia (Serbia and Montenegro) has refused to comply with NATO demands that it withdraw its military, paramilitary and security forces from the province of Kosovo, allow the return of ethnic Albanian refugees to their homes, and permit the establishment of a NATO-led peacekeeping force in Kosovo: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to use all necessary force and other means, in concert with United States allies, to accomplish United States and North Atlantic Treaty Organization objectives in the Federal Republic of Yugoslavia (Serbia and Montenegro).

The PRESIDING OFFICER. Under the previous order, the Chair recognizes Senator MCCAIN for 5 minutes.

Mr. MCCAIN. Mr. President, I would like to ask unanimous consent that Senator DORGAN be allowed to make a brief unanimous consent request.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

PRIVILEGE OF THE FLOOR

Mr. DORGAN. I ask unanimous consent that privilege of the floor be granted to Anthony Blaylock, a member of my staff, during the pendency of S.J. Res. 20.

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

Mr. MCCAIN. Mr. President, I also ask unanimous consent for 3 additional minutes, if necessary, for me to complete my statement.

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

Mr. MCCAIN. Mr. President, I thank Senators LOTT and DASCHLE for allowing the Senate more time for this debate than was their original intention. I think it has been a good debate. It was not as long as I would have liked but better than I had expected yesterday morning. Many Members on both sides, or should I say on all the multiple sides of the question, have had the opportunity to express themselves

and most have done so with distinction. I also thank the cosponsors of the resolution for having the courage of their convictions, Senators HAGEL, BIDEN, LUGAR, KERRY, DODD, ROBB, and all the other cosponsors. You have made the case for the resolution far more persuasively than have I, and I commend you for fighting this good fight.

Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will please be in order.

The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I want to speak plainly in the few minutes remaining to me. What I say now may offend some people, even some of my friends who support this resolution. I am sorry for that, but I say it because I believe it is the truth, the important truth, and it should be said.

The President of the United States is prepared to lose a war rather than do the hard work, the politically risky work, of fighting as the leader of the greatest nation on Earth should fight when our interests and our values are imperiled.

We all know why in a few minutes this resolution is going to lose. It is going to lose because the President and members of his Cabinet have joined with the opponents to the war and lobbied hard for the resolution's defeat. Do not believe administration officials when they tell you that the resolution would have been defeated even without their active opposition. Had they worked half as hard in support of it as they did to defeat it, the result would have been different today.

No, it is not that they could not win; it is because they did not want to win that we are facing defeat this morning. That is a shame, a real shame.

I have said repeatedly that the President does not need this resolution to use all the force he deems necessary to achieve victory in Kosovo. I stand by that contention. And I have the good company of the Constitution behind me.

I had wanted this resolution considered in the now forlorn hope that the President would take courage from it and find the resolve to do his duty, his duty by us, the American people, by the alliance he leads, and by the suffering people of Kosovo who now look to America and NATO for their very lives.

I was wrong, and I must accept the blame for that. The President does not want the power he possesses by law because the risks inherent in its exercise have paralyzed him.

Let me identify for my colleagues the price paid by Kosovars for the President's repeated and indefensible ruling out of ground troops. Mr. Milosevic was so certain of the limits to our commitment that he felt safe enough to widely disperse his forces. Instead of massing his forces to meet a possible ground attack, he has deployed them in small units to reach more towns and villages in less time than if the President had remained silent on the question of ground troops. In other words, he has been able to displace, rape, and murder more Kosovars more quickly than he could have if he feared he might face the mightiest army on Earth. That is a fact of this war that is undeniable. And shame on the President for creating it.

Now what is left to us, as our war on the cheap fails to achieve the objectives for which we went to war? Well, bombing pauses seem to be an idea in vogue. They were popular once before in another war. And I personally witnessed how effective they were. No, Mr. President, I do not have much regard for the diplomatic or military efficacy of bombing pauses. As a matter of fact, it was only when bombing pauses were finally abandoned in favor of sustained strategic bombing that almost 600 of my comrades and I received our freedom. I daresay some of the years that we had lost were attributable to bombing pauses. I will not support a bombing pause until Milosevic surrenders and not a moment before.

My father gave the order to send B–52s—planes that did not have the precision-guided munitions that so impress us all today—he gave the order to send them to bomb the city where his oldest son was held a prisoner of war. That is a pretty hard thing for a father to do, Mr. President, but he did it because it was his duty, and he would not shrink from it. He did it because he didn't believe America should lose a war, or settle for a draw or some lesser goal than it had sacrificed its young to achieve. He knew that leaders were expected to make hard choices in war. Would that the President had half that regard for the responsibilities of his office.

Give peace a chance. Yes, peace is a wonderful condition. Sweeter than many here will ever fully appreciate. The Kosovars appreciate it. They are living in its absence, and it is a horrible experience. But the absence of freedom is worse. They know that too. They know it well. And if the price of peace is that we abandon them to the cruelty of their oppressors, then the price is too high.

Some have suggested that we can drop our demand that NATO keep the peace in Kosovo. Let the U.N. command any future peacekeeping force instead. But a U.N. peacekeeping force led directly to the Srebrinica massacre in Bosnia. I think the Kosovars would rather they not have that kind of peace, Mr. President. And we should not impose it on them.

Give peace a chance. If we cannot keep our word to prevail over this inferior power that threatens our interests and our most cherished ideals, then it is unlikely that we will long know a real peace. We may enjoy a false peace for a brief time, but that will pass. Whatever your views about whether we were right or wrong to get involved in this war, why would you think that losing will recover what we have risked in the Balkans. If we fail to win this war, our allies and our enemies will lose their respect for our resolve and our power. You may count on it, Mr. President. And we will soon face far greater threats than we face today. We will know a much more dangerous absence of peace than we are experiencing today.

Mr. President, I ask my colleagues, in this late hour, to put aside our reservations, our past animosities, and encourage, implore, cajole, beg, shame this administration into doing its duty. Shame on the President if he persists in abdicating his responsibilities. But shame on us if we let him.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I will use leadership time to conclude this debate with a few comments of my own.

Let me begin by commending the authors of this resolution, Senator MCCAIN, Senator BIDEN, and others. I support their intent, and I appreciate the effort of all the authors in making this resolution the focus of our attention this morning.

There ought to be three rules this country should always adhere to in an addressing an international conflict. The first rule is that every effort should be made to resolve the matter diplomatically. I believe this is being done in the case of the conflict in Kosovo. In this struggle, there is no end to the lengths the United States and NATO have gone in an effort to resolve this matter diplomatically. As we speak, diplomatic efforts are underway. There will continue to be negotiations, discussions, and communications to resolve this matter diplomatically. Up to now all these efforts have failed.

Secondly, should diplomacy fail and U.S. forces be needed, we must not tie the hands of the Commander-in-Chief. We must provide whatever support is requested. That is what this resolution says: that the President is authorized to use all necessary force. I understand and support that concept.

Thirdly, we must support our troops when they come home—something we haven't always done. We didn't in Vietnam when they were suffering from the effects of exposure to Agent Orange; we didn't in the Persian Gulf when they were hit by Persian Gulf Syndrome. We have not always supported our troops when they come home. Veterans and the Veterans' Administration oftentimes are neglected in times of peace.

There is a caveat, an obvious caveat, to these three rules. When deploying force, there must be a clear indication of need. Only in the rarest of circumstances when it comes to executing a war, a military effort, should the Congress get ahead of the Commander in Chief and his military advisers. That is especially true when the United States is involved, as it is today in Yugoslavia, with other nations. They are the ones—the military, the Commander in Chief—who must decide

what kind of forces are to be used, what kind of war is to be waged, what facts must be considered in waging it successfully.

The distinguished Senator from Arizona made some comments about the President's unwillingness to use ground troops. It isn't just the President. It is all of his Joint Chiefs of Staff. It is everybody in the Pentagon who advises the President who has said, This is not the time; we do not want to commit ground troops at this point, Mr. President; don't request them. And he has not.

It is for this reason, Mr. President, that I reluctantly join in tabling this resolution today. I do so for three reasons. First, as I have just noted, the President has not asked for this authority, nor have his military advisers. They have indicated they don't support the inclusion of ground troops at this time. Why? Because the air campaign is working. That is not what some of the media want you to hear, but it is the case that the air campaign is working. The resolve on the part of Yugoslavia is being tested. And, I must say, there is increasing evidence that their resolve is weakening. There is increasing evidence that, regardless of what criteria one uses to evaluate the success of the air campaign, it is working.

Until we have given every opportunity for the air campaign to work, moving to a new strategy is premature. The time involved, the logistics involved, the questions involved in moving forces into Yugoslavia all have to be considered, but not now. This is not the time. Will there come a time? Perhaps. But it is not now. The Joint Chiefs of Staff unanimously endorse that position—not now. What is the Commander in Chief supposed to do? He listens to his military advisers and they say, ''Not now.'' He listens to his national security people and they say, ''Not now.''

This isn't a matter of courage, this isn't a matter of a lack of resolve on the part of the President. Instead, it is a matter of the President working with all the people in this administration to pick the best course of action. I believe he has done so.

Secondly, we must keep one thing in mind about this effort. This is not unilateral. We are involved with 18 other nations, most of whom oppose changing NATO's current air campaign strategy. If all necessary force implies using ground troops, they oppose taking a different course of action. This is a test for NATO. We should all recognize that. If we truly want NATO to succeed, we have no choice, no choice but to make all decisions involving strategy in concert with our NATO allies.

For Members today to say we are going to assert that our position calls for a change in strategy, that the air war alone is not working, sends a clear message to all the other NATO countries that we are the ones in charge, we are the only ones making this decision; we don't care what you think, we are not going to resolve this matter in concert with you; it is going to be us; we will call the shots.

We are not prepared to do that today, Mr. President.

Thirdly, because this authority has not been requested either by the President or his military advisers or by NATO, we have no clear idea what it is we are authorizing with this resolution. Because the President hasn't made a specific proposal, are we voting to use tactical nuclear weapons? Are we committing 500,000 troops for 5 years? Are we committing ourselves to an invasion of neighboring countries, should that be necessary? The answer to these questions, of course, is no. They are extreme options which no one would dare suggest. But what are we authorizing with this resolution? Without a specific proposal from the President, we can only guess. By guessing, we do a disservice to our mission. By guessing, we relegate too much discretion to others.

Mr. President, an up-or-down vote on this resolution is premature. There may be a time when it will be required. That time must be determined by the Commander in Chief and our NATO allies. If or when that time comes, it is the responsibility of the Congress to do what we must do and what we have done on many occasions in the past: We must debate it and we must vote on a resolution of approval. Until then, the Senate has spoken on this conflict. On a bipartisan vote, we have given our approval to the air campaign. We have no need to do so again.

So I ask my colleagues, let us be patient. Let us support our military as they fight so valiantly and successfully in the air mission. Let us send a clear message to the leaders in Yugoslavia, and to NATO: We will not terminate the air war until we are successful.

I might note another bit of evidence of our success occurred just this morning. There are reports that a NATO F–16 fighter jet shot down a Serb Mig29. The air war is working. We will keep the pressure on. We will not look the other way when victims of ethnic cleansing look to us.

A vote on this motion to table this resolution is a vote to postpone the decision to alter our military course in Yugoslavia. It is a vote to support our military in their efforts to bring peace to this region. I urge our colleagues to support it.

I yield the floor.

Mr. SHELBY. Mr. President, there are few people in the United States Congress who are as familiar with war as is the sponsor of this joint resolution, my esteemed colleague from Arizona, Senator JOHN MCCAIN. I agree with the principles behind his resolution; that this Nation should not fight wars to a stalemate, it should fight them to win or not fight them at all.

Mr. President, for the past 6 weeks, American military forces have been participating in a NATO-led aerial campaign in the Balkans. In March, I voted to support the use of air power in this operation. It was my view then that the administration had already committed our forces to action. A vote against the President, when bombing was imminent, would have undercut our troops at the front. However, that is not the case with the resolution before us today. As a nation we have a choice to make. The choice should be an informed one. Our intentions in this operation have been noble and just. However, the boundaries of this conflict are not apparent to many in this body nor it seems to a majority of the American people. Before we give a blank check to the administration, I believe that the President should clearly articulate to both Congress and the American people the objectives and the national interest which require a resolution authorizing full scale war. To date he has not done so.

As have many of my colleagues, I have traveled to the region. I have been briefed by General Clark, spoken to troops in the field and visited refugee camps in Albania. There is no question that our military personnel are the best in the world and are doing an outstanding job under extremely difficult circumstances. However, I have grave concerns over NATO's ability to salvage the humanitarian situation through aerial bombardment and its policy of war by committee. I know that Senator MCCAIN shares this latter concern. The United States led a coalition force during the Persian Gulf war. Yet in that war it was our military leaders and not politicians in Brussels who called the shots. Mr. President, we won the Persian Gulf war; we are not winning this war. My fear is that if we adopt this resolution now, it will be viewed as tacit approval of an overly bureaucratic and ineffective NATO command structure. The Senate can pass this resolution and authorize the President's ''. . . use of all necessary force and other means . . .'' but I fear the effect will be mitigated by the current command structure. It is a prerequisite that prior to any escalation of our involvement in this conflict, that NATO streamline its command structure and put professional soldiers back in charge.

A greater concern to me is the effect that this operation is having on the readiness of our military forces worldwide. Can we adequately defend South Korea, Taiwan, and Kuwait while waging a full scale war against Serbia? Some of the facts are alarming. We have no carrier battle group in the Western Pacific. The Air Force has committed one-third of its combat aircraft to the Balkans. The President has authorized the activation of over 33,000 reservists, including many Air National Guard tanker pilots from Birmingham, Alabama. The United States is still involved in an undeclared shooting war with Iraq. Last week, the administration informed the Appropriations Committee that the Nation's stated ability to simultaneously fight

and win two major regional conflicts is tenuous at best. And finally, our intelligence resources are being stretched thin due to this crisis. In short, we are pushing the envelope of our military capabilities. It begs the question: Is there a vital national interest in the Balkans which necessitates a commitment of the bulk of our limited military assets and endangers longstanding strategic interests? I don't have the answer to that question. The answer must come from the President. He must make his case for war to the Congress and American people prior to the passage of any resolution authorizing full scale war. I urge him to do so. It is his duty as the Commander in Chief. The stakes are very high.

I close with a reaffirmation of my support for our military forces throughout the world, especially those personnel fighting in the Balkans. Like their predecessors throughout history, the Americans who today go in harm's way wearing the uniform of their country lead a noble pursuit. Their service is not just another job as some would have us believe. Regardless of the outcome of this vote, I pledge my continued support to those soldiers, sailors, airmen, marines, and Coast Guardsmen who are in the field as I speak today.

This resolution authorizes the President to, ''. . . use all necessary force and other means, in concert with United States allies, to accomplish United States and North Atlantic Treaty Organization objectives in the Federal Republic of Yugoslavia.'' I have no doubt that Senator MCCAIN knows what it takes to succeed in a military campaign. I am confident that our military leaders know what it takes to succeed in a military campaign. However, as of today, this administration has demonstrated neither the vital necessity for, nor the capacity to successfully prosecute, a full scale war in the Balkans. I urge the Commander in Chief to execute the duties of his office and make that case before Congress and the American people. Until he does so, I cannot in good conscience vote to support Joint Resolution 20.

Mr. HOLLINGS. Mr. President, Winston Churchill observed that the ''Balkans have produced more history than we can absorb locally.'' With that in mind, let's realize certain history necessary to judgment.

This was a civil war in a sovereign country. Last Spring it was escalating. The shooting of a Serb policeman on the corner and the resulting burning of Albanian homes on the block had mushroomed to three thousand KLA fighting for independence versus ten thousand Serbian troops massing on the Kosovo border. By Fall it had grown to ten thousand KLA versus forty thousand Serbs.

In walks Secretary of State Madeleine Albright in Rambouillet, announcing to Milosevic and the Kosovars that killing would have to stop; that there be a cooling off period for three years, then one man one vote. The intent was noble—to defend human rights. The dreadful massacre at the hands of the Serbs was met with equally savage conduct by the Albanians. The agreement instrument was intentionally vague to be interpreted by the Kosovars as a vote for independence. The important thing to remember is that Serbia-Montenegro is a sovereign country. Milosevic was selected as its head by its Parliament. In this civil war there was no good side. Today in total war there is no good side.

Another important point is that the proposed agreement was a non-starter—Milosevic could not agree any more to relinquishing Kosovo than Lincoln could the South—a so called free election in three years was a given in an area ninety percent Albanian and ten percent Serb.

According to the Carter Center in Atlanta there are twenty-two wars the world around—all civil. And over half more violent than Kosovo. The United States is a world power. To continue as a world power with sufficient credibility to extend our influence for freedom and individual rights we cannot venture into every human rights conflict. The American people will not support it—as evidenced by the vote in the Congress. And living in the real world we need to husband our integrity for the world concerns of Russia and its missiles, North Korea, peace in the Middle East and the like.

There is no national security threat to the United States in Kosovo. We have yet to have a national debate to determine that GIs are to be sacrificed for human rights.

The demand that Milosevic agree or be bombed into agreement was diplomacy at its worst. The Congress, the country and most of all the military were totally unprepared to pursue this threat. More importantly, as I learned in the artillery no matter how good the aim if the recoil is going to kill the gun crew, don't fire!

The following is the recoil: (A) A civil war has turned into one of national defense for Milosevic. When the U.S. went to national defense upon the attack on Pearl Harbor, the first order of business was to clear the west coast of all who were thought to be the enemy or sympathetic to the enemy. Over 110,000 Nisei, sixty-four percent of whom were U.S. citizens, were forced from their homes into internment camps. When NATO attacked, Milosevic's ethnic cleansing became enemy cleansing; 700,000 in three weeks. Milosevic never would have attempted this on his own save the NATO attack on his country. We have made Milosevic popular in his country.

(B) Unprepared to pursue a ground war, NATO has strengthened Milosevic's military control of Kosovo.

(C) In contrast, the KLA assumes NATO has taken its side in the civil war and now will want revenge no matter what happens. We have ignited further the historic flames of enmity.

(D) With no national security interest at stake, the overwhelming air invasion of the U.S. into a small European country appears arrogant and threatening to much of Europe. Russia, no longer a strategic threat in Europe, is now being revitalized into a strategic threat.

(E) A country half the size of South Carolina with half the population is being hit with forty bombardments a day. Like Viet Nam, we are destroying it in order to save it.

It appears to me the recoil is killing the gun crew. Once again we are told that bombing will soon cause the people of Serbia-Montenegro to arise and throw the rascals out. In 1944 while preparing to cross the Rhine I heard this about Hitler; then in Viet Nam about Ho Chi Min; then for the past seven years about Saddam. When will the State Department learn? When will we all learn that there is no ''win'' in Kosovo? At the moment we are not only losing the war, we are losing our integrity as a world power. This mistake must be brought to a close. While under orders, we all support our troops. But this is not the issue before us. Unfortunately, the policy in Kosovo is a split decision between the House and the Senate. We still debate to determine that policy. This is sad, but it's the reality. Under no circumstance should we sacrifice a single GI for this mistake and indecision.

I shall vote to table.

Mr. MURKOWSKI. Mr. President, I rise in support of the motion to table the resolution authorizing the President to use whatever force and means necessary to carry the military campaign against Yugoslavia to a successful conclusion. As written, this resolution would provide the President with blanket authority to wage this war, including the right to deploy ground troops in the Balkans. There are too many unanswered, if not ignored questions about this war. If the Senate were to give the President this blanket authorization, we would abrogate our responsibility to our troops and to the American people to get real answers to these questions.

First of all, what would constitute a ''successful conclusion'' to this war? Would it be the overthrow of Slobodan Milosevic and his government? Perhaps the removal of all Serbian troops from Kosovo and the subsequent return of all refugees to their homeland? Or would a successful conclusion to the war simply be forcing Milosevic to agree to the terms of the peace agreement which failed at Rambouillet? I, for one, do not feel this question has been sufficiently addressed, and I have a hunch that most, if not all of my colleagues would agree with this assessment.

Mr. President, even if we can agree to what would constitute a ''successful conclusion'' to the war, what else are we agreeing to? Surely the use of ground troops. But how many are we talking? 50,000? 100,000? 200,000? more? We have already committed our pilots to the conflict. But as to ground

troops—I think this is an issue which mandates a separate Senate debate specifically on this issue. We owe it to the American people, and we surely owe this to the troops whose lives lay in the balance of this decision.

What about the costs of this operation? I do not think we have a clue what this will cost—in lives or in dollars. We know that the President has requested somewhere in the realm of $6 billion, but the actual floor debate hasn't even begun and the figure is already fluctuating between $8 and 13 billion.

There is another matter about this resolution, and about this war, which troubles me greatly. When the military completed its Quadrennial Defense Review (QDR), we were assured that our readiness state would allow us to successfully respond to two full scale wars at the same time. This would mean that although we are engaged in the air, and perhaps on the ground, in Kosovo, we would be ready to fight a full scale operation at the same time in another theater—the Korean Peninsula and Iraq come to mind as real possibilities.

Prior to the Kosovo operation, the Department of Defense assessed the risks associated with responding to a second major theater war as ''high.'' But now, because of our large commitment in the Balkans, and the fact that we are running dangerously low on cruise missiles and other munitions, our same military planners have changed this assessment to ''very high.'' If I understand this correctly, and I think I do, some of our own military strategists are concerned that our readiness is insufficient at this time to take on Milosevic and Saddam Hussein (Iraq) or Kim Jung-il (North Korea) at the same time.

Given this Administration's track record in dealing with Iraq and North Korea, I think we have a real problem on our hands. This is a catastrophe of virtually untellable proportions waiting to happen.

President Clinton has not asked the Congress for this blanket authorization on this war—and he continues to oppose the use of ground troops. While I strongly believe that it would be wrong for him to deploy ground troops absent clear Congressional authorization, I also do not believe that we should grant him this authority before he makes the request and the case for this authority.

On a final note, I want to congratulate Reverend Jesse Jackson for his efforts this past weekend, and convey my deep relief and pleasure that the three American soldiers were released and are now reunited with their families.

Mr. President, I support the motion to table, and urge my colleagues to do the same.

Mr. KERREY. Mr. President, I rise today to state my strong opposition to the McCain-Biden resolution currently pending before the Senate. I intend to vote to table this resolution.

I continue to have concerns about both the failure of diplomacy that led to the use of force in Kosovo and the current military strategy being employed. But now that U.S. Armed Forces are engaged, we should send a strong message of unity and determination to see the mission through. President Milosevic should know both the U.S. Senate and the American people remain committed to achieving our objectives.

I will vote to table S.J. Res. 20 for three reasons. First, the language contained in the resolution is too broad. I respect what Senators MCCAIN and BIDEN are trying to accomplish with this resolution; they are trying to increase the chance of success of our military operation. However, I do not support giving the President of the United States the authority to ''use all necessary force'' to accomplish our goals in Kosovo. I find it disturbing that the United States Senate is considering a resolution that would give the President more authority to exercise military force than he has requested. Passage of this resolution would be the equivalent of giving the President a blank check to operate militarily in Yugoslavia.

Secondly, passage of the resolution would abrogate Congressional responsibility for the conduct of this war. The Constitution provides the Congress with a clear role in the use of military force. While the President has consistently stated his belief that ground forces will not be used in a non-permissive environment, passage of this resolution would allow the President to reverse his position without prior Congressional authorization. To be clear, Mr. President, if this resolution were to pass, the President would be able to commit the full might of the U.S. military in Kosovo without first coming to the Congress and explaining the mission, without explaining the military objectives, without explaining the exit strategy, and without explaining how such a deployment would affect our military commitments around the world. Mr. President, the American people should expect more from their elected representatives; Congress should not surrender its Constitutional responsibilities in this matter.

Finally, I oppose the McCain-Biden resolution because it is the wrong legislative statement at the wrong time. While I recognize S.J. Res. 20 is before the Senate due to the parliamentary intricacies of the War Powers Act, it does not provide an appropriate starting point for a Senate debate. The truth is, the Senate is long-overdue in conducting a real debate over our role in Kosovo. What are our objectives? What are our long-term strategic interests in the Balkans? How do our military actions Kosovo affect our commitments to peace and stability throughout the world? These are the sort of fundamental questions we should be debating on the floor today. Rather than providing a starting point for discussing our policy options, the McCain-Biden resolution merely provides the final answer: the President knows best. This is not the statement I want to provide to the people of Nebraska.

I remain hopeful that the current air campaign will bring about a return to diplomacy. President Milosevic must realize that NATO's objectives—to stop the humanitarian tragedy in Kosovo, return the Kosovar people to their homes, and re-establish Kosovar autonomy—will be achieved. The only hope for the Serbian people is a negotiated settlement. In the mean time, the United States and our NATO allies should continue to apply pressure on the Serbian government while working with nations like Russia to establish the basis for a settlement. In the long-run, the United States and Europe are going to have to address the issues of peace and stability in the Balkans in a larger context of economic development and ethnic security.

Mr. President, Congress does have a role to play, both in the short-term discussion of our current military actions and in the long-term discussion of our broader policy in the Balkans. We must begin to talk about these issues in a serious manner or continue to face the prospect of having our decisions made for us as events pass us by. Mr. President, let's table the McCain-Biden resolution and begin a real debate on Kosovo and our national security interests.

Ms. LANDRIEU. Mr. President, Douglas MacArthur, one of this country's greatest military minds, stated ''it is fatal to enter any war without the will to win it.'' I believe that we are faced with that question today. Does this country have the will to win the war in Kosovo, or will the Atlantic Alliance become another fatality of Serbian aggression? We must pose this question to the Senate now because of a mistake. As NATO policy in Kosovo evolved, we made the mistake of taking a critical capability off the table. From the very start, the President and NATO leadership stated that this would be an air campaign, and an air campaign only. They went to great lengths to make this point to the press and to the public. Unfortunately, other ears were also listening. Slobodan Milosevic heard loud and clear that this would be a limited NATO effort. By doing so, we gave Milosevic every reason to doubt that NATO had the will to win.

Furthermore, we gave Mr. Milosevic a vital piece of intelligence on how we would fight this war. In doing so, we have inadvertently given him an advantage more valuable than divisions of soldiers, or batteries of antiaircraft guns. This information has allowed Milosevic to disperse his forces and dig in. He knows he has only to wait out the air campaign to win this war.

It is axiomatic that you cannot win a war by air power alone. We tried in Vietnam. We tried in Iraq, but when meeting an enemy determined to resist, airpower can only succeed with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The clerk will call the roll.

The legislative clerk called the roll.

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

[Rollcall Vote No. 98 Leg.]

YEAS—78

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

NAYS—22

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

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

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

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

The legislative assistant read as follows:

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

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Texas is recognized.

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

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

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

The Senator from New Mexico is recognized.

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

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

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

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

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

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

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

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

I would be happy to yield to Senator SARBANES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Congressman JOHN DINGELL, who is the ranking Democrat on the House Commerce Committee that has joint jurisdiction on this issue, has taken a very strong position that he will oppose the bill if banks are allowed to

provide these services within the structure of the bank itself. It is clear that the House Commerce Committee is going to take the position of the Senate bill. This is clearly a very important issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And I would say in the Sarbanes-Daschle substitute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

various locations. And I wanted to see, before I did all this stuff, if you were willing to 'comply' with the law.''

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

Mr. SARBANES addressed the Chair.

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

Mr. SARBANES. Mr. President, for the fourth time in 11 years, the Senate is debating legislation to modernize the structure of the financial services industry. We are addressing this issue

because we want our financial services statutes to keep pace with forces that are changing the financial marketplace, forces such as globalization, technological change, and the development of new products.

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

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

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

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

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

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

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

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

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

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

They reference that:

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

The President concludes that letter by saying:

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

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

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

(See Exhibit 1.)

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

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

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

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

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

(See Exhibit 2.)

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

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

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

It differs in one important respect, and that is with respect to the bank operating subsidiary provisions. I will discuss those in a little more detail

shortly. But that alternative which reflects essentially last year's bipartisan agreement will be offered as an amendment in a the nature of a substitute to S. 900.

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

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

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

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

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

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

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

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

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

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

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

Let me turn to the CRA provisions.

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

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

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

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

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

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

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

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

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

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

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

strike the CRA title of the bill. That amendment was defeated on a vote of 31 in favor and 40 against.

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

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

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

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

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

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

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

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

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

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

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

Mr. SARBANES. Surely.

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

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

Mr. WELLSTONE. There is or is not?

The PRESIDING OFFICER. There is not.

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

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

Mr. GRAMM. Will the Senator yield?

Mr. SARBANES. Certainly.

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

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

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

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

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

Mr. GRAMM. Sure.

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

Mr. WELLSTONE. I thank the chair.

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

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

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

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

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

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

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

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

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

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

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

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

OTS Director Ellen Seidman stated:

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

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

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

Chairman Greenspan said:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(See Exhibit No. 3.)

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

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

If you want to get legislation, given that at the end of the line it must not

only pass the Congress, but be signed by the President, this approach is clearly the one that is most likely to achieve the enactment of financial services modernization legislation.

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

I yield the floor.

EXHIBIT 1

THE WHITE HOUSE,
Washington, March 2, 1999.

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

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

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

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

Sincerely,

BILL CLINTON.

EXHIBIT 2

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

STATEMENT OF ADMINISTRATION POLICY

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

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

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

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

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

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

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

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

PAY-AS-YOU-GO SCORING

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

EXHIBIT 3

[From the American Banker, September 2, 1998]

EX-FDIC CHIEFS UNANIMOUSLY FAVOR THE OP-SUB STRUCTURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. GRAMM addressed the Chair.

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

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

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

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

Mr. GRAMM. I am happy to yield.

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

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

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

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

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

Mr. GRAMM. I am happy to yield.

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

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

Mr. SARBANES. I thank the chairman.

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

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

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

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

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

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

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

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

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

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

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

Mr. REED. I thank the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Senator from Rhode Island is recognized.

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

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

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

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

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

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

The critical issues that face us with respect to this bill that are troubling are, first, with respect to the Community Reinvestment Act. Over the last

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is nice to assume that banking institutions and financial institutions

are responsible and appropriate in their conduct of activities and that they would only conduct a merger that would be in the best interests of not only themselves but the public. But I think that sometimes strains credulity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield my time.

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

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

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

THE PALESTINIAN AUTHORITY

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

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

I ask unanimous consent that my letter to him dated in March be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, March 31, 1999.

Chairman YASSER ARAFAT,
President of the National Authority, Gaza City, GAZA, Palestinian National Authority.

DEAR MR. CHAIRMAN: Thank you very much for coming to my Senate hideaway and for our very productive discussion on March 23rd.

Following up on that discussion, I urge that the Palestinian Authority not make a unilateral declaration of statehood on May 4th or on any subsequent date. The issue of the Palestinian state is a matter for negotiation under the terms of the Oslo Accords.

I understand your position that this issue will not be decided by you alone but will be submitted to the Palestinian Authority Council.

When I was asked at our meeting whether you and the Palestinian Authority would receive credit for refraining from the unilateral declaration of statehood, I replied that I would go to the Senate floor on May 5th or as soon thereafter as possible and compliment your action in not unilaterally declaring a Palestinian state.

I look forward to continuing discussions with you on the important issues in the Mid-East peace process.

Sincerely,

ARLEN SPECTER,
Chairman.

Mr. SPECTER. I again thank the Chair for his staying late. I thank him, beyond that, for listening to my speech. Very often Presiding Officers are otherwise engaged. I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 1:03 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GREGG).

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

The PRESIDING OFFICER. The Senate will continue consideration of S. 900.

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I will be spending some time on S. 900, but I also, in my remarks today, will be focusing on the question of when the Senate is going to start dealing with issues that affect ordinary citizens. I think that is what people in Minnesota would like to know.

This is called the Financial Services Modernization Act. I have no doubt that the large banks and lending institutions are all for this. The question I have is, When are we going to come out here with legislation that benefits ordinary citizens?—which I mean in a positive way. I will come back to this later on.

The Minnesota Farm Services Administration has now had to lay off close to 60 employees. That is where we are heading. This is an agency, the Farm Services Administration, that is a grassroots organization. They are out there trying to serve farmers. They are out in the field. They pick up on what is happening in rural Minnesota.

Right now the message we are sending here from the Congress is, we can't even pass a supplemental appropriations bill that we started working on several months ago to provide spring planting operating money for family farmers. Prices are way down. Income is way down. People are being foreclosed on. It is not just where they work, it is where they live. They are losing their farms, and we can't even get to them some disaster relief money, some loan money, so they can continue to go on until we go back and change this ''Freedom to Fail'' bill that we passed several years ago.

I am not telling you that some of the large conglomerates and some of the large grain companies and some of the large packers aren't making record profits. They are. They have muscled their way to the dinner table. They exercise raw political control over family farmers.

Meanwhile, this bill, the Financial Services Modernization Act, is all about consolidation and letting large financial institutions have unchecked power. But what we should be talking about is these family farmers going under.

I talked with Tracy Beckman today, director of the Minnesota FSA office. He told me that right now we have 340 loan requests, totaling $44.9 million, that are approved but are unfunded due to a lack of funding. Right now there is the possibility, unless we get this funding, that we are going to have 800 farm families in Minnesota that aren't going to get any financing. They need that financing if they are going to be able to go on.

Yesterday Tracy Beckman told me the story of a family farmer who found out he couldn't get any loan money and he doesn't have any cash flow. You can work 24 hours a day and be the best manager in the world, and you will not make it as a family farmer right now. He said to one of our FSA officers out in the field, out in the countryside, when he found out that FSA can't help him because we are not able to pass a supplemental emergency assistance program, this farmer said, ''I'm just going to go home and shoot myself and my family.''

This is someone who is desperate. There is a lot of desperation in the countryside. We can't even pass a supplemental appropriations bill that will get some loan money out to family farmers, which we should have done a month ago or 6 weeks ago. Instead, we are out here on the floor talking about the Financial Services Modernization Act of 1999, the big bank act, the large conglomerate act, the large financial institution act. When are we going to be out here talking about affordable child care, or about raising the minimum wage? When are we going to make sure people get decent health coverage? When are we going to talk about providing more funding for the Head Start Program? When are we going to be out here talking about how to reduce violence in homes, and in schools, and in our communities? When are we going to be out here talking about something that makes a difference to ordinary people?

Now, Mr. President, I understand that all of the trade groups support this legislation—that is to say, all of the financial services groups. But I rise in strong opposition to this legislation called the Financial Services Modernization Act of 1999.

This bill, S. 900, would aggravate a trend toward economic concentration that endangers not only our economy, but, I think, more importantly, it endangers our democracy. S. 900 would make it easier for banks, securities firms, insurance companies, and, in some cases, commercial firms, to merge into gigantic new conglomerates that would dominate the financial industry.

Mr. President, this is the wrong kind of modernization at the wrong time. Modernization of the existing, confusing patchwork of laws, regulations, and regulatory authorities would be a good thing; but that is not what this legislation is really about. S. 900 is really about accelerating the trend toward massive consolidation in the financial sector.

This is the wrong kind of modernization because it fails to put in place adequate regulatory safeguards for these new financial giants whose failure could jeopardize the entire economy. It is the wrong kind of modernization because taxpayers could be stuck with the bill if these conglomerates become ''too big to fail.'' We have heard that before—''too big to fail.''

This is the wrong kind of modernization because it fails to protect consumers. In too many instances, S. 900 would lead to less competition in the financial industry, not more. It would result in higher fees for many customers, and it would squeeze credit for small businesses and rural America. Most importantly, Mr. President, this is the wrong kind of modernization because it encourages the concentration of more and more economic power in the hands of fewer and fewer people. The regulatory structure of S. 900, as well as the concentration it promotes, would wall off enormous areas of economic decisionmaking from democratic accountability.

Mr. President, this is the wrong time to be promoting concentration in the financial sector. S. 900 purports to update obsolete financial regulations, but

the bill itself is already obsolete. This idea has been around for over a decade. But economic circumstances have changed drastically in the intervening years. Today, much of the global economy is in crisis, and this is no time to be promoting a potentially destabilizing concentration of economic power.

The banking industry has become more and more concentrated over the last 18 years, and especially during the 1990s. There have been 7,000 bank mergers since 1980. In the last year or so, we have seen megamergers that are the largest in the history of American banking. The merger of NationsBank and BankAmerica would have assets of $525 billion, and the BancOne and First Chicago/NBD merger would have assets of $233 billion. In 1980, by comparison, there were no mergers or acquisitions of commercial banks with a total of more than $1 billion in assets.

What is new and different about the situation today is that banks are beginning to merge with insurance and securities firms. The merger between one of America's largest banks, Citibank, and the largest of insurance groups and brokerage groups, Travelers, is probably the best example. This new conglomerate will control over $700 billion in assets.

Supporters of S. 900 argue that whether we like it or not, the lines between banking and securities—and the lines between banking and insurance—have already been breached. Regulators and courts have already let banks dabble more and more into securities and insurance, and they have let brokerages invade banking. The battle over Glass-Steagall has already been lost, they say.

Well, Mr. President, I am not so convinced. If S. 900 didn't encourage more and bigger mergers, I don't think so many big banks, big insurance companies, and securities firms would be so enthusiastic about it.

In fact, passage of S. 900 would set in motion a tidal wave of big money mergers. It would prompt other banks to start courting insurance and securities firms. And it would put increasing pressure on the banks of every size to find new partners. It may be true that we have already come a long way down this road. It may be true that the protections of Glass-Steagall and the Bank Holding Company Act have already been eroded. It is certainly true that we cannot turn back the clock.

But it does not necessarily follow that we are doomed to continue down this perilous path wherever it may take us. Yes, regulators have already given banks an inch, but it doesn't mean we have to give them a mile. If the old laws and regulations are inadequate to deal with the changing world of finance, then we need better regulations, not weaker ones. We should not be supplying the wrecking ball that tears down all remaining walls between banking and other risky activities, without first putting into place adequate safeguards.

Passing this bill would be an act of monumental hubris. It would reflect a smugness and complacency about our economic policy that I believe is unhealthy and unwarranted. We have heard the argument that America has entered the new age, a ''new paradigm,'' a so-called ''new economy.'' Depression and deflation are relics of a distant past. The old laws of ''boom and bust'' no longer apply. Our superior technology, so the argument goes, will allow us to sustain this economic recovery for another 20 or 30 years, and maybe more. This is the beginning of a long boom. Some have dared to imagine that we have arrived at the end of history.

There is a dangerous moral to this story: that we no longer have to prepare for emergencies or guard against disaster; that the safeguards put in place years ago to stabilize the economy can now be safely withdrawn; that a safety net that will never again be tested by adversity can now be safely shredded; that we no longer need to worry about inadequate oversight of markets because the markets can and will police themselves; that bigger is better, antitrust is obsolete, and regulation is passe.

I think we are flirting with disaster. We are strolling casually along the upper decks of the *Titanic,* oblivious to the dangers ahead of us. Remember, the *Titanic* in its day symbolized the ultimate triumph of technology and progress. Just like these new financial conglomerates, it was considered ''too big to fail.'' Because everybody assumed this flagship of Western technology was unsinkable, they saw no need to take ordinary precautions. They disregarded the usual rules of speed and safety, as Congress is now doing with S. 900. And they failed to store enough lifeboats for all the passengers, which reminds me of nothing so much as the repeal of the welfare entitlement.

Mr. President, that is another thing that maybe we should be talking about on the floor of the Senate—what is happening with welfare reform. Later in my remarks, when I am talking about the real issues that affect real people, and in particular poor people, I will return to that.

Some of the passengers in first class may be oblivious, but the world economy is still in a precarious state. Most of Asia is still in a depression. The Japanese economy is slugging through the 9th year of an unshakable slump. Russia has been mired in a depression for 8 years, its economy shrunk to half its former size. Brazil is entering into recession, with serious implications for all of its Latin American neighbors. European economies are showing signs of weakness.

In the face of these sobering developments, the solution offered by this legislation is simply more of the same—more deregulation, more mergers, more concentration. At precisely the moment when, for the first time in 50 years, we face some of the hazards that Glass-Steagall was designed to contain, Congress wants to tear down the remaining firewalls once and for all.

We seem determined to unlearn the lessons of history. Scores of banks failed in the Great Depression as a result of unsound banking practices, and their failure only deepened the crisis. Glass-Steagall was intended to protect our financial system by insulating commercial banking from other forms of risk. It was designed to prevent a handful of powerful financial conglomerates from holding the rest of the economy hostage. Glass-Steagall was one of several stabilizers designed to keep that from ever happening again, and until very recently it was very successful. But now S. 900 openly breaches the wall between banking and commerce.

And what about the lessons of the savings and loan crisis? The Garn-St Germain Act of 1982 allowed thrifts to expand their services—people in the country will remember this—beyond basic home loans, and only seven years later taxpayers were tapped for a multibillion-dollar bailout. I'm afraid we're running the same kind of risks with this legislation. S. 900 would lead to the formation of a wide array of ''too big to fail'' conglomerates that might have to be bailed out with taxpayer money. These financial holding companies may well be tempted to run greater risks, knowing that taxpayers will come to their rescue if things go bad.

S. 900 does set up firewalls to protect banks for failures of their insurance and securities affiliates. But even Alan Greenspan has admitted that these firewalls would be weak. And as the Chairwoman of the FDIC has testified, ''In times of stress, firewalls tend to weaken.'' The economists Robert Auerbach and James Galbraith warn that ''the firewalls may be little more than placing potted plants between the desks of huge holding companies.''

Regulators will have little desire to stop violations of these firewalls if they think a holding company is ''too big to fail.'' After the stock market crash of 1987, for example, Continental Illinois breached its internal firewalls to prop up a securities subsidiary. Regulators reprimanded Continental with a slap on the wrist.

And even if there is no taxpayer bailout, the Treasury Department has expressed its concerns about unmet expectations. Investors and depositors may assume protection is indeed much greater for these holding companies than it actually is. And they may panic when they realize they were mistaken.

And what about the lessons of the Asian crisis? Just recently, the financial press was crowing about the inadequacies of Asian banking systems. Now we are considering a bill that would make out banking system more like theirs. The much maligned cozy relationships between Asian banks,

brokers, insurance companies and commercial firms are precisely the kind of crony capitalism S. 900 would promote.

The economists James Galbraith and Robert Auerbach warn against repeating the mistakes of the Asian economies: ''There is already evidence of monopolistic practices in the banking industry that would be heightened by [S. 900]. There is now devastating experience from the recent problems experienced by huge banking-finance conglomerates in Asia. There is little justification to follow these examples, as would be allowed by [S. 900]. It could happen here if we build the same unwieldy structures to dominate our banking system.''

To be accurate, if we want to locate the real causes of the Asian crisis, we have to look at the reckless liberalization of capital markets that led to unbalanced development and made these economies so vulnerable to investor panic in the first place. The IMF and other multilateral institutions failed to understand how dangerous and destabilizing financial deregulation can be without first putting appropriate safeguards in place.

World Bank Chief Economist Joseph Stiglitz wrote last year about the Asian crisis:

> The rapid growth and large influx of foreign investment created economic strain. In addition, heavy foreign investment combined with weak financial regulation to allow lenders in many Southeast Asian countries to rapidly expand credit, often to risky borrowers, making the financial system more vulnerable. Inadequate oversight, not overregulation, caused these problems. Consequently, our emphasis should not be on deregulation, but on finding the right regulatory regime to reestablish stability and confidence.

That is World Bank chief economist Joseph Stiglitz. We claim to have learned our lessons from the crisis in Asia. But I am not sure we have.

Tell me why on Earth are we doing this, besides the fact that these large financial institutions have so much political power? Why now?

The backers of S. 900 claim that the Glass-Steagall Act of 1933 and the Bank Holding Act of 1956 are obsolete and financial regulation must be modernized. Well, I'm all for modernization. But the question is: what kind of modernization?

I think most of us agree that the existing patchwork of confusing and inconsistent regulations needs to be simplified and rationalized. GAO has testified that the piecemeal approach to deregulation taken by the Fed and Treasury has resulted in ''overlaps, anomalies, and even some gaps'' in oversight.

The problem is that S. 900 doesn't really fix that problem. It maintains a patchwork of regulators. Who knows how they would coordinate their efforts when holding companies run into trouble?

But most importantly, the reach of S. 900's regulatory safeguards does not match the size of these new conglomerates. A central feature of S. 900 is the transfer of regulatory authority for the newly created holding companies to the Federal Reserve. This seems a lot more like deregulation than modernization.

Let me repeat that. A central feature of S. 900 is the transfer of regulatory authority for the newly created holding companies to the Federal Reserve. This sounds a lot more like deregulation than modernization.

How much confidence can we have in the Fed's oversight? The case of Long Term Capital Management last year does not exactly inspire confidence. Only one week before that $3.5 billion bailout, Alan Greenspan testified before Congress that the risk of hedge funds was well under control and that bankers policing them knew exactly what they were doing. Well, in this case at least, they didn't know what they were doing. And apparently neither did the Fed.

What concerns me more is that this massive transfer of power is anti-democratic. The Federal Reserve Board is not an elective body, and it's not democratically accountable. To the extent Congress pries into the Fed's business—which is not very much—we focus on monetary policy, not bank oversight. Why should we hand over so much power to an institution that is essentially accountable to the financial industry and nobody else?

I repeat that. Why should we hand over so much power to an institution that is essentially accountable to the financial industry and nobody else?

James Galbraith and Robert Auerbach write:

> The Federal Reserve's decision-making is contingent to a great extent on the banking industry which it regulates. Bankers elect two-thirds of its 108 directors on the boards directors of its 12 regional Federal Reserve Banks. This 25,000 employee bureaucracy with its own budget that is not authorized or approved by the Congress is not independent of the bankers and finance companies that it would regulate.

Several commentators have expressed open delight that this transfer of power to the Fed will insulate financial regulation from ''partisan politics.'' The Christian Science Monitor endorsed H.R. 10 last year because ''it would make financial regulation more remote from politics.''

But is this really something we should welcome? Another term for ''partisan politics'' in this case is ''democracy.'' Democracy may be messy sometimes. It would be vastly improved by real and meaningful campaign finance reform. But it also happens to be the basis of our form of government.

Why should such an important area of public life be ''insulated'' from democratic accountability? Why should the people making the most important economic decisions in our country be accountable only to Wall Street and not to voters?

Why are we transferring this kind of authority?

We've already walled off most economic decisionmaking from any kind of democratic input. Former Labor Secretary Robert Reich has argued that we no longer have any fiscal policy to speak of, and Congress has delegated monetary policy to the Federal Reserve. ''The Fed, the IMF, and the Treasury are staffed by skilled economists,'' he wrote, ''but can we be sure that the choices they make are the right ones in the eyes of most of the people whose lives are being altered by them?'' He has noted that ''One reason governments exist is to insure that economies function for the benefit of the people, and not the other way around.'' Already, decisions about interest rates and desirable rates of unemployment—decisions that will decisively impact the lives of millions of Americans—are beyond the reach of democracy. They are reserved to the exclusive jurisdiction of unelected bankers.

What does it mean, as a practical matter, for supervision of the financial sector to be protected from democratic accountability? The contents of S. 900 itself should give us a pretty good idea. For whose benefit is this legislation being passed? In the long debate over this legislation, there has been a lot of talk about the conflicting interests of bankers, insurance companies, and brokers, but very little discussion of the public interest.

Financial services firms argue that consolidation is necessary for their survival. They claim they need to be as large and as diversified as foreign firms in order to compete in the global marketplace. But the U.S. financial industry is already dominant across the globe and in recent years has been quite profitable. I see no crisis of competitiveness.

Financial firms also argue that consolidation will produce efficiencies that can be passed on to consumers. But there is little evidence that big mergers translate into more efficiency or better service. In fact, studies by the Federal Reserve indicate just the opposite. There is no convincing evidence that mergers produce greater economic efficiencies. On the contrary, they often lead to higher banking fees and charges for small businesses, farmers, and other customers. Bigger bankers offer fewer loans for small businesses. And other Fed studies have shown that the concentration of banking squeezes out the smaller community banks.

S. 900 reflects the same priority of interest promoted by financial consolidation itself. A provision designed to ensure that people with lower incomes can have access to basic banking services has been stripped out. Let me repeat that. A provision designed to ensure that people with lower incomes can have access to basic banking services has been stripped out. This provision was to address the growing problem that banking services are beyond the reach of millions of Americans. According to U.S. PIRG, the average cost of a checking account is $264 per year, a major obstacle to opening a checking

account for low-income families. These families have to rely instead on usurious check-cashing operations and money order services.

I don't see much protection for consumers in S. 900 either. Banks that have always offered safe, federally insured deposits will have every incentive to lure their customers into riskier investments. Last year, for example, NationsBank paid $7 million to settle charges that it misled bank customers into investing in risky bonds through a securities affiliate it set up with Morgan Stanley Dean Witter.

S. 900 makes nominal attempts to address these and other problems. But in the end, I am afraid this bill is an invitation to fraud and it is an invitation to abuse.

Finally, the impact of S. 900 on the Community Reinvestment Act is a cause of real concern. I thank my colleague, Senator SARBANES, for his tremendous leadership in making sure that we protect community reinvestment as a part of his substitute legislation. CRA has been an effective financial tool for the empowerment and growth of our communities for over 20 years. Despite this success, CRA is now in great danger. Why? Because S. 900 is a legislative package of deals and favors aimed to please Wall Street, certainly not Main Street. It is not good for small business, not good for low-income families, not good for rural America, not good for our neighbors or our communities.

Within this bill are three substantial provisions intended to ''modernize'' financial services by rolling back the Community Reinvestment Act. But that will only encourage discrimination and promote economic despair.

We need to ask ourselves a very important question: Are we willing to turn the clock back and abandon the Community Reinvestment Act? Are we willing to return to the days before 1977 when banks could freely discriminate against neighbors, farms, small towns, and other underserved populations, just because they were viewed as less profitable customers?

We need to keep the doors open for families, seniors, farmers, small businesses, for consumers to access credit so they can realize their dream to own a home or start a business. We need to keep the doors open for community groups, for cities and towns to access credit to revitalize impoverished neighborhoods or to restore once abandoned buildings. We need to keep CRA strong because we all benefit from community reinvestment.

CRA establishes a simple rule—that depository institutions must serve the needs of the communities in which they are chartered. In a safe and sound manner, they form partnerships with groups and consumers to provide lending to those denied credit. In a safe and sound manner, banks work with families looking to achieve their dream of owning a home. In a safe and sound manner, banks lend to small businesses to help them grow. In a safe and sound manner, banks lend to farmers who fall on hard times and need some extra help to survive falling commodity prices.

For many consumers, CRA has been a lifesaver. To deny the positive impact CRA has made in improving the economic health of our country is simply to deny the facts. The CRA has delivered an estimated $1 trillion or more for affordable homeownership and community development. The role of CRA is not just to benefit the most impoverished neighborhoods in our States; rather, CRA cuts across class lines, race lines, gender lines, practically every hurdle to discrimination, to promote economic stability for families, small farmers, and communities. This legislation in its present form begins to take all that away.

What is my proof? According to the statistics collected by the Local Initiative Support Corporation, or LISC, in 1997 the Home Mortgage Disclosure Act data showed that lending to minority and low-income borrowers is on the rise. For example, since 1993 the number of home mortgage loans to African Americans increased by 58 percent; to Hispanics, by 62 percent; and to low- and moderate-income borrowers by 38 percent—well above the overall market.

In 1997, large commercial banks made $18.6 billion in community development investments. In 1997, banks and thrifts subject to CRA's reporting requirements made two-thirds of all the small business loans made that year. More than one-fifth of those loans were made to small businesses and low- and moderate-income communities.

Each time I return to Minnesota, I am convinced that CRA is working. Early this year, I had a chance to present an award to a family who had achieved their dream of becoming homeowners. Rene and Gloreen Cabrarra were the 750th family to purchase their home through an innovative partnership between the community group ACORN and a local bank. Rene and Gloreen had to move out of their apartment when it was condemned for repair problems. As a result, they moved in with other family members. The Cabrarras began working with the community group ACORN in the Twin Cities and were soon able to obtain a special low-income loan to buy their home, thanks to a CRA agreement between that community group and that bank in that metro area. There is no doubt that CRA has benefited Rene and Gloreen. As a result, they are now proud homeowners living in the Phillips neighborhood.

From the nearly 170 mayors who have signed their name in support of the progress CRA has made in their communities, there is tremendous support. From family farm and rural organizations who see access to credit as being essential tools for their small communities, there is tremendous support. A story of empowerment can be shared by every group working for the advancement of their rights.

Despite this undeniable success, the CRA is under attack. S. 900 would begin to dismantle its effectiveness in the communities where it has been most beneficial. Specifically, I will speak to two anti-CRA provisions in S. 900.

First, S. 900 creates a safe harbor for banks that have maintained a satisfactory CRA rating for 3 consecutive years. This provision would practically eliminate the opportunity for public comment on the CRA performance of a bank at the time of a merger application. Banks that have received a satisfactory or better CRA rating for 3 years consecutively would be deemed in compliance and therefore freed from the requirement of public comment on their application.

Public comment on a proposed merger is an especially useful tool in the case of large banks serving a variety of markets. In such cases, regulators examine only a portion of these markets to evaluate a bank's CRA rating. Since performance in small communities is weighted less than in larger areas, public comment sometimes provides the only means to truly examine the commitments of a bank to all of its community members. Simply put, public comment is a chance for community groups and consumers to bring to light important information and facts that may have been overlooked during the review process.

However, this avenue for public involvement in the merger process is seriously undercut by S. 900's safe harbor provision. The only way a citizen could exercise his or her democratic rights would be to find ''substantial verifiable information'' of noncompliance since the merging bank's last CRA examination. This is a very high burden. An estimated 95 percent of all banks are deemed CRA compliant. As a result, the vast majority of mergers would be exempted from public comment.

Some have justified this undemocratic safe harbor as a way to prevent extortion by community groups during the merger review process. Mr. President, in August 1998, I wrote a letter to the Federal Reserve requesting a public hearing on the proposed merger between Norwest Corporation, based in Minnesota, and Wells Fargo Company. I specifically requested that special attention be paid to the possible effects that this merger would have on the people and the communities who rely on Norwest's services and community participation across the State. I ask my colleagues, Was this extortion?

I was not the only elected official to request such a hearing. A Congressman, a State representative, and various community groups did as well. Were they guilty of extortion?

The 2-day hearing opened the doors for 70 different groups and individuals to publicly comment on the strengths and weaknesses of both Norwest and Wells Fargo with regard to community involvement. Representatives from the Navajo Nation, statewide nonprofit

housing organizations, and microcredit lending organizations that provide a lifeline to small businesses, all had their chance to be heard. They had their chance to publicly challenge these merging entities to remain involved in their communities. Did this constitute extortion?

No one was practicing extortion by requesting a public hearing on the merger between these two financial giants. No elected officials or nonprofits were doing anything improper when they publicly commented on the lending practices of these two banks. What these 70-plus groups and individuals were practicing was democracy.

Using S. 900, citizens would be deprived of these democratic rights unless they could ''substantially verify'' a merging bank's noncompliance. That is not just undemocratic, it is unjust. At least the Daschle-Sarbanes amendment would retain the consumers' democratic right to participate in the process.

The second anti-CRA provision in S. 900 is the small bank exemption. This provision would exempt banks in rural communities with assets of less than $100 million from CRA requirements. In fact, it would exempt 63 percent of all banks from the requirements of CRA. It would send a clear message to farmers, to small businesses, and to consumers in small towns that they do not have the same rights to access credit as consumers who live in urban areas.

Some of my colleagues would argue that small banks in rural communities do not need CRA. Why? They claim that small banks by their nature serve the credit needs of local communities. But CRA compliance records will tell you a different story.

More importantly, rural America is facing an economic crisis. Family farms are disappearing one by one from this country's rural landscape. Many rural communities are in great need of access to credit before their economies collapse. This anti-CRA provision completely ignores the realities and needs of rural America.

According to a recent SBA (Small Business Administration) report, June 1998 data show a 4.6-percent decline in the number of small farm loans. That June 1998 data also reveals that the value of very large farm loans, over 1 million, has increased by 25 percent, while small farm loans under $250,000 increased by only 3.9 percent. As family farm and rural community organizations have concluded, larger loans are going to fewer farmers.

According to a similar study conducted by the State of Wisconsin, farming operations were more likely to obtain a loan if they were under contract with an agribusiness. Small and independent farmers faced greater difficulty accessing the necessary credit to remain in operation.

To quote an April 29 letter signed by 19 organizations representing the interests of farmers in rural communities:

> Rural areas continue to suffer from a serious shortage of affordable housing. Farmers are facing the worst financial conditions in more than a decade due to declining commodity prices. Rural Americans continue to need the tools of the CRA to ensure accountability of their local lending institutions. CRA helps to meet the credit demand of millions of family farmers, rural residents, and local businesses.

In a March 24 letter to Senators, the National Farmers Union also sent the message that rural America needs the CRA just as much as our urban centers. To quote the letter from President Leland Swenson:

> The Community Reinvestment Act prohibits redlining, and encourages banks to make affordable mortgage, small farm, and small business loans. Under the impetus of CRA, banks and thrifts made $11 billion in farm loans in 1997. CRA loans assisted small farmers in obtaining credit for operating expenses, livestock and real estate purchases. Low- and moderate-income residents in rural communities also benefited from $2.8 billion in small business loans in 1997.

In 1999, access to credit is tighter than usual, making it critical to maintain the CRA.

For many consumers living in rural communities, having access to credit is having access to a future. Our rural communities need CRA because they can depend on little else in today's agricultural markets.

I am strongly opposed to the small bank exemption in S. 900 because I have witnessed firsthand the important role CRA plays in rural communities in Minnesota. At least the Sarbanes-Daschle amendment would remove this harmful provision from the bill.

We need to ask ourselves, do we really intend to return to the old banking practices of red lining? Do we want to leave our cities, small towns, and families without a means to become economically stable and strong? Do we intend to draw a clear line between the haves and have-nots?

It has been nearly 3 years since the passage of welfare reform. Since then, urban and rural America has seen a dramatic rise in the numbers and needs of the desperately poor.

Mr. President, that is right. Since then, we have seen a dramatic rise in the number and needs of the desperately poor. Why are we not talking about other issues on the floor of the Senate? I will get back to this in a little while.

What does that have to do with CRA? Everything. Because of CRA, nonprofit organizations that assist the homeless are able to establish partnerships with banks to access credit and build affordable and emergency long-term housing. CRA loans that develop dilapidated neighborhoods and bring more jobs to our urban centers benefit former welfare recipients. Over $1 trillion has been invested with innovative ways of providing housing, jobs, and community revitalization to stabilize these economically troubled areas.

CRA has been a mainstream banking practice for over 20 years. It has evolved over the years to better serve banks and their communities, and it has been streamlined to reduce the regulatory burden on small banks. This is a law that has been improved and has grown to better serve banks and consumers.

A lot of big banks don't like the CRA. They feel it is an imposition. They denounce it as big government and overregulation. But for most people I ask, Which is the greatest danger here, concentration of political power in government or concentration of economic power? I don't think it is a close call.

I think our goal should be to help ordinary people make sure they have some say over the economic decisions that affect their lives. Repealing CRA is not going to do that. No amount of antigovernment rhetoric is going to do that. But enforcing some meaningful consumer protections would do that. So would prohibiting mergers that threaten to crowd out community banking, squeeze credit for small businesses, and open the door to higher fees and ever more fraud and abuse.

This is the fundamental problem with deregulation and economic concentration generally. It allows the Nation's economic power to be held in the hands of fewer and fewer people. The same thing is happening in many of our other major industries, including airlines, electric utilities, and communications.

Ben Bagdikian has noted that 20 corporations and multinationals own most of the major media in the entire country—newspapers, magazines, radio, television and publishing companies. In the 2 years since the Congress eased restrictions on ownership of radio, 4,000 stations have been sold—in the last 2 years—and more than half of all big-city stations are in the hands of just five companies.

The electric utility industry is already consolidating in expectation that the States and Congress will soon mandate retail competition. And 4,500 corporate mergers were announced in the first 6 months of last year, with the combined value of $1.7 trillion. These include SBC and Ameritech, Chrysler and Daimler Benz, Enron and PGE, Monsanto and American Home Products, Worldcom and MCI, and Columbia and HCA Healthcare. Now we hear about mergers between BP and Amoco, Mobil and Exxon, and on and on.

Pretty soon we are going to have three financial service firms in the country, four airlines, two media conglomerates, and five energy giants.

Mr. President, this is absolutely amazing to me, which is why I have spent some time making the case. We see more consolidations here. We see a dangerous concentration of power in telecommunications—that is the flow of information in democracy—and the same thing in energy, the same thing with health insurance companies.

In agriculture it is absolutely unbelievable—absolutely unbelievable. Everywhere family farmers look you have these conglomerates that have muscled

their way to the dinner table, exercising their raw economic and political power over family farmers, over consumers, and I might add, over taxpayers as well.

Joel Klein came out to Minnesota, along with Mike Dunn, who heads the Packers and Stockyard Administration in the USDA, for a very dramatic public hearing in our State just a couple of Sundays ago. Let me tell you, you have these hog producers that are facing extinction, and then you have these packers that are in hog heaven. You have your grain farmers going under; and you have Cargill making a 52-percent profit in this past year.

The farmers are saying, ''What is going on here? Consumers aren't getting a break. And we're not getting the prices that enable us to even keep going on with our farming. Who is making the money?'' Everywhere you see this concentration of power. I will have an amendment on this bill later on that will talk about antitrust action.

Antitrust action has been taken off the table. Antitrust action has been taken off the table. This is a classic example of why we need reform. Because when it comes to antitrust action, and having the Senate say we are on the side of consumers, we are on the side of family farmers, we are on the side of community people, and we are willing to take on these huge companies, we dare not do that. These monopolies are the campaign givers. These are the heavy hitters. These are the investors.

We have been through this before, Mr. President. At the end of the last century, industrial concentration accelerated at an alarming pace. Lots of people, including the columnist and author E.J. Dionne, former House Speaker Newt Gingrich, and the philosopher, Michael Sandel, have noted the similarities between that era and our own.

American democracy suffered as a result of that concentration of economic power. The two parties became dominated by similar corporate interests. Their platforms started to sound an awful lot alike, and voter participation declined dramatically. Why? Because people realized that they had little to say in the economic decisions that most affected their lives.

I think that aptly describes the situation today. I tell you, when I travel in Minnesota or travel in the country, one of the things that people say to me is that they think both parties are controlled by the same investors. They do not think there is any real opportunity for them to have any say anymore in this political process.

And once again, we are about to pass a piece of legislation —I hope we do not, but if we do—a piece of legislation that will lead to the rapid consolidation in the financial services industry, to the detriment of rural America, to the detriment of small towns, to the detriment of low- and moderate-income people, and to the detriment of working families. But there is an awful lot of economic and political clout behind this bill.

And what is in store for us if we allow this trend to continue? Huge financial conglomerates the size of Citigroup will truly be ''too big to fail.'' Government officials and Members of Congress will be prone to confuse Citigroup's interests with the public interest, if they do not already. I think they do already.

What happens when one of these colossal conglomerates decides, for example, it might like to turn a profit by privatizing Social Security? Who is going to stand in their way? That is a trick question, of course, because we already face that dilemma today. But I contend that the economic concentration resulting from passage of S. 900 would only make that problem worse.

In a sense, then, campaign finance is only a symptom of a larger problem. By all means, we should drive money out of politics. Absolutely, we should. But even if we succeed, the trend towards economic concentration will diminish the value of democratic decisionmaking. If few or none of the most important economic decisions are made democratically, or are even subject to democratic accountability, what is the point of voting? Indeed, these developments raise important and fundamental questions about the role of democracy itself.

It used to be that these questions were a source of concern for many people. And they were a hot topic for political debate. Thomas Jefferson and Andrew Jackson warned not only against the concentration of political power, but also against the concentration of economic power.

The great Supreme Court Justice Louis Brandeis railed against the ''Curse of Bigness.'' Brandeis argued that industrial concentration coarsened the value of democracy by diminishing the role of individuals in economic decisions. We should not let that debate die. It is a vital part of our democratic heritage.

There may be some colleagues who share these concerns but will nonetheless vote for S. 900. They say this is the best we can do. They say the damage has already been done, and concentration will continue with or without this legislation.

I disagree. I think we need to take a good look at this. Before we consider sweeping changes in our financial services laws, we had better understand the effects of the latest wave of mergers. The true test of these new combinations will be the impact of the next recession. We need to see how these megamergers hold up before proceeding any further.

There is simply no justification or excuse for this kind of invitation to bigness before a solid, updated regulatory system can be put in place. I believe this legislation is an enormous mistake. It is not necessary. And it could do real harm to the economy. It should be soundly defeated. It should be soundly rejected.

Mr. President, with due respect to my colleagues, while I have the floor I want to argue one other case. And I say to both the Senator from Texas and the Senator from Utah, I will not dominate the whole afternoon, but I do want to make one other argument. And it is this: I do not understand why we are on the floor dealing with this legislation. I do not really understand why we are dealing with—what is it called—the Financial Services Modernization Act.

When I talk to people in cafes in Minnesota, they do not talk to me about the Financial Services Modernization Act at all. As a matter of fact, I will tell you something. If you spend a little bit of time with people, most people will say—and both of my colleagues, the Senator from Texas and the Senator from Utah will be happy to hear the first part of what they say, and maybe not as happy to hear the second part. If you do a poll and ask them, ''Are you a liberal or a conservative,'' at the Town Talk Cafe in Willmar, which is my focus group—and that is the name of the cafe—I would say 75 percent of the people say they are conservative. They do.

But you know what? If you stick around and talk to people for a while, they do not like the way in which these big banks have taken over financial services and have driven out the community banks. And they do not like these big insurance companies that are dominating health insurance. And they do not like how these conglomerates are driving family farmers out. And they do not like the concentration in telecommunications. And they do not like to see the merger of the energy companies. And they are not all that happy with Northwest Airlines that basically dominates about 75 percent of the flights in the State of Minnesota.

Those people in the cafes of Minnesota have a healthy skepticism about bigness. They have a healthy skepticism about a piece of legislation that leads to dangerous consolidation, and basically leaves the economic decisionmaking, that can make or break the lives of families and communities and neighbors, in a few hands. They are right. More importantly, one more time, I just want to sound this alarm, which is why I am going to talk a little bit more here. We have a situation in my State of Minnesota right now which I can only define as desperate.

I have spoken at enough farm gatherings. I spoke first, it was a farm gathering in northwest Minnesota, Crookston. Then there was a farm gathering that I spoke at in Worthington. Then there was a farm gathering in Sioux Falls, SD. Then there was a farm gathering in Sioux City, IA. Every time I spoke at those gatherings—and there were 500, 600, 700, several thousand farmers—I looked out

there and I saw the pain in the faces of family farmers.

I see the pain in the faces of those family farmers as I am in this Chamber for two reasons: First of all, on the long-term front, these family farmers can't make it without a decent price. They want to know what we are going to do about getting farm income up. Why aren't we talking about farm income today? Why aren't we doing something about agriculture?

They want to talk about when there is going to be antitrust action. They want to talk about who is going to be on their side, not on Cargill's side or IBP's side or Monsanto's side. They want to talk about whether or not there is going to be some protection for them so they have a chance to make it.

These family farmers also want to know why in the world we can't get emergency assistance to them as a part of the emergency supplemental bill. They thought 2 months ago we were going to do it, but we didn't. We left and went home for spring break. Now we are back. I say to the majority party, get that supplemental bill out here on the floor and pass it. How can we hold this bill up? There was supposed to be a separate ag supplemental bill. But I think it was tied to Central American assistance. I think they went together.

It should be passed out of here, because, one more time, the Minnesota FSA is laying off its employees. You might say, so what, a bunch of bureaucrats. Not so. This is a grassroots organization, with people out in the farmland providing people with credit, as a lender of last resort, with more and more demand as farm prices are down, farmers are facing foreclosure, trying to get out there and plant, and they do not have the loan money. This is a demoralized agency, and they are letting people go.

As I said earlier, we are going to have, on the present course, at least 800 farmers who aren't going to get any financing at all. They are going to go under. That is a real emergency supplemental bill.

I am tempted, while I have the floor, to speak for a while about this, because it seems to me that we ought to be doing something about this and we ought to be doing something about it right now. The Financial Services Modernization Act—I have to write this down—the Financial Services Modernization Act does not mean a thing to them. The Financial Services Modernization Act does not mean a thing to these family farmers. They want this Congress to pass that supplemental bill because for them time is not neutral. Time marches on. If they do not get any assistance, they are going to go under. These are hardworking people. I think it is just simply unconscionable. I am not just talking about the Financial Services Modernization Act. I think it is unconscionable that any piece of legislation go forward on the floor of the Senate until we do something about this.

It is absolutely unbelievable; it really is.

I mentioned a story earlier. I see there are people in the Chamber who are watching the debate—or at least watching one person speak. I have a hard time giving people a feel for the gloom that is out there. Again, I talked to Tracy Beckman, not using any names, who is director of the Minnesota FSA.

He said, I think it was this morning, that one of the farmers who was denied a loan because there was no money, because we haven't done anything—we are supposed to pass this emergency supplemental bill and get the funding out there—one farmer today said, ''Well, I'm just going to shoot myself and my family.'' That is horrifying. That is what he said.

There is tremendous economic pain, tremendous desperation. People are going under. We have the Financial Services Modernization Act, this piece of legislation. Frankly, it doesn't mean anything to these farmers. They want to get some help. They would like to get spring planting loan money. That is what they would like to have done for them. That is not what we are doing.

When are we going to get serious? It is clear what this piece of legislation does. We have the Community Reinvestment Act, which has been tremendously important to lots of people in small communities. It has ended redlining. I used to do community organizing against redlining. It has worked well. It has made a huge difference. It's a source of capital, and lots of communities have overcome discrimination. This piece of legislation takes all that away. Wipes it out, wipes it out through the two provisions that I talked about.

My question is, what does it do for ordinary citizens? What does it do for ordinary people? That is the question. Why aren't Senators talking about issues that matter to working people, that matter to ordinary citizens in our country? Why aren't we talking about the Town Talk Cafe?

I see my colleagues on the floor.

Mr. GRAMM. Will the Senator yield for one moment?

Mr. WELLSTONE. As long as I continue to have the floor, I will be pleased to yield.

Mr. GRAMM. I have to accommodate our dear colleague from Minnesota. Let me say, I wish he could go on forever, because I am always enlightened listening to him. But to accommodate him, I asked unanimous consent that he might have 40 minutes when we came back in at 2:15. It is now 3:15. The Senator has spoken an hour.

I asked other people to come over to speak based on that agreement. I do not intend to try to enforce the 40 minutes, but if the Senator could take that into account, because I asked Senator BENNETT, who, as are all of us, is busy, to come over based on that agreement. He has been sitting here now for 25 minutes or so. If the Senator could sort of begin to bring it to a close, it would be much appreciated.

Mr. WELLSTONE. Mr. President, let me say to my colleague that initially—and I appreciate what he is saying and because of that, I will try to bring it to a close—I said I thought it would take 40 minutes. My colleague was gracious enough to say, take the time you need, take an hour and a half, whatever you need. I think that is actually part of the RECORD.

And when he said that—I usually take direction from my colleague from Texas—I thought to myself, well, if I have an hour and a half to talk about the issues that I think we really ought to be talking about, I will take that. So I am about ready to finish up on that hour and a half.

Mr. BENNETT. Mr. President, will the Senator yield for a question?

Mr. WELLSTONE. I am pleased to, although I want to make sure that I focus on some of these other issues. Let me yield for a question.

Mr. BENNETT. I want to answer some of the things the Senator has been saying here and ask him a question in that context.

The Senator has asked the question, why we are taking this up, and why does it matter, and is there any urgency. My question to the Senator is, is he aware of the fact that Robert Rubin, the Secretary of the Treasury, and Alan Greenspan, Chairman of the Federal Reserve system, both testified before the Senate Banking Committee that this legislation was of the highest urgency and that if it did not pass as quickly as possible, the entire banking system of the United States would be adversely affected by virtue of foreign competition? Is the Senator aware of that testimony from the administration and the Federal Reserve Board?

Mr. WELLSTONE. Mr. President, it is a fair enough question. In answering the question, let me say that I actually just did have an opportunity to be in a session with Secretary Rubin in which several of us expressed the very concerns that I have taken an hour to express. He said they are very valid concerns. ''On balance, I think it is better that we do this'' was what he said.

And then when we had a discussion about CRA—and I have devoted a good deal of my time talking about that—the Secretary was very clear about the President's veto letter and very clear that it was important that we maintain these CRA provisions.

Of course, the Secretary is interested in this legislation, though it wasn't quite the same report I heard that my colleague heard. I say one more time—I am coming to the end of my remarks—that in deference to all my colleagues out here, I know this Financial Services Modernization Act has the support of the industry groups and has the support of the financial institutions. Of course, because it is going to lead to more concentration of power and give them more say.

I am sure Alan Greenspan would like it. The Federal Reserve Board is going to have even more power—an unelected body with yet even more decision-making power over decisions that vitally affect people's lives. But I have to tell you, in all due respect to one of my favorite colleagues, the Senator from Utah, one more time, besides believing this piece of legislation is a huge mistake, I won't support this legislation in its present form.

I won't support the alternative, the substitute, either. Besides thinking it is a huge mistake, for reasons I have argued over the last hour—and my colleague from Texas was gracious enough to give me that opportunity—I also want to say one more time to family farmers in the State of Minnesota right now that this Financial Modernization Services Act doesn't mean anything. It doesn't mean a thing. They want to know why we are not getting some loan money out to them right now because they are in such desperate shape. They are trying to live to be able to farm another day.

To the people who are going to be laid off in Minnesota FSA, who are doing the good work of trying to process loans and help people, but have no money to work with, I think it is absolutely outrageous. To all the farmers in economic pain because we are not doing a darn thing about getting farm income up, or about getting price up, or a darn thing to take on some of these big grain companies and packers so family farmers can get a fair shake in the marketplace, I am for putting more free enterprise back into the food industry. It is the big monopolies I don't care for. These farmers have every reason to wonder what we are doing here.

I will tell you one more time that the people in the cafes I have been in are not talking about this particular legislation; they don't see this as a crisis. Alan Greenspan may see the world in a very different way than people in the cafes in Minnesota, and so might the Secretary. Certainly these financial institutions do. Certainly Wall Street does.

But people in Minnesota are not particularly interested in mergers, acquisitions, and all this consolidation of power. They are interested in a good job at a good wage. Why aren't we out here talking about raising the minimum wage?

They are interested in not falling between the cracks when it comes to health care coverage. Why aren't Senators talking about decent health care coverage for people? They are interested in how they can afford prescription drugs. Why aren't Senators talking about affordable prescription drug coverage for seniors, and, for that matter, for all of us? They are interested in how there can be a decent education for their children. Why aren't Senators having a major debate about education or getting resources to communities so we can do a better job of educating our children? They are interested in how we can reduce violence in homes, in schools, and end the violence in our communities. Why aren't Senators out here with legislation that deals with that? They are interested in how to earn a decent living and how to give their children what they need and deserve. They are interested in making sure that every child, by kindergarten, comes to school ready to learn. Why aren't we investing in good, developmental affordable child care?

That is what they are interested in.

We are not dealing with any of those issues. I want to know when Senators are going to come out on the floor and deal with pieces of legislation that dramatically affect ordinary people, working families in my State and working families around the country.

I yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I have enjoyed the presentation by my friend from Minnesota. I return his friendship, and he is my friend. We disagree on just about everything, and we disagree about most of the things he said here today. I want to make a few comments about some of the positions he has taken before I talk about the bill.

As I listened to the Senator run down the litany of things he thinks we ought to solve with legislation—we ought to solve farm prices with legislation; we ought to solve preparation for school with legislation; we ought to solve education, generally, with legislation; we ought to solve the amount of money people earn with legislation, and on down the list—he reminds me of a comment that I found very insightful that was made by a head of state in another country as I was visiting there. This man said to me, ''Politicians think that money comes from the budget.'' Money does not come from the budget. Money comes from the economy. If the economy doesn't work, there is no money in the budget. And if I may, Mr. President, I think that discussing financial modernization has a great deal to do with all of the issues that the Senator from Minnesota was discussing because it has to do with the health of the economy.

If the banking system, the financial system, and the economy does not work efficiently, if it does not work carefully and properly, the economy as a whole will suffer, the amount of tax revenue coming into the Government will suffer, and we can have all of the discussions we want about solving all of the social problems with legislation, and then we will turn around and find that the cupboard is bare.

It is very important that we recognize the impact of this legislation on the Nation's economy. As I said in my question to my friend from Minnesota, we heard testimony in the Banking Committee from the member of the administration most charged with focusing on this area of the economy, the Secretary of the Treasury, and with the head of the independent agency most charged with keeping the economy strong and vital, the Chairman of the Federal Reserve Board, that it was essential that we modernize our financial legislative structure in this country.

Why? They told us that foreign banks are coming to the United States, and as the American banks go overseas, they are competing in a different regulatory framework. They said that the American framework is outdated, it is outmoded, it is expensive, and that it gets in the way of America's ability to compete.

The big banks that my friend from Minnesota attacks so vigorously, the last time I checked, all paid taxes on the revenues they received. The best way to make sure that we do not get those tax revenues is to say, let us hobble those banks in their competitive structure with foreign banks. Let's see to it that they cannot compete in the same kind of atmosphere as their foreign competitors, in the name of preventing them from concentrating power, and then see how much taxes we get from those big banks. Taxes are a percentage of profits; if there are no profits, there are no taxes and there is no money in the budget to pay for all of the programs that the Senator from Minnesota wants to fund.

Now, he made another comment that I found fascinating, from a personal point of view. He said that, of course, the big banks don't like CRA because it forces them to do what they should be doing. He stands up for the little banks that he wants to protect from the big banks that, in his view, want to gobble them up. In my experience with this legislation, it has been exactly the reverse. The big banks have said to me: We don't much care about the CRA provisions. We have learned to live with CRA. We have learned to handle our banking practices in such a way that gets us appropriate CRA ratings. And some of the big banks have said: Don't pay any attention to the CRA amendments in this bill because we can live with them just fine. No. The protest about CRA has come, ironically, given the position of the Senator from Minnesota, from the small banks, the little bank.

Let me give you an example that I have heard of, secondhand, but I think summarizes what we are dealing with here. I have heard of a bank in California that was opened by a group of Chinese Americans. What do you do in the marketplace when you are trying to find a niche that will allow you to survive, whether you are in the banking business, or the clothing business, or the automobile business, or whatever kind of a business? You do look around for some community that is not being served properly, and say to yourself, ''I can fill that niche.'' The oldest business advice in the world is find a need and fill it. Here were a group of

Chinese Americans who decided that other Chinese Americans for some reason or another were not getting access to the credit they needed. They found this need and they hoped they could fill it. They did. They were successful. They prospered.

Then comes the CRA regulators, and they said, ''Let us see your books. Let us look at your loans.'' They came back and said, ''You are only making loans to Chinese Americans. That is, you are not complying with the Community Reinvestment Act that requires you to make loans to Hispanics or African Americans or other minorities that we, the regulators, will identify and determine.'' The people at this bank said, ''Of course we are only making loans to Chinese Americans. That is what we set up to do. That is the market we set up to serve.'' ''Well, you will accept the penalties and strictures of CRA regulation if you do not go out and find statistically enough African Americans and Hispanics to meet our requirements.''

This was a community that these Chinese Americans did not understand instinctively. This was the community that they were not set up to serve. Maybe you can say that it was a good kind of thing for them to reach out beyond their natural business area and start serving these other sectors, but it created a burden on this small bank, and it was a very small bank that the managers of the bank objected to.

In my own State of Utah, I get the same reaction. The big banks don't much care about CRA. They don't like it. They find it burdensome. But they have learned to live with it. Banks that have written in that are complaining are the little banks, and they are complaining for the same reason in the example that I have given. They feel they are serving their communities and they are being forced to try to reach beyond their natural communities to try to find somebody who can statistically qualify under CRA.

This is from a very small bank in Utah. The President of the bank says, ''We have and will continue to lend to all segments of our community because it has been defined by regulation. The time spent documenting our community lending efforts for regulatory purposes is in itself counterproductive, as we could instead redirect our energies toward additional lending and community development activities.''

In other words, they are spending more time filling out forms for CRA than they are investing in their community.

Another one from a very small town in Utah, and it is surrounded by the family farmers that the Senator from Minnesota was talking about: ''Exempting our institution from CRA requirements would allow bank personnel to spend more time with our customers and developing new products rather than gathering information to satisfy CRA documentation requirements.''

We will have a great deal more to say about the CRA issue, I am sure, when it comes up. I simply wanted to make those points in response to the points that were made by my friend from Minnesota, because he is very clearly talking to different people than I am talking to. He is talking to the people in the crossroads cafes. And I think that is fine. But I think when it gets to the issue of banking regulation, he might spend some time talking to people who run banks and talking to people who borrow from banks.

He made another point that I will talk about and then get specifically to the bill.

He talked about the concentration of power, and he railed at great length against corporations that he felt were destroying our democracy. ''Fewer and fewer people,'' he said—I wrote that phrase down—are controlling our economic power.

I want to share a statistic that I saw in the paper last week that has an interesting slant on this.

Back in, say, 1950—my memory is not sharp enough to give you the exact year, but it was sometime in the 1950s—the percentages of Americans who owned stock in corporations was 4 percent. Today it is over 50 percent.

I would say to those who, like my colleague from Minnesota, are concerned about the concentration of power in the hands of a few people, who does he think owns Citibank? Who does he think owns these corporations that he says are so terrible? They are owned by Americans. They are owned by individuals. Fifty percent of Americans now own stock, and the number is going up all the time.

This is one of the reasons that the class warfare arguments that we have heard around this Chamber for so long are beginning to wear thinner and thinner, because the people who own the corporations are ordinary, everyday, hard-working Americans. The days of J.P. Morgan being the controller of these institutions are over. J.P. Morgan is dead, his heirs scattered, and the controlling shareholder ownership of these corporations is in the hands of the teachers' pension fund—in the hands of ordinary people who have invested their savings in these corporations and have a stake in seeing to it that these corporations survive. That is why the class warfare arguments get thinner and thinner with each passing year.

We are in a sense, Mr. President, turning Karl Marx on his head. He wanted the people to own all of the means of production. That was tried in the Soviet Union in the name of the government as they attacked the terrible capitalists in the United States, and ironically it is the capitalists that are seeing to it that the people ultimately own the means of production, but they own the means of production in their own name with shares held in their own name, which they can control and which they can vote and which they can sell if they don't like what the corporation is doing. And we are getting the people's ownership of the means of production through capitalism rather than through the forced distribution of wealth that Karl Marx and his followers practiced in modern communism.

Having given that reaction to the political science lecture from my friend, who was once a professor of political science—I was never a professor, but I was once a student of political science, and I like to engage in these kinds of debate—I would like to say just a few words about the bill.

The fact that it is just a few words is a testament to the expertise of our chairman who has worked harder and more personally on a piece of legislation than any chairman I have ever seen. We have resolved the controversies in this legislation to the point where there are only a few left. The Senator from Texas has led the fight in doing that.

When we first started this, when I first came to the Banking Committee, the number of issues was huge and the gap between those issues was very wide. I would go out and people would ask me where we were on financial modernization. Unlike my friend from Minnesota, I did get those questions. I would go out in places where people were interested. And I would say repeatedly through my first term of service in the Senate that we were nowhere and we were not going to have financial modernization legislation, because the issues were so contentious and the gap between the two sides was so great that we were simply not going to get it done, and, quite frankly, I was not paying any attention to it for that reason. I didn't want to waste my time becoming cognizant of all of the ins and outs of these arguments when the arguments were going nowhere, and the legislation was going nowhere.

We made a major step towards resolving these last year when Senator D'Amato was the chairman of the committee, and we finally began to grapple with some of these issues and tried to bring them closer together. But Senator GRAMM has brought us even closer together and produced a bill on which there are now only relatively few issues in contention rather than the great many issues that were in contention 4 or 5 years ago.

I think that is an extraordinary achievement, not only on the part of the chairman who has led the issue, but, frankly, on the part of the committee as a whole. The fact that we are having this debate when we should have been having it a few years ago, according to those who are following the issue, demonstrates how far we have come.

This reminds me in some ways of the debate we had in the telecommunications bill where we had huge forces on both sides of the issue struggling, literally, for survival. We had telephone companies, cable companies, long-distance carriers, local carriers, all fighting over what would happen to their future.

We finally came together on a bill that virtually everybody could buy off on. They weren't happy with it, but they said they could live with it. We made a landmark step forward in telecommunications.

I think that analogy holds true here. Insurance companies, when I first came to the Senate, were bitter in their opposition to any kind of change that would affect them; banks were chomping at the bit for more competitive opportunities and complaining that laws passed in the 1930s were freezing them out; testimony which I have referred to from Chairman Greenspan and Secretary Rubin indicated we are being savaged by foreign competition because our regulatory structure gets in the way; the securities industry and all the other folks, everybody agreed we needed reform but nobody could agree on the form of that reform.

Now we have a bill before the Senate that, however reluctantly, the insurance companies have said, ''We can live with,'' and the banks have said, ''We can live with''—the big banks and the little banks that are not usually on the same page on everything; the insurance agents and the insurance companies are not necessarily always on the same page.

We have reconciled these various interests now. The regulators have said they can live with this and that. There is only one major regulatory argument left, and we will do our best to work our way through that one and find a compromise.

The time to pass the bill is now. The moment has come when all of these forces are together. Let us not waste that moment. Let the Senate not shatter it all and say we will deal with it later. The forces of competition that led Secretary Rubin and Chairman Greenspan to speak of the urgency of this are still there and their pressures are still there. The passage of time, as we get farther and farther away from the 1930s when our present regulatory structure was put in place, is not on our side in terms of making the financial services in this country efficient, more effective, and more competitive.

We need this bill. We need it now. We should not lose the opportunity we have to seize the moment while there is a degree of agreement among all of the parties of the bill to get it done.

I salute the chairman for his personal effort in getting us where we are. I urge the Senate to pass the bill.

Mr. GRAMM. Mr. President, let me thank our dear colleague from Utah for his very fine comments. Any colleagues who want an opportunity to speak on the bill should come to the floor to be afforded that opportunity. At some point, if we don't have people over to speak on the bill, Senator SARBANES, under the unanimous consent request, will offer his substitute. Members can wait and speak on that substitute, if the Senator chooses to offer it, and obviously if you want to speak about the bill itself, you can do it on the substitute. Members desiring to speak on the bill before the substitute is pending, should come on over.

Mr. President, I will respond very briefly to our dear colleague, Senator WELLSTONE. Senator WELLSTONE gave an impassioned plea not to repeal CRA. Let me say that one of my great frustrations with our efforts to reform CRA and curb abuses in CRA is that nobody wants to debate the reforms. Even the spokesman for the national association of the community groups that form the heart of CRA has said what they call ''green mail'' exists. They think it is harmful to CRA. Most Americans would call that process ''blackmail'' and not ''green mail.''

I think many people have had at least their eyebrows raised by the fact that $9 billion in cash payments have been made or committed under CRA. CRA is not about giving people money not to testify against your bank merger, or to testify for it; instead, CRA is about giving people an opportunity to have input and present evidence as to whether they are meeting the requirements of the law.

I don't know what any judicial process—and this is a quasi-judicial process, I guess you could say—how anyone would not be revolted by the practice of paying witnesses. In essence, as Members will see when we begin the debate on CRA and we show some of the documents with the names redacted, that is exactly what is happening all over America today.

The point I make about CRA is no one is talking about repealing CRA. This is not a debate about repealing or weakening CRA. This is a debate about integrity of banks that have long-standing records of compliance, and whether somebody just by calling them a name—by saying they are a loan shark, they are a racist, or some other inflammatory name—should be able to delay actions that they are guaranteed on an impartial basis under the law.

All our provision in the bill says is that if a bank is going to be denied the ability to do something that they would have to be in CRA compliance for, and they have a long history of being in compliance on CRA, then those people who object—for their objection to be used to delay the process—have to present substantial evidence.

Now, ''substantial evidence'' is defined in law more precisely than any other term of art in the American legal system: more than a scintilla of evidence; facts that would lead a reasonable person to think that something might be true.

We are talking about the lowest standard of law, not the highest standard.

The second provision in out bill would allow very small banks in rural areas that don't have a city to serve, much less an inner city, to be exempt from a regulatory burden that costs them between $60,000 and $80,000 a year, even though these banks generally have only between 6 and 10 employees. Since 1990, in 16,000 audits of these small, rural banks, only three banks have been found to be in substantial noncompliance.

Every word that the Senator said about not repealing CRA I am sure resonated, but it doesn't have anything to do with the debate we are having. Nobody is proposing we repeal CRA in this bill. We are talking about two targeted reforms. I don't want anybody to get confused.

Senator DODD has come to the floor. I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I have noticed over the last week every time I get up to give a talk, the Senator from Idaho is in the Chair.

The PRESIDING OFFICER. I love to hear the Senator's speech.

Mr. DODD. I enjoy the Senator's collegiality and leadership. It is nice to have the distinguished Senator from Idaho as a new Member of the Senate.

Let me begin these brief remarks by commending the distinguished chairman of the committee, Senator GRAMM, and the ranking Democrat, Senator SARBANES, for their efforts on this legislation to date.

I have been on the Banking Committee, and in fact I sat with my colleague from Maryland. I have been in the Congress 24 years, and I think for almost all 24 years he has been my seatmate—usually depending on where we were, the majority or the minority, to the left or right of me—almost all 24 years on one committee or another, including service in the House, in the Judiciary Committee, and then over these last 18 years in both the Foreign Relations Committee and the Banking Committee. I have been fortunate to have his good counsel and advice, and admired his leadership and thoughtfulness on so many issues. This is one which I constantly feel like the mythological figure of Sisyphus, rolling up this rock of financial services modernization every Congress. I do not think there is one we have missed since my arrival in this Chamber 18 years ago, not one Congress in which we have not tried to address the issue of modernization of financial services. On numerous occasions, the Senate, this body, actually completed its work but, because of bifurcated jurisdictions and other matters in the House, we were never able to attain success; that is, sending a bill, a broad bill on financial modernization, to a President, any of them that I served with—including President Reagan, President Bush, and now President Clinton.

But we are precariously close to achieving a result that has been unattainable over the last number of years. The fact that we are dealing with this legislation as early as we are in this Congress is heartening to me, because it means we have in front of us an opportunity to complete action on what I think is a worthwhile endeavor.

Again, let me commend my two colleagues who are making it possible for us to arrive at the point where we are on the floor of the Senate. Over the next several days we will consider, I assume, a number of different amendments that will, I hope, allow us to bring broad-based support to this proposal and to enter a conference with the other body and send a measure to the President which he can sign.

That is a lot of steps in front of us. I realize that. But if you know the past history of this legislation, they seem like minor steps indeed, when you consider we rarely reach the point we are today.

Let me also, once again, in this forum here, commend my colleague from Texas, Senator GRAMM. This is his first major legislative effort as chairman of the Banking Committee. He has had other major legislative efforts but never as the chairman of this committee. He deserves all due credit for his contributions to this bill. Few committee chairmen have more personally invested themselves in a piece of legislation than he has. As I said a moment ago, my colleague and friend from Maryland brings a career's worth of experience in dealing with financial services issues, both domestic and international. His counsel and advice and words of wisdom ought to be heeded.

The legislation before us does address some very, very important issues, outstanding issues. It provides a framework for modernization of our Nation's financial services. It allows banks and securities firms, as I know you have heard from both the chairman of the committee and the Senator from Maryland, and insurance companies, to affiliate. It provides a rational process, we think, for these affiliations to take place.

Although it needs to improve, in my view this bill provides some significant benefits and protections to consumers who would not only benefit from these diversified firms but who would also benefit from having standardized and comprehensive protections for the sale of securities and insurance products.

Let me add right here, these are arcane subject matters. Sometimes we are asked where the consumer protections are in this bill; where is the consumer in this legislation? The consumer is all through this bill, in a sense. First and foremost, the consumer is there because consumers are seeking to handle their financial matters in a more expeditious way, knowing they have broad, comprehensive protections.

In many ways, this legislation is trying to catch up with what already is occurring in the marketplace, both at home and abroad. By regulation and court decision, much of our modernization is occurring. What we are seeking to do here is involve ourselves, as we should have been years ago, in setting out the guidelines of modernization from a public policy standpoint. So it is very important legislation because the courts, and in too many cases the regulators, do not bring to bear the kind of consumer issues that only a public policy forum like the Senate can do.

When the issue is raised where is the consumer in this legislation, in fact the consumer is all through this bill. It is our goal here to see to it that they will be able to conduct their financial matters, financial business in a way that conforms to the lives and demands of consumers in this country, and that will also better equip them with protections in dealing with other matters in securities and insurance issues.

This bill also protects the traditional right of States to regulate insurance, something that has been subject to longstanding debate. This will codify at the end of the 20th century how we in Congress feel about that issue, while at the same time will provide for functional regulation of all financial institutions. That has been an ongoing debate for years, and one that the adoption of this bill would establish firmly as we enter the 21st century.

But I believe the outstanding issues, such as banking and commerce, the operating subsidy of affiliate structure and additional consumer protections, can and will be worked out in a reasonable fashion. However, I must share my deep frustration, frankly, and great concern over the future of financial services modernization legislation. During my tenure, as I said a moment ago, in the Senate, I, like many of my colleagues, have invested a significant amount of time and effort attempting to enact modernization legislation. I am of the belief that it is vital to the future of America's financial services industries and important to consumers as well.

This process has not been an easy one. Finding the delicate balance of protecting consumers while at the same time creating a regulatory framework that fosters market efficiency and industry innovation has been a difficult and a long task. I had hoped that by today I would be speaking on behalf of the merits of a bipartisan legislative approach. I had hoped to speak on behalf of a bill that last year received the overwhelming support of the Senate Banking Committee by a vote of 16 to 2. Just recently, similar legislation passed the House Banking Committee by a vote of 51 to 8. Instead, I reluctantly rise to express my deep concerns about the legislation before us that attacks what I consider to be one of the most important laws in our Federal code, the Community Reinvestment Act, CRA, of which you are going to hear a great deal in the coming days.

The attack on CRA contained in this legislation is clear, in my view, and unmitigated. It broadly exempts depository institutions from CRA. It attempts to address a problem that simply does not exist, and in the process, in my view, does great harm to a law that has brought billions of dollars in mortgage and small business credit to rural and urban Americans, allowing them to participate with equal opportunity to expand their financial gains and opportunities in this country.

As you know, this bill as drafted will be vetoed by the President. We usually receive a statement of administration policy written by the appropriate department head. Only on rare occasions does the President of the United States write a personal letter prior to committee markup, stating his concerns and articulating his promise to veto a bill if certain provisions are not resolved. Of primary importance to the President is the preservation of the Community Reinvestment Act in the context of any financial modernization legislation.

I will say very directly—I say this to my colleagues, whom I know have a different point of view. If this bill is not changed to address various CRA concerns, the President of the United States will veto this bill. And that mythological figure of Sisyphus will, once again, rear his head at the close of the 20th century and we will fail in our attempts to modernize financial services.

That would be a great misfortune. But I say as well that to pass a piece of legislation as we end the 20th century, about to begin the 21st, and to disregard the principles and values incorporated in the Community Reinvestment Act, also, in my view, would be a tragedy of significant proportion.

The veto of this bill as written is certain, as certain as our ability to avoid it. We should understand who supports this attack on the CRA provisions contained in this bill. The attack has not been sought by the industry, which is normally the case. There is no constituency of support for them. The support of this legislation is not contingent on the inclusion of CRA provisions. Banks are in the midst of their 7th year of record profits with CRA as the law of the land.

Over the years, at the request of industry and appropriate regulators, CRA has been simplified and modified to be far less invasive to depository institutions. The fact of the matter is that banks care little about changing CRA. The attack on CRA is truly supported only by a few people. I say again with deep respect to my colleague and friend from Texas, who cares deeply about this issue, as does the senior Senator from Alabama: I respect their points of view. I disagree with them fundamentally. I respect their points of view. But there are really no other constituencies that I can find who share their point of view on this issue. There are many people who have a different point of view, including financial institutions, consumer groups, and others about the importance of extending the CRA provisions.

Let me reiterate, if I can. The President of the United States, all Federal regulators, industry, 51 of the 60 Democrats and Republicans in the House

Banking Committee, 16 of the 18 Democrats and Republicans in the Senate Banking Committee, all support the preservation of CRA.

While not perfect—and no one is arguing that it is—CRA, in my view, and in the view of many others, has been truly a success story.

Between 1993 and 1997, the number of conventional home mortgage loans extended to African Americans increased by over 70 percent. Let me repeat that. Between 1993 and 1997, the number of conventional home mortgages extended to African Americans increased by over 70 percent.

Over the same period, the number of home mortgage loans increased 45 percent for Hispanics, and 30 percent for Native Americans.

According to the Small Business Administration, loans to African-American-owned businesses doubled between the years of 1993 and 1997.

More than $1 trillion has been leveraged under CRA—credit for home mortgages, small businesses, and other purposes—that has enabled creditworthy citizens, minority creditworthy citizens to improve their economic status and that of their families in both rural areas and inner cities.

We should not retreat from these laudable goals if we are going to make the modernization of financial services conform with the modernization of a society that reaches out to each and every sector of that society to see to it that they have the equal opportunity to invest and to grow and to enjoy the full benefits of being Americans.

Despite these strides, CRA has not erased all lending discrimination in this country.

In 1997, mortgage loans for African Americans, Native Americans, and Hispanics were denied at a rate of more than twice those of white mortgage applicants of similar incomes. For both urban and rural areas, CRA has played an invaluable role in economic development.

I recently received a letter from the U.S. Conference of Mayors, signed by the mayors of nearly 200 towns and cities of all sizes, from New Haven, CT, to Houston, TX. Let me quote them. It states:

> The Community Reinvestment Act has played a critical role in encouraging federally insured financial institutions to invest in the cities of our nation.

The letter goes on further and says:

> Unless the onerous CRA provisions are addressed and the CRA is preserved, we would urge strong opposition to the Senate bill as presently drafted.

Urban areas are not the only beneficiaries of CRA. CRA loans assist small farmers in obtaining credit for operating expenses, livestock, and real estate.

Less than a month ago, we voted unanimously to award a Congressional Medal of Honor to Rosa Parks. As we all know, Ms. Parks led the fight in this country for racial equality. The CRA provisions in this bill we have before us today would send, in my view, Rosa Parks and many others to the back of that bus economically. They would directly hurt minorities and rural citizens by restricting their right to pursue the American dream to own a home, start a small business, to receive fair access to credit.

Despite my strong support for financial services modernization—and, Mr. President, it is very strong, indeed—if the price of modernization is the denial of financial services in the 21st century to rural Americans, African Americans, Asian Americans, Hispanic Americans, and Native Americans in the country, then I am unwilling to pay it.

I strongly urge my colleagues to support Senator SARBANES' substitute amendment and Senator BRYAN's CRA amendment. In my view, if these measures are improved, as I believe they should be, then I think we would have a strong bill.

There are a lot of other amendments that may be offered. There is a debate over the op-sub and the affiliate issue. I think that is an important issue. I think the issue of privacy in financial dealings is an important issue. And there are many other matters that may be raised.

But, in my view, nothing—nothing—is as important as whether or not we are going to provide equal access to our financial institutions to all Americans. The Community Reinvestment Act has made a significant contribution to tearing down the barriers that have existed far too long and has provided the access to credit, home mortgages, and improving the financial future of too many of our citizens to retreat now. To back up on a major, major bill such as this, I think, would be a great retreat, indeed.

So as strongly as I support the concepts included in the fundamental financial modernization bill, Mr. President, I could not support a bill that treats too many of our Americans unfairly as they presently are by retreating on Community Reinvestment Act provisions.

So I urge my colleagues, those who care about financial modernization, those who care about civil rights and care about access to financial institutions, to support the substitute, support the CRA amendments. I think then we would have a strong bill, and remaining issues could be resolved without too much difficulty. But a bill that fails to address this issue is a bill that, in my view, will not pass and will not be signed into law, and it would be an unfortunate, unfortunate day, indeed.

Mr. President, with that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GORTON). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BYRD. Mr. President, is time under control?

The PRESIDING OFFICER. There is no control of time.

Mr. BYRD. I thank the Chair.

I presume that the Pastore rule has expired for the day?

The PRESIDING OFFICER. It expired at 1:15 this afternoon.

Mr. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent to speak for not to exceed 5 minutes out of order.

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

Mr. BYRD. Mr. President, over the weekend, a glimmer of light broke through the war clouds shrouding Yugoslavia. That light was kindled by the release of the three American soldiers who have been held hostage in the Federal Republic of Yugoslavia since their capture by the forces of Yugoslav President Slobodan Milosevic on March 31. The individual responsible for this remarkable turn of events is the Reverend Jesse L. Jackson. For his efforts, he has earned the thanks of a grateful nation. Due to the faith and determination of Mr. Jackson, the Reverend Joan Brown Campbell of the National Council of Churches and the delegation of religious leaders that Mr. Jackson led to Yugoslavia, in this one small corner of a terrible conflict, good has triumphed over evil.

I have no doubt but that the motives of President Milosevic in freeing the American servicemen will be analyzed, dissected, and ruminated on by the commentators in the coming days. Despite all the conjectures, we may never know what he was hoping to achieve. Surely Milosevic will be disappointed if he believes that this gesture, welcome as it is, will blind the United States and the rest of NATO to the atrocities that he is inflicting on the ethnic Albanian population of Kosovo.

But in contrast to Mr. Milosevic, we do know what the Reverend Mr. Jackson was hoping to achieve.

He has faced some of the most ruthless strongmen in the world, including Syrian President Hafiz Assad, Cuban President Fidel Castro, and Iraqi President Saddam Hussein.

In 1984, Mr. Jackson won the release from Syria of Navy Lieutenant Robert Goodman Jr., who was shot down over Lebanon. That same year, he persuaded Castro to release 48 American and Cuban prisoners. In 1990, he helped to win freedom for more than 700 foreigners who were being detained as human shields by Saddam Hussein following the invasion of Kuwait. His trip to Yugoslavia marks the fourth time that Jesse Jackson has won freedom for hostages.

In the faces of the freed soldiers and their families, I am reminded once again that faith can move mountains. I salute the Reverend Mr. Jackson and his delegation for their remarkable success.

Mr. President, as a mark of respect for Mr. Jackson and the delegation of church leaders, I am today submitting a Sense of the Senate Resolution commending Mr. Jackson for the deep faith that marked his mission to Belgrade, and for his successful efforts to free Staff Sergeant Andrew A. Ramirez of California, Staff Sergeant Christopher J. Stone of Michigan, and Specialist Steven M. Gonzales of Texas. We welcome these soldiers home with open arms. We also salute the brave men and women of our armed forces who remain in harm's way in the Balkans. Their courage and patriotism, and the dedication and sacrifice of their families, are appreciated and honored by all Americans.

Mr. President, I ask unanimous consent that I may send the resolution to the desk and that it be held there until the majority leader and the minority leader decide upon a proper disposition of it, but that it can't be held longer than a day, the end of business today.

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

Mr. GRAMM. Mr. President, I ask the distinguished Senator from West Virginia to add me as a cosponsor to that resolution, if he would.

Mr. BYRD. I thank the distinguished Senator. Mr. President, I make that request.

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

Mr. BYRD. Mr. President, I have retrieved my resolution from the desk. I ask unanimous consent that S. Res. 94 be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

S. RES. 94

Whereas on March 31, 1999, Staff Sergeant Andrew A. Ramirez, Staff Sergeant Christopher J. Stone, and Specialist Steven M. Gonzales were taken prisoner by the armed forces of the Federal Republic of Yugoslavia while on patrol along the Macedonia-Yugoslav border;

Whereas Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales conducted themselves throughout their ordeal with dignity, patriotism, and faith;

Whereas the Reverend Jesse Jackson led a delegation of religious leaders to the Federal Republic of Yugoslavia that succeeded in negotiating the release of Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales; and

Whereas the Reverend Jesse Jackson has previously succeeded in securing the release of hostages held in Syria, Cuba, and Iraq: Now, therefore, be it

Resolved, That—

(1) the Senate commends the Reverend Jesse Jackson for his successful efforts in securing the release of Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales, and for his leadership and actions arising from his deep faith in God; and

(2) the Senate joins the families of Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales in expressing relief and joy at their safe release.

Mr. ALLARD addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise in support of S. 900, the financial modernization bill. I supported this legislation as a member of the Banking Committee, and I commend Chairman GRAMM for the excellent work he has done in bringing this bill to the floor. The chairman has worked very hard to craft a bill that makes sense. It is balanced and will benefit our economy.

This legislation is designed to modernize America's financial services industry by providing a sensible framework for the affiliation of banks, securities firms, insurance companies, and other financial institutions. It is, of course, very difficult to craft a compromise that is acceptable to many diverse interests, but it is necessary that we do so.

Much of our financial services industry is governed by laws written in the 1930s. Congress has struggled with this issue for many years. I am hopeful that this is finally the year we enact this legislation.

I will focus my comments on several issues concerning community banks.

In Colorado, the community bank is an important institution. It is the center of many of our towns and rural areas. I have worked hard to represent their interests in the Banking Committee. I am a supporter of the provisions in this bill to exempt small rural banks from the Community Reinvestment Act. For small banks, the CRA, or Community Reinvestment Act, is a regulatory burden. While a large bank can often devote an entire department to CRA compliance, a small bank has to divert scarce resources toward compliance. Each of these small banks is required to undergo regular exams and actually designate a CRA compliance officer. This makes little sense when one recognizes that small rural banks could not survive if they did not invest in the community. Frankly, where else could they put their money?

I will read a few excerpts from Colorado banks on this very important point.

From the First National Bank of Stratton:

Your amendment removing the CRA requirement will have a positive benefit for small community banks located in non-metropolitan areas. As a small community bank in a town of 700, the employees and the bank's officers are already involved in literally everything going on in the town. The CRA requirement provides a burdensome paper and personnel requirement for small community banks.

Remember, this is coming from a bank in a town of only 700 people.

Then from the First National Bank of Cortez:

In our bank, our compliance officer spends a great deal of time preparing documents for the CRA file and Bank Examiners. We estimate that it takes 80 to 100 hours each year to update the CRA file, and to date, we have never had a customer ask to see the file.

Then from the First National Bank in Las Animas and La Junta:

I strongly support the provision to remove the onerous requirements of the CRA from small rural banks. We serve our communities well and if we do not serve the needs of our community we will not exist.

From the Kirk State Bank:

As a small rural bank, the CRA is a burdensome regulation. In reality, small banks and small communities have to be good community citizens to be successful and a bureaucratic regulation does nothing to improve the situation.

Mr. President, I ask unanimous consent to have the text of these letters and others from Colorado bankers printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE FIRST NATIONAL BANK
OF STRATTON,
Stratton, CO, March 29, 1999.

Hon. PHIL GRAMM,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: Your amendment removing the CRA requirement will have a positive benefit for small community banks located in Non-metropolitan areas. As a small community bank in a town of 700, the employees and the bank's officers are already involved in literally everything going on in the town. The CRA requirement provides a burdensome paper and personnel requirement for small community banks.

Your support of this amendment is greatly appreciated.

Yours Truly,

DANA M. SIEKMAN,
Vice President.

FIRST NATIONAL BANK, CORTEZ,
Cortez, CO, March 30, 1999.

Hon. PHIL GRAMM,
Chairman, Committee on Banking, Housing and Urban Affairs, Washington, DC.

DEAR SENATOR GRAMM: Thank you for your letter of inquiry regarding our position on your amendment to exempt banks less than $100 million in aggregate assets from the CRA regulation.

Needless to say, I am very proud of you and your committee and strongly desire that this amendment be passed.

In our bank, our compliance officer spends a great deal of time preparing documents for the CRA file and Bank Examiners. We estimate that it takes 80 to 100 hours each year to update the CRA file, and to date, we have never had a customer request to see the file. Of course the Bank examiners do request this information. We find that this regulation is completely worthless and of no benefit at all.

Also, in my opinion the whole CRA regulation should be disposed of, since it does not apply to others in the financial industry.

Very truly yours,

DONALD G. HALEY,
President.

THE FIRST NATIONAL BANK,
Las Animas, CO, March 29, 1999.

Hon. PHIL GRAMM,
Chairman, U.S. Senate Committee on Banking, Housing and Urban Affairs, Washington, DC.

DEAR SENATOR GRAMM: I appreciated your letter of March 22, inquiring about the financial services modernization bill and the exemption from the requirements of CRA for smaller rural banks, such as our own. Although I do not believe many of the aspects of the financial services modernization bill are in the best interest of our nation I strongly support the provision to remove the onerous requirements of the CRA from small

rural banks. We serve our communities well and if we do not serve the needs of our communities we will not exist. The CRA requirements, are in many cases, counter-productive and anything that can be done to remove the bureaucracy involved in that would be appreciated. Thank you again for soliciting input.

Sincerely,

DALE L. LEIGHTY,
President.

THE KIRK STATE BANK,
Kirk, CO, March 31, 1999.

Senator PHIL GRAMM,
U.S. Senate, Committee on Banking, Housing and Urban Affairs, Washington, DC.

DEAR SENATOR GRAMM: Thank you for your letter of March 22, 1999 regarding the CRA Amendment.

As a small rural bank, the CRA is a burdensome regulation. In reality, small banks in small communities have to be good community citizens to be successful and a bureaucratic regulation does nothing to improve the situation.

Very truly yours,

L.E. HOUSE,
President.

FOOTHILLS BANK,
Wheat Ridge, CO, April 13, 1999.

Hon. PHIL GRAMM,
Chairman, Banking Committee, U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: The Community Reinvestment Act has outlived it's usefulness, and was never fairly implemented to included all financial institutions. It was a government hammer to force banks to make loans and open branches that were not prudent. Enforcement of discrimination laws produces better results.

Please hold firm on exempting banks with less than $100 million in assets from CRA requirements during your consideration of the Financial Services Modernization bill. The exemption should be at the $500 million level, if not removed altogether, and all financial institutions (lenders) should be included; such as Credit Unions.

Finally, please remember, this great Country's economic health is largely based on the freedom of individuals who take the risk of opening a small business, and a small bank is a small business. The less government regulation for small banks the better we can compete with large banks who have full time staffs to handle regulatory requirements. As the President of a small bank that I started after a large bank purchased the bank I had worked at for 20+ years, and let me go at the ripe old age of 49 years, I wear many hats and spend much of my mornings reviewing stacks of regulatory correspondence. Any relief will be appreciated.

Sincerely,

JOE L. WILLIAMS,
President & CEO.

FIRST NATIONAL BANK
OF CANON CITY,
Cañon City, CO, April 7, 1999.

Hon. PHIL GRAMM,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: We support your thoughts that rural banks of less than $100 million in assets should be exempt from the provisions of CRA. In my thirty years of banking, I can honestly say that CRA compliance issues in a bank of this size ($95 million in assets in a community of less than 50,000 people)are unnecessary. This bank and every other rural bank, by their very nature, are leaders and innovators in meeting the credit needs of the citizens and businesses in communities in which they are located.

Our directors, officers and employees, for the most part, were born and raised in this community and they volunteer untold numbers of hours to community organizations and governmental agencies. While attending these events, we have and take the opportunity to listen to the needs of the community and to communicate our products and services accordingly. We often develop new products and services, or actually sponsor events, to satisfy specific needs based on feed-back we have received from the community.

The present CRA examination procedures for small banks have already been simplified to the point, that the remaining procedures are nothing more than an exercise in futility. The results prove nothing that the examiner doing the work and the bank being examined does not already know. The bank is truly meeting the community's credit needs and there is no discrimination or redlining taking place. Eliminating small rural banks from any and all CRA requirements would be cost effective and will permit bank examiners to focus on safety and soundness areas that are truly meaningful and effective in the examination process.

Respectfully yours,

WILLIAM H. PAOLINO,
Sr. V.P. and Cashier.

PAONIA STATE BANK,
Paonia, CO, April 1, 1999.

Senator PHIL GRAMM,
Chairman, Committee on Banking, Housing, & Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: Thank you for your letter of March 22, 1999, received today. Please be advised that we do support the amendment to the Financial Services Modernization bill, to exempt banks with less than $100 million in assets and in non-metropolitan areas, from CRA requirements.

We believe that mall community banks have more than demonstrate that we must reinvent in our communities on a wide basis, simply to continue in business. With the high levels of competition in the marketplace, we do not have any alternative but to complete rigorously, and that means covering all areas and segments of our population and service areas, with full and complete banking services. The costs of doing so are enormous without the added costs of documentation of compliance with CRA. It will be more helpful to small community banks like ours to be relieved of such burden, and we thank you for pursuing the amendment.

Sincerely,

CLINTON W. BOOTH,
President & CEO.

THE GUNNISON BANK
AND TRUST COMPANY,
Gunnison, CO, April 9, 1999.

Hon. PHIL GRAMM,
Committee on Banking, Housing, and Urban Affairs, Washington, DC.

DEAR SENATOR GRAMM: Thank you for your letter regarding the pending financial modernization legislation. While I applaud your support of regulatory relief from the burdens of the Community Reinvestment Act for small rural banks, there continue to be provisions of the financial modernization legislation that concerns me. I believe, as does the Independent Bankers of Colorado on whose Board I am a member, that the financial modernization bill as it is currently written is harmful to community bank interests.

We support the closure of the unitary thrift holding company loophole through which an increasing number of non-banking firms are acquiring thrifts. We agree with the Federal Reserve, Independent Bankers' of America Association and American Bankers' Association that this loophole allows the mixing of banking and commerce and the entry of non-federally insured entities to the payments system and discount window. Without a payments system reserved solely for federally insured financial institutions the future of community banking is doubtful. Community banks cannot compete effectively against a combination of the country's largest banking, financial and commercial firms. These combined entities would own and control products and services vital to the continuing viability of community banks. Moreover, they would control access to the payments system the lifeblood of community banks and communities throughout Colorado and the nation, especially of our rural community banks and communities.

For these same reasons, we oppose any commercial basket that allows a bank to invest its revenues in commercial firms-the mixing of banking and commerce. Community banks cannot compete effectively against financial and commercial conglomerates that will control a variety of commercial and consumer markets.

We support an increase in community bank access to the Federal Home Loan Bank (FHLB) by according membership to the FHLB for all banks less than $500 million in assets and by including agricultural and small business paper as eligible collateral. Alternative sources of funding are becoming increasingly expensive for community banks to acquire. Increased access to the FHLB will help to ensure an additional, affordable source of funds for community bank lending, particularly rural community bank lending. Without affordable sources of funding, community banks cannot adequately support their local communities.

Community banks remain concerned about the insurance provisions that may be included in financial modernization legislation. We urge that Congress not take any legislative steps that would hinder community bank insurance activities. Community banks must retain the authority to engage in insurance activities to be able to compete effectively against big banks, insurance companies and financial conglomerates controlled by unitary thrift holding companies that are increasingly in pursuit of community bank customers.

Thank you for seeking my input into your laudable efforts to reach a comprise on financial modernization that benefits all parties.

With Sincere Regards,

TOM L. HAVENS,
President.

THE FIRST NATIONAL BANK
OF STRATTON,
Stratton, CO, March 26, 1999.

Hon. PHIL GRAMM,
Chairman, Committee On Banking, Housing & Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: I would like to thank you for your support in the Senate Banking Committee, concerning your proposal to exempt Banks with under one hundred million in assets, from the Community Reinvestment Act.

We strongly support this exemption. We are all over burdened with regulatory requirements and CRA is at the top of this list. We have devoted countless hours and thousands of reams of paper to be outstanding in our CRA Reports.

It is a well known and documented fact that any Bank surviving in the 80's and into the 90's who is not meeting the requirements of the Community Reinvestment Act, is not succeeding. Most small Banks not in the metropolitan setting perform all the acts, required under CRA, in their daily survival.

It might be further interesting to note that due to the change in the matrix and composition of the requirements for an outstanding CRA rural Banks find it very difficult to receive an outstanding. We had worked diligently and faithfully to maintain an outstanding CRA Rating and then with the change of rules we are almost excluded by a definition form being able to obtain an outstanding rating and have to be satisfied with merely a satisfactory.

This again points up the fact that there is no reason to go through that gyration to be only satisfactory, as we certainly are satisfied in the daily performance of our Banking lives. We are all concerned about the Community and daily make every effort to enhance the Communities which we serve.

We therefore highly support the exemption of this requirement on the smaller institutions. It would save us dollars and cents, but more importantly would allow us the time to get out of the office, away from the paper work requirements and actually serve the customers as we intend to. It would also help provide one less unfair advantage to small Banks concerning our Credit Union struggles and brings us one step closer to a level playing field. Credit Unions are not required to be under any CRA requirements.

I thank you for the opportunity to be heard and to support your efforts on the Financial Modernization Bill. We also would ask for your support in closing the unitary thrift loophole which is detrimental to the small Banks and the Banking payment system in general. We believe these two items are of the highest priority in the up coming Modernization Bill.

Respectfully,

ROBERT L. TODD,
President.

Mr. ALLARD. Mr. President, these letters contain a number of views on the CRA and other provisions of the bill.

Now I want to talk about taxes. For over a year now, I have been working on legislation to reduce the tax burden on small banks. Last week, I introduced S. 875 along with Chairman GRAMM and Senators BENNETT, ABRAHAM, HAGEL, ENZI, MACK, GRAMS and SHELBY.

This legislation expands the subchapter S option for small banks. Subchapter S is a portion of the Tax Code designed for small businesses with a modest number of shareholders. The most important feature of subchapter S is that it eliminates the double taxation faced by corporations. Subchapter S businesses are taxed only at the shareholder level.

Congress made this provision available to banks 3 years ago. Since then, nearly 1,000 small banks have converted from C corporations to S corporations. Unfortunately, many more would like to convert. They are prevented from doing so by a number of remaining obstacles in the tax law.

My legislation would change this by making subchapter S available to many more banks. I will be working closely with Senator GRAMM and the Finance Committee in the months to come in an attempt to include this legislation in a tax bill.

Mr. President, I will include a full description of the provisions of my bill at the end of these comments.

I also want to talk briefly about one additional matter that has come to my attention. This is a proposal to permit banks to be organized as limited liability companies, or LLCs. LLCs were first created in the mid-1980s and have spread throughout the Nation. Virtually every State now permits businesses to be organized as LLCs, as well as corporations and partnerships. The tax benefit of an LLC is similar to that of a subchapter S corporation. Double taxes are eliminated and taxes are paid at the level of the owners. Up to this point, Federal law had limited banks to the corporate form.

In recent years, a number of experts have questioned this restriction, and there appear to be good reasons why we may wish to examine permitting small banks to be organized as LLCs.

I will provide the chairman with language on this point and ask that he take a good look at it. I want to thank Chairman GRAMM, once again, for his hard work on this bill. I have been pleased to be a member of the Banking Committee, and I am pleased to support the legislation.

Mr. President, I ask unanimous consent that an explanation of my legislation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SMALL BUSINESS AND FINANCIAL INSTITUTIONS TAX RELIEF ACT OF 1999 LEGISLATION TO REDUCE THE FEDERAL TAX BURDEN ON SMALL BANKS

This legislation expands Subchapter S of the IRS Code. Subchapter S corporations do not pay corporate income taxes, earnings are passed through to the shareholders where income taxes are paid, eliminating the double taxation of corporations. By contrast, Subchapter C corporations pay corporate income taxes on earnings, and shareholders pay income taxes again on those same earnings when they pass through as dividends. Subchapter S of the IRS Code was enacted in 1958 to reduce the tax burden on small business. The Subchapter S provisions have been liberalized a number of times over the last two decades, significantly in 1982, and again in 1996. This reflects a desire on the part of Congress to reduce taxes on small business.

This S corporation legislation would benefit many small businesses, but its provisions are particularly applicable to banks. Congress made S corporation status available to small banks for the first time in the 1996 ''Small Business Job Protection Act'' but many banks are having trouble qualifying under the current rules. The proposed legislation:

Permits S corporation shares to be held as Individual Retirement Accounts (IRAs), and permits IRA shareholders to purchase their shares from the IRA in order to facilitate a Subchapter S election.

Clarifies that interest and dividends on investments maintained by a bank for liquidity and safety and soundness purposes shall not be ''passive'' income. This is necessary because S corporations are restricted in the amount of passive investment income they may generate.

Increases the number of S corporation eligible shareholders from 75 to 150.

Provides that any stock that bank directors must hold under banking regulations shall not be a disqualifying second class of stock. This is necessary because S corporations are permitted only one class of stock.

Permits banks to treat bad debt charge offs as items of built in loss over the same number of years that the accumulated bad debt reserve must be recaptured (four years) for built in gains tax purposes. This provision is necessary to properly match built in gains and losses relating to accounting for bad debts. Banks that are converting to S corporations must convert from the reserve method of accounting to the specific charge off method and the recapture of the accumulated bad debt reserve is built in gain. Presently the presumption that a bad debt charge off is a built in loss applies only to the first S corporation year.

Clarifies that the general 3 Year S corporation rule for certain ''preference'' items applies to interest deductions by S corporation banks, thereby providing equitable treatment for S corporation banks. S corporations that convert from C corporations are denied certain interest deductions (preference items) for up to 3 years after the conversion, at the end of three years the deductions are allowed.

Provides that non-health care related fringe benefits such as group-term life insurance will be excludable from wages for ''more-than-two-percent'' shareholders. Current law taxes the fringe benefits of these shareholders. Health care related benefits are not included because their deductibility would increase the revenue impact of the legislation.

Permits Family Limited Partnerships to be shareholders in Subchapter S corporations. Many family owned small businesses are organized as Family Limited Partnerships or controlled by Family Limited Partnerships for a variety of reasons. A number of small banks have Family Limited Partnership shareholders, and this legislation would for the first time permit those partnerships to be S corporation shareholders.

Permits S corporations to issue preferred stock in addition to common. Prohibited under current law which permits S corporations to have only one class of stock. Because of limitations on the number of common shareholders, banks need to be able to issue preferred stock in order to have adequate access to equity.

Reduces the required level of shareholder consent to convert to an S corporation from unanimous to 90 percent of shares. Non-consenting shareholders retain their stock, with such stock treated as C corporation stock. The procedures for consent are clarified in order to streamline the process.

Clarifies that Qualified Subchapter S Subsidiaries (QSSS) provide information returns under their own tax id number. This can help avoid confusion by depositors and other parties over the insurance of deposits and the payer of salaries and interest.

Mr. ALLARD. Mr. President, I yield back my time.

Mr. SCHUMER addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise to address the issue of the financial services legislation now before us. Like many of my colleagues, Mr. President, this marks my 19th year of trying to improve financial services. We haven't done much in 19 years, but I am hoping this 20th year is the charm.

Today, however, regrettably I have a few doubts. As much as anyone in the Senate, I want to see modernization pass, and I want to see it pass now. The bill is critical to the vitality of New York's economy. New York City is the financial capital of the world.

As I have said time and time again, financial modernization legislation is critical to ensuring that our financial institutions are competitive at home and abroad. Because of the entrepreneurialness of America, particularly in financial services, we dominate the world. Hundreds of thousands, if not millions, of people are employed in every one of the 50 great States because of our dominance in this area. And even as things that have happened in America spread to Europe and Asia, it is more and more American companies that are taking the lead and doing them. That is because we are technologically, entrepreneurially, and in innovation ahead of just about every other country in the world in financial services. So today we are the financial capital. We are the leaders. But we may not be tomorrow. Our superiority is not some historical inevitability. We need to compete in order to win. And we cannot compete in the present context of the laws.

Mr. President, when I came to the Congress in 1981, I was strongly supportive of the Glass-Steagall law. It seemed to me very simple—that while my inclination would be to allow financial institutions to do whatever they chose, they should not take part in risky activities with insured dollars. In those days, many of the banking institutions in the country wanted to use their insured dollars for the riskiest of activities. Some of us, even back in the early eighties, warned against it, and we were like voices against the wind.

I will never forget an amendment of the Banking Committee in the House, sponsored by the gentleman from Louisiana, Mr. Roemer, and myself, that said no S&L, for instance, could use insured dollars for equity investments in real estate. It lost by one vote. Had it passed, America would have saved $200 billion.

But as a result of the awful S&L crisis, we were able to come closer together on financial services. One of the great ironies is that in the early eighties, when many had said let everybody do everything, even with insured dollars, and they deadlocked with those of us who felt—some felt that each institution should be pigeonholed, but others felt don't pigeon-hole institutions but pigeon-hole insured dollars and make sure they only go to low-risk types of activities. But the S&L crisis allowed us to come together because everyone realized that insured dollars should not be used for risky activities.

And so in the early and middle nineties, legislation was crafted that allowed institutions to underwrite, sell, and even be agents for all varieties of financial services, but that successfully walled off insured dollars from the rest. This is good legislation. And so in the last few years, I—who was regarded, I guess, as one of the leading opponents of modernization—became an advocate. I was proud to support the modernization bill that reached the floor of the House last year. In fact, I persuaded a good number of my New York colleagues to support it and it passed by one vote.

We found a good model, Mr. President; we ought to stick with it. There was balance in that model. There was bipartisanship in that model. It worked. Yet, we come here to the floor of the Senate today, with financial services at risk. They are at risk because even though we had a plan that had almost everyone's support, that is not the bill coming to the floor today.

One of the main sticking points is CRA. CRA is supported by most of the financial institutions in my State, while those who seek to lift CRA say that it is a terrible burden for the financial institutions. I seem to hear that more from some of my colleagues in the Senate than from the institutions that it is supposed to help. In fact, if you surveyed the major banks and major insurance companies and major securities firms in my State of New York, almost every one would say they were happy to support last year's H.R. 10 and would be happy to support it again this year.

They realize that CRA has been an important tool for building communities across America. It has been at work in my State, whether it be in the inner city, which in the past was starved for capital, or whether it be in rural areas, also starved for capital. Individuals, homeowners, small builders, small business people, from the Adirondack Mountains and from the South Bronx, have come and said, ''Senator, make sure we keep CRA.''

The amazing thing is that CRA has worked. While in the past financial institutions, banks, would write off whole areas because it was hard to find the good loans, the economical loans, CRA forced them to go in and now they find they are making money by lending money in rural areas and inner-city areas. So it works. All of a sudden, we see that these provisions, widely accepted by the industry, widely accepted in a bipartisan measure in the House this year, accepted last year by the Senate Banking Committee by a 16–2 vote margin, are ready to scuttle the whole bill.

Let me say this: I fear that the Community Reinvestment Act provisions in the bill before us would doom modernization's failure once again, doom modernization to partisanship, doom modernization to a Presidential veto. It cannot and should not be the monkey wrench that grinds modernization to a halt. CRA or removing CRA should not be the monkey wrench that grinds modernization to a halt.

I greatly respect the views of our chairman. He is a towering intellect—somebody I joust with on many occasions and have always done it in a respectful way so that we each enjoyed it and went away shaking hands.

I say to my chairman that I understand his strongly held views. But if you believe that financial modernization is important, given the consensus that CRA has built through most parts of this country and among most Members of both parties—the House, for instance, passed a bill with a similar CRA provision as the Sarbanes substitute by a 51 to 8 margin—I ask the chairman to reexamine it, and again not have his strong feelings about CRA be the monkey wrench that undoes the whole financial services construct.

Strangely enough, it is not the passions of the many in the House but rather the passions of the few in the Senate that are causing us problems today. This is a reversal of what has usually happened.

The bill's provisions that undermine CRA will clearly cause a Presidential veto. It caused all of the Democrats on the committee to vote against the bill.

One thing we have learned in financial services in this long, tortuous, and sad history is that unless we have bipartisan support, a bill such as this with so many conflicting interests will fail. It is my hope we can today move this bill forward by setting aside partisanship and confrontation and replacing it with pragmatism and compromise.

There are certain provisions in the Democratic substitute that I don't particularly like. I am giving serious thought to the affiliate op-sub issue. In the past I have strongly been for the affiliates for the same Glass-Steagall reasons I mentioned before. I talked to the Secretary of the Treasury, who feels strongly on the other side, and he has modified the bill to meet some of the objections I have. But I don't want to let my views on that issue hold up the bill.

It is my hope similarly with CRA that we will act with dispatch. It is my hope that the Senate will adopt the CRA provisions of the Democratic substitute and we can move this bill forward to conference assured that we have created a bill that has sufficient support to pass the Senate on a bipartisan basis, assured that we have created a bill that will finally, after 20 years, be signed into law.

Thank you, Mr. President.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, we have been trying to accommodate Members who wish to make opening statements. We have been forbearing on offering the substitute, which is in order under the agreement as the first amendment. I guess I am really just trying to let colleagues know that I am sort of close to being ready to offer the substitute. I don't know whether there are others who want to make an opening statement before we get to that. I see the Senator from Nebraska may be interested in doing so. I withhold. Obviously, Members, once the substitute is offered, can make statements, too. But I withhold. I see the Senator is seeking recognition.

Mr. ALLARD addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, on this side I think we have at least two Members right now who want to be recognized to make opening statements. I request we go ahead and give them an opportunity to do that.

Mr. HAGEL addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Thank you, Mr. President.

Mr. President, I rise today in support of S. 900, the Financial Services Modernization Act of 1999. As a member of the Senate Banking Committee, I am proud to have played a small role in writing this bill.

America's financial services companies operate under a regulatory regime that dates back to the Great Depression. Our banks, insurance, and securities firms are bound by artificial barriers that do not recognize the current realities of the global marketplace. The reality is this: That the line separating these industries have been blurred by the evolution of new financial products and technology.

Securities firms, insurance companies, and banks already affiliate with one another, because the marketplace demands it. However, these affiliations cannot lead to full and fair competition or the full potential benefits for consumers because of the Glass-Steagall Act and its legal barriers.

Clearly, it is time for Congress to modernize U.S. financial service regulations and introduce full and open competition across the banking securities and insurance industries. S. 900 would accomplish that.

Passage of this bill will benefit consumers in two basic ways: First, allowing competition among banks, securities firms, and insurance companies will lead to lower costs and higher savings for consumers. Second, this competition will strengthen our financial service firms that are integral to the health of the American economy.

A 1995 Bureau of Economic Analysis report estimated that increased competition in the financial services industry would save consumers nearly $3 billion a year. I realize, Mr. President, that $3 billion may not seem to be a large figure around here, but in places such as Scottsbluff, NE, and other towns in my State that is real money.

If we don't modernize our laws governing the delivery of financial services, then we will put our companies and our industries at a severe disadvantage in the global arena.

Today, the United States is the world leader in financial services. We must not jeopardize this position through congressional inaction. Just as exports of manufactured goods and commodities have become increasingly important to the growth of our Nation's economy, so are our exports of financial services very important to our economy's growth.

Our global position was strengthened by the conclusion of a historic financial services side agreement to the Uruguay Round of GATT. It is ironic that the United States pushed hard for this agreement to reduce barriers to competition abroad while our domestic market continues to operate under a 1930s regulatory regime. It is time to tear down barriers to competition in our domestic markets and ensure that our industries are able to continue to compete at home and abroad.

The members of the Senate Banking Committee took a hard look at this important issue surrounding financial modernization. S. 900 balances the sense of urgency surrounding passage of financial services reform legislation with the need to ensure that the legislation responds to future marketplace dynamics and not just to today's realities and political pressures.

Is this legislation perfect? No, it is not perfect. There are far too many competing and important interests involved in this legislation. And perfection means different things to different people. But this bill does achieve a very workable and relevant and realistic balance between the politics of financial modernization and sound public policy.

Some of my colleagues have alleged that this bill is only going to help large financial institutions and will not help small banks. This is not true. S. 900 includes some very important changes, for example, to the Federal home loan bank system. These changes are very important to small banks everywhere across this country, not just in the rural States, such as my State of Nebraska, but in urban communities and large cities as well.

The Federal home loan bank provisions in S. 900 will strengthen local community banks that are vital to the economic growth and viability of all communities. They will ensure that in an era of banking megamergers, smaller banks are able to compete effectively and continue to serve their customers' lending needs.

These provisions are supported by all of the major banking trade organizations. There are many specific dynamics to improving the marketplace and the ability for the small institutions to compete. Many of my colleagues this afternoon have detailed those changes rather well.

It is important, Mr. President, to modernize our financial service laws to ensure that our companies can compete in this new global marketplace. As barriers to trade come down, our financial service firms must be prepared to take advantage of new global opportunities.

Congress can help them prepare by giving them the flexibility they so desperately need. S. 900 provides this flexibility. I urge my colleagues to support its speedy passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am not a member of the Banking Committee, although I have served there from time to time. I don't have an opening statement in the normal sense of the word because I don't intend to address the specific provisions in the bill, but rather to say to those who are on the committee, and in particular the chairman of the committee, Senator GRAMM, while many may not understand and appreciate the significance of the banking and financing institutions of the United States, and some may even come to the floor, as my good friend, Senator WELLSTONE, and talk about when we might get on to some business in the Senate that really helps people, that prompted me to come down and talk about something that I think is very, very people-oriented.

As a matter of fact, I have given a number of talks to fellow Americans. When I have asked, what do you think is the most significant thing institutionally about the United States that contributes to the opportunities we have in our daily lives to live better lives? Then I answer for them and say, it is the financing system in the United States.

There is no doubt about what helps the average man buy a car, buy a house, make renovations to his house, perhaps even buy a second cabin, or a second car for his children, those things which, when added up, make America the most prosperous Nation on Earth, the country that has people with more material wealth—if that is what measures the validity of a society—than any other nation in the world. It is that we can finance purchases. We can finance what we buy, we can pay for it over time, and of late we are getting the interest rates down where they ought to be, as low as possible.

This is the best thing for Americans in their day-by-day life which permits them to use their salary and their earnings in a way that will let them spread out the costs of items that they need over a period of time, with a reasonable and rational finance plan.

It is absolutely important that from time to time, even though in the Congress we don't like to legislate items like a brand-new banking and finance bill—it is tedious for some, it is difficult, and for many it doesn't even seem like anything exciting we ought to be doing in the Senate. However, realizing what it does for our people, it ought to be full speed ahead to get to the floor with a good bill to modernize the banking and financing system of this country.

Earlier in our history, almost everything was financed through banks and the type of institutions that are principally the subject matter of this bill. Because we didn't modernize the system soon enough, financing is done in various ways—perhaps there is more financing done outside the banking system than there is in the banking system per se. Insurance companies do financing; companies that are big

enough do their own financing of appliances; clearly, institutions that are not banks and not subject to banking rules or financing purchases.

When it comes to measuring a country's long-term success and the international markets and the day-by-day availability of good credit and soundness of our economy, we have to always look to the banking system. As a matter of fact, just think a moment of the past 3 years when things have gone wrong in other countries, when some of these countries went almost totally bankrupt. What led such failures? It was frequently led by the failure of their banking system. That should say something when we see that all around us.

Why is the country of Japan, that many people 15 years ago said we should mimic—obviously we don't choose to speak that way today; I never spoke about it even 15 years ago—what has happened to Japan today? They don't want to face up to the fact their financing institutions are in a state of chaos, if not bankruptcy. It is tough for them to admit.

We didn't want to admit it when our savings and loans were going bankrupt. We didn't want to come up with the money it took to bail out the depositors who were guaranteed their money, up to $100,000, who financed the S&L banking system in the United States, but we finally did it. We saved it. We spent a lot of money doing it.

In a very real sense, those who are managing this bill, including my good friend from Maryland, Senator SARBANES, and obviously the chairman, who I have already mentioned, are contributing a very vital quality to American life by trying to modernize the financial and banking system of the United States.

As my good friend from Nebraska said, what we have is too old, too ancient. It is not modern. It is not taking care of modern problems. It is not helping banks grow in a way they can and should to be modern institutions of financing.

I commend and laud those on the committee who have worked hard. I hope even with our differences we will get a bill. I read a letter from the President saying if certain things are in the bill, he will veto it. This letter was directed to the distinguished chairman, Senator GRAMM. We know the executive branch has a couple of strong feelings about this bill; perhaps the Senate has equally strong feelings about the same items.

On the other hand, I believe when we are finished and go to conference and work this through with the House and with the administration in an effort to get a bill that is sound, reform-minded, modern and yet protects certain interests that the banking system is currently helping and protecting, we will get a bill. The opportunity doesn't come very often for Congress to reform a significant portion of our capitalist system.

I will make one other observation. For anyone who doesn't think capital—which is the substance of banks—isn't important to a capitalist society, let me suggest that the last 3 years ought to prove it up in America in spades. While many economies in the world were in a state of bankruptcy, couldn't buy our goods and were having great economic difficulty, what happened to America? Our consumers bought more rather than less. Interest rates went down rather than up. There was more money for almost any venture desired because the banking system in our country was the greatest safe haven for capital that the world has ever seen. That meant anyone with extra money sent it here. Thus, that money was available to finance purchases in America, bring interest rates down rather than up.

The question is, What will happen when the world economy goes the other direction? Frankly, we ought to have a modernized banking system when that occurs. It is predicted that America's prosperity may turn a little bit in the wrong direction within 3 to 5 years. If it lasts 5 years, it will be astronomical in terms of a previous growth period. We have learned that the availability of a lot of capital in a capitalist system such as ours can make this economy grow and prosper in a way we had never quite figured out until we became almost totally dependent upon that.

There are signs all over the place that this great opportunistic land of ours needs a good, sound, solvent, and modern banking system. I came down to make sure those listening understand this is not a bill for bankers. This is not a bill for rich people. This is a bill to let a banking and finance system work for Americans—whether they are financing a home, whether they are moderate-income people, whether they are financing an education for their kids, whatever it may be. We have to have a sound set of financial rules in America for Americans to grow and prosper.

American business needs to borrow money, and clearly a banking system has to be ready and able to do that for the American business people here and abroad. It cannot be done with a system that is hog tied with ancient rules and regulations that don't meet today's times.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I thank both my Republican colleagues for great statements. I think the Senator from New Mexico reminded us of the successes of our banking system and how we should appreciate it. I think he made a very good statement. My colleague from Nebraska, who is working real hard on the Banking Committee with the chairman and all members on the Banking Committee, I appreciate his effort and help on these very important issues. He has contributed considerably to this legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 302

Mr. SARBANES. Mr. President, pursuant to the order that is governing our consideration of this bill, at least currently, I send an amendment in the nature of a substitute to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Mr. SARBANES], for Mr. DASCHLE, for himself, Mr. SARBANES, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mr. JOHNSON, Mr. REED, Mr. SCHUMER, Mr. BAYH and Mr. EDWARDS proposes an amendment numbered 302.

Mr. SARBANES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Maryland.

Mr. SARBANES. Mr. President, as I have indicated earlier in the course of the opening debate on this issue, we are very anxious on our side to have financial service modernization legislation, and most of us subscribe to the proposition of allowing affiliations between banks, security firms, and insurance companies.

However, as I have indicated, that is not the only issue before us. We have to consider that question in the context of addressing important questions of providing credit in all communities in our country; namely, the Community Reinvestment Act issue. We have to consider how these activities are to be done, whether they are to be done solely in an affiliate, outside of the banking structure, or whether banks will have the opportunity either to use the affiliate or to do it in an operating subsidiary. We have the important issue of the long historical separation between banking and commerce, which has prevailed in this country. And we have other aspects of the legislation which I think are of importance, including important provisions with respect to consumer protection.

As we have indicated earlier, we were not able to support this legislation in the committee and the legislation was brought to the floor on an 11-to-9 vote. The alternative, which we have now offered, just offered, and which is at the desk, is, in effect, the bill that the committee reported last year on a 16-to-2 vote with the one substantial change of providing for the operating subsidiary approach. That is now contained in the alternative, the substitute amendment which I have sent to the desk.

Last year some very careful compromises were worked out in order to move this legislation forward on a consensus basis. Unfortunately, that has

not been the case this year, and the legislation that was developed in the committee was reported by the majority but contained no supporting vote from any of the Democratic members of the committee. The proposal before us, S. 900, the bill from the committee, is strongly opposed by a great number of civil rights groups, community groups, consumer organizations, and local government officials. People within the financial services industry have mixed views on some of the provisions of S. 900, and of course the President has indicated that he will veto the committee bill.

Unfortunately, we have this sharp contrast with last year's bipartisan approach. I think it is fair to say that none of the industry association groups oppose the substitute. They have been caught in the switches, so to speak, on this issue, and subjected to considerable persuasion. But I think it is fair to say that the provisions that are in the substitute will pass muster. These provisions also are fairly close to what the House Banking Committee has done by a 51-to-8 bipartisan vote. So we think the approach contained in the substitute just sent to the desk stands the greatest chance of finally being enacted into law. This substitute amendment, in effect, would put us on a path, at the end of which we could obtain the President's signature and get legislation.

Let me briefly seek to contrast the substitute and S. 900, the bill brought from the committee. It should be clearly understood that there is an intense view on this side of the aisle, and I believe shared by at least a few on the other side of the aisle, that the Community Reinvestment Act has really been a very significant and constructive public policy. It has improved the availability of credit in low- and moderate-income communities. There is example after example, and we will put those in the RECORD as this debate develops, where the CRA lending and investments have brought life to previously neglected communities and given people not only hope, but the ability to move up the American ladder of opportunity. It has helped to alleviate credit needs and improve services in rural areas and on Native American reservations. It has had a significant impact on home ownership amongst minority groups, African Americans and Hispanic Americans, whose numbers in terms of home ownership have increased dramatically, and everyone who goes and observes that phenomenon reports back that the CRA has had a considerable role to play in that very important objective.

The President has stated:

> [W]e should all be proud of what [CRA] has meant for low and moderate-income Americans of all races. Although we still have a long way to go in bringing all Americans into the economic mainstream, under CRA the private sector has pumped billions of dollars of credit to build housing, create jobs and restore hope in communities left behind.

It is for this reason that farm groups, labor unions, mayors all across the country, community development corporations, Hispanic organizations, Asian American, Native American—this has had a significant impact on the Indian reservations across the country—and civil rights groups all support retaining the effectiveness of CRA.

I will include in the RECORD at the end of my remarks letters from these various organizations detailing their very strong view about CRA, and in effect their support for this substitute.

The substitute requires that banks should have at least a satisfactory CRA rating before they can affiliate with securities and insurance firms, and that they would have to maintain that rating to continue the new affiliation. These provisions are essential in order to maintain the effectiveness of CRA within the expanded holding company structure. Capital, management, and CRA performance are at issue when an institution files an application for deposit insurance, a charter, a merger, an acquisition or other corporate reorganization, a branch or the relocation of a home office or branch.

If you are going to allow banks for the first time in a comprehensive way to engage in insurance and securities activities, then it is important that those banks, before they can do that, meet the CRA test. Otherwise, you are going to have a situation in which financial institutions could enter into additional activities, even if they were deficient in their CRA performance.

As the FDIC Chairman, Donna Tanoue stated:

> The bank and thrift regulatory agencies consistently take into account an insured institution's record of performance under CRA when considering an application to open or relocate a branch, a main office, or acquire or merge with another institution. As this legislation would enable institutions to enter into additional activities, it would seem consistent that CRA compliance should continue to be a determining factor.

Last year, we worked out these CRA provisions in the bill that was reported out of the committee. And the consensus, a 16–2 vote, contained these important CRA provisions.

This year, the provision requiring a satisfactory rating as a precondition of expanded affiliations is absent from the committee-reported bill. There are two provisions in the committee-reported bill which we feel very strongly contribute to undermining the application of CRA.

This substitute amendment, unlike the committee bill, requires banks have and maintain satisfactory CRA ratings in order to engage in and maintain expanded affiliations. To fail to do so would allow banks, for the first time, to move out in terms of the activities they can engage in, in a comprehensive way—both securities and insurance—without the bank that is going to do that having to meet the CRA test.

It does not apply, the CRA, to the insurance and securities activities, although many CRA advocates want to do exactly that. It only requires that the bank, as a condition of affiliation, meet the CRA performance standards.

As Secretary Rubin has stated:

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

Let me turn to the other CRA issues that are, in effect, posed by the substitute as compared to the committee-reported bill.

The second provision of the committee bill that weakens CRA is its safe harbor for banks with a ''satisfactory'' or better CRA rating. This is, banks would be deemed in compliance with CRA if they had in each of their three preceding examinations received a satisfactory rating. Groups, in fact, would not be able to comment about CRA performance unless they could carry the very heavy burden of providing substantial, verifiable information to the contrary.

The Federal bank regulatory agencies oppose this provision. They agree that a satisfactory CRA rating is not conclusive evidence that a bank is meeting the credit needs of all of its communities. On the contrary, they welcome comments from the public regarding the CRA performance of the institutions they supervise.

For example, Ellen Seidman, Director of the Office of Supervision said:

> [w]e generally find that the information received from those few who do comment on applications is relevant, constructive, and thoughtful, and frequently raise issues that need to be considered. In order for us to reach a supportable disposition on an application, and satisfy our statutory responsibilities, we need to have public input.

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

In fact, the provision that is in the committee bill would preclude looking at anything that took place prior to the past examinations if those examinations produced a satisfactory rating.

It is very clear that this safe harbor provision of the committee bill would stifle public comment on banks' and thrifts' CRA performance. This is so because nearly all banks and thrifts receive satisfactory or better CRA ratings, well up into the 90s, 90-percentile figures.

The committee majority asserts that the public comment process has been routinely abused, but that assertion is not supported by the record. We get these sort of examples that are brought in. There has never been a full-scale hearing on this issue. All of the statistical information from the regulatory

agencies indicate that there has not been abuse of the public comment process. The vast majority of applications reviewed on CRA grounds are approved in a timely manner. Many do not receive any adverse comments. Very few applications that receive adverse CRA comments are delayed.

The substantial, verifiable information would really knock community groups and ordinary citizens out of being able to comment in any meaningful way. As the FDIC Chairman Tanoue stated, ''Public comments relating to CRA should not bear a burden of proof that is not imposed on public comment related to any other aspect of a bank's performance.''

The regulators take in all these comments and then they make their judgment. There seems to be a presumption here that when people come in and make a comment that somehow they then carry the day. Nothing could be further from the truth. The regulators collate all these comments, consider them, and proceed to make their judgment. And the number of instances in which CRA has been raised is a very small percentage of the total.

The third way in which the committee bill attacks CRA is the exemption for rural institutions with less than $100 million in assets. This would obviously have very severe consequences for low- and moderate-income rural communities which depend heavily on small banks for their credit needs.

It is asserted that these small banks, by their nature, serve the credit needs of their local communities. However, historically, in the ratings made by the regulators, small banks have received the lowest CRA ratings. Although many small banks do serve the needs of their communities, observers note that some small banks often invest in Treasury bonds rather than in their own communities.

Some have argued that you need an exemption in order to relieve the regulatory burden. The fact of the matter is, as the Federal bank regulators revised the CRA regulations in 1995 to reduce the cost of compliance for small banks, the new rules provided a streamlined examination for small banks. They exempted small banks from reporting requirements. And they emphasized the institution's actual performance rather than paperwork.

The FDIC, the OTS, and the OCC support the application of CRA to small banks. FDIC Chairman Tanoue stated:

> Although the vast majority of institutions satisfactorily help to meet the credit needs of their communities, not all institutions may do so over time, including small institutions. Some institutions may unreasonably lend outside of their communities, or arbitrarily exclude low- and moderate-income areas or individuals within their communities. We believe that periodic CRA examinations for all insured depository institutions, regardless of asset-size, are an effective means to ensure that institutions help to meet the credit needs of their entire communities, including low- and moderate-income areas.

Before I turn to that subject, let me again stress how critical the flow of credit, which has resulted from CRA, has been to the redevelopment of low- and moderate-income areas. The bill brought out of the committee, S. 900, would really close down opportunity for large numbers of people in these low- and moderate-income communities to really improve themselves, to move to home ownership, to open small businesses, to carry out the sort of community renewal which gives them a better neighborhood in which to live.

I have heard these assertions, but we can take you through instance after instance in which the impact of CRA has been such as to provide hope to communities and to lift them up and to enable people to move up the ladder of opportunity. I do not know what could be more consistent with an American goal or objective than to give people this opportunity to advance. And particularly the financial institutions, which are subject to these CRA requirements, are prepared to abide by them. Many of them have given testimony about the beneficial impact it has had on the community and the beneficial impact on their relationship with the community.

Let me turn to the banking and commerce issue. Another aspect of the committee bill—and this is an important part of the substitute—that differs significantly from the substitute amendment is its approach to the separation of banking and commerce. In an important respect, the committee bill breaches the separation of banking and commerce, and this could lead to biased lending decisions and may well ultimately put the taxpayer-backed deposit insurance funds at risk.

Now, this separation of banking and commerce is a longstanding principle in American law, dating back over now almost 140 years to the National Bank Act of 1864, which specifically forbids banks to engage in or invest in commercial or industrial activities. Under existing law, a commercial firm, such as General Motors or Microsoft, may not own a bank or be owned by a bank. We have tried to draw a line there. There has been some fuzzing of that line, but not much.

In 1956, the Congress enacted the Bank Holding Company Act, which prohibited commercial firms from owning banks and prohibited holding companies owning two or more banks from owning commercial firms. This policy was strengthened by the Bank Holding Company Act Amendments of 1970, which extended the prohibition on owning commercial firms to holding companies owning just one bank. In other words, it drew a very sharp line.

In submitting the 1970 amendments, President Nixon said:

> The strength of our banking system depends largely on its independence. Banking must not dominate commerce or be dominated by it.

Now, why do we have this principle of separating banking and commerce in U.S. law? Because allowing banks to affiliate with commercial firms raises concerns relating to risk to the deposit insurance fund, the impartial granting of credit, unfair competition, and concentration of economic power. A bank affiliated with a commercial firm would have an incentive to make loans to that firm, even if the firm were less creditworthy than other borrowers. The bank would have a similar incentive not to lend to the firm's competitors, even if they were creditworthy.

Financial experts have pointed out these dangers. Secretary Rubin testified that mixing banking and commerce:

> . . . might pose additional, unforeseen and undue risk to the safety and soundness of the financial system, potentially exposing the federal deposit Insurance funds and taxpayers to substantial losses. . . . Equally uncertain is the effect such combinations might have on the cost and availability of credit to numerous diverse borrowers and on the concentration of economic resources.

The leading economist Henry Kaufman warned that mixing banking and commerce would lead to conflicts of interest and unfair competition in the allocation of credit. In his view:

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

Public interest groups have made the same point. Consumers Union testified that it opposes:

> . . . permitting federally-insured institutions to combine with commercial interests because of the potential to skew the availability of credit, conflict of interest issues, and general safety and soundness concerns from expanding the safety net provided by the government.

The difficulties experienced in Asia demonstrate the risks associated with mixing banking and commerce. Both Secretary Rubin and Chairman Greenspan testified that the financial crisis in Asia was made worse by imprudent lending by banks to affiliated commercial firms. In other words, if you cross that line and put the commercial firm in the bank—as it were, in the same pot—you run a heavy risk, as was exemplified in the Asian financial crisis, of imprudent lending.

Former Federal Reserve Chairman Paul Volcker wrote, recent experience with the banking crises in countries as different in their stages of development as Japan, Indonesia and Russia demonstrate the folly of permitting industrial financial conglomerates to dominate financial markets in potentially large areas of the economy.

The substitute amendment tries to sustain this line between banking and commerce. The committee bill crosses this line in a number of respects.

First of all, it permits bank affiliates to acquire any type of company in connection with merchant banking activities. However, the committee bill drops

certain safeguards that are in the substitute and that were in last year's bipartisan bill. Those safeguards allowed merchant banking investment to be held only for such period of time as would permit the sale of the investment on a reasonable basis. It precluded the bank affiliate from actively participating in the day-to-day management of the company.

The committee bill drops those safeguards. In effect, it would allow a bank holding company to operate commercial companies of any size and in any industry for an unlimited period of time. This would break down the separation of banking and commerce.

The substitute restores the safeguards that were in last year's bill.

Secondly, both the committee bill and the substitute amendment allow holding companies that own banks to engage in activities that are financial in nature or incidental to such financial activities. But the committee bill goes further by authorizing holding companies to engage in activities that are complementary activities that are financial in nature. It provides no definition or limitation of these complementary activities and, therefore, raises the danger that these complementary activities would be commercial in nature and cross the separation between banking and commerce. The substitute does not permit those complementary activities.

Finally, the committee bill does not close the unitary thrift company loophole. That loophole refers to the fact that a company that owns just one thrift, called a unitary thrift holding company, may also own a commercial firm. There are currently over 500 thrifts owned by unitary holding companies. The vast majority of these are owned by financial firms. Now, both the committee bill and the substitute would prohibit the creation of new unitary thrift holding companies by commercial firms. However, there is a sharp difference in that the committee bill would allow a commercial company to acquire any of the 500 existing unitary thrift holding companies.

Now, obviously, if they can do that, if hundreds of commercial firms, in effect, can acquire a unitary thrift holding company, they can effectively obliterate the separation between banking and commerce. Financial leaders and banking industry groups advise the committee to prohibit commercial firms from acquiring control of thrifts. Chairman Greenspan recommended that financial services modernization legislation at least prohibit, or significantly restrict, the ability of grandfather unitary thrift holding companies to transfer their legislatively created grandfather rights to another commercial organization.

Secretary Rubin observed that, ''without such a limit on transferability, existing charters may tend to migrate to commercial firms and could become a significant exception to the general prohibition against commercial ownership of depository institutions.''

Both the ABA and IBAA—the American Bankers Association and the Independent Bankers Association of America—wrote to Senators yesterday expressing their support for closing the unitary thrift holding company provision, including restricting transferability of existing unitaries.

Now, let me turn briefly to some important consumer protection provisions that are in the substitute amendment, but that are not in the committee bill, and which we think make the substitute more desirable legislation than the committee bill.

Obviously, if you are going to have a financial services modernization bill, you must ensure adequate consumer protection. We need to be sure that consumer protections keep pace with changes taking place in the financial market. In recent years, banking securities and insurance products have become more similar. A wider variety of financial products is available through banks. This increases potential customer confusion about the risks of the product the customer is buying, who is selling it, and whether or not it is insured by the FDIC. Measures such as disclosure to customers and licensing of personnel can help keep such misunderstandings to a minimum, and such a provision should be included in any financial services modernization bill.

Unfortunately, the committee bill fails to include a number of important consumer protection provisions that passed the committee overwhelmingly last year, and which we have now included in the substitute that is now before the body.

Very quickly, on insurance sales, while some of the provisions of last year's bill relating to insurance sales have been substituted into the committee bill—that was done in the committee—but more remains to be done. The substitute amendment would require Federal bank regulators to establish mechanisms for receiving and addressing consumer complaints—something that is completely absent in the committee bill.

The substitute amendment would provide that Federal regulations would supersede State regulations when the Federal regulations afforded greater protection for consumers. The committee bill allows State regulations to prevail even if it offers less protection to consumers.

With respect to securities activities, the committee bill provides less protection for consumers than does the substitute amendment.

Currently, banks enjoy a total exemption from the definitions of ''broker,'' ''dealer'' and ''investment advisor'' under the Federal securities law. Because of this blanket exemption, consumers who purchase securities from banks do not receive any of the protections of the securities laws, which in many ways are superior to those offered by the banking laws. For example, broker-dealer personnel have an obligation to recommend to their clients only transactions that are suitable based on their client's tolerance for risk, overall portfolio, and so forth.

Bank personnel have no such obligation. Broker-dealer personnel must pass licensing exams and are subject to continuing education requirements. Bank personnel are exempt from these requirements. Disciplinary histories of broker-dealer personnel are made publicly available to investors. No such history is available regarding bank personnel. Broker-dealer managers have a duty to supervise their sales personnel, which is enforceable under the Federal securities laws. Bank managers do not.

Finally, customer disputes with brokerage firms are subject to arbitration, which offers a specialized, quicker and cheaper forum for settling disputes. No arbitration exists for customer disputes with banks.

Now, the committee bill, like the substitute amendment, would repeal the total exemption banks enjoy from the definition of broker and dealer. Also, like the substitute amendment, the committee bill contains a number of exceptions that allow certain securities activities to continue to take place directly within banks. However, the exceptions in the committee bill are significantly wider than those in the substitute amendment. Let me just mention some of those important differences.

The committee bill allows a bank trust department conducting securities transactions to be compensated on a transaction-by-transaction basis, just like a broker. Where the substitute amendment allows a bank to sell unregistered securities exclusively to sophisticated investors, the committee bill allows a bank to sell unregistered securities to all investors.

Finally, the committee bill prohibits the SEC from determining that a new product is a security and, therefore, must be sold by an SEC-registered broker-dealer, unless the Federal Reserve concurs. Over time, this will move even more securities activities directly into banks. The substitute amendment would afford the SEC the first opportunity to define new products as securities.

The committee bill also leaves the SEC with less authority over bank-advised mutual funds and with less ability to protect investors in those funds.

Now, the substitute amendment requires the Federal banking regulators to issue regulations regarding the sale of securities by banks and bank affiliates. The bank regulators would have established mechanisms to review and address consumer complaints. The committee bill does not include this provision.

No one of these provisions that I made reference to may seem to be of major import. But all of them taken together, I think, indicate that the protections for consumers that are contained in the substitute amendment

significantly exceed those that are in the committee-reported bill.

Another area in which the committee bill departs from last year's agreement regards a special deposit insurance assessment paid by thrifts.

Prior to 1996, thrifts paid a higher assessment rate than banks did for interest payments on certain bonds issued to pay for the resolution of the savings and loan crisis, so-called ''FICO bonds.'' In 1996, Congress acted to close this assessment differential on FICO bonds. The rates were to be equalized until January 1, 2000, and the bill that we reported last year left the 1996 agreement intact. The committee bill now before us would extend this assessment differential for another 3 years, so that thrifts would continue to pay a higher assessment rate for another 3 years.

This may well lead institutions to shift their deposits from the thrift insurance fund to the bank insurance fund, which might well create stability problems for the thrift insurance fund.

Chairman Tanoue has written that this provision serves no positive public policy purpose. And it is not in the substitute amendment that is now before us.

Let me now turn to an issue in which my colleague, the chairman of the committee, has spent a considerable amount of time here on the floor today in pointing out the differences between the substitute that is now before us and the committee bill.

All of these provisions I have thus far enumerated were essentially contained in the bill that was reported last year by the committee on a 16-to-2 vote. The one area in which the substitute amendment differs from last year's bipartisan bill is its treatment of operating subsidiaries and banks.

Last year's bill contemplated that principal activities, such as underwriting securities and insurance, would take place in a holding company's subsidiary rather than bank subsidiaries. Certain agency activities such as sales of insurance were permitted in bank subsidiaries.

This approach was supported by the Federal Reserve. It was opposed by the Treasury Department. That was an important difference last year. It remains an important difference this year.

As the legislative process has proceeded, the Treasury Department has agreed to significant additional safeguards regarding the scope and regulation of bank subsidiaries' activities. With these safeguards, it appeared to us that banks should be given the option of conducting financial activities in operating subsidiaries. That approach is contained in the substitute amendment now before the Chamber.

President Clinton has indicated that he will veto the reported bill in part because ''it would deny financial services firms the freedom to organize themselves in a way that best serves their customers.''

Let me talk a bit about the safeguards, the changes in the sense that the Treasury has agreed to, which I think now warrant allowing the banking institution to have a choice. They wouldn't be required to do it in an op-sub. They could still do it in an affiliate. They could have a choice between the two as a matter of their own organizational preference.

Last year, the Treasury was clear that they would not do real estate in the operating-sub. And they continue to hold to that position this year. In addition, the Treasury last year agreed that insurance underwriting may not take place in a bank subsidiary. This prohibition on insurance underwriting would be in addition to an explicit prohibition on real estate development conducted by bank subsidiaries to which the Treasury agreed last year. So we have these two areas now that were provided for and placed outside of the op-sub umbrella.

On merchant banking, the Treasury has agreed that the Federal Reserve shall have the authority to define merchant banking activities and bank subsidiaries. This meaningful step on the part of the Treasury will contribute to bank subsidiary activities being structured in a prudent fashion.

Merchant banking presents a potential breach in the separation of banking and commerce. The possible dangers would be increased if two different regulators were to define separately the dimensions of permissible merchant banking activities. Then to avoid the possibility that would happen—that the dimensions of the permissible merchant banking activities would be defined by two different regulators who would have different concepts—in the substitute, we have the provision that the Federal Reserve would have the exclusive authority to define merchant banking activities and bank subsidiaries.

The Treasury has also agreed that the Secretary and the Federal Reserve should jointly determine which activities are financial in nature, both for a holding company subsidiary and for a bank subsidiary. Both the Secretary and the Federal Reserve would jointly issue regulations and interpretations under ''the financial in nature'' standard. This would eliminate a potential competition between bank regulators.

Further, to place activities on an equal footing, the same conditions would apply to a national bank seeking to exercise expanded affiliation through a subsidiary as a holding company seeking to exercise those affiliations. These conditions are that banks be well capitalized, well managed, and in compliance with CRA.

The Treasury also supports the application of the functional regulation of securities and insurance activities taking place in bank subsidiaries just as it applies to holding company subsidiaries.

These provisions are all reflected in the substitute amendment.

In addition, the Treasury supports a requirement that national banks with total assets of $10 billion or more retain a holding company, even if they choose to engage in expanded financial activities through subsidiaries. This is designed to preserve the oversight that the Federal Reserve now has over the Nation's largest commercial banks through their holding company. So this was an effort by the Treasury to accommodate one of the concerns that had been repeatedly expressed by the Federal Reserve.

Furthermore, the substitute amendment contains certain additional safeguards that the Treasury Department now supports for financial services modernization legislation. Every dollar of a bank's investment in a subsidiary would be deducted from the bank's capital for regulatory purposes. In this way, the bank would have to remain well capitalized, even after deducting the investment in the subsidiary, and even should it lose its entire investment.

Secondly, a bank could not invest in a subsidiary in an amount exceeding the amount the bank would pay to a holding company as a dividend.

And, thirdly, the strict limits that now apply to transactions between banks and their affiliates would apply to transactions between banks and their subsidiaries.

These restrict extensions of credit from banks to their affiliates guaranteed by banks for the benefit of their affiliates and purchases of assets by banks from their affiliates. All such transactions must be at arm's length, and fully collateralized, and the total amount of such transactions between a bank and all of the affiliates is limited.

In total, these safeguards pertaining to the regulation of bank subsidiaries should eliminate any economic benefit that may exist when activities are conducted in bank subsidiaries rather than holding company subsidiaries.

The provisions regarding the scope of activities permitted for bank subsidiaries should remove any opportunity for regulators to compete with one another to the detriment of the safety and soundness of the banking system, or the separation of banking and commerce.

FDIC Chairman Tanoue testified:

> From a safety-and-soundness perspective, both the bank operating subsidiary and the holding company affiliate structures can provide adequate protection to the insured depository institution from the direct and indirect effects of losses in nonbank subsidiaries or affiliates.

This position of the current FDIC Chairman was echoed by three former Chairmen of the FDIC in an editorial that I printed earlier in the remarks.

> On the basis of the provisions agreed to by the Treasury Department and the testimony given by the FDIC—

And I want to underscore the efforts on the part of the Treasury Department to address questions that had been raised last year; in other words, what we are containing in the substitute differs from what the Treasury

was putting forward last year and has encompassed all of these various safeguards which they have sought to develop—

> [it was our judgment that] permitting bank operating subsidiaries can be consistent with the goals of preserving safety and soundness, protecting consumers, and promoting comparable regulation.

Therefore, we have included the operating subsidiary provisions in this substitute amendment and regard it as a meaningful step toward enactment of financial services modernization legislation.

Let me simply close with these observations. The substitute amendment now before the body achieves the primary objective of financial services modernization; namely, allowing affiliation of banks, securities firms, and insurance companies. It does so while preserving safety and soundness, protecting consumers, providing for regulatory parity, and promoting the availability of financial services to all communities.

The committee bill, S. 900, falls short of these goals. It undermines the Community Reinvestment Act. It does not provide bank operating subsidiaries with the scope sought by the Treasury Department. Its protections for consumers are substantially less than in the substitute. And, finally, it enables the separation of banking and commerce to be breached with respect to the unitary thrift holding companies.

For all of these reasons, the President has declared he will veto it in its current form. I believe that the substitute amendment, the one that is now before the Senate and on which at the conclusion of this debate we will vote, represents a balanced, prudent approach to financial services modernization. It is legislation which has broad acceptance within the industry. In many ways, it is comparable to the activities of the legislation of the House Banking Committee.

I am frank to say that I clearly think it is the approach most likely to achieve the enactment of financial services modernization legislation. If Members want financial services modernization legislation, if Members want to manufacture a legislative vehicle that can go all the way through to Presidential signature and become law, then Members should vote for the substitute amendment.

I yield the floor.

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRAMM. Mr. President, let me talk about simplicity and clarity in the two bills. I know that seldom in writing laws do we hear lawmakers talk about what makes sense and what is simple and what is readable.

I begin by asking people to look at the bill adopted by the Senate Banking Committee modernizing financial services. That bill is 150 pages long. The substitute which has been offered by Senator SARBANES is 349 pages long. Members might ask, What is the extra 200 pages for? The extra 200 pages is for a convoluted process that breaks the simplicity of the bill adopted by the Banking Committee.

What is very good about our bill is, it is very easy to understand. If a securities firm wants to set up a bank holding company and engage in securities activities, banking activities, and insurance activities, it can set up a bank holding company, and outside the bank it can be involved in insurance and securities and it can be involved in banking under the bank holding company. It is a very simple organization. It is an organization that provides any one of the three financial industries to become bank holding companies and participate in providing a broad array of services, including banking services. And it is an organization that is very easy to understand. It is an organization that you can set out in 150 pages with all the whistles and bells and all the icing on the cake.

The Sarbanes substitute is 200 pages more complicated, and it is more complicated because it goes about things in a very different way. You can have a bank holding company that can be in the banking business and in the securities business under the basic framework of the bank. You can have a financial services holding company, a totally new entity, and it can have an insurance company, a bank holding company, and a securities firm. And under the bank holding company, you can have a bank, and that bank can be in the securities business, and it creates another totally new entity, a wholesale financial holding company, and it can be in the insurance business, wholesale financial institution business, and securities firms. Finally, banks can be in the securities business.

So the first argument I want to make is based on simplicity—not that anybody ever gauged a Federal law based on, ''Does it make sense, is it simple, could people actually employ it, what kind of roadmap is it for the development of new financial institutions in America?'' But the reason our bill can do what it sets out to do in 150 pages, and the reason the substitute takes 300 pages, is the underlying bill adopted by the Banking Committee has a simple structure that everybody can understand and that securities firms, banks, and insurance companies could all participate in. Under our bill, it is easy for any one of the three to set up a bank holding company.

The substitute is a lot more complicated and brings in a lot of new institutions. It would be very hard, in terms of a user-friendly roadmap, as to how to do this. I do not know that sways anybody in the private sector or in any real world activity. But simplicity, and the sort of clear approach that people can follow—if they are buying a roadmap or if they are buying a computer program—is an important thing. Unfortunately, it is not something that is often mentioned in making the law of the land; but, quite frankly, it should be.

I am going to try to take less time in responding than I did in my opening statement on this. I want to break the proposal into eight areas and discuss the proposal in that way. There are eight key ways that this substitute is fundamentally different from the bill which was adopted by the Banking Committee and which is before us.

The first and most important difference is that the substitute before us—offered by Senator SARBANES, which is different from the bill that Senator SARBANES supported last year, different from the bill that was adopted by the Banking Committee last year, and far different from the bill that is before the Senate now—allows banks to engage in broad financial services within the legal framework of the bank.

Alan Greenspan, the Chairman of the Board of Governors of the Federal Reserve, has said—and I want to read this quote because I think it is important. I think, No. 1, everybody in America takes Alan Greenspan seriously. Second, I want to remind people that the majority of the Governors of the Federal Reserve Board were appointed by this President, Bill Clinton. This is a statement that Chairman Greenspan made just last week before the House Commerce Committee in opposition to exactly the proposal which is the heart of the Sarbanes substitute. When Chairman Greenspan refers to ''colleagues,'' he means every member of the Federal Reserve Board, including those appointed by Bill Clinton:

> I and my colleagues are firmly convinced of the view that the long-term stability of U.S. financial markets and the interests of the American taxpayer would be better served by no financial modernization bill rather than one that allows the proposed new activities to be conducted by the bank. . . .

I want to be sure everybody understands this quote. It is as clear as you can be clear. The most respected economic mind in America, the man who more than any other person on this planet has been responsible for the financial stability that has created over 20 million jobs and enriched working Americans by driving up equity values and by creating unparalleled prosperity in America, said last week that he and every member of the Board of Governors of the Federal Reserve believe it would be better to have no financial services modernization bill than to adopt the Sarbanes substitute.

That is pretty clear. I think it is a profound position to take. Let me make the point: Everybody who knows Alan Greenspan knows that Alan

Greenspan goes out of his way not to be confrontational. Everybody who knows Chairman Greenspan knows that if there is a way of saying something around the barn, something which might be offensive to somebody, he sort of walks all the way around the barn and let's you understand—where you can hope nobody else understands—that he said your idea is a bad idea. That is the way Alan Greenspan works.

But in front of God and everybody at the House Commerce Committee last week, Alan Greenspan said if the alternative is the Sarbanes substitute or no bill, he and every member of the Board of Governors of the Federal Reserve are convinced that ''no bill'' is better than the Sarbanes substitute.

Why does he say this? In a dozen other quotes, he basically says two things: No. 1, since we have deposit insurance, where the taxpayer is on the hook for bank failures that threaten insured deposits, he is concerned that allowing banks to get into these other kinds of financial businesses within the framework of the bank itself endangers deposit insurance and threatens the taxpayer. So the first reason that Chairman Greenspan made this extraordinary statement—in fact, the strongest statement he has made as Chairman of the Board of Governors of the Federal Reserve—is concern about the insurance fund and the taxpayer being on the hook.

The second concern is that if banks provide these expanded activities, such as securities and insurance or whatever activities are ultimately allowed within banks, the subsidy that banks have in deposit insurance—something no other institution has besides banks, S&Ls, and other institutions that have Federal guarantees, and when I am saying banks I mean broadly defined—plus the ability to borrow from the Federal Reserve at the lowest interest rates at which anybody in the world borrows, and the ability to use the Fed wire, where they can wire money that instantly becomes bank reserves and it is guaranteed by the Federal Reserve bank, Chairman Greenspan and the Federal Reserve have estimated that if banks were allowed to provide these services within the bank, they probably have an effective subsidy of around 14 basis points. And this subsidy is due to the access to these three items: Deposit insurance, the Fed window, the Fed wire.

Chairman Greenspan has explained to anybody who would listen that if you let banks perform these services within the banking structure itself, banks will have an advantage over those who are providing securities services and selling securities outside of banks; that if you allowed banks to do insurance within the bank, they would have an advantage over insurance companies that are not banks.

Chairman Greenspan has tried to alert us to the fact that if we adopted the Sarbanes substitute we could literally, within 10 or 20 years, have a financial system where virtually all of the securities activities and all of the insurance activities, if banks were allowed to do insurance within the bank itself, would be dominated by a handful of big banks. In other words, our economy would look very much like the Japanese economy, in terms of its financial structure.

Chairman Greenspan says, if your choice is no bill or doing what the Sarbanes substitute wants to do, for safety and soundness reasons, for the protection of the taxpayer, for the protection of competition, for the protection of the competitiveness of the American economy, Chairman Greenspan says: Kill the bill before you do what the Sarbanes substitute would do, in terms of letting banks in these other lines of financial services within the structure of the bank.

Chairman Greenspan said let banks do these things—let them sell insurance, let them provide securities services—but make banks do them outside the bank where they have to take capital out of the bank to capitalize these companies and where they compete with nonbanks on an equal footing.

This is a critically important issue, and it is an incredible paradox, an absolutely astounding paradox that Senator SARBANES, who supported Chairman Greenspan's position in the bill last year, is now taking exactly the opposite position. It is my understanding that perhaps all the Democrat Members of the Senate may be inclined to take this position, a position that many of them, perhaps two out of every three, would have opposed as any kind of freestanding measure. I hope that is not the case, but perhaps it is.

If for no other reason, if you do not have 101 other reasons to vote against the Sarbanes substitute, listen to Alan Greenspan: Spare the taxpayer, spare deposit insurance, and spare the economy by rejecting this proposal.

The pending substitute dramatically expands CRA. It dramatically expands CRA in several ways. For the first time in the history of CRA, the Sarbanes substitute provides that financial institutions that fall out of compliance with CRA will now be deemed to be in violation of banking law and, therefore, potentially subject to fines of up to $1 million a day.

Let me remind those who do not follow these issues—and why would you unless you are in this line of work?—currently under the Community Reinvestment Act, while banks are evaluated every year and while banks take a legitimate pride in getting good scores on their evaluations, they are not required to be in compliance. The only time CRA imposes a ''penalty'' is if a bank wants to take an action that requires CRA evaluation—such as the opening or closing of a branch, or selling or buying a bank, or merging with another bank.

The Sarbanes substitute would vastly expand CRA by making it a violation of Federal banking law simply to be out of compliance with CRA and, in the process, potentially subject not just the bank, but an individual bank officer and an individual board member, to a fine of $1 million a day.

The Independent Community Bankers of America sent a letter today raising a very important issue. Little banks have trouble getting people of substance to serve on their bank boards. It is hard because there are liability issues involved, and one of the big struggles that little banks have is getting city leaders to be on the bank board. We want the best people to serve on bank boards because they are the people who ultimately make decisions that affect safety and soundness, that affect the well-being of the depositor, that affect lending policy, and that affect the taxpayer through Federal deposit insurance.

I want you to listen to the president of the Independent Community Bankers of America. This is an organization that represents small, independent banks all over America. Listen to this paragraph:

> We also have grave concerns about expanding CRA enforcement authority to include the levying of heavy fines and penalties against banks or their officers and directors. An ongoing challenge for many community banks in small communities is finding willing and qualified bank directors. Legislation following the savings and loan crisis of the 1980s and early 1990s greatly increased the amount of civil monetary penalties to which bank officers and directors may be subject. Any increase in the potential for fines and penalties could provide further disincentive for serving on a bank board.

All Members should realize that this does not apply just to small banks, it applies to big banks. If you had a bank with 200 branches and just one branch fell out of compliance, you could potentially be subjected to this fine. This is regulatory overkill. This is totally unjustified.

Our colleague, Senator SARBANES, says we have not presented enough data about abuses. Where is the abuse that could possibly call for such a provision? This is punitive legislation at its worst, and if you think we have a problem now with community groups intervening and demanding cash payments, you add to it a possibility that a bank officer or board member could be fined $1 million a day and you are going to multiply the abuse a thousandfold. This is a proposal which was clearly written, and I can tell you where and when, when there was a desperate effort in the House to get their bill passed last year. It passed by one vote, and they basically gave this provision to groups that wanted to massively expand CRA. That is how it got into this whole debate.

I cannot believe anybody seriously would want to subject bank officers and bank directors to a potential $1-million-a-day fine for temporarily falling out of compliance with CRA.

The Sarbanes substitute expands CRA by requiring CRA compliance to

engage in new financial activities, including insurance and securities. No CRA test is now required for such banking activities.

Here is the whole issue. Today, some banks do sell insurance. Today, some 20 banks engage in securities activities, and virtually every bank, through their holding company, engages in activities which, under the Sarbanes substitute, would be pushed out of the trust department and into an affiliate or an operating sub and, therefore, would subject that bank to this new regulation.

The point is, current law does not require a bank to get CRA approval to sell insurance. Current law does not require a bank to get CRA approval to sell securities. This is, again, a massive expansion in CRA. And if the Senator is justified in questioning our justification for wanting to adopt two modest reforms of CRA, I think it is reasonable to ask what is the justification for this massive expansion in CRA.

Finally, on CRA, for the first time in American history, the Sarbanes substitute would expand CRA to a noninsured institution. The justification for CRA was that banks and other banking-type institutions, S&Ls, have deposit insurance.

And that is a subsidy to the bank. Therefore, asking the bank to provide these resources, on a broad basis, to the community or to allocate capital based on a Government dictate rather than the market had a justification. That was the justification for CRA.

The SARBANES substitute would expand CRA coverage to a new institution, the wholesale financial institution, or WFI, which does not have FDIC insurance. This is a clear expansion of CRA beyond anything that has ever been enacted into law. In addition, the SARBANES substitute would repeal the two reform provisions that are in the bill.

I am not going to get into a long dissertation on this subject, because we are going to have an opportunity to debate this subject at length tomorrow—and believe me, I am ready to debate it—but I just want to make a couple points about the provisions that would be stricken by the SARBANES substitute.

First of all, our first provision is an integrity provision. Put simply, consider a bank that is in compliance and has been in continuing compliance with CRA for 3 years in a row, so that in the mind of the regulator, based on the information they have been presented—and any group in America can have an input into those evaluations—this bank is a good actor, they have a good record of compliance.

The SARBANES substitute would strike our provision that says that while anybody can present any information they want to the regulator—and the regulator can demand a new evaluation when the bank in question seeks, for example, to merge with another bank or sell or buy a bank—but unless the protesting group presents some substantial evidence that this bank is out of compliance—something that their regulators had said three times in a row they were not—unless they can present some substantial evidence, then based on that objection alone, the regulator cannot turn down the proposal or delay it.

I went through earlier today—and I hope people heard it and remember it—but I went through what ''substantial evidence'' means. The most important thing to remember about it is, the law already requires it. All banking law requires decisionmaking to be based on ''substantial evidence,'' and bars decisionmaking based on arbitrary and capricious action. All banking law currently requires it. All appeals of banking regulator decisions must be based on the absence of substantial evidence.

So really what we are trying to do here is force the regulator to comply with the normal administrative convention, which is, if somebody wants to enter a process—at the last moment, in this case—and demand that someone not be allowed to do something that they have earned a right to do, then they must present substantial evidence to show that they are not complying.

Senator SARBANES suggested that the evidence can only be on items which have occurred since the last evaluation. Not so. In fact, what our bill says is that the regulator may not delay or deny an application unless ''substantial verifiable information arising since the time of [the bank's] most recent examination under that Act demonstrating noncompliance is filed with the appropriate Federal [regulator].''

Our provision provides that any new information may be presented. It is not something that has occurred since the last evaluation. It is something that the banking examiners did not have before when they said the bank was complying with the law.

I went through at great length the 900—I did not go through all 900 of them—but 900 times in Federal statutes we refer to ''substantial evidence.'' We have 400 court cases that have defined it. What does it mean? ''More than a scintilla of information,'' a factual basis under which a reasonable person might reach a conclusion—not that they would reach a conclusion, but that they might reach a conclusion.

So what Senator SARBANES is determined to kill is a simple proposal that certainly does not repeal CRA or overturn CRA or do violence to CRA. All it says is, if a bank has a long record of being in compliance with CRA, if they are in compliance with CRA now, and they want to undertake an action that requires CRA evaluation, that if somebody wants to come in and object, they can say anything they want, they can present any information they want, but the regulator cannot overturn their established record unless the protester presents substantial information or data to back up their claim.

You might ask, why could anybody be opposed to that? Can you imagine that you have a bank which is trying to buy another bank, and they have been in compliance with CRA for three evaluations in a row and are currently in compliance, they have hundreds of millions of dollars at stake in consummating this agreement, a decision that can affect thousands of people, and you let one protester, who often is from not just another State but another region of the country—a protester from Brooklyn, NY—and he comes in and protests a bank merger in Illinois and will not go away until he gets his ''expenses paid'' and until he gets a cash payment? Now, under our provision, anybody can come in and protest, but in order for them to be able to stop the process, they have to provide substantial information.

I cannot understand how anybody can be opposed to that.

The second provision of our bill that would be overturned by the SARBANES substitute is the small bank exemption. Let me try to explain this, I think, in a way that everybody can understand.

I have two colleagues here. Let me say that I am sorry, but Senator SARBANES took an extended period of time to present this, and I have to go through and be sure it is responded to comprehensively. So I am probably going to talk for another half an hour or 45 minutes. If either one of my colleagues has just a few minutes, I will stop and let them speak. But I do not want them staying around here, standing up and thinking that I am about to finish. So with that, if either one of you just has an announcement you want to make or a unanimous consent request, I will yield. OK.

Here is the problem. You have little banks in rural areas. They have, most of them, between 6 and 10 employees. They are serving communities that do not even have a city, much less an inner city, and they are being forced to comply with this law called CRA.

It would be one thing if there were a record showing that these small, rural banks are not lending in their communities. But the plain truth is, as I pointed out earlier, since 1990 there have been 16,380 examinations conducted by bank regulators of small banks and S&Ls in rural areas, that is, outside standard metropolitan areas. And in those 16,380 examinations, only 3 rural banks have been found to be in substantial noncompliance. These examinations and the regulatory burden imposed in complying with this law costs the average rural bank between $60- and $80,000. Imagine, you have a bank with 6 to 10 employees and they have to pay $80,000 to comply with a law that has found, since 1990, 3/100 of 1 percent of them out of compliance.

You might ask, is this overkill? It is interesting, because in other financial laws that relate to similar issues, we exempt banks outside standard metropolitan areas. In the HMDA statute related to similar areas, if you are very

small, you are exempt if you are outside a standard metropolitan area. And that is what we are talking in our provision—exempting very small banks in very rural areas.

Instead of my speaking for the problem, let me let the people who are affected speak. They are a lot more articulate on these issues than I am. Let me just run over some numbers with you.

We have received hundreds of letters from small banks all over America urging us to adopt the provision in this bill; we have received 488 as of today. What these small banks tell us is that CRA compliance is costing them between $60- and $80,000 a year.

The First National Bank of Seiling, OK, has estimated it takes the equivalent of one full-time employee to comply with CRA. The Chemical Bank of Big Rapids, MN—with assets of $94 million—agrees that it takes one full-time employee. Crosby State Bank of Crosby, TX, agrees with the one full-time employee. The First National Bank of Cortez, CO, thinks that they spend a minimum of 100 hours annually of CRA compliance officer time.

Let me read from some of the letters that have been submitted to the committee. I am only going to read from five or six of them, but I think they tell the story.

The first letter is from the Cattle National Bank. The Cattle National Bank, for those of you who don't know, and you should, is in Seward, NE. Here is what the vice president and cashier of the Cattle National Bank in Seward, NE, says:

Let me add that since the origination of public disclosure of CRA examinations we have not had one person from our community ever request the information. The only requests that we have had have come from bank consultants wanting to glean some tidbit from our disclosure.

This is a letter from Copiah Bank, which is a national bank in Crystal Springs, MS. This is written by the president and chief executive officer.

Our Compliance Officer, Gary Broome, and his assistant have spent many research hours and reams of paper in their efforts to comply with the mandated requirement's paper work. We have even had to outsource some of its checkpoints to a compliance consultant from time to time. As an $83 million community bank . . . that means they probably have 6 or 7 employees . . . we feel an obligation to help in your efforts toward easing our paper work burden.

Lakeside State Bank, ND.

As a former bank examiner for the Federal Deposit Insurance Corporation, which included consumer compliance experience, and as a banker for over 15 years I believe I have a good understanding of the intent and the workings of CRA. Over 47 years of our existence we have provided financing to virtually every main street business in our town, our customer base includes approximately 80 percent of the area farms and for the last several years over 50 percent of our loans have been to American Indians. The law—

And he means CRA.

. . .is a heavy burden because of the expansiveness of the regulations and the paper requirements of compliance. We spend hours documenting what we have already done rather than spending that time more efficiently by doing more for our community.

This is from Farmers and Merchants Bank, and this is in Arnett, OK, written by the executive vice president and CEO.

I am the CEO as well as the chief loan officer, compliance officer and CRA officer. I have to wear so many hats because we are small and have a staff of only 7 including myself. CRA compliance, done correctly, takes a lot of time, which takes me away from my primary responsibility of loaning money to my community. It has almost gotten to the point that lending is a secondary function. It seems like we have the choice of lending to our community or writing up CRA plans showing how we would lend to the community if we had time to make the loans.

It is funny how wisdom just leaps off the page.

Large banks can hire full time CRA officers and other compliance personnel to administer CRA programs, but small banks cannot . . .

This is from the Redlands Centennial Bank, and it is in Redlands, CA.

We spent approximately $80 thousand dollars of our shareholders' money last year supporting this ill-defined regulation. Even the regulators who examined us were hard pressed to give us specific definitions on how we might better implement this regulation. I am urging you to get rid of this nonsensical CRA yoke. Keep up the fight, because there are a lot of us out here who are too busy balancing making a living with government regulations in this crazy business . . .

Chemical Bank North, which is a little bank in Grayling, MI. It is a $74 million bank, which means it probably has 6 to 10 employees.

As it is, we must devote disproportionate resources to creating and maintaining the ''paper trail'' that the current CRA regulations require. Our board members must attend time consuming CRA Committee meetings and our officers and staff members spend significant valuable time preparing reports and keeping records that serve no purpose other than to keep us in compliance with a regulation that attempts to enforce from a regulatory standpoint what we do everyday in the normal course of our business . . . I would estimate that we devote the equivalent of a full time employee to all aspects of CRA compliance.

I mean, does anybody care that, for this little bank, that one-tenth of their payroll is needed to comply with a government regulation that in 9 years, in 16,000 such audits, has found only 3 banks substantially out of compliance? In 9 years, in 16,000 audits of banks like the Chemical Bank in Grayling, MI, government regulators have found only 3 banks out of the 16,000 evaluations where there was substantial noncompliance. And yet, we are making these banks pay $80,000 a year. Does anybody care? You know, we talk about the little guy and why aren't we here debating this and that. Does anybody care that a little bank, trying to serve consumers in a small town, a little independent bank in an era when a lot of people are worried about all the banks being taken over by big banks, here is a little bitty bank trying to stay in business, and 1 out of every 10 people they employ—because they only employ 10—has to spend time complying with one regulation, which, over 9 years, in 16,000 audits, has found 3 violators? Yet, our colleague, Senator SARBANES, is so outraged that we would lift this paperwork burden that he has offered a substitute. I don't understand it. I don't understand it. But I don't guess I have to understand it.

First National Bank, founded in 1876, in Wamego, KS, spelled W-A-M-E-G-O. I ask the Chair, am I pronouncing it right?

The PRESIDING OFFICER (Mr. BROWNBACK). The Chair notes that the correct pronunciation is Wamego.

Mr. GRAMM. The occupant of the Chair knows because he knows and loves everybody that lives in that State, and I appreciate that. Wamego, KS. This is a little bitty bank, the First National Bank of Wamego, KS, founded in 1876. In other words, it has been in business for 123 years. How big do you think it is after 123 years of service? They have $65 million in assets, and it is the lifeblood of Wamego, KS. It is struggling with paperwork. It is a small bank and has 6 to 10 employees. People in that town are proud they have a bank. In a lot of towns that size, the bank has already gone broke and moved off to the big city. This bank has not deserted its customer base. They are trying to make a living. Let me read to you from their letter:

Our bank was listed 2 years in a row as the best bank in Kansas to obtain loans for small businesses by Entrepreneur Magazine.

They have received an outstanding rating under CRA—the best rating you can get.

Our outstanding grade did not make us a better bank. CRA did not make us make more loans than we would have made. CRA did take a lot of employee time to document that we were an outstanding bank.

Here is the point. This is a little bank that has been doing the job for 123 years. It only has $65 million in assets. This is a very small bank. It probably does not have 10 employees. It has been evaluated as being outstanding. But in 16,000 evaluations over the last 9 years, bank regulators nationwide found only 3 banks that were in substantial noncompliance. Why are we tormenting this little bank in Wamego, KS, which is doing a great job, and imposing $60,000 to $80,000 in costs on them to discover that only 3 banks out of 16,000 evaluations aren't doing a good job?

The next letter is from Nebraska National Bank, which is in Kearney, NE. They have $34 million in assets. This has to be one of the smallest banks in America. It has been in business for an extended period of time. I don't know how many employees they have, but I would guess five or six employees in the whole bank:

We do not make foreign loans. We don't speculate in derivatives. We don't siphon deposits from this area to fund loans elsewhere. Instead, like virtually all banks

under $250 million in assets [remember, they are only $34 million in assets], we provide home loans, business loans, farm loans, construction loans. We don't do this because of the Community Reinvestment Act, but because it makes good business sense. I bitterly resent every minute of my time and that of my staff spent to comply with this regulation because it takes time away from productive duties. I feel the regulation is now being used by consumer activist groups to shake down banks seeking regulatory approval for expansion of mergers.

Now, that is a strong testament. Nothing I could say could give a stronger testament than that.

Let me give you one final one. Like I said, we have 488 just like it. They don't understand why it is unreasonable to lift this heavy regulatory burden when only 3 substantial noncompliant banks have been discovered in 9 years after 16,000 audits. You take 16,000 audits at $80,000 apiece, for the banks, that is a lot of money for these little towns.

The last letter is from American State Bank, an independent bank in Portland, OR. It is signed by the chairman and the CEO:

As one of the oldest and most strongly capitalized African American owned banks west of the Mississippi River, Portland based American State Bank supports your position on CRA exemption for nonmetropolitan banks. We also urge you to explore exempting from CRA requirements minority-owned commercial banks. Today, minority-owned banks still maintain their focus on serving our Nation's minority communities and their citizens. It is redundant at best to impose CRA requirements on banks whose sole purpose is to serve minority citizens. At worst, it compels minority banks to sustain burdensome, expensive administrative costs and subjects banks to a bureaucracy largely unaware of the realities of the inner-city marketplace.

Now, I could go on and on, Mr. President, in outlining the arguments related to small banks, but let me stop there on this issue and go back to the other provisions of the bill.

Let me say to my colleague that to go through and respond to each of the points Senator SARBANES made is probably going to take me another half hour. If the Senator has a unanimous consent request, or a short statement, I would be glad to yield. But if not, I want him and others to know that I should be finished maybe by 7 o'clock.

Mr. SARBANES. Will the Senator yield?

Mr. GRAMM. I am happy to yield.

Mr. SARBANES. Senator KERRY has been trying to make a statement all day. I guess, by this process he won't be able to do it now. What is the Senator's intention for tomorrow? How can we carve out some time?

Mr. GRAMM. It was my hope tonight that we could finish debate on this amendment, and that we would have a vote tomorrow. Our problem, as you know, is that we have the two Senators from Oklahoma who have flown home to participate in the evaluation and assistance with the terrible tragedy that happened there with the tornadoes. We are hopeful that they are going to be back tonight or in the morning. Then we are going to have a vote on Senator BYRD's resolution commending the Rev. Jesse Jackson, and other clergy leaders who participated in his trip. That vote is going to occur in the morning; I am not sure exactly what time. But the idea would be to have that vote in the morning and then, at that point, either I or the majority leader would move to table the amendment and we would have a vote on it. We would then offer one of our amendments at that point.

Mr. KERRY. Will the Senator yield?

Mr. GRAMM. I am happy to yield.

Mr. KERRY. Unaccustomed as I am to speaking from this side of the aisle, maybe it will get me extra credit from the Senator from Texas. Would it be possible to carve out some time because of my complications on the schedule? I have been here a number of times today trying to get in on the schedule to speak prior to the vote. Would I be able to have 20 minutes set aside for that purpose?

Mr. GRAMM. I would assume we will have a debate in the morning and that we will probably have at least a half an hour on each side. I see nothing unreasonable about having time in the morning. I would strongly suggest that we do it. Any Member can object to any unanimous consent request. Otherwise, if the Senator wishes to have time, we will divide the time equally tomorrow. I don't see any reason why he couldn't have a chance to speak tomorrow.

Mr. KERRY. Mr. President, if the Senator will further yield, I don't want to disturb the schedule of the Senator from Maryland or concept of how he wishes to proceed managing our side of the aisle, if that would fit within his framework.

Mr. SARBANES. If we have sufficient time before we vote on this substitute to take care of the Senator and a couple of others who want to speak on it, including the minority leader, I don't have a problem with that. But if the time period is extremely short, then we would be precluded from accomplishing this objective.

Mr. GRAMM. Why don't I do this. Just reclaiming my time, why don't I try to finish up here in 20 minutes and yield and let the Senator speak?

Mr. KERRY. Mr. President, the problem is that isn't going to work on the schedule I have now this evening. I simply say to the Senator, Mr. President, that it would seem to me, in furtherance of what the Senator from Maryland has said, that if we were to write in the order for the morning for tomorrow that X amount of time will be set on both sides, taking into account the amount of time I have requested from the Senator, we could accomplish all of the goals, if the Senator were willing to try to make that the order.

Mr. GRAMM. I don't know whether we have 30 minutes equally divided or 1 hour equally divided, but within that constraint, it seems to me, the Senator could speak.

Mr. KERRY. I thank the Chair. I thank the Senator from Texas. I thank the Senator from Maryland.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me just touch on four more issues in the Sarbanes substitute that I take strong issue with. I see Senator GORTON is here and he wanted to say something.

The next concern that I have and that the majority has with the Sarbanes substitute is that it adopts security law revisions making it significantly more difficult for small banks to engage in trust and fiduciary activities. These activities currently make up about 15 to 20 percent of the revenues of small banks.

Here is the problem. Our bill goes to great lengths to say to some small bank in some small town that doesn't intend to get into financial services, that nothing in this bill is going to force them to take their trust department activities that they are now engaged in and either set up an operating subsidiary or set up an affiliate.

I believe the provisions of the Sarbanes substitute could adversely affect virtually every small bank in America and endanger the operations that they currently can do within a bank only under regulation by the bank in the name of trust department activities. I believe the provision offered by Senator SARBANES could force many of these banks to set up operating subsidiaries, or set up affiliates, and in the process drive up their costs and threaten their revenues.

Now we come to the so-called unitary thrift holding company. If you listen to Senator SARBANES, you get the idea that somehow we are expanding commercial activities of banks. The reality is that the Sarbanes substitute, by allowing banks to hold a commercial basket for 15 years, expands commercial activities of banks substantially more than our bill does.

Our bill restricts the ability of commercial companies—an ability they have under current law—our bill restricts their ability to apply for charters and to set up a unitary thrift.

Unitary thrifts are legal under current law. So, for example, General Motors can get an S&L charter and can go into the S&L or banking business through that charter. That is the law of the land today. As a result, a substantial number of commercial companies have gotten those charters.

Our bill ends that practice. And effective on the day that the underlying committee bill was released as a committee print, any application for a unitary thrift received after that date would not be acted upon.

The difference between the Sarbanes substitute and what we do is that, in addition, the Sarbanes substitute goes back and says that those unitary thrifts that already exist would have an ex post facto change in law that would limit their ability to sell their

thrift—which is a change in the regulations under which they set up or bought the charter.

I believe that this is a takings of property, that it violates the fifth amendment of the Constitution. In fact, we have recently had a Supreme Court ruling striking down another ex post facto law that Congress passed that took away provisions that were in contracts that banks—and in this case S&Ls—had negotiated with Federal S&L regulators.

So we create no new commercial powers. There is nothing in our bill that in any way expands the ability of banks to hold commercial assets, whereas the substitute will allow them to hold them for 15 years under a grandfather provision, a provision that is not in our bill.

I was somewhat stunned to hear the presentation by Senator SARBANES that we were expanding commercial powers when in reality his substitute has a 15-year grandfather for existing activities, a provision that our bill does not have. Our bill not only does not expand commercial activities but it cuts off the issue of new unitary thrift licenses. But we do not go back and change the rules of the game on S&Ls that invested good money, many of them during the S&L crisis, saving the taxpayer billions of dollars. We don't go back and change the rules of the game on them.

I talked about No. 7. That is the commercial basket issue. The substitute offered by Senator SARBANES allows commercial banks to hold these commercial assets for up to 15 years. There is no similar provision in our bill.

Finally, the Sarbanes substitute strips away power from State insurance regulators. Under the Sarbanes substitute, States could only collect information but could not act on information, nullifying the authority of State insurance commissioners to review and approve or disapprove applications.

The National Association of Insurance Commissioners opposes this provision.

So basically those are the differences. I think the differences are very clear and very stark. I hope my colleagues will look at them and will reject this substitute.

This substitute would create a bill that Alan Greenspan and every member of the Federal Reserve Board, speaking as a body through the Chairman, has said would be worse, in terms of danger to the taxpayers, danger to the insurance fund, danger to the economy, than passing no bill at all.

This bill would repeal two very simple, very targeted, very minor reforms of CRA, and would institute the most massive expansion of CRA in America history.

I think if people look at any one of these eight areas that I have outlined, they will conclude that the committee acted properly in rejecting the Sarbanes substitute. But the Sarbanes substitute wasn't rejected just because it was deficient in, say, five of these eight areas. It was rejected because in each and every one of these areas it was inferior—in terms of the well-being of the taxpayer, the well-being of the depository insurance system, the well-being of the economy—to the underlying bill that was adopted by the Banking Committee.

I urge my colleagues to reject this substitute. There will be a tabling motion tomorrow on some basis yet to be agreed to.

I yield the floor.

Mr. GORTON. Mr. President, I support the distinguished Senator from Texas, the chairman of the Banking Committee, in his advocacy of his own proposal and in his desire that we defeat the substitute which is before the Senate at the present time.

He has stated in great detail his reason for his support and the majority support for his financial reorganization bill. I mention only three differences that seem to me to be very significant.

One is the arcane but vitally important difference between a holding company structure and a structure of making subsidiaries. In this respect, it seems to me the holding company system has worked well for this country, literally for generations. The advice of the Chairman of the Federal Reserve Board, Alan Greenspan, overwhelmingly supports the proposition of the choice that has been made in this regard by the committee majority itself.

Second, with respect to the Community Reinvestment Act, it also seems to me that the chairman's modest reforms are steps in the right direction. They do not destroy that system by any stretch of the imagination but, they do fire a warning shot across the bow of those who would use that bill for extortion purposes.

Finally, and most important to me in my own State, is the way in which the bill, is against the proposed substitute, deals with unitary thrifts. A unitary thrift is authorized to affiliate with both financial and commercial companies. This authority is balanced both by lending restrictions and by safeguards prohibiting thrifts from extending credit to a commercial affiliate. This chartering structure has been available for more than 30 years. To the best of my knowledge, during that 30-year period of time, 30 years during which thrifts have been allowed to combine with commercial firms, there have been no major scandals, no serious corruption, no sapping of America's capitalism vigor. In other words, to limit the authority of thrifts while we are extending the authority of commercial banks in the bulk of this bill is to deal with an evil that simply does not exist.

Financial modernization should be about expanding choices for consumers and chartering options, not constricting those options and stripping existing authorities from consumer-oriented institutions without sound policy justification.

I do not believe we should limit the unitary thrift chartering option at all. Unitary thrifts have a longstanding record of serving their communities. There is a glaring absence of any evidence that their commercial affiliations have led to a concentration of economic powers or posed risks to consumers or taxpayers. This legislation includes a provision that grandfathers the commercial affiliation authorities of unitary thrifts chartered or applied for before February 28 of this year. Given the lack of any evidence that those affiliations are harmful, financial modernization should, at the minimum, not roll back the authority of existing unitary thrifts.

Limiting the ability of commercial firms to charter thrifts in the future is debatable policy, but there is no question in my mind that the authorities of existing unitary thrifts should not be abolished.

For these reasons, I oppose the Democratic substitute and intend to fight any later amendment which deals with this issue alone.

With the expression of my support for the position taken by the distinguished chairman of the Banking Committee, I yield the floor.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE UNITED STATES CAPITOL POLICE AND RECRUIT CLASS 116

Mr. LOTT. Mr. President, the past year has been a trying one for the United States Capitol Police. The deaths of Officer Jacob Chestnut and Detective John Gibson struck a chord with the American people and the Congress. We are keenly aware that we rely on the men and women of the U.S. Capitol Police to protect the Capitol Complex and all of those who work and visit here. In doing so, they ensure that the national legislative process proceeds unhindered and that citizens are safe and free to visit their Capitol, view the House and Senate in session, and meet with their elected representatives.

Protecting the Capitol Complex requires well trained, highly-motivated, and dedicated police officers. On April 27, the U.S. Capitol Police added such officers to its ranks when it graduated Recruit Class 116. The twenty-four recruits in this class proudly became police officers after successfully completing five months of exhaustive training. These officers came from all walks of life and from a number of states around the nation. Many had prior military experience, others had previous experience in the law enforcement profession, while some just recently graduated from college. The

common bond among these officers is the desire to enter the law enforcement profession and honor the memory of Officer Chestnut and Detective Gibson.

During the graduation ceremony, which was attended by the members of the U.S. Capitol Police Board, the Department's Command Staff, and family and friends of the recruit officers, Class President Robert Garisto gave a speech on behalf of the members of the Recruit Class 116. I feel that this speech is indicative of the caliber of personnel who fill the ranks of the U.S. Capitol Police. I ask unanimous consent that Officer Garisto's speech be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED STATES CAPITOL POLICE CLASS 116—GRADUATION SPEECH

Good afternoon everyone. I would like to start by expressing my gratitude to the Members of Class 116. I have been fortunate to have spent the last five months getting to know each and every one of you. Now that I do, the honor you have bestowed on me by allowing me to represent you means so much more and it is an experience I will cherish forever.

Now, class, we are about to take a dramatic step forward. The challenges which lie ahead of us are immense, many of the problems we will confront as police officers are highly complex. The skills and abilities we bring to our positions in law enforcement must be continually honed to transcend these obstacles.

I am sure everyone here is aware of the events that have taken place recently in the United States. The crisis of crime and violence in our society is really a crisis of values and conscience. It is a problem compounded by the glamorization of violence, drugs, sex and greed in Hollywood films and music lyrics. Our young people are being told that it is okay to carry a 9MM and live the lifestyle of a drug dealer, it is all right to ''sex you up.'' They are told they have the right to the latest music CD or the coolest clothes. They have the right to have these things even if they have to take from someone else. They can have what they want at any price regardless of the consequences. However, there are consequences to a society that sensationalizes sin while it trivializes morality and religious beliefs. The consequence is the carnage we see on the streets of America almost every day. Too many of our children have learned to solve problems of conflict and anger with weapons for the simple reason that they haven't experienced love, compassion and understanding from those who should be the role models in their lives. It's insane and it's hurting our Nation in the worst possible way, because our young people are our greatest national resource and asset. More importantly, they are our future.

We as parents, police officers, teachers and public officials must take an active role in the rearing of America's youth.

This world we live upon is a tremendously huge place but, technology is, and will continue to make, the global experience more accessible to everyone. Young people must understand the global context of our existence. The horizons and life opportunities that exist for them throughout this world. And, yes, there will continue to be racism and bias fueled by ignorance and fear. Those who are different will continue to be judged by the standard of what is considered by the judge to be normal. However, it should never be intellectualized as the sole excuse for failure. More importantly, it must serve as the impetus which pushes us forward toward higher achievement and success.

A contemporary society cannot develop unless it places a premium on education and human development. The complex issues and problems we face today require agents with thoughtful and progressive minds committed to bringing about positive change.

I believe that each of us of The Graduating Class of 116 are those agents of change.

Thank you.

Mr. LOTT. Mr. President, I am proud of the men and women of the United States Capitol Police and I appreciate what they do, each day, in service to the Congress and the nation. I would like to congratulate Officer Garisto and the men and women of Recruit Class 116 on their accomplishments and I wish them continued success during their careers with the United States Capitol Police.

HONORING THE AAA SAFETY PATROL LIFESAVING MEDAL AWARD WINNERS

Mr. DASCHLE. Mr. President, I am proud to announce to the Senate today the names of the 7 young men and women who have been selected to receive the 1999 American Automobile Association Lifesaving Medal. This award is the highest honor given to members of the school safety patrol.

There are roughly 500,000 members of the school safety patrol in this country, helping over 50,000 schools. Every day, these young people ensure that their peers arrive safely at school in the morning, and back home in the afternoon.

Most of the time, they accomplish their jobs uneventfully. But, on occasion, these volunteers must make split-second decisions, placing themselves in harm's way to save the lives of others. The heroic actions of this year's honorees exemplify this selflessness, and richly deserve recognition.

The first AAA Lifesaving Medal recipient comes from Rochester, New York.

On September 22, 1998, 11-year-old Theodore Roosevelt Elementary School Safety Patrol Katherine Garcia was at her post in the back parking lot. She was helping create order out of the chaos that occurs when buses, walkers and parents all try to leave the school at the same time.

Behind her post, a 9-year-old boy and his 7-year-old friend separated from his grandmother to look for their car. They tried to run past Katherine. As they did, she quickly reached out, grabbed the boys by their t-shirts, and pulled them out of the path of an oncoming car.

This year's second AAA Lifesaving Medal honoree comes from Brooklyn, New York.

On January 5, 1999, an 8-year-old student asked Public School 151 Safety Patrol Anthony Christian, Jr. if he would walk him across the street.

Leaving his post in the hands of his patrol partner, Anthony carefully checked the traffic signal and crossed the street. Just as they reached the other corner, two cars collided at high speed in the middle of the intersection. One of the cars spun out of control, heading directly for the two boys. Without regard for his own safety, Anthony pulled the little boy out of the way just before the car jumped the curb where the two boys were.

The third AAA Lifesaving Medal winner comes from Unadilla, New York.

On October 8, 1997, Unadilla Elementary School Safety Patrol Nichole L. Decker was at her post at the school's back door when she heard a 7-year-old boy's desperate cries for help.

When she went outside, she saw the boy trapped on the ground by a huge dog—a husky/wolf mix. The dog was biting at the little boy's face and throat. Without considering what the 50-pound dog could do to her, 13-year-old Nichole began shouting and waving her arms to distract it from the boy. When the dog ran away, Nichole scooped up the badly bleeding boy and took him inside the school for help.

The fourth recipient of the AAA Lifesaving Medal comes from Brooklyn, New York.

On January 28, 1999, 10-year-old Public School 91 Safety Patrol Stacia Walker saw a car drop off a 5-year-old boy at school, then depart.

Instead of entering the schoolyard, the little boy turned around and headed for a park across the street, Stacia ran to the little boy and stopped him just before he crossed the street in front of a car.

This year's fifth AAA Lifesaving Medal honoree comes from Mt. Pleasant, Michigan.

On September 2, 1998, 12-year-old Ganiard Elementary School Safety Patrol Michael T. Wiltsie was helping the adult crossing guard at the corner of Broadway and Adams streets, the busiest corner for patrols.

The adult crossing guard had just walked to the center of the street to stop traffic when a 7-year-old boy walked around Michael's outstretched arms to follow her. A truck made a left-hand turn and passed between the adult crossing guard and Michael's post on the curb, ignoring the stop sign held by the adult crossing guard. Michael reached out, grabbed the 7-year-old boy by the backpack, and pulled him to safety just as the truck sped by.

The fifth recipient of the AAA Lifesaving Medal comes from Fairfax, Virginia.

On February 22, 1999, Fairhill Elementary School Safety Patrol Roxanne A. Bauland (BALL-lund) was standing at her post near a bus stop when she noticed there was something wrong with a 6-year-old girl approaching the bus stop from across the street.

When the little girl began running toward the bus stop, the hard candy she had been eating became lodged in her throat, causing her to cough and choke. Quickly sizing up the situation, 11-year-old Roxanne performed the

Heimlich maneuver on the little girl and dislodged the candy from her throat, quite possible saving the little girl's life.

The final AAA School Safety Patrol Lifesaving Award recipient comes from Minneapolis, Minnesota.

On November 2, 1998, 11-year-old Jenny Lind Community School Safety Patrol Tonya L. M. Boner was completing her shift for the day when she decided to wait a little longer to help some stragglers cross the street safely.

Three students, ages 7, 9, and 10, began to cross the road. Across the intersection, a car stopped briefly at the stop sign, then headed straight for the crosswalk and the students. Seeing the immediate danger, Tonya hurried the students to the other side just as the car sped through the crosswalk a mere 2 feet from where she and the students had been walking seconds before.

Mr. President, on behalf of the Senate, I extend congratulations and thanks to these young women and men who are visiting the Capitol today. They are an asset to their communities, and their families and neighbors should be very proud of their courage and dedication.

I would also like to recognize the American Automobile Association for providing the supplies and training necessary to keep the safety patrol on duty nationwide.

Since the 1920's, AAA clubs across the country have been sponsoring student safety patrols to guide and protect younger classmates against traffic accidents. Easily recognizable by their fluorescent orange safety belt and shoulder strap, safety patrol members represent the very best of their schools and communities. Experts credit school safety patrol programs with helping to lower the number of traffic accidents and fatalities involving young children.

We owe AAA our gratitude for their tireless efforts to ensure that our Nation's children arrive to and from school safe and sound.

And we owe our thanks to these exceptional young men and women for their selfless actions. The discipline and courage they displayed deserves the praise and recognition of their schools, their communities and the Nation.

CLARIFYING TAX TREATMENT OF SETTLEMENT TRUSTS ESTABLISHED UNDER ANCSA

Mr. STEVENS. Mr. President, today I join Senator MURKOWSKI in rising in support of S. 933, which would clarify tax treatment of Settlement Trusts established under the Alaska Native Claims Settlement Act. Our legislation would amend the U.S. tax code by allowing these Settlement Trusts to organize as 501(c)(28) tax exempt organizations. This bill is similar to S. 2065 which I co-sponsored with Senator MURKOWSKI last year.

Consistent with last year's proposal, this bill allows for conveyances to a Settlement Trust without including those contributions in the beneficiaries' gross income. This is an important provision because under the current tax code, beneficiaries of a Settlement Trust can be taxed on contributions to the trust, even though they haven't received a payment or disbursement from the Settlement Trust.

Our new provision also outlines the process and terms for revoking a trust's tax exempt status as a 501(c)(28) organization. Under this provision, if a Settlement Trust engages in forbidden activities as outlined in the Alaska Native Claims Settlement Act, its election as a 501(c)(28) tax exempt organization would be revoked and the trust would pay a tax on the fair market value of the assets held. This ensures that U.S. taxpayers will not underwrite forbidden transactions within the trusts or between the trusts and the beneficiaries.

This provision also requires a Settlement Trust to distribute at least 55 percent of its adjusted taxable income for each year. This would insure that Settlement Trusts fulfill a basic obligation to the beneficiaries.

In addition, the new provision requires trusts electing to be recognized as 501(c)(28) tax exempt organizations to withhold income tax from payments made to beneficiaries. There is, however, an important exception to this withholding provision. That exception would apply to third party payments made on the behalf of beneficiaries for educational, funeral, or medical benefits.

It is my hope that we will clarify the tax treatment of these Settlement Trusts so that beneficiaries are treated in a fair and just manner.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, May 3, 1999, the federal debt stood at $5,562,741,424,540.43 (Five trillion, five hundred sixty-two billion, seven hundred forty-one million, four hundred twenty-four thousand, five hundred forty dollars and forty-three cents).

Five years ago, May 3, 1994, the federal debt stood at $4,569,524,000,000 (Four trillion, five hundred sixty-nine billion, five hundred twenty-four million).

Ten years ago, May 3, 1989, the federal debt stood at $2,769,324,000,000 (Two trillion, seven hundred sixty-nine billion, three hundred twenty-four million).

Fifteen years ago, May 3, 1984, the federal debt stood at $1,489,259,000,000 (One trillion, four hundred eighty-nine billion, two hundred fifty-nine million).

Twenty-five years ago, May 3, 1974, the federal debt stood at $467,768,000,000 (Four hundred sixty-seven billion, seven hundred sixty-eight million) which reflects a debt increase of more than $5 trillion—$5,094,973,424,540.43 (Five trillion, ninety-four billion, nine hundred seventy-three million, four hundred twenty-four thousand, five hundred forty dollars and forty-three cents) during the past 25 years.

REVISED BUDGET LEVELS FOR FISCAL YEAR 1999

Mr. DOMENICI. Mr. President, pursuant to Sec. 209 of H. Con. Res. 68, the Concurrent Resolution on the Budget for Fiscal Year 2000, I hereby submit to the Senate revised budget levels for fiscal year 1999.

The following table displays the appropriations caps and the committee allocation levels that will be enforced for the remainder of fiscal year 1999.

I ask unanimous consent to have the table printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE BUDGET AUTHORITY AND OUTLAY ALLOCATIONS PURSUANT TO SECTION 302 OF THE CONGRESSIONAL BUDGET ACT, BUDGET YEAR TOTAL 1999

[In millions of dollars]

Committee	Direct spending jurisdiction		Entitlements funded in annual appropriations acts	
	Budget authority	Outlays	Budget authority	Outlays
Appropriations:				
Defense	279,891	271,403	0	0
General Purpose Discretionary	287,157	273,901	0	0
Violent Crime Reduction Trust Fund	5,800	4,953	0	0
Highways	0	21,885	.....	.....
Mass Transit	0	4,401	.....	.....
Mandatory	299,159	291,731	0	0
Total	872,007	868,274	0	0
Agriculture, Nutrition, and Forestry	8,931	6,362	17,273	9,183
Armed Services	48,285	48,158	0	0
Banking, Housing, and Urban Affairs	9,200	3,182	0	0
Commerce, Science, and Transportation	8,119	5,753	682	678

SENATE COMMITTEE BUDGET AUTHORITY AND OUTLAY ALLOCATIONS PURSUANT TO SECTION 302 OF THE CONGRESSIONAL BUDGET ACT, BUDGET YEAR TOTAL 1999—Continued

[In millions of dollars]

Committee	Direct spending jurisdiction		Entitlements funded in annual appropriations acts	
	Budget authority	Outlays	Budget authority	Outlays
Energy and Natural Resources	2,185	2,163	40	39
Environmental and Public Works	28,591	1,365	0	0
Finance	694,516	688,064	146,033	146,926
Foreign Relations	10,908	12,141	0	0
Governmental Affairs	58,113	57,036	0	0
Judiciary	4,954	4,528	231	232
Labor and Human Resources	8,000	7,525	1,328	1,328
Rules and Administration	93	56	0	0
Veterans' Affairs	1,204	1,428	22,629	22,536
Indian Affairs	492	485	0	0
Small Business	0	(220)	0	0
Unassigned to Committee	(303,086)	(294,966)	0	0
Total	1,452,512	1,411,334	188,216	180,922

RECOGNITION OF KAREN MIKOLASY—WASHINGTON STATE TEACHER OF THE YEAR

Mr. GORTON. Mr. President, ''Teacher''—Webster's defines a teacher as one who ''imparts knowledge of or skill in'' a particular subject matter. Teaching, of course, extends far beyond that clinical definition. Many teachers bring passion and dedication to their work that often reaches outside the classroom as teachers serve as mentors, coaches, advisors and friends to their students. Each of us can remember a teacher who inspired us, motivated us, even changed our lives.

The students at Shorecrest High School in Washington state have just such a teacher. Karen Mikolasy has taught for 28 years with passion for her students and for her work. She emphasizes consistency and standards. In Mrs. Mikolasy's class homework is handed in on time and papers are rewritten until they earn at least a B. That consistency in expectations also carries over to consistent positive reinforcement to her studnets—she tells them daily that it is a privilege to be their teacher. She says that in 28 years, not one day has gone by which she hasn't wanted to be in the classroom with her students.

I was honored to meet Mrs. Mikolasy a few weeks ago in my office while she was in DC to be recognized as the Washington State Teacher of the Year. In the few minutes I met with her, I understood why she won this honor. Her passion and commitment to educating and inspiring young people was clear. The words of her students however, are probably the best tribute.

One student characterized Mrs. Mikolasy this way: ''. . . she teased, she nagged, fumed, roared, tested and laughed. She turned us into real readers. She led us through worlds both familiar and foreign. There are still rumors that hint at her unwavering stance in class, but one legend should not be overlooked for forgotten. Mrs. Mikolasy is and always will be a masterful teacher.''

Mrs. Mikolasy also tells a story about a package she received one day from a former student who is now a lawyer. The package, in which was a Mont Blanc pen, also included a note: ''Dear teacher, big case, won lots of bucks! Won case because of writing. You taught writing: you get pen. I did writing: I get money. Spend money. Money gone? Do more writing, get more money. Writing not work, maybe I come get another writing lesson.'' It is said that while most Americans spend their living building careers, teachers spend their careers building lives. That certainly seems to be the case with Karen Mikolasy.

So today I recognize Karen Mikolasy with the Innovation in Education Award. This is an award I give out each week to recognize people who make a difference in our local communities. It is based on the common-sense idea, that it is parents and educators who look our children in the eyes every day who know best how to educate them. Karen Mikolasy is most deserving of this award.

Last night another experience made clear to me the impact teachers can have on their students. I attended an awards dinner for the ''We the People . . . the Citizen and the Constitution'' program. The program encourages junior high and high school students to study the constitution by developing competitive teams at each school. Each team has a teacher as a coach. Last night each teacher was recognized. There were no fewer than 1200 students giving their teachers standing ovations and cheering in appreciation of their efforts.

I also like to recognize all of the teachers in Washington state, who demonstrate their passion for teaching and for kids every day in the classroom. Today and the balance of this week is set aside to honor and celebrate teachers. I know that all of my colleagues will join me in recognizing our wonderful teachers across the nation.

RECOGNITION OF THE WASHINGTON STATE CHAMPIONS OF THE ''WE THE PEOPLE . . . THE CITIZEN'S AND THE CONSTITUTION'' COMPETITION

Mr. GORTON. Mr. President, this week's Innovation in Education Award recipient is an award winning class from Tahoma High School in Maple Valley, Washington. Earlier this year 29 exceptional students from Tahoma High School in Washington state won Washington state's competition testing their knowledge of the Constitution. As a result of that victory, this past weekend they were in Washington, D.C. to participate in the national finals of the ''We the People . . . The Citizen and the Constitution'' program.

The ''We the People . . . The Citizen and the Constitution'' program, administered by the Center for Civic Education, provides our elementary and secondary students a strong foundation in the history and philosophical underpinnings of the Constitution. That foundation ultimately promotes a sense of civic responsibility in these students and provides them with the means to act effectively within a democratic society.

The final activity in this program, which took place April 30–May 3, is a simulated congressional hearing in which students ''testify'' before a panel of judges. Students demonstrate their knowledge and understanding of constitutional principles and have opportunities to evaluate, take, and defend positions on relevant historical and contemporary issues. I am happy to announce that I attended last night's award ceremony which the Tahoma High team won a regional award.

I am proud of the achievement of these students and am happy to recognize them. They are Adam Baldridge, Mary Basinger, Josh Bodily, Sydney Brumbach, Katie Carder, Erica Chavez, Elizabeth Dauenhauer, Steven Dekoker, Meaghan Denney, Nathan Dill, Marisa Dorazio, Jesse Duncan, Jayson Hart, Jon Hallstrom, Carolyn Hott, Daniel Linder, Casey Lineberger, Clark Lundberg, Karrie Pilgrim, Michael Pirog, David Rosales, Jason Shinn, Jeremy Sloan, Justin Sly, Donny Trieu, Orianna Tucker, Jessica Walker, Raymond Williams, and Elizabeth Zaleski. I also recognize Kathy Hand, the Washington state coordinator for the ''We the People . . .'' program, and Kristy Ulrich, the district coordinator.

Finally, I applaud Mark Oglesby and his assistant Stephanie Galloway, the teachers who have led their Tahoma High School class to this national competition, and have taught the past four

state championship classes from Washington state. That track record shows great leadership and dedication to the education of their students.

I enjoyed meeting with the students this weekend and wish them the best for their future. They will certainly be well prepared for it.

MESSAGES FROM THE HOUSE

At 12:59 p.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1480. An act to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 93. Concurrent resolution expressing the sense of the Congress regarding the social problem of child abuse and neglect and supporting efforts to enhance public awareness of this problem.

MEASURE REFERRED

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 93. Concurrent resolution expressing the sense of the Congress regarding the social problem of child abuse and neglect and supporting efforts to enhance public awareness of this problem; to the Committee on the Judiciary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2823. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a report entitled ''Fiscal Year 2000 Capital Investment and Leasing Program''; to the Committee on Environment and Public Works.

EC–2824. A communication from the Vice President, Communications, Tennessee Valley Authority, transmitting, pursuant to law, a report entitled ''The Statistical Summary for Fiscal Year 1998''; to the Committee on Environment and Public Works.

EC–2825. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Builder Warranty for High-Ratio FHA-Insured Single Family Mortgages for New Homes (FR–4288–C–02)'' (RIN2502–AH08), received April 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2826. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Fair Housing Complaint Processing; Plain Language Revision and Reorganization; Interim Rule (FR–4431–I–01)'' (RIN2529–AA86), received April 27, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2827. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Public Housing Agency Plans and Section 8 Certificate and Voucher Merger Rules; Announcement of Public Forums; Solicitation of Additional Public Comment on Relationship of PHA Plans to Consolidate Plan (FR–4420–N–02)'' (RIN2577–AB89), received April 27, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2828. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Affairs, transmitting, pursuant to law, the report of a rule entitled ''Public Housing Agency Plans and Section 8 Certificate and Voucher Merger Rules; Announcement of Public Forums; Solicitation of Additional Public Comment on Relationship of PHA Plans to Consolidated Plan (FR–4420–N–02)'' (RIN2577–AB89), received on April 27, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–2829. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Native Hawaiian Revolving Loan Fund'' for fiscal years 1995 through 1997; to the Committee on Indian Affairs.

EC–2830. A communication from the Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Juvenile Accountability Incentive Block Grants'' (RIN1121–AA46), received on April 30, 1999; to the Committee on the Judiciary.

EC–2831. A communication from the Executive Director, American Academy of Arts and Letters, transmitting, pursuant to law, a report of activities during calendar year 1999; to the Committee on the Judiciary.

EC–2832. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to law, the annual report for calendar year 1998; to the Committee on the Judiciary.

EC–2833. A communication from the General Counsel, Department of Justice, transmitting, a draft of proposed legislation to authorize consent to and authorize appropriations for the United States subscription to additional shares of the capital of the Multilateral Investment Guarantee Agency; to the Committee on Foreign Relations.

EC–2834. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–2835. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of an export license relative to Turkey; to the Committee on Foreign Relations.

EC–2836. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act—Amendment of Transit Without Visa (TWOV) List'' (RIN1400–AA48), received April 27, 1999; to the Committee on Foreign Relations.

EC–2837. A communication from the Secretary of Education and the Chief Operating Officer, Office of Student Financial Assistance Programs, Department of Education, transmitting jointly, pursuant to law, a report relative to student financial aid programs; to the Committee on Health, Education, Labor, and Pensions.

EC–2838. A communication from the Secretary of Labor, transmitting a report of proposed legislation entitled ''Hazard Reporting Protection Act of 1999''; to the Committee on Health, Education, Labor, and Pensions.

EC–2839. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Premarket Notification Program for Food Contact Substances-Cost Estimate''; to the Committee on Health, Education, Labor, and Pensions.

EC–2840. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Carbohydrase and Protease Enzyme Preparations Derived from Bacillus Subtilis or Bacillus Amyloliquefaciens; Affirmation of GRAS Status as Direct Food Ingredients'', received April 26, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC–2841. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Investigational New Drug Applications; Clinical Holds; Confirmation of Effective Date'' (RIN0910–AA84), received April 26, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC–2842. A communication from the Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans; OMB Control Numbers for OFCCP Information Collection Requirements'' (FR Docket No. 99–7835), received April 13, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC–2843. A communication from the Assistant General Counsel for Regulation, Special Education & Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''National Institute on Disability & Rehabilitative Research'' (84.133), received April 29, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC–2844. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the report of the Chief of Engineers dated February 3, 1999; to the Committee on Environment and Public Works.

EC–2845. A communication from the Assistant Secretary for Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Kaloko-Honokohau National Historical Park, Hawaii; Public Nudity'' (RIN1024–AC66); to the Committee on Energy and Natural Resources.

EC–2846. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report entitled ''Annual Performance Plan, Fiscal Year 2000''; to the Committee on Energy and Natural Resources.

EC–2847. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled

''International Energy Outlook 1999''; to the Committee on Energy and Natural Resources.

EC–2848. A communication from the Director, Office of Surface Mining, Department of The Interior, transmitting, pursuant to law, the report of a rule entitled ''Virginia Regulatory Program'' SPATS No. VA–110–FOR, received April 27, 1999; to the Committee on Energy and Natural Resources.

EC–2849. A communication from the Director, Office of Surface Mining, Department of The Interior, transmitting, pursuant to law, the report of a rule entitled ''Texas Regulatory Program'' SPATS No. TX–045–FOR, received April 27, 1999; to the Committee on Energy and Natural Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–81. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Environment and Public Works.

SENATE JOINT MEMORIAL 8013

To the Honorable William J. Clinton, President of the United States, and to the President of the Senate and the Speaker of the House of Representatives, and to the Senate and House of Representatives of the United States, in Congress assembled:

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

Whereas, parts of Western Washington received the highest amount of rainfall in state history between the months of November and February, raining for ninety-one consecutive days and producing over fifty-five inches of rain in King County; and

Whereas, parts of the Olympic Peninsula, i.e., Lilliwaup, received over one hundred fourteen inches of rain in a four-month period; and

Whereas, sixty-one homes have been damaged and twenty-six homes are uninhabitable in the area known as Carlyon Beach in Thurston County, with property losses estimated at over ten million dollars; and

Whereas, ground water flooding and landslides in Thurston County have directly impacted at least seven hundred and sixty-five residents, many of whom are elderly or have special needs; and

Whereas, a landslide in the Aldercrest neighborhood in Cowlitz County has damaged one hundred and thirty-seven homes to date, and at least fifty additional homes are threatened; and

Whereas, ground water problems will cost over two million dollars to repair and currently no water or sewer systems are in operation; and

Whereas, shoreline bulkheads are failing, and public facilities expenses are estimated at one million dollars, excluding the cost of geotechnical assistance; and

Whereas, Washington State Department of Transportation estimates of highway damages reach eleven million two hundred two thousand dollars, and ten million dollars of those damages are in Mason County alone; and

Whereas, local government estimates of damages to county roads and city streets reach seven million three hundred ninety-two thousand four hundred thirty-five dollars; and

Whereas, Governor Locke's emergency proclamation now includes six western counties and directs state government to support emergency response activities as needed around the state and authorizes the Washington Military Department and its Emergency Management Division to coordinate state agencies in the affected areas; and

Whereas, county officials are continuing to assess damages to determine sufficient damage for justification of federal assistance; and

Whereas, when damage from an event is so great it is beyond the capability of local and state government to repair, the Governor can ask the President to declare a disaster, thus making a variety of federal disaster assistance programs available to help restore communities to their predisaster condition; and

Whereas, the federal disaster assistance programs available may include housing and relocation assistance, individual and family grants, funding to restore public infrastructure and roads, tax exemptions for the relocation of evacuated citizens, funding for geotechnical studies to prevent future damage, and hazard mitigation;

Now, therefore, your Memorialists respectfully pray that if the Governor requests federal assistance, the President and the Federal Emergency Management Agency will respond favorably to the request and authorize the needed maximum available disaster recovery support to address the needs of Washington's citizens devastated by the record rainfall.

Be it resolved, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–82. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Appropriations.

HOUSE JOINT MEMORIAL 4008

To the Honorable William J. Clinton, President of the United States, and to the President of the Senate and the Speaker of the House of Representatives, and to the Senate and House of Representatives of the United States, in Congress assembled:

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

Whereas, the introduction of aquatic nuisance species, such as the zebra mussel, European green crab, and the mitten crab have the potential to cause significant environmental and economic damage to our state and nation; and

Whereas, aquatic nuisance species can spread from any state within our nation causing harm to all; and

Whereas, the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 authorizes the Aquatic Nuisance Species Task Force to approve aquatic nuisance species management plans that are submitted by state governors, and authorizes the United States Fish and Wildlife Service to fund up to seventy-five percent of the implementation cost of approved plans; and

Whereas, an important function of aquatic nuisance species management plans is to encourage state and regional jurisdictions to respond to aquatic nuisance species problems; and

Whereas, Congress has authorized four million dollars annually to fund the implementation of state management plans to minimize the environmental and economic damage caused by aquatic nuisance species to our state and nation; and

Whereas, in recent years only two hundred thousand dollars has been appropriated annually to fund the implementation of aquatic nuisance species management plans; and

Whereas, the Washington State Aquatic Nuisance Species Management Plan alone identified one million seven hundred thousand dollars in additional funding needed to address aquatic nuisance species problems; and

Whereas, two hundred thousand dollars is inadequate to allow fifty states, as well as interstate organizations, to implement effective programs identified in aquatic nuisance species management plans; and

Whereas, the appropriation of the full four million dollars authorized to fund aquatic nuisance species management plans would encourage development of plans, and thereby serve to reduce the destructive impact of aquatic nuisance species and minimize the risk of their spread to other states;

Now, therefore, your Memorialists respectfully pray that the President and Congress should recognize the destructive potential of aquatic nuisance species and act to minimize this destruction by supporting appropriation of the four million dollars authorized to fund state aquatic nuisance species management plans in fiscal year 2000 and future years.

Be it resolved, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–83. A joint resolution adopted by the Legislature of the State of Montana; to the Committee on Energy and Natural Resources.

JOINT RESOLUTION 17

Whereas, the President of the United States, by Executive Order, initiated the Interior Columbia Basin Ecosystem Management Project (ICBEMP) to create a scientifically sound, legally defensible, ecosystem management plan; and

Whereas, the ICBEMP was to be a broad-scale, 12-month project that would give general direction to public land managers for ecosystem management but has become a top-down, highly prescriptive set of management directives; and

Whereas, the management direction provided by the ICBEMP does not match the purpose and need statements made in the environmental impact statement (EIS), which were to restore and maintain a healthy forest, to provide sustainable and predictable levels of products and services, and to support economic and social needs of people, cultures, and communities; and

Whereas, the Columbia Basin ecosystem is a very diverse and complex environment, and basinwide standards could be a detriment to some or all forest-dependent and range-dependent economies; and

Whereas, experts maintain that the ICBEMP violates the Multiple-Use Sustained-Yield Act of 1960, the National Forest Management Act of 1976, the Forest and Rangeland Renewable Resource Planning Act of 1974, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996; and

Whereas, the ICBEMP was intended to be a scientifically sound management plan but has become politically based on selective science, which supports predetermined preservation goals with a top-down, one-size-fits-all, highly prescriptive set of management objectives and standards; and

Whereas, the recent interim roadless policy proposed by federal agencies indicates a strong desire to create de facto wilderness areas and circumvent the authority of Congress (in direct violation of the previously listed laws) and indicates the political direction incorporated into the ICBEMP, which

obfuscates the tireless, good faith efforts of local representatives who participated in the ICBEMP process; and

Whereas, public lands administered by the U.S. Forest Service and U.S. Bureau of Land Management (BLM) are to be managed for multiple use for the benefit of the citizens of the United States, and road closures proposed within the ICBEMP EIS preferred alternative will severely limit the multiple use of millions of acres of public land; and

Whereas, current road closures already dramatically limit physical and financial abilities to control noxious weeds, and the ICBEMP-proposed further closures pose a serious threat of further and more serious weed encroachment into Montana's forests and grasslands; and

Whereas, the ICBEMP has become a political document, rather than a resource manageable planning document; and

Whereas, the ICBEMP contains too many economic assumptions and too few economic projections based on accurate information; and

Whereas, implementation of the ICBEMP will directly affect management of 16 BLM districts and 30 national forests, all in the western United States; and

Whereas, the ICBEMP coverage extends to 104 counties and 144 million acres of land (72 million scores of which are private), and the ICBEMP implementation will directly and indirectly affect the livelihoods of millions of citizens in the planning area; and

Whereas, a major component of the basic economies of about two-thirds of the affected rural and natural resource-dependent counties would be directly and potentially severely impacted by implementation of the ICBEMP; and

Whereas, the citizens of Montana, Montana's local government units, and Montana's communities have a direct interest in public land management that produces payments in lieu of taxes and (most importantly) forest receipts that generate revenue to the federal treasury and significantly contribute to funding public schools and roads; and

Whereas, it is questionable whether Congress will fund the ICBEMP implementation, and the impacts of inadequate implementation funding would be significantly more disastrous for natural resources than if implementation were fully funded; and

Whereas, the citizens of the United States and communities throughout the western United States depend on the stewardship, sustained yield, and even-flow production of goods and services from multiple-use management of public lands located in those states; and

Whereas, there is increasing national and world demand for renewable, recyclable goods and services, including recreation, wildlife, fisheries, food, fiber, clean air, and clean water; and

Whereas, in Montana, the U.S. Forest Service has reduced timber harvest by over 50% since 1950, even though wood is the preferred raw material for home building, and transferred global environmental consequences were never discussed or considered when decisions were being made to reduce budgets; and

Whereas, domestic raw materials production is being increasingly restricted in the United States, even in light of rising domestic consumption and the United States' position as a massive net importer of raw materials; and

Whereas, decisions are being made on a daily basis and at all levels of government to restrict raw materials production, almost always on environmental grounds, yet consumption is virtually never discussed; and

Whereas, the ICBEMP draft documents fail to adequately and truthfully define and disclose the economic, environmental, and social conditions of Montana's communities and local government units and the future effects on these entities of implementation of the proposed ecosystem management practices; and

Whereas, the ICBEMP represents a top-down management paradigm that reduces or eliminates effective local input to natural resource management and environmental decisionmaking; and

Whereas, the ICBEMP has become a 6-year, over $40 million project, with no end in sight: Now, therefore, be it

Resolved by the Senate and the House of Representatives of the State of Montana, That the federal government be strongly urged to:

(1) terminate the ICBEMP and issue no Record of Decision on the ICBEMP;

(2) forward the accurate ecosystem management data developed through the ICBEMP to relevant BLM district managers and U.S. Forest Service forest supervisors;

(3) ensure that all public comments on the ICBEMP be incorporated into the public record for the ICBEMP;

(4) forward to district managers and supervisors the public comments provided on the ICBEMP for the managers' and supervisors' consideration related to updates to the land and resource management plans required by federal law; and

(5) coordinate plan revisions between adjoining management units to provide consistency and connectivity and to consider cumulative impacts in dealing with broad-scale issues that affect multiple jurisdictions.

BE IT FURTHER RESOLVED, that federal natural resource planning and environmental management feature site-specific management decisions made by local decisionmakers, local citizenry, and parties directly and personally affected by these decisions for our public lands.

BE IT FURTHER RESOLVED, that the federal government acknowledge that the alternatives presented in the ICBEMP EIS are inconsistent with but should be consistent with the balanced ''Purpose of and Need for Action'' statements in the same documents, which are:

(1) ''restore and maintain long-term ecosystem health and ecological integrity'' (i.e., restore and maintain a healthy forest); and

(2) ''support economic and/or social needs of people, cultures, and communities, and provide sustainable and predictable levels of products and services from our public lands administered by the Forest Service or BLM . . .''; be it further

Resolved, That copies of this resolution be sent by the Secretary of State to the President of the United States, the Vice President of the United States, the Secretary of Agriculture, the Secretary of the Interior, the presiding officers of the Appropriations Committees of the U.S. Senate and U.S. House, the Montana Congressional Delegation, the Chief of the Forest Service, and the Director of the Bureau of Land Management.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ROBB:

S. 948. A bill to amend chapter 83 and 84 of title 5, United States Code, to provide for the equitable waiver of certain limitations on the election of survivor reductions of Federal annuities, and for other purposes; to the Committee on Governmental Affairs.

By Mr. LUGAR (for himself, Mr. FITZGERALD, and Mr. FEINGOLD):

S. 949. A bill to clarify and enhance the authorities of the Chief Information Officer of the Department of Agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. FEINSTEIN:

S. 950. A bill to award grants for school construction; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. FRIST, Mr. LIEBERMAN, and Ms. SNOWE):

S. 951. A bill to amend the Internal Revenue Code of 1986 to establish a permanent tax incentive for research and development, and for other purposes; to the Committee on Finance.

By Mr. SPECTER:

S. 952. A bill to expand an antitrust exemption applicable to professional sports leagues and to require, as a condition of such an exemption, participation by professional football and major league baseball sports leagues in the financing of certain stadium construction activities, and for other purposes; to the Committee on the Judiciary.

By Mr. JOHNSON (for himself and Mr. DASCHLE):

S. 953. A bill to direct the Secretary of Agriculture to convey certain land in the State of South Dakota to the Terry Peak Ski Area; to the Committee on Energy and Natural Resources.

By Mr. SMITH of New Hampshire:

S. 954. A bill to amend title 18, United States Code, to protect citizens' rights under the Second Amendment to obtain firearms for legal use, and for other purposes; to the Committee on the Judiciary.

By Mr. WARNER (for himself, Mr. ROBB, and Mr. MCCONNELL):

S. 955. A bill to allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield in Virginia, as previously authorized by law, by purchase or exchange as well as by donation; to the Committee on Energy and Natural Resources.

By Ms. SNOWE (for herself, Mr. HARKIN, and Mr. FRIST):

S. 956. A bill to establish programs regarding early detection, diagnosis, and interventions for newborns and infants with hearing loss; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KOHL:

S. 957. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes; to the Committee on the Judiciary.

By Mr. BENNETT:

S. 958. A bill to amend certain banking and securities laws with respect to financial contracts; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DURBIN (for himself and Mr. FITZGERALD):

S. Res. 93. A resolution to recognize Lincoln Park High School for its educational excellence, congratulating the faculty and staff of Lincoln Park High School for their efforts, and encouraging the faculty, staff, and students of Lincoln Park High School to continue their good work into the next millennium; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BYRD (for himself and Mr. GRAMM):

S. Res. 94. A resolution commending the efforts of the Reverend Jesse Jackson to secure the release of the soldiers held by the Federal Republic of Yugoslavia.

By Mr. THURMOND:

S. Res. 95. A resolution designating August 16, 1999, as ''National Airborne Day''; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR (for himself, Mr. FITZGERALD, and Mr. FEINGOLD):

S. 949. A bill to clarify and enhance the authorities of the Chief Information Officer of the Department of Agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

THE USDA INFORMATION TECHNOLOGY REFORM AND YEAR-2000 COMPLIANCE ACT OF 1999

Mr. LUGAR. Mr. President, today I rise to introduce the USDA Information Technology Reform and Year-2000 Compliance Act of 1999. This legislation aims to centralize all year 2000 computer conversion and other information technology acquisition and management activities within the Office of the Chief Information Office of the Department of Agriculture. Centralization is the most efficient way to manage the complex and important task of ensuring that all critical computer functions at the department are operational on January 1, 2000. It is also a wiser and more cost-effective way to construct an information technology infrastructure to enable USDA's hundreds of computer systems to interoperate, which unfortunately they cannot now do.

The Department of Agriculture is charged with enormous responsibilities and its year 2000 readiness is crucial. It has a diverse portfolio of over 200 Federal programs throughout the Nation and the world. The department delivers about $80 billion in programs. It is the fourth largest Federal agency, with 31 agencies and offices. The department is responsible for the safety of our food supply, nutrition programs that serve the poor, young and old, and the protection of our natural resources. Since more than 40 percent of the non-tax debt owed to the Federal Government is owed to USDA, the department has a responsibility to ensure the financial soundness of taxpayers' investments.

Responsibility for keeping the mission-critical information technology functioning should clearly rest with the Chief Information Officer. The decentralized approach to the year 2000 issue at USDA led to a lack of focus on departmental priorities. Each agency was allowed to determine what services, programs, and activities it deemed important enough to be operational at the end of the millennium. This decentralized approach also led to a lack of guidance, oversight and the development of contingency plans. Efforts to rectify this situation are well underway. I am pleased that Secretary of Agriculture Glickman has pledged his personal commitment to the success of year 2000 compliance and has made it one of the highest priorities for USDA.

In fiscal year 1999, USDA plans to spend more than $1.2 billion on information technology and related information resources management activities, including year 2000 computer compliance. The General Accounting Office has chronicled USDA's long history of problems in managing its substantial information technology investments. The GAO reports that such ineffective planning and management have resulted in USDA's wasting millions of dollars on computer systems.

Last year, I introduced S. 2116, a bill to reform the information technology systems of the Department of Agriculture. It gave the Chief Information Officer control over the planning, development, and acquisition of information technology at the department. Introduction of that bill and similar legislation in 1997 prompted some coordination of information technology among the department's agencies and offices. However, component agencies are still allowed to independently acquire and manage information technology investments solely on the basis of their own parochial interests or needs. This legislation is needed to strengthen that coordination and ensure that centralized information technology management continues in the future.

This legislation further requires that the Chief Information Officer manage the design and implementation of an information technology architecture based on strategic business plans that maximizes the effectiveness and efficiency of USDA's program activities. Included in the bill is authority for the Chief Information Officer to approve expenditures for information resources and for year 2000 compliance purposes, except for minor acquisitions. To accomplish these purposes, the bill requires that each agency transfer up to 10 percent of its information technology budget to the Chief Information Officer's control.

The bill makes the Chief Information Officer responsible for ensuring that the information technology architecture facilitates a flexible common computing environment for the field service centers based on integrated program delivery. The architecture will also provide maximum data sharing with USDA customers and other Federal and state agencies, which is expected to result in a significant reduction in operating costs.

Mr. President, this is a bill whose time has come. Unfortunately, USDA's problems in managing information technology are not unusual among Government agencies, according to the General Accounting Office. I commend the attention of my colleagues to this bill designed to address a portion of the information resource management problems of the Federal Government and ask for their support of it.

Mr. President, I ask that the full text and a summary of the bill be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 949

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''USDA Information Technology Reform and Year-2000 Compliance Act of 1999''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) United States agriculture, food safety, the health of plants and animals, the economies of rural communities, international commerce in food, and food aid rely on the Department of Agriculture for the effective and timely administration of program activities essential to their success and vitality;

(2) the successful administration of the program activities depends on the ability of the Department to use information technology in as efficient and effective manner as is technologically feasible;

(3) to successfully administer the program activities, the Department relies on information technology that requires comprehensive and Department-wide overview and control to avoid needless duplication and misuse of resources;

(4) to better ensure the continued success and vitality of agricultural producers and rural communities, it is imperative that measures are taken within the Department to coordinate and centrally plan the use of the information technology of the Department;

(5) because production control and subsidy programs are ending, agricultural producers of the United States need the best possible information to make decisions that will maximize profits, satisfy consumer demand, and contribute to the alleviation of hunger in the United States and abroad;

(6) a single authority for Department-wide planning is needed to ensure that the information technology architecture of the Department is based on the strategic business plans, information technology, management goals, and core business process methodology of the Department;

(7) information technology is a strategic resource for the missions and program activities of the Department;

(8) year-2000 compliance is 1 of the most important challenges facing the Federal Government and the private sector;

(9) because the responsibility for ensuring year-2000 compliance at the Department was initially left to individual offices and agencies, no overall priorities have been established, and there is no assurance that the

most important functions of the Department will be operable on January 1, 2000;

(10) it is the responsibility of the Chief Information Officer to provide leadership in—

(A) defining and explaining the importance of achieving year-2000 compliance;

(B) selecting the overall approach for structuring the year-2000 compliance efforts of the Department;

(C) assessing the ability of the information resource management infrastructures of the Department to adequately support the year-2000 compliance efforts; and

(D) mobilizing the resources of the Department to achieve year-2000 compliance;

(11) the failure of the Department to meet the requirement of the Director of the Office of Management and Budget that all mission-critical systems of the Department achieve year-2000 compliance would have serious adverse consequences on the program activities of the Department, the economies of rural communities, the health of the people of the United States, world hunger, and international commerce in agricultural commodities and products;

(12) centralizing the approval authority for planning and investment for information technology in the Office of the Chief Information Officer will—

(A) provide the Department with strong and coordinated leadership and direction;

(B) ensure that the business architecture of an office or agency is based on rigorous core business process methodology;

(C) ensure that the information technology architecture of the Department is based on the strategic business plans of the offices or agencies and the missions of the Department;

(D) ensure that funds will be invested in information technology only after the Chief Information Officer has determined that—

(i) the planning and review of future business requirements of the office or agency are complete; and

(ii) the information technology architecture of the office or agency is based on business requirements and is consistent with the Department-wide information technology architecture; and

(E) cause the Department to act as a single enterprise with respect to information technology, thus eliminating the duplication and inefficiency associated with a single office- or agency-based approach; and

(13) consistent with the Information Technology Management Reform Act of 1996 (40 U.S.C. 1401 et seq.), each office or agency of the Department should achieve at least—

(A) a 5 percent per year decrease in costs incurred for operation and maintenance of information technology; and

(B) a 5 percent per year increase in operational efficiency through improvements in information resource management.

(b) PURPOSES.—The purposes of this Act are—

(1) to facilitate the successful administration of programs and activities of the Department through the creation of a centralized office, and Chief Information Officer position, in the Department to provide strong and innovative managerial leadership to oversee the planning, funding, acquisition, and management of information technology and information resource management; and

(2) to provide the Chief Information Officer with the authority and funding necessary to correct the year-2000 compliance problem of the Department.

SEC. 3. DEFINITIONS.

In this Act:

(1) CHIEF INFORMATION OFFICER.—The term ''Chief Information Officer'' means the individual appointed by the Secretary to serve as Chief Information Officer (as established by section 5125 of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425)) for the Department.

(2) DEPARTMENT.—The term ''Department'' means the Department of Agriculture.

(3) INFORMATION RESOURCE MANAGEMENT.—The term ''information resource management'' means the process of managing information resources to accomplish agency missions and to improve agency performance.

(4) INFORMATION TECHNOLOGY.—

(A) IN GENERAL.—The term ''information technology'' means any equipment or interconnected system or subsystem of equipment that is used by an office or agency in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(B) USE OF EQUIPMENT.—For purposes of subparagraph (A), equipment is used by an office or agency if the equipment is used by—

(i) the office or agency directly; or

(ii) a contractor under a contract with the office or agency—

(I) that requires the use of the equipment; or

(II) to a significant extent, that requires the use of the equipment in the performance of a service or the furnishing of a product.

(C) INCLUSIONS.—The term ''information technology'' includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(D) EXCLUSIONS.—The term ''information technology'' does not include any equipment that is acquired by a Federal contractor that is incidental to a Federal contract.

(5) INFORMATION TECHNOLOGY ARCHITECTURE.—The term ''information technology architecture'' means an integrated framework for developing or maintaining existing information technology, and acquiring new information technology, to achieve or effectively use the strategic business plans, information resources, management goals, and core business processes of the Department.

(6) OFFICE OR AGENCY.—The term ''office or agency'' means, as applicable, each—

(A) national, regional, county, or local office or agency of the Department;

(B) county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5));

(C) State committee, State office, or field service center of the Department; and

(D) group of multiple offices and agencies of the Department that are, or will be, connected through common program activities or systems of information technology.

(7) PROGRAM ACTIVITY.—The term ''program activity'' means a specific activity or project of a program that is carried out by 1 or more offices or agencies of the Department.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(9) YEAR-2000 COMPLIANCE.—The term ''year-2000 compliance'', with respect to the Department, means a condition in which information systems are able to accurately process data relating to the 20th and 21st centuries—

(A) within the Department;

(B) between the Department and local and State governments;

(C) between the Department and the private sector;

(D) between the Department and foreign governments; and

(E) between the Department and the international private sector.

SEC. 4. MANAGEMENT OF YEAR-2000 COMPLIANCE AT DEPARTMENT.

(a) FINDING.—Congress finds that the Chief Information Officer of the Department has not been provided the funding and authority necessary to adequately manage the year-2000 compliance problem at the Department.

(b) MANAGEMENT.—The Chief Information Officer shall provide the leadership and innovative management within the Department to—

(1) identify, prioritize, and mobilize the resources needed to achieve year-2000 compliance;

(2) coordinate the renovation of computer systems through conversion, replacement, or retirement of the systems;

(3) develop verification and validation strategies (within the Department and by independent persons) for converted or replaced computer systems;

(4) develop contingency plans for mission-critical systems in the event of a year-2000 compliance system failure;

(5) coordinate outreach between computer systems of the Department and computer systems in—

(A) the domestic private sector;

(B) State and local governments;

(C) foreign governments; and

(D) the international private sector, such as foreign banks;

(6) identify, prioritize, and mobilize the resources needed to correct periodic date problems in computer systems within the Department and between the Department and outside computer systems; and

(7) during the period beginning on the date of enactment of this Act and ending on June 1, 2001, consult, on a quarterly basis, with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on actions taken to carry out this section.

(c) FUNDING AND AUTHORITIES.—To carry out subsection (b), the Chief Information Officer shall use—

(1) the authorities in sections 7, 8, and 9, particularly the authority to approve the transfer or obligation of funds described in section 7(a) intended for information technology and information resource management; and

(2) the transferred funds targeted by offices and agencies for information technology and information resource management under section 8.

SEC. 5. POSITION OF CHIEF INFORMATION OFFICER.

(a) ESTABLISHMENT.—To ensure the highest quality and most efficient planning, acquisition, administration, and management of information technology within the Department, there is established the position of the Chief Information Officer of the Department.

(b) CONFIRMATION.—

(1) IN GENERAL.—The position of the Chief Information Officer shall be appointed by the President, by and with the advice and consent of the Senate.

(2) SUCCESSION.—An official who is serving as Chief Information Officer on the date of enactment of this Act shall not be required to be reappointed by the President.

(c) REPORT.—The Chief Information Officer shall report directly to the Secretary.

(d) POSITION ON EXECUTIVE INFORMATION TECHNOLOGY INVESTMENT REVIEW BOARD.—The Chief Information Officer shall serve as an officer of the Executive Information Technology Investment Review Board (or its successor).

SEC. 6. DUTIES AND AUTHORITIES OF CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—Notwithstanding any other provision of law (except the Government Performance and Results Act of 1993 (Public Law 103–62), amendments made by that Act, and the Information Technology Management Reform Act of 1996 (40 U.S.C.

1401 et seq.)) and policies and procedures of the Department, in addition to the general authorities provided to the Chief Information Officer by section 5125 of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425), the Chief Information Officer shall have the authorities and duties within the Department provided in this Act.

(b) INFORMATION TECHNOLOGY ARCHITECTURE.—

(1) IN GENERAL.—To ensure the efficient and effective implementation of program activities of the Department, the Chief Information Officer shall ensure that the information technology architecture of the Department, and each office or agency, is based on the strategic business plans, information resources, goals of information resource management, and core business process methodology of the Department.

(2) DESIGN AND IMPLEMENTATION.—The Chief Information Officer shall manage the design and implementation of an information technology architecture for the Department in a manner that ensures that—

(A) the information technology systems of each office or agency maximize—

(i) the effectiveness and efficiency of program activities of the Department;

(ii) quality per dollar expended; and

(iii) the efficiency and coordination of information resource management among offices or agencies, including the exchange of information between field service centers of the Department and each office or agency;

(B) the planning, transfer or obligation of funds described in section 7(a), and acquisition of information technology, by each office or agency most efficiently satisfies the needs of the office or agency in terms of the customers served, and program activities and employees affected, by the information technology; and

(C) the information technology of each office or agency is designed and managed to coordinate or consolidate similar functions of the missions of the Department and offices or agencies, on a Department-wide basis.

(3) COMPLIANCE WITH RESULTING ARCHITECTURE.—The Chief Information Officer shall—

(A) if determined appropriate by the Chief Information Officer, approve the transfer or obligation of funds described in section 7(a) in connection with information technology architecture for an office or agency; and

(B) be responsible for the development, acquisition, and implementation of information technology by an office or agency in a manner that—

(i) is consistent with the information technology architecture designed under paragraph (2);

(ii) results in the most efficient and effective use of information technology of the office or agency; and

(iii) maximizes the efficient delivery and effectiveness of program activities of the Department.

(4) FIELD SERVICE CENTERS.—The Chief Information Officer shall ensure that the information technology architecture of the Department facilitates the design, acquisition, and deployment of an open, flexible common computing environment for the field service centers of the Department that—

(A) is based on strategic goals, business reengineering, and integrated program delivery;

(B) is flexible enough to accommodate and facilitate future business and organizational changes;

(C) provides maximum data sharing, interoperability, and communications capability with other Department, Federal, and State agencies and customers; and

(D) results in significant reductions in annual operating costs.

(c) EVALUATION OF PROPOSED INFORMATION TECHNOLOGY INVESTMENTS.—

(1) IN GENERAL.—In consultation with the Executive Information Technology Investment Review Board (or its successor), the Chief Information Officer shall adopt criteria to evaluate proposals for information technology investments that are applicable to individual offices or agencies or are applicable Department-wide.

(2) CRITERIA.—The criteria adopted under paragraph (1) shall include consideration of—

(A) whether the function to be supported by the investment should be performed by the private sector, negating the need for the investment;

(B) the Department-wide or Government-wide impacts of the investment;

(C) the costs and risks of the investment;

(D) the consistency of the investment with the information technology architecture;

(E) the interoperability of information technology or information resource management in offices or agencies; and

(F) whether the investment maximizes the efficiency and effectiveness of program activities of the Department.

(3) EVALUATION OF INFORMATION TECHNOLOGY AND INFORMATION RESOURCE MANAGEMENT.—

(A) IN GENERAL.—In consultation with the Executive Information Technology Investment Review Board (or its successor), the Chief Information Officer shall monitor and evaluate the information resource management practices of offices or agencies with respect to the performance and results of the information technology investments made by the offices or agencies.

(B) GUIDELINES FOR EVALUATION.—The Chief Information Officer shall issue Departmental regulations that provide guidelines for—

(i) establishing whether the program activity of an office or agency that is proposed to be supported by the information technology investment should be performed by the private sector;

(ii)(I) analyzing the program activities of the office or agency and the mission of the office or agency; and

(II) based on the analysis, revising the mission-related and administrative processes of the office or agency, as appropriate, before making significant investments in information technology to be used in support of the program activities and mission of the office or agency;

(iii) establishing effective and efficient capital planning for selecting, managing, and evaluating the results of all major investments in information technology by the Department;

(iv) ensuring compliance with governmental and Department-wide policies, regulations, standards, and guidelines that relate to information technology and information resource management;

(v) identifying potential information resource management problem areas that could prevent or delay delivery of program activities of the office or agency;

(vi) validating that information resource management of the office or agency facilitates—

(I) strategic goals of the office or agency;

(II) the mission of the office or agency; and

(III) performance measures established by the office or agency; and

(vii) ensuring that the information security policies, procedures, and practices for the information technology are sufficient.

(d) ELECTRONIC FUND TRANSFERS.—The Chief Information Officer shall ensure that the information technology architecture of the Department complies with the requirement of section 3332 of title 31, United States Code, that certain current, and all future payments after January 1, 1999, be tendered through electronic fund transfer.

(e) DEPARTMENTAL REGULATIONS.—The Chief Information Officer shall issue such Departmental regulations as the Chief Information Officer considers necessary to carry out this Act within all offices and agencies.

(f) REPORT.—Not later than March 1 of each year through March 1, 2003, the Chief Information Officer shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that includes—

(1) an evaluation of the current and future information technology directions and needs of the Department;

(2) an accounting of—

(A) each transfer or obligation of funds described in section 7(a), and each outlay of funds, for information technology or information resource management by each office or agency for the past fiscal year; and

(B) each transfer or obligation of funds described in section 7(a) for information technology or information resource management by each office or agency known or estimated for the current and future fiscal years;

(3) a summary of an evaluation of information technology and information resource management applicable Department-wide or to an office or agency; and

(4) a copy of the annual report to the Secretary by the Chief Information Officer that is required by section 5125(c)(3) of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425(c)(3)).

SEC. 7. FUNDING APPROVAL BY CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—Notwithstanding any other provision of law, an office or agency, without the prior approval of the Chief Information Officer, shall not—

(1) transfer funds (including appropriated funds, mandatory funds, and funds of the Commodity Credit Corporation or any other corporation within the Department) from 1 account of a fund or office or agency to another account of a fund or office or agency for the purpose of investing in information technology or information resource management involving planning, evaluation, or management, providing services, or leasing or purchasing personal property (including all hardware and software) or services;

(2) obligate funds (including appropriated funds, mandatory funds, and funds of the Commodity Credit Corporation or any other corporation within the Department) for the purpose of investing in information technology or information resource management involving planning, evaluation, or management, providing services, or leasing or purchasing personal property (including all hardware and software) or services; or

(3) obligate funds (including appropriated funds, mandatory funds, and funds of the Commodity Credit Corporation) for the purpose of investing in information technology or information resource management involving planning, evaluation, or management, providing services, or leasing or purchasing personal property (including all hardware and software) or services, obtained through a contract, cooperative agreement, reciprocal agreement, or any other type of agreement with an agency of the Federal Government, a State, the District of Columbia, or any person in the private sector.

(b) DISCRETION OF CHIEF INFORMATION OFFICER.—The Chief Information Officer may, by Departmental regulation, waive the requirement under subsection (a) applicable to, as the Chief Information Officer determines is appropriate for the office or agency—

(1) the transfer or obligation of funds described in subsection (a) in an amount not to exceed $200,000; or

(2) a specific class or category of information technology.

(c) CONDITIONS FOR APPROVAL OF FUNDING.—Under subsection (a), the Chief Information Officer shall not approve the transfer or obligation of funds described in subsection (a) with respect to an office or agency unless the Chief Information Officer determines that—

(1) the proposed transfer or obligation of funds described in subsection (a) is consistent with the information technology architecture of the Department;

(2) the proposed transfer or obligation of funds described in subsection (a) for information technology or information resource management is consistent with and maximizes the achievement of the strategic business plans of the office or agency;

(3) the proposed transfer or obligation of funds described in subsection (a) is consistent with the strategic business plan of the office or agency; and

(4) to the maximum extent practicable, economies of scale are realized through the proposed transfer or obligation of funds described in subsection (a).

(d) CONSULTATION WITH EXECUTIVE INFORMATION TECHNOLOGY INVESTMENT REVIEW BOARD.—To the maximum extent practicable, as determined by the Chief Information Officer, prior to approving a transfer or obligation of funds described in subsection (a) for information technology or information resource management, the Chief Information Officer shall consult with the Executive Information Technology Investment Review Board (or its successor) concerning whether the investment—

(1) meets the objectives of capital planning processes for selecting, managing, and evaluating the results of major investments in information technology or information resource management; and

(2) links the affected strategic plan with the information technology architecture of the Department.

SEC. 8. AVAILABILITY OF AGENCY INFORMATION TECHNOLOGY FUNDS.

(a) TRANSFER.—

(1) IN GENERAL.—Not later than December 1 of each fiscal year, the Secretary shall transfer to the appropriations account of the Chief Information Officer an amount of funds of an office or agency determined under paragraph (2).

(2) AMOUNT.—

(A) IN GENERAL.—Subject to subparagraph (B), the amount of funds of an office or agency for a fiscal year transferred under paragraph (1) may be up to 10 percent of the discretionary funds made available for that fiscal year by the office or agency for information technology or information resource management.

(B) ADJUSTMENT.—Not later than September 30 of each fiscal year, the Secretary shall adjust the amount to be transferred from the funds of an office or agency for the fiscal year to the extent that the estimate for the fiscal year was in excess of, or less than, the amount actually expended by the office or agency for information technology or information resource management.

(b) USE OF FUNDS.—Funds transferred under subsection (a) shall be used by the Chief Information Officer—

(1) to carry out the duties and authorities of the Chief Information Officer under—

(A) this Act;

(B) section 5125 of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425); and

(C) section 3506 of title 44, United States Code;

(2) to direct and control the planning, transfer or obligation of funds described in section 7(a), and administration of information technology or information resource management by an office or agency;

(3) to meet the requirement of the Director of the Office and Management and Budget that all mission-critical systems achieve year-2000 compliance; or

(4) to pay the salaries and expenses of all personnel and functions of the office of the Chief Information Officer.

(c) AVAILABILITY OF FUNDS.—The Chief Information Officer shall transfer unexpended funds at the end of a fiscal year to the office or agency that made the funds available under subsection (a), to remain available until expended.

(d) NO REDUCTION OF EMPLOYEES OF OFFICES OR AGENCIES.—A transfer of funds under subsection (a) shall not result in a reduction in the number of employees in an office or agency.

(e) TERMINATION OF AUTHORITY.—The authority under this section terminates on September 30, 2004.

SEC. 9. AUTHORITY OF CHIEF INFORMATION OFFICER OVER INFORMATION TECHNOLOGY PERSONNEL.

(a) AGENCY CHIEF INFORMATION OFFICERS.—

(1) ESTABLISHMENT.—Subject to the concurrence of the Chief Information Officer, the head of each office or agency shall establish within the office or agency the position of Agency Chief Information Officer and shall appoint an individual to that position.

(2) RELATIONSHIP TO HEAD OF OFFICE OR AGENCY.—The Agency Chief Information Officer shall—

(A) report to the head of the office or agency; and

(B) regularly update the head of the office or agency on the status of year-2000 compliance and other significant information technology issues.

(3) PERFORMANCE REVIEW.—The Chief Information Officer shall—

(A) provide input for the performance review of an Agency Chief Information Officer of an office or agency;

(B) annually review and assess the information technology functions of the office or agency; and

(C) provide a report on the review and assessment to the Under Secretary or Assistant Secretary for the office or agency.

(4) DUTIES.—The Agency Chief Information Officer of an office or agency shall be responsible for carrying out the policies and procedures established by the Chief Information Officer for that office or agency, the Administrator for the office or agency, and the Under Secretary or Assistant Secretary for the office or agency.

(b) MANAGERS OF MAJOR INFORMATION TECHNOLOGY PROJECTS.—

(1) IN GENERAL.—The assignment, and continued eligibility for the assignment, of an employee of the Department to serve as manager of a major information technology project (as defined by the Chief Information Officer) of an office or agency, shall be subject to the approval of the Chief Information Officer.

(2) PERFORMANCE REVIEW.—The Chief Information Officer shall provide input into the performance review of a manager of a major information technology project.

(c) DETAIL AND ASSIGNMENT OF PERSONNEL.—Notwithstanding any other provision of law, an employee of the Department may be detailed to the Office of the Chief Information Officer for a period of more than 30 days without reimbursement by the Office of the Chief Information Officer to the office or agency from which the employee is detailed.

(d) INFORMATION TECHNOLOGY PROCUREMENT OFFICERS.—A procurement officer of an office or agency shall procure information technology for the office or agency in a manner that is consistent with the Departmental regulations issued by the Chief Information Officer.

SEC. 10. ANNUAL COMPTROLLER GENERAL REPORT ON COMPLIANCE.

(a) REPORT.—Not later than May 15 of each year through May 15, 2003, in coordination with the Inspector General of the Department, the Comptroller General of the United States shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report evaluating the compliance with this Act in the past fiscal year by the Chief Information Officer and each office or agency.

(b) CONTENTS OF REPORT.—Each report shall include—

(1) an audit of the transfer or obligation of funds described in section 7(a) and outlays by an office or agency for the fiscal year;

(2) an audit and evaluation of the compliance of the Chief Information Officer with the requirements of section 8(c);

(3) a review and evaluation of the performance of the Chief Information Officer under this Act; and

(4) a review and evaluation of the success of the Department in—

(A) creating a Department-wide information technology architecture; and

(B) complying with the requirement of the Director of the Office of Management and Budget that all mission-critical systems of an office or agency achieve year-2000 compliance.

SEC. 11. OFFICE OF INSPECTOR GENERAL.

(a) IN GENERAL.—The Office of Inspector General of the Department shall be exempt from the requirements of this Act.

(b) REPORT.—The Inspector General of the Department shall semiannually submit a report to the Committee on Agriculture and the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the progress of the Office of Inspector General regarding—

(1) year-2000 compliance; and

(2) the establishment of an information technology architecture for the Office of Inspector General of the Department.

SEC. 12. TECHNICAL AMENDMENT.

Section 13 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714k) is amended in the second sentence by striking ''section 5 or 11'' and inserting ''section 4, 5, or 11''.

SUMMARY OF THE USDA INFORMATION TECHNOLOGY REFORM AND YEAR 2000 COMPLIANCE ACT OF 1999

The bill:

Requires the Chief Information Officer to manage the design and implementation of an information technology architecture, based on strategic business plans, that maximizes the effectiveness and efficiency of USDA's program activities;

requires the Chief Information Officer to approve or disapprove all expenditures for information resources, and allows the Chief Information Officer to waive this authority for expenditures under $200,000;

permits the Secretary of Agriculture to transfer to the Chief Information Officer up to ten percent of each agency's information technology funds for year 2000 compliance, information technology acquisition or information resource management (this authority expires in 2003);

requires the Secretary of Agriculture to ensure the transfer of information technology funds does not result in a reduction in the number of employees in an agency;

requires the Chief Information Officer to manage the year 2000 computing crisis

throughout USDA agencies, between USDA and other federal, state and local agencies and between USDA and private and international partners;

makes the Chief Information Officer a presidential appointee, subject to Senate confirmation, thereby raising the stature of the Chief Information Officer in the department as envisioned by the Clinger-Cohen Act; and

requires an annual report from the Comptroller General regarding USDA's compliance with this act.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. FRIST, Mr. LIEBERMAN, and Ms. SNOWE):

S. 951. A bill to amend the Internal Revenue Code of 1986 to establish permanent tax incentives for research and development, and for other purposes; to the Committee on Finance.

PRIVATE SECTOR RESEARCH AND DEVELOPMENT INVESTMENT ACT OF 1999

Mr. DOMENICI. Mr. President, today I am joining my cosponsors, Senators BINGAMAN, FRIST, LIEBERMAN, and SNOWE, in introducing the Private Sector Research and Development Investment Act of 1999.

This bill makes the research tax credit permanent and significantly improves the structure of that credit. Many Senators are for this extension, and it is high time, and for the permanentization of this credit.

This also adjusts the credit to today. That credit was put in place many years ago, and much of what it does doesn't fit today's industrial base, including many startup companies that cannot take the right kind of credit.

We have made some changes which will make it cost a little bit more, but I think the Finance Committee should take a look at some of the changes that are in this Domenici-Bingaman bill, because it will make the credit more effective and more available.

In March of 1998, 150 of our Nation's top decisionmakers met at MIT for the first national innovative summit. The summit leaders included CEOs, university presidents, labor leaders, Governors, Members of Congress, and senior administrative officials.

In essence, they conclude that in order to keep the United States of America on the cutting edge of research that can be applied to innovative things for America's future and for our businesses, that we must make this tax permanent, that dollar for dollar it is the best investment in both general research and specific research to keep America strong and competitive in the world.

When those people say dollar for dollar it is the most effective, they are saying it is more effective than programmatic assistance to research, which obviously is very necessary, and we continue to expand upon and have it grow. But if you don't make this permanent, you are losing a lot of research by American businesses, No. 1. If you don't correct it, you will lose the effectiveness among companies that need it the most. And third, you will see to it that more, rather than less, American companies do research overseas.

Research jobs are great jobs. They are just as much a part of America's basic prosperity as are the jobs that come from that research by way of products or activities.

Mr. President, advanced technologies drive a significant part of our nation's economic strength. Our economy and our standard of living depend on a constant influx of new technologies, processes, and products from our industries.

Many countries provide labor at lower costs than the United States. Thus, as any new product matures, competitors using overseas labor frequently find ways to undercut our production costs. We maintain our economic strength only by constantly improving our products through innovation. Maintaining and improving our national ability to innovate is critically important to the nation.

The majority of new products requires industrial research and development to reach the market stage. I want to encourage that research and development to create new products to ensure that our factories stay busy and that our workforce stays fully employed at high salaried jobs.

I want more of our large multi-national companies to select the United States as the location of their R&D. R&D done here creates American jobs. And since frequently the benefits of research in one area apply in another area, I want those spin-off benefits here, too.

Congress created the Research Tax Credit to encourage companies to perform research. But many studies document that the present form of this Tax Credit is not providing as much stimulation to industrial R&D as it could. Today, we're introducing legislation to improve the Research Tax Credit.

In March of 1998, 150 of our nation's top decision makers met at MIT, for the first National Innovation Summit. The Summit included corporate CEO's, university presidents, labor leaders, governors, members of Congress, and Senior Administration officials.

At the Summit, these experts discussed the health of the future national research base. More than three-quarters of them thought that the quality of that base would be no better or worse than it is today, with nearly one third projecting that it would be weaker.

The Summit participants singled out the Research Tax Credit as the policy measure with the greatest potential for a positive near-term impact. The Council on Competitiveness, who co-sponsored that Summit, stated that ''making the [Research] Tax Credit permanent reflected a widely share consensus among leaders whose companies and universities contribute decisively to the nation's economy.''

The single most important change in our bill is to make the Credit permanent. Many studies point out that the temporary nature of the Credit has prevented companies from building careful research strategies.

Many of my colleagues in Congress have also expressed interest in making the Credit permanent. But we're urging them to go beyond that action and, at the same time, address shortcomings that have been identified in the current Credit. I want to use the current enthusiasm for permanence to also craft a Credit that will better serve the nation.

For example, the current Credit references a company's research intensity back to 1984–88. That's too outdated to meet today's dynamic market conditions. Many companies are involved today in products that weren't even invented in 1984.

Our legislation allows a company to base their credit on their research intensity averaged over the preceding eight years. It also allows companies to stay with the current formulation of the Credit if they prefer.

Our bill builds other improvements into the Credit as well. For example, the Alternative Research Credit component has been criticized because it only rewards the maintenance level of a company's research, it does not provide significant motivation to increase research intensity. With our proposed changes, the Alternative Credit now incorporates the same 20 percent motivation for increased research intensity that is found in the regular Credit—this is a major improvement. We also increase the base level of the Alternative Credit significantly.

The current Credit has a provision that severely restricts the ability of start-up companies to fully benefit. Analysis by the Congressional Research Service showed that 5 our of 6 start-up companies received reduced benefits because of a current provision that limits their allowable increase in research expenditures.

I'm concerned when start-up companies aren't receiving full Credit. These are just the companies that drive the innovative cycle in this country; they are the ones that frequently bring out the newest leading-edge products. Our legislation thus drops this limitation and introduces additional help for start-up businesses.

Our legislation addresses several other shortcomings in the current Credit as well. Now there is a ''Basic Research Credit'' allowed, but rarely used. This should be encouraging research conducted at universities.

But that part of the Credit is now defined to include only research that does ''not have a specific commercial objective.'' There aren't many companies that want to support—much less admit to their stockholders that they are supporting—research with no commercial interest. The idea of this clause was to encourage support of long term research, which is a fine idea.

This is the kind of research that benefits far more than just the next product improvement. It can enable a whole

new product or service and we need to encourage it.

Our legislation adds major incentives for basic research by dropping the requirement that only increments above a baseline can be used and by including any research that is done for a consortium of U.S. companies or any research that is destined for open literature publication. We're also allowing this Credit to apply to research done in national labs.

And finally our legislation recognizes the importance of encouraging companies to use research capabilities wherever they exist in the country, whether in other businesses, universities, or national labs. The current credit disallows 35% of all expenses for research performed under an external contract—our legislation allows all such expenses to apply towards the Credit when the research is performed at a university, small business, or national laboratory.

In summary, this bill incorporates all the improvement suggested in other bills that primarily make the credit permanent and provide some increase in the alternative credit. But this bill goes further and corrects weaknesses in the current formulation of the Credit. I want to seize this opportunity to make the Research Tax Credit a tool that will truly meet the goals for which it was established.

The fact that this bill addresses significant shortcomings in the current Credit has not gone unnoticed. Spokesman for several groups that endorse this bill are here with us today. After Senator BINGAMAN speaks, I'll invite representatives from the Council on Competitiveness, the National Association of State Universities and Land Grant Colleges, the National Coalition for Advanced Manufacturing, and the American Association of Engineering Societies to add their perspectives.

With this new bill, we will significantly strengthen incentives for private companies to undertake research that leads to new processes, new services, and new products. The result will be stronger companies that are better positioned for global competition. Those stronger companies will hire people at higher salaries with real benefits to our national economy and workforce.

I ask unanimous consent that the text and a summary of the bill, section by section, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 951

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Sector Research and Development Investment Act of 1999''.

SEC. 2. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 45C(b)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1999.

SEC. 3. IMPROVED ALTERNATIVE INCREMENTAL CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities), as amended by section 2, is amended by adding at the end the following new subsection:

''(h) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

''(1) IN GENERAL.—At the election of the taxpayer, the credit under subsection (a)(1) shall be determined under this section by taking into account the modifications provided by this subsection.

''(2) DETERMINATION OF BASE AMOUNT.—

''(A) IN GENERAL.—In computing the base amount under subsection (c)—

''(i) notwithstanding subsection (c)(3), the fixed-base percentage shall be equal to 80 percent of the percentage which the aggregate qualified research expenses of the taxpayer for the base period is of the aggregate gross receipts of the taxpayer for the base period, and

''(ii) the minimum base amount under subsection (c)(2) shall not apply.

''(B) START-UP AND SMALL TAXPAYERS.—In computing the base amount under subsection (c), the gross receipts of a taxpayer for any taxable year in the base period shall be treated as at least equal to $1,000,000.

''(C) BASE PERIOD.—For purposes of this subsection, the base period is the 8-taxable year period preceding the taxable year (or, if shorter, the period the taxpayer (and any predecessor) has been in existence).

''(3) ELECTION.—An election under this subsection shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

(b) CONFORMING AMENDMENT.—Section 41(c) of the Internal Revenue Code of 1986 is amended by striking paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 4. MODIFICATIONS TO CREDIT FOR BASIC RESEARCH.

(a) ELIMINATION OF INCREMENTAL REQUIREMENT.—

(1) IN GENERAL.—Paragraph (1) of section 41(e) of the Internal Revenue Code of 1986 (relating to credit allowable with respect to certain payments to qualified organizations for basic research) is amended to read as follows:

''(1) IN GENERAL.—The amount of basic research payments taken into account under subsection (a)(2) shall be determined in accordance with this subsection.''

(2) CONFORMING AMENDMENTS.—

(A) Section 41(a)(2) of such Code is amended by striking ''determined under subsection (e)(1)(A)'' and inserting ''for the taxable year''.

(B) Section 41(e) of such Code is amended by striking paragraphs (3), (4), and (5) and by redesignating paragraphs (6) and (7) as paragraphs (3) and (4), respectively.

(C) Section 41(e)(4) of such Code, as redesignated by subparagraph (B), is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(D) Clause (i) of section 170(e)(4)(B) of such Code is amended by striking ''section 41(e)(6)'' and inserting ''section 41(e)(3)''.

(b) BASIC RESEARCH.—

(1) SPECIFIC COMMERCIAL OBJECTIVE.—Section 41(e)(4) of the Internal Revenue Code of 1986 (relating to definitions and special rules), as redesignated by subsection (a)(2)(B), is amended by adding at the end the following new subparagraph:

''(E) SPECIFIC COMMERCIAL OBJECTIVE.—For purposes of subparagraph (A), research shall not be treated as having a specific commercial objective if the results of such research are to be published in a timely manner as to be available to the general public prior to their use for a commercial purpose.''

(2) EXCLUSIONS FROM BASIC RESEARCH.—Clause (ii) of section 41(e)(4)(A) of such Code (relating to definitions and special rules), as redesignated by subsection (a), is amended to read as follows:

''(ii) basic research in the arts and humanities.''

(c) EXPANSION OF CREDIT TO RESEARCH DONE AT FEDERAL LABORATORIES.—Section 41(e)(3) of the Internal Revenue Code of 1986, as redesignated by subsection (a), is amended by adding at the end the following new subparagraph:

''(E) FEDERAL LABORATORIES.—Any organization which is a Federal laboratory (as defined in section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 5. CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.—Subsection (a) of section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), striking the period at the end of paragraph (2) and inserting '', and '', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to a qualified research consortium.''

(b) QUALIFIED RESEARCH CONSORTIUM DEFINED.—Subsection (f) of section 41 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(6) QUALIFIED RESEARCH CONSORTIUM.—The term 'qualified research consortium' means any organization—

''(A) which is—

''(i) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct scientific or engineering research, or

''(ii) organized and operated primarily to conduct scientific or engineering research in the public interest (within the meaning of section 501(c)(3)),

''(B) which is not a private foundation,

''(C) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for scientific or engineering research, and

''(D) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for scientific or engineering research.

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (C) and as a single person for purposes of subparagraph (D).''

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 41(b) of the Internal Revenue Code of 1986 is amended by striking subparagraph (C).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 6. IMPROVEMENT TO CREDIT FOR SMALL BUSINESSES AND RESEARCH PARTNERSHIPS.

(a) ASSISTANCE TO SMALL AND START-UP BUSINESSES.—The Secretary of the Treasury or the Secretary's delegate shall take such actions as are appropriate to—

(1) provide assistance to small and start-up businesses in complying with the requirements of section 41 of the Internal Revenue Code of 1986, and

(2) reduce the costs of such compliance.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—Section 41(b)(3) of the Internal Revenue Code of 1986, as amended by section 5(c), is amended by adding at the end the following new subparagraph:

''(C) AMOUNTS PAID TO ELIGIBLE SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—

''(i) IN GENERAL.—In the case of amounts paid by the taxpayer to an eligible small business, an institution of higher education (as defined in section 3304(f)), or an organization which is a Federal laboratory (as defined in subsection (e)(3)(E)), subparagraph (A) shall be applied by substituting '100 percent' for '65 percent'.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

''(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

''(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.''

(c) CREDIT FOR PATENT FILING FEES.—Section 41(a) of the Internal Revenue Code of 1986, as amended by section 5(a), is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) 20 percent of the patent filing fees paid or incurred by a small business (as defined in subsection (b)(3)(C)(iii)) to the United States or to any foreign government in carrying on any trade or business.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

DOMENICI-BINGAMAN RESEARCH TAX CREDIT BILL

This bill addresses two broad goals: establishes a permanent Credit, and strengthens the formulation of the Credit.

The Bill enhances the Credit received by all users of the regular Research Tax Credit. Thus, all companies benefiting from its current formulation are positively impacted. The changes in the Credit are focused in the Alternative Credit and Basic Research Credit portions of the current Credit legislation and represent significant enhancements to these options.

The Bill addresses several concerns with the existing Credit: base period used for the regular credit, 1984–88, is out-dated; 50% rule precludes most startups from gaining full credit; basic research credit is very difficult to use, and alternative credit provides no strong incentive for increased research intensity.

In addition to permanence, the Bill increases the maintenance level of the alternative credit to 4%. (Thus the Bill meets the goals of some groups who favor simply permanence and 1% additional to the alternative credit). In addition, the bill; establishes a 20% marginal rate for increased intensity for users of the alternative credit; changes the base period for alternative credit users to an 8 year average; eliminates the 50% rule for users of the alternative credit; encourages industrial partnerships with universities and national labs; expands definition of basic research to include all published work; enables basic research at FFRDCs to count toward their basic research credit; qualifies 100% of contract research accomplished at universities, national labs, and small businesses; encourages establishment of research-driven consortia by providing 20% credit for their research expenses; provides a phase-in of credit for start-up businesses, and enables small businesses to count patent filing fees toward research expenses.

With these enhancements, the Domenici-Bingaman Bill provides a permanent Research Tax Credit that address shortcomings in the current formulation of the Credit. Furthermore, the Bill meets the goals of constituents who favor only permanence or only permanence plus an increase in the alternative credit.

SUMMARY

Joint Tax 10-yr evaluations:	
Section II: Make the Credit permanent	$26.3 B
Section III: Improve the Alternative Investment Credit, AIC, by increasing the Credit allowed for the base maintenance level of R&E expenditures, and add an incremental incentive package onto the AIC. Create a floating 8-year base period for the AIC. Drop the ''50%'' rule for the AIC. Insert a transition approach to help startups	3.8
Section IV: Provide a flat credit for basic research expenditures at universities, small businesses, and national labs. Improve definition of basic research	5.0
Section V: Provide flat credit for consortia-based research	0.1
Section VI: Increase the allowance for contract research conducted at universities, small businesses, and national labs from 65% to 100%. Add patent filing expenses as qualified expenditures for small businesses	[1]3??
Total	38.2

[1] Joint Tax did not score Section VI yet. A version of Section VI was in S. 2072 last year, except that it increased the allowance for everybody, including large businesses. They scored that at $4.8B. The score this year ''has to'' be well below $4.8B, I used $3 for talking purposes.

NOTES—TO JOINT TAX SCORES

Section II duplicates Senator BOXER's S. 195 by just making the Credit permanent, Representative SENSENBRENNER has the same version in the House.

Sections II and III together duplicate and extend the approach of the Baucus/Hatch S. 680 with 36 cosponsors and the Johnson/Matsui Bill in the House. These two sections give permanence plus increase the AIC by slightly more than 1%. They also add major enhancements to the AIC by establishing an option for companies to realize a 20% incremental benefit. The Baucus/Hatch version is supported by the R&D Tax Coalition, using their mantra of ''Permanence plus 1%.'' Sections II and III do everything that the R&D Tax Coalition wants and a lot more.

Section IV is expensive at $5 Billion, but gains the strongest possible support from universities. This section changes the definition of basic research, but more important, lets contract research at a university (+SB or lab) be treated as a flat 20% credit, not above an incremental base. This is a tremendous incentive to fund expenditures for basic research at universities.

Section V encourages consortia to fund research. Senator has encouraged consortia formation in other ways, this continues his leadership in this area.

Section VI is a further major incentive for companies to fund research at universities, labs, and small businesses.

Mr. BINGAMAN. Mr. President, I am pleased to join with my co-sponsors, Senators DOMENICI, LIEBERMAN, FRIST, and SNOWE in introducing the Private Sector Research and Development Investment Act of 1999. This bill will finally make the Research and Experimentation Tax Credit permanent, a provision of the federal tax code that was first enacted in 1981, and has been extended 9 times since.

In addition to the provision of permanence, our bill has other improvements that I believe will address many of the shortcomings of existing law, and will bring the code more in synch with the ways industry is performing R&D today. But before I speak to some of those provisions, I would like to spend a little time discussing why I think we need to enact this legislation now.

I think it is fair to say that the nation's economy owes much of its resurgence to the increases in productivity attributable to the infusion of high technology products and services. Our nation is today in the enviable position of not only having the greatest access to these products, but also being the primary provider of these products for the rest of the world.

These capabilities have enabled American businesses to be in a position of world leadership in areas as diverse as medical and bio technologies, microelectronics, and financial services.

In order for us to insure that the economic engine continues to run at peak form, we must assure that there is a continual infusion of new technologies

that will spawn the products and services of the future market. Many economists state that the best way to do this is to create a stable incentive for research investment and an environment where businesses have the flexibility to choose among all the options available to perform the research. A policy which achieves these goals will provide businesses with the long-term incentive to invest in both the research and the people that will create the next generation of commercially successful products.

That is exactly what the ''Private Sector Research and Development Investment Act of 1999'' does. First, it makes Section 41 of the Internal Revenue Code permanent, creating a stable long-term environment for investment. But it goes beyond that.

Present law does not allow all companies to benefit equally from the Tax Credit. Some companies, simply as a result of where they were in the business cycle in the late 80's, find that they cannot attain the full benefit of the credit. And, if the company did not exist at all in the 80's, as is the case with most of the Internet and many of the biotech start-up firms, there is simply no way at all for them to access the full credit rate. This is simply not fair. Our bill proposes to correct that inequity by making the 20% marginal rate available to all companies that are growing their research investment.

With much of the nation's research talent residing in our universities and federal laboratories, we are proposing to extend the full Tax Credit for research investments companies make in those institutions.

I am particularly pleased with the part of this provision that provides a more cost effective way for companies to invest in the education of our future generation of scientists and engineers at our universities. If this bill becomes law, as many as 3000 additional masters and doctoral level engineers and scientists could be produced each year, with up to 1000 of these being women and minorities, all at no additional cost to businesses.

I fully expect that the ''Private Sector Research and Development Investment Act of 1999'' will accelerate business investment in universities, growing the number of trained scientists and engineers even faster. At a time when there has been much debate over providing additional employment visas to foreign engineers, this bill provides one mechanism for educating qualified Americans to fill these high tech jobs.

As the cost of doing research continues to escalate, and companies find it more difficult to go it alone, our bill proposes that the research investments companies make in research consortia with other businesses, universities, and federal laboratories be fully available for the Tax Credit. I have seen firsthand, at places like Sandia and Los Alamos National Laboratories, the results of consortia partnerships between industry and our national labs, and I believe that it is in our nation's best interest to promote these research arrangements.

All of our studies indicate that small businesses are the ''high test'' fuel of the nation's economy, producing more and highly paid jobs. Yet it is this group of companies that have the hardest time in accessing the Tax Credit under existing law. We propose to modify the law so that small businesses have greater benefit in their early years, when the value of the credit can have the greatest impact on a rapidly growing, but often cash-limited, company.

Finally, to assure that these small businesses are truly able to compete in the global market and to protect their intellectual assets, we are proposing that the full value of the Tax Credit be applied to their patent filing fees, both here and abroad.

In speaking with owners of small, high tech businesses in New Mexico, I hear that anything we can do to increase the capital funds available to these businesses as they are starting up is critical to their success. These two special provisions for small businesses are positive steps in that direction.

Mr. President, many of my fellow Senators and Members of the House have already endorsed the concept of a permanent R&D Tax Credit. With that base of enthusiasm already in place, I encourage my colleagues to seize the opportunity to move forward and complete the job. Let's make it permanent, and let's make it right.

Mr. LIEBERMAN. Mr. President, I am pleased to join Senators DOMENICI and BINGAMAN today in supporting the Private Sector Research and Development Investment Act of 1999. This bill recognizes that we are moving toward a New Economy and supports the engine of that New Economy. Let me explain.

In this decade, we have returned to our nation's historic growth rate of 3% plus growth. We haven't seen this in 30 years, but now we are back there again. We know what the last few years of growth feel like—America is starting to feel like an opportunity society again. We are moving toward some fundamental changes in our economic structure, toward a knowledge-based economy and further away from a resource-based economy. Key to these high growth rates has been overall productivity gains that are back in the 2% range, which has enabled the United States to experience real growth and real growth in incomes without significant inflation. A significant part of our productivity gains have come from gains in manufacturing productivity, which has approached 4% in each of the past three years. These manufacturing gains come directly from innovation, and in recent years these are largely driven by innovation in information technology—one of the most amazing results of R&D in this century from the invention of the transistor over 50 years ago to the development of the Internet today. And it looks like we are starting to get noticeable productivity gains in our services sector as well, also driven by information technology. The digital revolution is affecting every sector of our economy. As Andy Grove, Chairman of Intel, said, ''In five years, there will be no Internet companies. Every company will be an Internet company,'' or it won't be in business.

Some analysts look at the stock market today and compare it to the 1600's Dutch tulip bulbs investment bubble, maybe the largest bubble of all time, and its subsequent crash. The difference is that tulip bulbs did not fundamentally alter the means of communication and increase productivity as the Internet does.

Pharmaceuticals and health care is another area in which our country's investment in R&D has catapulted us above our competitors. A recent study from the Department of Commerce found that the United States is decades ahead of other countries in the pharmaceutical and health related industries directly because of our investment in R&D. In the past 50 years, researchers from U.S. pharmaceutical companies have discovered and developed breakthrough treatments for asthma, heart disease, osteoporosis, HIV/AIDS, stroke, ulcers, and glaucoma. And they have developed vaccines against previously common causes of infant death including polio, rubella, influenza B and whooping cough. Why is the U.S. pharmaceutical industry the number one global innovator in medicine? According to Raymond Gilmartin, Chairman, President and CEO of Merck & Co., because ''The U.S. pharmaceutical industry leads the world in its commitment to research. . .''

There have been at least a dozen major economic studies, including those of Nobel Prize winner Robert Solow, which conclude that technological progress accounts for 50%, and lately considerable more, of our total growth and has twice the impact on economic growth as labor or capital. For the long term health of our economy, we need to invest now in activities that will have a future payoff in innovation and productivity. A one percent increase in our nation's investment in research results in a productivity increase of 0.23%. We need to ensure our future by creating the institutions and incentives to increase R&D investment in the United States. This Act will replace our current, dysfunctional system of on-again, off-again R&D tax credits with a tax credit that is reliably permanent. In the global economy we will have to not only outperform our competitors, but out-innovate them. Giving our industry the tools to support their own innovation is a timely act.

This Act meets the goals of some groups who favor simply making the credit permanent and increasing the alternative credit by one percent, as does

the bill introduced by my esteemed colleague Senator HATCH. I am a cosponsor of Senator HATCH's bill. I believe we need to make the R&D credit permanent. But I feel strongly that we need further changes to the Act to increase its effectiveness, make it more accessible to small and start up businesses, update the credit to account for changes we are seeing in industry and, importantly, to complement the relationship between Federal and private sector research. The bill that Senators DOMENICI, BINGAMAN, FRIST, SNOWE, and myself are introducing makes these important changes, as well as making the R&D tax credit permanent.

Industry research is largely dependent on the basic research undertaken by the Federal government. Because industry itself does not perform basic research—84% of industry research is concentrated on product development, the final stage of R&D—the private sector must draw on government-funded research to develop ideas for new market products. Of all papers cited in U.S. industry patents, 73% are from government and non-profit funded research. This marriage of basic Federal research and applied private research is essential. Yet, as a percent of GDP, Federal investment in R&D has been nearly halved over the last 30 years. We are living off of the fruits of basic research from the mid-1960s. In addition, the national labs and universities are facing a brain drain by the private sector as engineers and scientists are in high demand and increasingly in short supply. The private sector recognizes the importance of work accomplished through Federal funding and knows this is a problem that needs to be addressed. This bill encourages collaboration between private sector research and national labs and universities and offers a financial incentive to use the national labs and universities. Specifically, the Act encourages industry to use the federally funded programs by qualifying 100% of contract research accomplished at universities, national labs, and small businesses. It also enables basic research at Federally Funded R&D Centers to count toward the basic research credit. By expanding the credit to research done in consortia, the Act also recognizes that research today is more often done in collaboration than in isolation.

The fastest method of moving research into the marketplace is often through small, startup companies. The Act updates the tax credit rules to accommodate the special R&D cycles faced by these companies. By supporting the small but crucial R&D efforts of new technology-based firms, the Act nurtures the very companies who contribute disproportionately to our national productivity and employment growth.

The Act also updates our view of R&D. For the alternative credit, it calculates R&D expenditures with respect to a rolling baseline, rather than a fixed 1980's baseline that is increasingly remote and outdated as time passes.

Mr. President, I believe there has been a growing awareness among Senators over the past couple of years that technology has been one of the driving forces behind our fantastic economic growth in this country. Despite that we are finally out of the red on the budget and finally in the black, we know that continued control and restraint must be exercised on the budget and we will have to make difficult choices about what programs to fund and what tax cuts to make. But now that we know that technological progress is responsible for 50% or more of economic growth, I think we owe it to ourselves to encourage such progress whenever possible. It is an investment in our future which we cannot do without.

By Mr. SPECTER:

S. 952. A bill to expand an antitrust exemption applicable to professional sports leagues and to require, as a condition of such an exemption, participation by professional football and major league baseball sports leagues in the financing of certain stadium construction activities, and for other purposes; to the Committee on the Judiciary.

STADIUM FINANCING AND FRANCHISE RELOCATION ACT OF 1999

Mr. SPECTER. Mr. President, I have sought recognition today to introduce legislation, the Stadium Financing and Franchise Relocation Act of 1999, which is designed to respond to the need for stabilizing major league baseball and football franchises located in metropolitan areas of the United States.

I have long been concerned with the pressure put upon communities by baseball and football clubs seeking new playing facilities, where, with the gun to their heads of the team's overt or tacit threat to move to another city, government leaders feel compelled to have taxpayers finance a lion's share of ballpark and stadium construction costs. As those costs rise—a present state-of-the-art new facility goes for close to $300 million—those pressures have intensified.

Professional sports teams are entrusted with a public interest. The movement of the Dodgers from Brooklyn, which broke the hearts of millions of their Flatbush followers, was the start of pirating of sports franchises in America, and should never have been allowed. It was accompanied, of course, by the flight of the Giants from New York to San Francisco.

Since then, the matter has proliferated to an almost absurd degree. It is hard to understand why the taxpayers of Maryland and Baltimore had to be in a bidding contest for the Cleveland Browns, when Baltimore should have had its own team, the Colts, instead of the Colts moving out of Baltimore in the middle of the night to go to Indianapolis.

I have participated in America's love affair with sports since I was a youngster in Wichita, Kansas, reading the box scores in the Wichita Eagle every morning because of my love and passion for baseball. I have been attending Phillies and Eagles games, and, when I can, Pirates and Steelers games, because of my love for each of these sports. They are tremendously exciting.

Basically, it was unfair for the old Browns to have been taken out of Cleveland, but now I am glad to hail the arrival of the new Browns, even though it was at great cost to the taxpayers, and deprived the Eagles of a well-earned first overall draft pick.

The value of sports franchises to their owners has ballooned in recent years. Jeffrey Lurie bought the Philadelphia Eagles in 1995 for a then-high price of $185 million. Last year, the successful bidder for an expansion NFL franchise in Cleveland paid $530 million. The bidding for the Washington Redskins franchise (including Cooke Stadium) has surpassed $800 million. There also seems to be no limit to the amount of money available to club owners when it comes to paying players—witness Mike Piazza's signing last year of a $91 million ten-year contract with the New York Mets.

New ballparks and stadiums clearly provide an enhancement to the culture and tax base of communities. That said, however, there is also no doubt that having a new ballpark or stadium significantly increases the value of a sports franchise for its owner. In December, 1998, Forbes Magazine estimated the net worth of the nation's professional sports teams. Seven of the top ten valued baseball franchises and eight of the top ten valued football franchises were in cities with ballparks and stadiums built or approved to be built since 1990.

In January, 1999, the Philadelphia Inquirer quoted Jeffrey Stein, managing director of McDonald Investments, a Cleveland brokerage house, who said: ''New stadiums, in and of themselves, significantly enhance the value of a team.'' He cited the Cleveland Indians Baseball Club as an example. In the December, 1998, Forbes article, the value of that team, which now plays in beautiful new Jacobs Field, was listed as $322 million, the third highest in baseball. In 1986, the Indians had been purchased for $35 million. In 1993, the last year the Indians played at Cleveland Stadium, the team had revenues of $54.1 million. Its 1997 revenues were $140 million.

The value of these sports franchises to a community is reflected in the astronomical broadcast rights fees the sports leagues command in the U.S. marketplace. Ten years ago, the National Football League received $970 million a year for its network television rights. The NFL now receives three times that amount, through contracts with TV and cable networks that pay the League $17.6 billion for its TV rights over an 8-year period commencing with the 1998 season, an average of $2.2 billion per year, while Major

League Baseball annually derives more than $400 million from this source. These revenues are shared by the clubs and their players.

One would think some of that giant revenue windfall might trickle down and be used to help finance new ballparks and stadiums, which produce greatly enhanced revenues for team owners, yet it seems the more TV money a league makes, the more its clubs demand from local taxpayers to fund the construction of new playing facilities. The irony of this is that none of these huge TV revenues would accrue to the clubs and their players if the leagues did not have the benefit of an antitrust exemption permitting clubs to pool their TV rights.

In the interest of fairness, I believe the leagues should, with a small portion of these TV revenues, assist local communities in the financing of new playing facilities for the leagues' clubs, as a condition of their continuing to receive the antitrust exemption which permits pooling of TV rights.

I also believe the leagues should have an antitrust exemption which permits them to deny a club's request to move, thus minimizing the implied threat to move which has characteristically accompanied demands upon local government for a new ballpark or stadium.

Both these objectives are met by the legislation I am offering today. It will clarify the broadcast antitrust exemption given to sports leagues and give the National Football League and Major League Baseball an opportunity to continue to receive it by agreeing to place 10% of their network TV revenues into a trust fund to be used to help finance construction or renovation of ballparks and stadiums for use by their teams. Trust fund revenues will be restricted to such use and will be excluded from the league's gross receipts which are distributed to clubs and players.

Money from the trust fund will be provided to finance up to one-half the cost of construction or renovation of ballparks and stadiums on a matching fund basis, conditioned upon the local government's agreement to provide at least one dollar of financing for every two dollars to be provided from the trust fund.

Thus, for example, if the cost of constructing a new stadium for the Philadelphia Eagles, or for the Pittsburgh Steelers, were $280 million, the National Football League would be obliged to provide $140 million to each such project, on condition that the city and state, combined, provided at least $70 million. Ideally, the League would pay one-half the cost out of the trust fund and the other half would be financed by the club owner and the local government.

The legislation will also enlarge the antitrust exemption given to baseball, basketball, football, and hockey leagues to permit those leagues to deny a member club's request to move its franchise to a different city.

My bill will take effect on the date of its passage, and will apply to all network TV revenues thereafter received by the leagues, and to all new ballpark and stadium facilities not yet constructed, such as the construction now underway in Cleveland and Pittsburgh.

I have sought recognition today to introduce the Stadium Financing and Franchise Relocation Act of 1999. This legislation would require that the National Football League and Major League Baseball act to provide financing for 50 percent of new stadium construction costs, and that the National Football League be given a limited antitrust exemption to regulate franchise moves.

This legislation is necessary because baseball and football have for too long had a public-be-damned attitude. At the present time, major league sports is out of control on franchise moves for football teams and the demands upon cities and states for exorbitant construction costs is a form of legalized extortion in major league sports.

The National Football League has a multi-year television contract for $17.6 billion which it enjoys by virtue of a special status and antitrust exemption which they have for revenue sharing or else they could not collect television receipts of $17 billion. But, at the same time, when they are asked to step forward and help with stadium construction costs, which are minimal compared to their television receipts, they put one community in competition with another community. A franchise, being what it is, leaves a city like Hartford and a state like Connecticut to offer $375 million to lure the Patriots from Massachusetts to Connecticut.

This is a problem which is particularly acute for my State, Pennsylvania, which is now looking at the construction of four new stadiums. Two are now under construction in western Pennsylvania—Pittsburgh for the Pirates and the Steelers—and two more are being sought in eastern Pennsylvania for the Phillies and for the Eagles. It is a $1 billion price tag which we are looking at now, which is significant for public funding, especially in a context where our schools are under funded, where our housing is in need of assistance, where we need funds for child assistance, where we need funds for transition from welfare to work, where we need funds for highways, and for so many other important matters. But, understandably, a NFL franchise is a very major matter for the prestige of a city and also for the economy of a city. And a major league baseball franchise, similarly, is a major matter for the economy and the prestige of a city.

You have a situation, for example, where the Colts left Baltimore in the middle of the night for Indianapolis. Then there was a bidding war for the Browns, which left Cleveland to go to Baltimore at an enormous cost to the taxpayers of Maryland and Baltimore. Indianapolis ought to have a football team, but they ought not to have Baltimore's football team. Similarly, Cleveland ought to be able to retain the Browns. It has been a matter of great pride for Cleveland for many, many years.

The start occurred in 1958 when the Dodgers left Brooklyn to go to Los Angeles. Brooklyn had no more precious possession than ''Dem Bums,'' the Dodgers. And I recall as a youngster the 1941 World Series, Mickey Owens' famous fumble, dropping of the third strike, and the tremendous tradition that the Dodgers had with Jackie Robinson and Pee Wee Reese in the Pennant races. And off they went to Los Angeles. Los Angeles should have had a baseball team, but not Brooklyn's baseball team. And they had a twofer, they took the Giants out of New York and put them in San Francisco at the same time.

Baseball has had an opportunity, to some extent, to control franchise moves because baseball has an unlimited antitrust exemption. And they have it in a very curious, illogical way. Justice Oliver Wendell Holmes ruled in the 1920s that baseball was a sport and not involved in interstate commerce and therefore exempt. That has been an item which has been out of touch with reality for a long time. Justice Blackmun said baseball was a big business, in a Supreme Court decision, and involved in interstate commerce. But since it had been unregulated with the antitrust exemption for so long, it has been left to Congress to make a change.

It may be that we ought to make a change and take away the antitrust exemption from baseball generally. Baseball fiercely resists any contribution to stadium construction costs—fiercely resists with a lobbying campaign, which is now underway, of great intensity. I will not list the cosponsors who have prospectively dropped off this bill because of that lobbying.

I am introducing this bill on behalf of Senator HATCH, chairman of the Judiciary Committee, Senator BIDEN, former chairman of the Judiciary Committee, and myself. We had a hearing in the Antitrust Subcommittee of Judiciary where I serve, and I asked the head of the Antitrust Division of the Department of Justice and the Chairman of the Federal Trade Commission to take a look at revoking baseball's antitrust exemption totally. Baseball has not been responsible in dealing with salary caps and with revenue sharing. So there would be some equality and some parity for cities like Pittsburgh, small cities, where you have the financial power of the New York Yankees dominating the league, buying up all the players; where you have Mr. Murdoch acquiring the Dodgers for a giant price in connection with his satellite ideas and with television revenues and the superstation which Atlanta now has.

Here you have a goose which is laying a golden egg and baseball has not

faced up to fairness in changing its approach to dealing with the realities of the market and has not undertaken the salary caps and the revenue sharing necessary to stabilize baseball.

So this bill goes, to a limited extent, on conditioning baseball's continuation of its antitrust exemption to helping with stadium construction costs. I want them to help build a stadium for the Philadelphia Phillies. I want them to help on the construction costs for the Pittsburgh Pirates. I went them to help on construction costs for new teams, where cities are facing the reality of either spending hundreds of millions of dollars for these new stadiums, or having the teams flee to other cities. That is something baseball ought to face up to, even though it is true that baseball has a different situation from football, because baseball's television revenues are lesser. But there has to be some equality and there has to be some parity. Or if baseball wants to function like any other business, let them do so, but without the antitrust exemption, and let's see what will happen to those giant salaries for the baseball players and those tremendous rates and the way baseball operates, if it does not have an antitrust exemption which is very special and unique.

Football has an antitrust exemption as to revenue sharing. Without that exemption they could not have the $17 billion multi-year television contract. They have plenty of funds to face up to stadium construction costs for the Pittsburgh Steelers and for the Philadelphia Eagles and for other teams. The facts are not yet before the public, but I hear the rumors that football is putting up a very substantial sum to have the Patriots remain in Massachusetts to top the bid of Connecticut. Connecticut is a television market, according to the media, about 24th. Boston, MA, is a media market about 6th. And the National Football League wants to protect its media market so they will put up a substantial sum of money to accomplish that.

It ought to be regularized and they ought to have a specific obligation. And 50 percent is not too much for the leagues to contribute. That would leave the owners with 25 percent and would still leave the public with 25 percent. One of the prospective cosponsors dropped off the bill because he does not want to be associated with even 25 percent for the public. But I suggest when the raiders—I am not talking about the Oakland Raiders; I am talking about the sports franchise raiders coming to his State, which I shall not name—go after his baseball team and go after his football team, watch the scurrying around to pay a lot more than 25 percent unless there is some leveraging and some compulsion.

Baseball and football are not going to face up to a fair allocation of funds if they are left to their own devices. But the Congress of the United States does have control of the antitrust exemption and we can take it away from baseball or we can limit it for baseball. And we can take away, if we choose, the football antitrust exemption on revenue sharing. So I do believe this is a matter which is of significant public interest. When a city like Hartford and a State like Connecticut bids $375 million of funds which could obviously be used better; where Pennsylvania is looking at more than $1 billion in four new stadiums at a time when $17 billion comes to the NFL, and the salaries are astronomical. If the leagues are to have this exemption, if they are to have this special break, they ought to face up to some public responsibility.

The second part of this legislation would grant football a limited antitrust exemption so they could regulate franchise moves. When the Raiders moved from Oakland to Los Angeles, there was a multimillion-dollar lawsuit which the NFL had to pay. So they are reluctant to take a stand on exercising their league rules which require three-fourths approval. But, if they had an antitrust exemption to this limited extent, then they would be in a position to ameliorate the larceny. Maybe it would be petit larceny instead of grand larceny. But I think that kind of antitrust exemption would be worthwhile.

As you can tell, I feel very strongly about this subject. I have been a sports fan since I was 8 years old—perhaps 5 years old when my family, living in Wichita, KS, made a trip to Chicago for the World's Fair and I became a Cubs fan. And I became a Phillies fan when I moved to Philadelphia more than a half century ago. And I am a Pirates fan, too, except when they are playing the Phillies.

If you lived in Wichita, KS, when the morning paper came, the major item of interest would be the sports page and the box scores. And I am an Eagles fan and a Steelers fan and held season tickets as early as 1958. When the Dodgers and Giants moved away from Brooklyn and New York City, I thought that was really a very serious breach. Such moves have a great impact on the public, and we ought to stop this legalized extortion, and we ought to get a fair share for the tremendous antitrust break which baseball and football enjoy.

By Mr. SMITH of New Hampshire:

S. 954. A bill to amend title 18, United States Code, to protect citizens' rights under the second amendment to obtain firearms for legal use, and for other purposes; to the Committee on the Judiciary.

SECOND AMENDMENT PRESERVATION ACT OF 1999

Mr. SMITH of New Hampshire. Mr. President, I rise today to introduce the Second Amendment Preservation Act of 1999.

Mr. President, my bill is intended to address the lawsuits that have been filed by various municipal governments against firearms manufacturers. These lawsuits are premised on the novel theory that manufacturers in full compliance with all of the laws governing the production of their products can nevertheless be held liable for the criminal misuse of those products by individuals who are completely beyond their control. This radical notion is flatly contrary to the principle of individual responsibility on which the tort laws of our Nation are based.

In at least some cases, Mr. President, these lawsuits seem to be intended to subject firearms manufacturers, importers and dealers to legal costs that are so onerous that they may not be able to defend themselves, or indeed be able to remain in business. A majority of firearms manufacturers, importers and dealers are small, privately-owned businesses that cannot afford to bear the legal costs of defending themselves in a large number of judicial forums. Moreover, compared to most firearms manufacturers, importers and dealers, States and local governments are large and relatively wealthy entities that are able to spend large amounts of taxpayers' dollars on wars of attrition against small business.

Mr. President, these lawsuits represent an effort by social activists and trial lawyers to use the Nation's judiciary to secure victories against the firearms industry that they never would be able to achieve through the legislative process. In fact, the firearms industry won't be the last target of these lawsuits. In a January 31, 1999, article in the Washington Post, plaintiffs' attorney John Coale stated ''. . . we are interested in taking a close look at the exorbitant prices of prescription drugs for the elderly, for example.'' ''Unless the courts reject our approach,'' Coale continued, ''we will continue to utilize it to tackle industry bullies.''

Thankfully, Mr. President, the public is not fooled. A December, 1998, survey of 1,008 U.S. adults by DecisionQuest, a jury consulting firm, found that 66.2% of American adults oppose these lawsuits against firearms manufacturers. Only 19.3% of Americans believe that these suits are justified.

Even some anti-gun elements of the media oppose these lawsuits. A March 1, 1999, editorial in the Boston Globe stated that ''. . . guns should be controlled by the legislative process rather than through litigation.'' ''gun makers may be responsible for flaws in their products that lead to injury or death,'' the editorial continued. ''Making manufacturers liable for the actions of others,'' the editorial concluded, ''. . . stretches the boundaries beyond reasonable limits . . . .''

Mr. President, I believe that fairness requires that a unit of government that undertakes an unsuccessful ''fishing expedition'' against a firearms manufacturer, importer or dealer should bear the costs of that business in defending itself against such an frivolous and unwarranted civil action. Fairness also requires that taxpayers not be required to pay millions of dollars to wealthy attorneys, out of

awards that are intended, at least in part, to benefit the victims of crime.

The second amendment to the Constitution of the United States requires that Congress must respond to actions that are intended to, and that would have the effect of, nullifying that provision of the Bill of Rights. Congress has the power under the second amendment, and under the Commerce Clause, to take appropriate action to protect the rights of citizens to obtain and own firearms.

Onr action that Congress may take, Mr. President, is to provide protection from excessive and unwarranted legal fees. The Second Amendment Preservation Act, which I am introducing today, provides that protection. My bill limits attorneys' fees to plaintiffs in civil lawsuits that seek ''to hold a firearms manufacturer, importer, or dealer liable for damages caused by the unlawful or tortuous use of a firearm by a person not employed by or affiliated with the manufacturer, dealer, or importer.'' Under my bill, those fees are limited to the lesser of $150 per hour, plus expenses, or 10% of the amount that the plaintiff is awarded in the action.

Further, my bill provides that in lawsuits in which the defendant is found by the court to be ''not wholly or primarily liable for the damages sought,'' the plaintiff must reimburse the defendant for reasonable attorney's fees and costs.

Finally, Mr. President, my bill provides that if a court strikes down this legislation as unconstitutional, the decision is directly appealable as of right to the Supreme Court of the United States.

Mr. President, I ask unanimous consent that the text of my bill, the Second Amendment Preservation Act, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 954

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Second Amendment Preservation Act of 1999''.

SEC. 2. FINDINGS.

Congress finds that—

(1) a number of State and local governments have commenced civil actions, or are considering commencing civil actions, against manufacturers, importers, and dealers of firearms based on the unlawful use of the firearms by a purchaser or other person;

(2) in at least some cases, the intent in bringing the action is to subject manufacturers, importers, and dealers to legal costs that are so onerous that the manufacturers, importers, and dealers may not be able defend themselves, or indeed be able to remain in business;

(3) a majority of manufacturers, importers, and dealers of firearms are small, privately owned businesses that cannot afford to bear the legal costs of defending themselves in a large number of judicial forums;

(4) compared to most manufacturers, importers, and dealers of firearms, States and local governments are large and relatively wealthy entities that are able to spend large amounts of taxpayers' dollars on a war of attrition with small businesses;

(5) fairness requires that—

(A) a unit of government that undertakes an unsuccessful ''fishing expedition'' against a firearm manufacturer, importer, or dealer bear the cost of defending against its frivolous and unwarranted civil action; and

(B) taxpayers not be required to pay millions of dollars to wealthy attorneys, out of awards that are intended, at least in part, to benefit the victims of crime;

(6) the Second Amendment to the Constitution requires that Congress respond to actions that are intended to, and that would have the effect of, nullifying that provision of the Bill of Rights;

(7) Congress has power under the Second Amendment and under the Commerce Clause to take appropriate action to protect the right of citizens to obtain and own firearms; and

(8) one appropriate action that Congress may take is to provide protection from excessive and unwarranted legal fees.

SEC. 3. RULES GOVERNING ACTIONS BROUGHT TO CURTAIL THE SALE OR AVAILABILITY OF FIREARMS FOR LEGAL PURPOSES.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following:

''§ 926B. Rules governing actions brought to curtail the sale or availability of firearms for legal purposes

''(a) DEFINITIONS.—In this section, the term 'action brought to curtail the sale or availability of firearms for legal purposes' means a civil action brought in Federal or State court that—

''(1) has as a defendant a firearms manufacturer, importer, or dealer in firearms;

''(2) expressly or by implication requests actual damages, punitive damages, or any other form of damages in excess of the lesser of—

''(A) $1,000,000; or

''(B) 50 percent of the net assets of any such defendant; and

''(3) seeks, in whole or in part, to hold a firearms manufacturer, importer, or dealer liable for damages caused by the unlawful or tortious use of a firearm by a person not employed by or affiliated with the manufacturer, dealer, or importer.

''(b) LIMITATION ON ATTORNEY'S FEES AWARDED TO PLAINTIFF.—In a civil action brought to curtail the sale or availability of firearms for legal purposes, notwithstanding any other provision of law or any agreement between any persons to the contrary, amounts paid in plaintiff's attorney's fees in connection with the settlement or adjudication of the action shall not exceed the lesser of—

''(1) an amount equal to $150 per hour for each hour spent productively, plus actual expenses incurred by the attorney in connection with the action; or

''(2) an amount equal to 10 percent of the amount that the plaintiff receives under the action.

''(c) ATTORNEY'S FEES FOR THE DEFENDANT.—In a civil action brought to curtail the sale or availability of firearms for legal purposes, if the court finds that the defendant is not wholly or primarily liable for the damages sought, the court shall require the plaintiff to reimburse the defendant for reasonable attorney's fees and court costs, as determined by the court, incurred in litigating the action, unless the court finds that special circumstances make such a reimbursement unjust.

''(d) POWER OF CONGRESS.—If any court renders a decision in an action brought to curtail the sale or availability of firearms for legal purposes or in any other proceeding that the Constitution does not confer on Congress the power to enact this section, the decision shall be directly appealable as of right to the Supreme Court.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 44 of title 18 is amended by inserting after the item relating to section 926A the following:

''926B. Rules governing actions brought to curtail the sale or availability of firearms for legal purposes.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) takes effect on the date of enactment of this Act; and

(2) applies to any action pending or on appeal on that date or brought after that date.

By Mr. WARNER (for himself, Mr. ROBB, and Mr. MCCONNELL):

S. 955. A bill to allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield in Virginia, as previously authorized by law, by purchase or exchange as well as by donation; to the Committee on Energy and Natural Resources.

LONGSTREET'S FLANK ATTACK

Mr. WARNER. Mr. President, I rise today to introduce legislation which will preserve a site of great historical importance. The legacy of Civil War battlefields must be perpetuated, not only to commemorate those who lost their lives in this tragic epoch, but also to consecrate land upon which some our country's finest strategic maneuvers occurred. On the hallowed land of Wilderness, Virginia occurred one of the greatest tactical stratagems in military history. Snatching the initiative to turn the tide of battle, Lt. General James A. Longstreet, under the command of General Robert E. Lee, forced back Union forces directed by General Ulysses S. Grant, in an advance known as ''Longstreet's Flank Attack''.

Mr. President, this legislation will allow the Park Service to acquire this stretch of land, which will serve to ''complete'' Wilderness Battlefield. The legacy of the Civil War is far-reaching. A war which wrought such destruction has been the source of much fascination for scholars and amateur historians. The Battle of Wilderness is legendary for the tactical skills employed and the caliber of the soldiers who fought. There, among the tangled forests and twisted undergrowth, the Union Army, numerically superior and well supplied, were forced into confrontation with General Lee's hard scrabble Confederate troops. It would be one of the last battles in which Lee's incomparable martial machine would force Grant's Army of the Potomac to withdraw. It is also the site of the wounding of Gen. Longstreet, who, like General Stonewall Jackson, was wounded by friendly fire. Though Longstreet's injury was not mortal, the genius of the cadre of officers under the command of Lee dwindled. Thus would begin the twilight of the Confederacy.

Legislation passed in the 102nd Congress would have allowed the Park

Service to acquire this land by donation. Despite numerous efforts, the Park Service has been unable to accomplish this. The legislation at hand would amend Public Law 102–541 to allow the Park Service to procure the land by purchase or exchange as well as donation. The heritage and history which dwell amongst the interlaced undergrowth of this land deserve our recognition. I look forward to the swift passage of this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 955

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

SECTION 1. ADDITION TO WILDERNESS BATTLEFIELD, VIRGINIA.

(a) REMOVAL OF CONDITION ON BATTLEFIELD ADDITION.—Section 2(a)(2) of Public Law 102–541 (16 U.S.C. 525k note; 106 Stat. 3565) is amended by striking ''*Provided*,'' and all that follows through ''Interior''.

(b) AUTHORIZED METHODS OF ACQUISITION.—

(1) ACQUISITION OF CERTAIN LANDS BY DONATION.—Section 3(a) of Public Law 101–214 (16 U.S.C. 425*l*(a)) is amended by adding at the end the following new sentence: ''However, the lands designated 'P04–04' on the map referred to in section 2(a) numbered 326–40072E/89/A and dated September 1990 may be acquired only by donation.''.

(2) REMOVAL OF RESTRICTION ON ACQUISITION OF ADDITION.—Section 2 of Public Law 102–541 (16 U.S.C. 525k note; 106 Stat. 3565) is amended by striking subsection (b).

(c) TECHNICAL CORRECTION.—Section 2(a) of Public Law 101–214 (16 U.S.C. 425k(a)) is amended by striking ''Spotslyvania'' and inserting ''Spotsylvania''.

By Ms. SNOWE (for herself, Mr. HARKIN, and Mr. FRIST):

S. 956. A bill to establish programs regarding early detection, diagnosis, and interventions for newborns and infants with hearing loss; to the Committee on Health, Education, Labor, and Pensions.

NEWBORN AND INFANT HEARING SCREENING AND INTERVENTION ACT OF 1999

● Ms. SNOWE. Mr. President, I rise today to introduce the Newborn and Infant Hearing Screening and Intervention Act of 1999. This bill is a companion bill to H.R. 1193, introduced in the House by Representative JIM WALSH. I am pleased to be joined again this year by my colleague from Iowa, Senator HARKIN, who has long been a champion of the hearing impaired, and my colleague from Tennessee, Senator FRIST.

We usually associate hearing problems with the aging process, and it is true that the largest group of Americans suffering from hearing impairment are those in the 65 to 75 year age range. But at the same time, approximately 1.5 to 3 out of every 1000 children—or as many as 33 children per day—are born with significant hearing problems. According to the National Institute on Deafness and Other Communication Disorders, as many as 12,000 infants are born each year in the United States with some form of hearing impairment.

In recent years, scientists have stressed that the first years of a child's life are crucial to their future development. This makes early detection and intervention of hearing loss a necessity if we are to ensure that all our children get the strong start they deserve. Specialists in speech and language development believe that the crucial period of speech and communication in a child's life can begin as early as six months of age. Unfortunately, though the average age of diagnosis of hearing loss is close to three years of age.

The ability to hear is a major element of one's ability to read and communicate. To the extent that we can help infants and young children overcome disabilities detected early in life, we will improve their ability to function in society, receive an education, obtain meaningful employment, and enjoy a better quality of life. Without early diagnosis and intervention, these children are behind the learning curve—literally—before they have even started. They should not be denied a strong start in life simply for the lack of a simple screening test.

There are many causes of hearing loss, and in many states a newborn child is screened only if the physician is aware of some factor that puts that baby in a risk category. The good news is that over 550 hospitals in 46 states operate universal newborn hearing screening programs. Nine states—Hawaii, Rhode Island, Mississippi, Connecticut, Colorado, Utah, Virginia, West Virginia, and Massachusetts—have passed legislation requiring universal newborn hearing screening. Hawaii, Mississippi, Rhode Island, Utah, and Wyoming have statewide early hearing detection and intervention programs. And scientists across the country are developing and implementing model rural-based infant hearing, screening, follow-up, and intervention programs for children at risk for hearing and language disabilities.

The bad news is that, unfortunately, only about 20 percent of the babies in this country are born in hospitals with universal newborn hearing screening programs, and more than 85 percent of all hospitals do not do a hearing screening before sending the baby home.

Universal screening is not a new idea. As early as 1965, the Advisory Committee on Education of the Deaf, in a report of the Secretary of Health, Education and Welfare, recommended the development and nationwide implementation of ''universally applied procedures for early identification.'' In 1989, former Surgeon General C. Everett Koop used the year 2000 as a goal for identifying 90 percent of children with significant hearing loss before they are one year old.

In 1997, an expert panel at the National Institute of Deafness and Other Communication Disorders recommended that the first hearing screening be carried out before an infant is three months old in order to ensure that treatment can begin before six months of age. The Panel also recommended that the most comprehensive and effective way of ensuring screening before an infant is six months old is to have newborns screened before they sent home from the hospital. But a 1998 report by the Commission on Education of the Deaf estimated that the average age at which a child with congenital hearing loss was identified in the United States was a 2½ to 3 years old, with many children not being identified until five or six years old.

It is time to move beyond the recommendations and achieve the goal of universal screening. In addition to the nine states that require screening, the Bureau of Maternal and Child Health, in conjunction with the Centers for Disease Control, is helping 17 states commit to achieving universal hearing screening by the year 2000. This plan will lead to the screening of more than one million newborns a year, but it still leaves more than half the states without universal screening programs.

The purpose of the bill I am introducing today is to provide the additional assistance necessary to help all the states in implementing programs to ensure that all our newborns are tested and to ensure that those identified with a hearing impairment get help. Specifically, the bill:

(1) Authorizes $5 million in FY 2000 and $8 million in FY 2001 for the Secretary of Health and Human Services to work with the states to develop early detection, diagnosis and intervention networks for the purpose of developing models to ensure testing and to collect data;

(2) Authorizes $5 million in FY 2000 and $7 million in FY 2001 for the Centers for Disease Control to provide technical assistance to State agencies and to conduct applied research related to infant hearing detection, diagnosis and treatment/intervention; and

(3) Authorizes the National Institutes of Health to carry out research on the efficacy of new screening techniques and technology.

A baby born today will be part of this country's future in the 21st century. Surely we owe it to that child to give them a strong start on that future by ensuring that if they do have a hearing impairment it is diagnosed and treatment started well before their first year of life is completed. I urge my colleagues to join me, Senator HARKIN, and Senator FRIST in supporting the Newborn and Infant Hearing Screening and Intervention Act of 1999.

● Mr. HARKIN. Mr. President, I am pleased to introduce, along with my colleagues, Senator SNOWE and Senator FRIST, the Newborn and Infant Hearing Screening and Intervention Act of 1999.

Tne Newborn and Infant Hearing Screening and Intervention Act would help States establish programs to detect and diagnose hearing loss in every

newborn child and to promote appropriate treatment and intervention for newborns with hearing loss. The Act would fund research by the National Institutes of Health to determine the best detection, diagnostic, treatment and intervention techniques and technologies.

Every year, approximately 12,000 children in the United States are born with a hearing impairment. Most of them will not be diagnosed as hearing-impaired until after their second birthday. The consequences of not detecting early hearing impairment are significant, but easily avoidable.

Late detection means that crucial years of stimulating the brain's hearing centers are lost. It may delay speech and language development. Delayed language development can retard a child's educational progress, minimize his or her socialization skills, and as a result, destroy his or her self-esteem and confidence. On top of all that, many children are diagnosed incorrectly as having behavioral or cognitive problems, simply because of their undetected hearing loss.

In 1988, the Commission on Education of the Deaf reported to Congress that early detection, diagnosis and treatment were essential to improving the status of education for people who are deaf in the United States. Based on that report and others, in 1991, when I was chair of the Labor-HHS Subcommittee on Appropriations, we urged the National Institute on Deafness and Other Communication Deisorders—NIDCD—to determine the most effective means of identifying hearing impairments in newborn infants. In 1993, the Labor-HHS Subcommittee supported NIDCD's efforts to sponsor a consensus development conference on early identification of hearing impairment in infants and children. And in 1998, the Subcommittee encouraged NIDCD to pursue research on intervention strategies for infants with hearing impairments, and encouraged HRSA to provide states with the results of the NIH study on the most effective forms of screening infants for hearing loss.

Mr. President, the Act we are introducing today builds on these earlier efforts. The Act would help states develop programs that many of them already are working on; it would not impose a single federal mandate. At least eight states already have mandatory testing programs; many others have legislation pending to establish such programs. Other states have achieved universal newborn testing voluntarily. These programs can work; they deserve federal help.

One of the highlights of my Congressional career, indeed, of my life, has been working on policies and laws to ensure that people with disabilities have an equal opportunity to succeed in our society. This is especially meaningful to me, because my brother Frank became deaf as a child.

I watched Frank grow up, and I saw how few options and support services were available for people who were deaf. I remember the frustrations and challenges Frank faced, and I told myself early on that I would do all I could to break down the barriers in our society that prevented people who were deaf from reaching their potential. By supporting early screening, diagnosis, and treatment programs, this act would go a long way toward accomplishing that goal.

I would like to thank Senators SNOWE and FRIST for their hard work and support of this act, and I hope our colleagues will join us in this worthy effort.●

By Mr. KOHL:

S. 957. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes, to the Committee on the Judiciary.

SUNSHINE IN LITIGATION ACT OF 1999

Mr. KOHL. Mr. President, I rise today to offer the Sunshine in Litigation Act of 1999, a measure that addresses the growing abuse of secrecy orders issued by our Federal courts. All too often our Federal courts allow vital information that is discovered in litigation—and which directly bears on public health and safety—to be covered up, to be shielded from mothers, fathers and children whose lives are potentially at stake, and from the public officials we have asked to protect our health and safety.

All this happens because of the use of so-called ''protective orders''—really gag orders issued by courts—that are designed to keep information discovered in the course of litigation secret and undisclosed. Typically, injured victims agree to a defendant's request to keep lawsuit information secret. They agree because defendants threaten that, without secrecy, they will fight every document requested and will refuse to agree to a settlement. Victims cannot afford to take such chances. And while courts in these situations actually have the legal authority to deny requests for secrecy, typically they do not—because both sides have agreed, and judges have other matters to which they prefer to attend. So judges are regularly and frequently entering these protective orders, using the power of the Federal government to keep people in the dark about the dangers they face.

Perhaps the worst offenders are the tobacco companies. They have used protective orders not only to keep incriminating documents away from public view, but also to drive up litigation costs by preventing document sharing, effectively forcing every successive plaintiff to ''reinvent the wheel.'' One tobacco industry official even boasted, ''The aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of our money, but by making the other S.O.B. spend all his.''

This systematic abuse of secrecy orders is one of the reasons that it took more than four decades of tobacco litigation to achieve a reasonable settlement. In fact, Congress and the public's shift in recent years against Big Tobacco resulted in large part from disclosure of materials that had been concealed under secrecy orders, including materials regarding youth targeting and nicotine manipulation.

The problem of excessive secrecy orders in cases involving public health and safety has been apparent for years. The Judiciary Committee first held hearings on this issue in 1990 and again in 1994. In 1990, Arthur Bryant, the executive director of Trial Lawyers for Public Justice, told us, ''The one thing we learned . . . is that this problem is far more egregious than we ever imagined. It goes the length and depth of this country, and the frank truth is that much of civil litigation in this country is taking place in secret.''

Four years later, attorney Gerry Spence told us about 19 cases in which he had been involved where his clients had been required to sign secrecy agreements. They included cases involving defects in a hormonal pregnancy test that caused severe birth defects, a defective braking system on a steamroller, and an improperly manufactured tire rim.

But that's not surprising, because individual examples of this problem abound. For over a decade, Miracle Recreation, a U.S. playground equipment company, marketed a merry-go-round that caused serious injury to scores of small children—including severed fingers and feet. Lawsuits brought against the manufacturer were confidentially settled, preventing the public and the Consumer Products Safety Commission from learning about the hazard. It took more than a decade for regulators to discover the danger and for the company to recall the merry-go-round.

There are yet more cases like these. In 1973, GM allegedly began marketing vehicles with dangerously placed fuel tanks that tended to rupture, burn, and explode on impact more frequently than regular tanks. Soon after these vehicles hit the American road, tragic accidents began occurring, and lawsuits were filed. More than 150 lawsuits were settled confidentially by GM. For years this secrecy prevented the public from learning of the alleged dangers presented by these vehicles—millions of which are still on the road. It wasn't until a 1993 trail that the public learned about sidesaddle gas tanks and some GM crash test data that demonstrated these dangers.

The thrust of our legislation is straightforward. In cases affecting public health and safety, Federal courts would be required to apply a balancing test: they could permit secrecy only if

the need for privacy outweighs the public need to know about potential health or safety hazards. Moreover, all courts—both Federal and state—would be prohibited from issuing protective orders that prevent disclosure to regulatory agencies. In this way, our bill will bring crucial information out of the darkness and into the light.

Although this law may result in some small additional burden on judges, a little extra work seems a tiny price to pay to protect blameless people from danger. Every day, in the course of litigation, judges make tough calls about how to construe the public interest and interpret other laws that Congress passes. I am confident that the courts will administer this law fairly and sensibly. If this requires extra work, then that work is well worth the effort. After all, no one argues that spoiled meat should be allowed on the market because stricter regulations mean more work for FDA meat inspectors.

Having said all this, we must in fairness recognize that there is another side to this problem. Privacy is a cherished possession, and business information is a cherished commodity. For this reason, the courts must, in some cases, keep trade secrets and other business information confidential.

But, in my opinion, today's balance of these interests is entirely inadequate. Our legislation will ensure that courts do not carelessly and automatically sanction secrecy when the health and safety of the American public are at stake. At the same time, this bill will allow defendants to obtain secrecy orders when the need for privacy is significant and substantial.

Indeed, this proposal would simply codify the practices of the most thoughtful Federal judges. As Justice Breyer has said, ''no court can or should stand silent when they see an immediate, serious risk to . . . health or safety.'' Virtually identical legislation received 49 votes on the floor in 1994 and was passed with bipartisan support out of the Judiciary Committee in 1996.

Who knows what other hazards are hidden behind courthouse doors? Do we want to wait four decades for the next ''tobacco'' to be disclosed? We need to take action to prevent the next threat before it's too late.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 957

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

SECTION 1. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.

(a) SHORT TITLE.—This section may be cited as the ''Sunshine in Litigation Act of 1999''.

(b) PROTECTIVE ORDERS AND SEALING OF CASES.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1660. Protective orders and sealing of cases and settlements relating to public health or safety

''(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case only after making particularized findings of fact that—

''(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) No order entered in accordance with paragraph (1) (other than an order approving a settlement agreement) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

''(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

''(c)(1) No court of the United States may approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order subject to subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Protective orders and sealing of cases and settlements relating to public health or safety.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

By Mr. BENNETT:

S. 958. A bill to amend certain banking and securities laws with respect to financial contracts; to the Committee on Banking, Housing, and Urban Affairs.

FINANCIAL INSTITUTIONS INSOLVENCY IMPROVEMENT ACT OF 1999

Mr. BENNETT. Mr. President, I rise today to introduce the Financial Institutions Insolvency Improvement Act of 1999. Recognizing that the changes to our Nations' banking laws have not kept pace with changes in our capital markets, this bill would strengthen the laws that enforce and protect certain financial agreements and transactions in the event that one of the parties involved becomes insolvent. This legislation would also harmonize the treatment of financial instruments under the bankruptcy code and the banking insolvency laws.

The legislation that I am introducing is based largely on the recommendations made in March of 1998 by the President's Working Group on Financial Markets. This same working group reiterated on April 29th of this year, in their report on hedge fund activity, that Congress should pass this legislation. However, in an effort to keep this legislation free and separate from the ongoing bankruptcy debate, I am only introducing those portions of the proposal which amend banking law. I will be chairing a hearing on this legislation on the Financial Institutions Subcommittee tomorrow morning.

Since the adoption of the Bankruptcy Code in 1978, Congress has recognized that certain financial market transactions qualify for different treatment in the event that one of the parties becomes insolvent. Specifically, many financial instruments are exempted from the automatic stay that is imposed on general commercial contracts during a bankruptcy proceeding. This is largely due to the fact that the Federal Deposit Insurance Corporation (FDIC), by law, becomes a trustee during any bankruptcy proceeding.

Mr. President, the ability to terminate, or close out and ''net'' financial products is an essential and vital part of our capital markets. Congress has recognized that participants in swap transactions should have the ability to terminate and ''net'' their swap agreements. Simply put, netting means that money payments or other obligations owed between parties with multiple contracts can be offset against each other, and one net amount can be paid by one party to the other in settlement. Cross-product netting means that parties can net out different kinds of financial contracts, such as swap agreements being offset with repurchase agreements. By eliminating the need for large fund transfers for each transaction in favor of a smaller net payment, netting allows parties to enter into multiple-transaction relationships with reduced credit and liquidity exposures to a counterparty's insolvency.

Many parties involved in financial transactions have entered into them for hedging purposes. My legislation encourages this type of behavior by clarifying that cross-product close-out netting should be permitted for positions in securities contracts, commodity contracts, forward contracts, repurchase agreements and swaps.

For example, in certain cases, the protections for financial contracts in the bank insolvency laws have not kept pace with market evolution. Assume, for example, that Party A and Party B have two outstanding equity swaps in which the payments are calculated on the basis of an equity securities index. If Party A enter insolvency, it is not entirely clear whether Party B's contractual rights to close-out and net

would be protected by the current ''swap agreement'' definition in the Federal Deposit Insurance Act. If both of the parties are ''financial institutions'' under the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE and the swap agreements are ''netting contracts,'' then Party B might (although it is not entirely clear) be able to exercise its close-out, netting and foreclosure rights.

However, if one of the parties is not a ''financial institution'' or the contract does not constitute a ''netting contract'' (for example, because it is governed by the laws of the United Kingdom), then Party B could be subject, among other things, to the risk of ''cherry-picking''—the risk that Party A's receiver would assume responsibility only for the swap that currently favors Party A, leaving Party B with a potentially sizable claim against Party A (which would be undersecured because of the impairment of netting) and the risk that its foreclosure on any collateral would be blocked indefinitely. This could impair Party B's creditworthiness, which in turn could lead to its default to its counterparties. It is this sort of ''chain reaction'' that can exacerbate systemic risk in the financial markets.

Finally, Mr. President, it is important to recognize that the framework for the bill I am introducing was contained in S. 1301, the bankruptcy bill introduced by Senator GRASSLEY last year which passed the Senate by a vote of 97–1.

ADDITIONAL COSPONSORS

S. 341

At the request of Mr. CRAIG, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 341, a bill to amend the Internal Revenue Code of 1986 to increase the amount allowable for qualified adoption expenses, to permanently extend the credit for adoption expenses, and to adjust the limitations on such credit for inflation, and for other purposes.

S. 376

At the request of Mr. BURNS, the name of the Senator from Maine [Ms. SNOWE] was added as a cosponsor of S. 376, a bill to amend the Communications Satellite Act of 1962 to promote competition and privatization in satellite communications, and for other purposes.

S. 385

At the request of Mr. ENZI, the names of the Senator from Tennessee [Mr. FRIST] and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 385, a bill to amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

S. 434

At the request of Mr. BREAUX, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of S. 434, a bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits.

S. 440

At the request of Mr. DURBIN, his name was added as a cosponsor of S. 440, a bill to provide support for certain institutes and schools.

S. 505

At the request of Mr. GRASSLEY, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Montana [Mr. BAUCUS] were added as cosponsors of S. 505, a bill to give gifted and talented students the opportunity to develop their capabilities.

S. 512

At the request of Mr. GORTON, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 512, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the Department of Health and Human Services with respect to research on autism.

S. 514

At the request of Mr. COCHRAN, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 514, a bill to improve the National Writing Project.

S. 625

At the request of Mr. GRASSLEY, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 625, a bill to amend title 11, United States Code, and for other purposes.

S. 710

At the request of Mr. LOTT, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of S. 710, a bill to authorize the feasibility study on the preservation of certain Civil War battlefields along the Vicksburg Campaign Trail.

S. 774

At the request of Mr. BREAUX, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 774, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for meal and entertainment expenses of small businesses.

S. 784

At the request of Mr. ROCKEFELLER, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 784, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trial program.

S. 882

At the request of Mr. MURKOWSKI, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 882, a bill to strengthen provisions in the Energy Policy Act of 1992 and the Federal Nonnuclear Energy Research and Development Act of 1974 with respect to potential Climate Change.

S. 918

At the request of Mr. KERRY, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 918, A bill to authorize the Small Business Administration to provide financial and business development assistance to military reservists' small business, and for other purposes.

SENATE CONCURRENT RESOLUTION 22

At the request of Mr. DODD, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of Senate Concurrent Resolution 22, a concurrent resolution expressing the sense of the Congress with respect to promoting coverage of individuals under long-term care insurance.

SENATE RESOLUTION 34

At the request of Mr. TORRICELLI, the name of the Senator from Idaho [Mr. CRAPO] was added as a cosponsor of Senate Resolution 34, a resolution designating the week beginning April 30, 1999, as ''National Youth Fitness Week.''

SENATE RESOLUTION 59

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Resolution 59, a resolution designating both July 2, 1999, and July 2, 2000, as ''National Literacy Day.''

SENATE RESOLUTION 71

At the request of Mr. ABRAHAM, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of Senate Resolution 71, a resolution expressing the sense of the Senate rejecting a tax increase on investment income of certain associations.

SENATE RESOLUTION 93—TO RECOGNIZE LINCOLN PARK HIGH SCHOOL FOR ITS EDUCATIONAL EXCELLENCE, CONGRATULATING THE FACULTY AND STAFF OF LINCOLN PARK HIGH SCHOOL FOR THEIR EFFORTS, AND ENCOURAGING THE FACULTY, STAFF, AND STUDENTS OF LINCOLN PARK HIGH SCHOOL TO CONTINUE THEIR GOOD WORK INTO THE NEXT MILLENNIUM

Mr. DURBIN (for himself and Mr. FITZGERALD) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 93

Whereas 1999 marks the centennial anniversary of the establishment of Lincoln Park High School;

Whereas Lincoln Park High School is the oldest continually operated high school building in the Chicago Public School System;

Whereas Lincoln Park High School has been a cornerstone of the community and an educational leader in Chicago for 100 years;

Whereas over 100,000 students have graduated from Lincoln Park High School, with 85 percent of those students pursuing higher education;

Whereas throughout its existence, Lincoln Park High School has created an environment of academic excellence and has produced many Illinois State Scholars and National Merit Scholars;

Whereas Lincoln Park High School has been a leader in education, being the first

school in Illinois to offer the International Baccalaureate program;

Whereas Lincoln Park High School has been a racially integrated institution throughout its 100-year history;

Whereas Lincoln Park High School has provided stability to the community in times of need, through World War I, the Great Depression, World War II, the Korean conflict, the civil rights struggle, and the Vietnam era; and

Whereas Lincoln Park High School is consistently among the top public high schools in both test scores and other measures of academic achievement: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Lincoln Park High School for its educational excellence;

(2) congratulates the faculty and staff of Lincoln Park High School for their efforts; and

(3) encourages the faculty, staff, and students of Lincoln Park High School to continue their good work into the next millennium.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the principal of Lincoln Park High School.

● Mr. DURBIN. Mr. President, I rise today to submit a resolution honoring the academic achievements and excellence of Lincoln Park High School in Chicago, Illinois, which is celebrating its 100th anniversary this year.

Educating America's youth is a difficult and often overlooked task. For the students of today to become the leaders of tommorrow, education is critical. It is the foundation on which a student builds his or her future. With our ever changing world, education is the key that unlocks the door of opportunity. Therefore, it is an honor to acknowledge this institution for its great service over the last century.

Since 1899, Lincoln Park High School has been an educational leader in Chicago, maintaining a standard of excellence that should be looked upon as a model. Furthermore, Lincoln Park High School has been consistently among the top public high schools in test scores and other measures of achievement, and has been racially integrated throughout its history.

I am pleased to be joined today by my colleague from Illinois, Senator PETER FITZGERALD, in presenting this resolution recognizing Lincoln Park High School as a model for educational institutions throughout the United States.●

● Mr. FITZGERALD. Mr. President, It is my pleasure to recognize an outstanding public high school in my home state of illinois. I, along with Senator DICK DURBIN, want to congratulate Lincoln Park High School, a public high school in Chicago, Illinois, on its 100th anniversary this year.

Throughout its history, Lincoln Park High School has been a model for other public schools in its single minded pursuit of excellence. I'd like to share with you some of the history of this terrific school. Lincoln Park is the oldest continually-used public high school in the Chicago Public School system. Since its opening in 1899, more than 100,000 students have passed through the doors of Lincoln Park High and benefitted from the classes and extracurricular activities offered. Additionally, Lincoln Park High has created an atmosphere of academic excellence and produced many Illinois State Scholars and National Merit Scholars. It is ranked consistently among the top high schools in test scores and other measures of academic achievement. The school's strive to excel is readily apparent with the establishment of rigorous academic programs such as the ''Access to Excellence'' magnet program and the International Baccalaureate Program, a program available only in selected schools. The outstanding academic success of Lincoln Park High School prompted President Ronald Reagan to praise the school publicly in 1984.

Mr. President, I am pleased to introduce this resolution with my colleague, Senator DURBIN, and congratulate the faculty, staff and students who attend Lincoln Park High School on their 100th anniversary. They should be very proud of this tremendous accomplishment.●

SENATE RESOLUTION 94—COMMENDING THE EFFORTS OF THE REVEREND JESSE JACKSON TO SECURE THE RELEASE OF THE SOLDIERS HELD BY THE FEDERAL REPUBLIC OF YUGOSLAVIA

Mr. BYRD (for himself and Mr. GRAMM) submitted the following resolution; which was ordered held at the desk until the close of business on May 4, 1999:

S. RES. 94

Whereas on March 31, 1999, Staff Sergeant Andrew A. Ramirez, Staff Sergeant Christopher J. Stone, and Specialist Steven M. Gonzales were taken prisoner by the armed forces of the Federal Republic of Yugoslavia while on patrol along the Macedonia-Yugoslav border;

Whereas Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales conducted themselves throughout their ordeal with dignity, patriotism, and faith;

Whereas the Reverend Jesse Jackson led a delegation of religious leaders to the Federal Republic of Yugoslavia that succeeded in negotiating the release of Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales; and

Whereas the Reverend Jesse Jackson has previously succeeded in securing the release of hostages held in Syria, Cuba, and Iraq: Now, therefore, be it

Resolved, That—

(1) the Senate commends the Reverend Jesse Jackson for his successful efforts in securing the release of Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales, and for his leadership and actions arising from his deep faith in God; and

(2) the Senate joins the families of Sergeant Ramirez, Sergeant Stone, and Specialist Gonzales in expressing relief and joy at their safe release.

SENATE RESOLUTION 95—DESIGNATING AUGUST 16, 1999, AS ''NATIONAL AIRBORNE DAY''

Mr. THURMOND submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 95

Whereas the Parachute Test Platoon was authorized by the War Department on June 25, 1940, to experiment with the potential use of airborne troops;

Whereas the Parachute Test Platoon was composed of 48 volunteers that began training in July, 1940;

Whereas the Parachute Test Platoon performed the first official Army parachute jump on August 16, 1940;

Whereas the success of the Parachute Test Platoon led to the formation of a large and successful airborne contingent serving from World War II until the present;

Whereas the 11th, 13th, 17th, 82nd, and 101st Airborne Divisions and the numerous other regimental and battalion-sized airborne units were organized following the success of the Parachute Test Platoon;

Whereas the 501 Parachute Battalion participated successfully and valiantly in achieving victory in World War II;

Whereas the airborne achievements during World War II provided the basis for continuing the development of a diversified force of parachute and air assault troops;

Whereas paratroopers, glidermen, and air assault troops of the United States were and are proud members of the world's most exclusive and honorable fraternity, have earned and wear the ''Silver Wings of Courage'', have participated in a total of 93 combat jumps, and have distinguished themselves in battle by earning 68 Congressional medals of Honor, the highest military decoration of the United States, and hundreds of Distinguished Service Crosses and Silver Stars;

Whereas these airborne forces have performed in important military and peacekeeping operations, wherever needed, in World War II, Korea, Vietnam, Lebanon, Sinai, the Dominican Republic, Panama, Somalia, Haiti, and Bosnia; and

Whereas the Senate joins together with the airborne community to celebrate August 16, 1999, as ''National Airborne Day'': Now, therefore, be it

Resolved, That the Senate—

(1) designates August 16, 1999, as ''National Airborne Day''; and

(2) requests that the President issue a proclamation calling on Federal, State, and local administrators and the people of the United States to observe the day with appropriate programs, ceremonies, and activities.

Mr. THURMOND. Mr. President, I am pleased to submit today a Senate resolution proclaiming August 16, 1999 as ''National Airborne Day.''

On June 25, 1940, the War Department authorized the Parachusete Test Platoon to experiment with the potential use of airborne troops. The Parachute Test Platoon, which was composed of 48 volunteers, performed the first official army parachute jump on August 16, 1940. The success of the Platoon led to the formation of a large and successful airborne contingent that has served from World War Two unto the present.

The 82d Airborne Division was the first airborne division to be organized. In a two-year period during World War Two, the regiments of the 82d served in Italy at Anzio, in France at Normandy, where I landed with them, and at the Battle of the Bulge.

Other units were subsequently organized, including the 101st Airborne, and since their formation airborne forces have defended American interests all over the world. They have seen action

in the Caribbean, Asia, Panama, and in the Persian Gulf. Airborne units have earned over 65 Congressional Medals of Honor, our Nation's highest military honor.

These brave soldiers have served our Nation for over sixty years with distinction. This resolution recognize the airborne's past and present commitment to our country. It is only fitting that we honor them.

I urge you to join with me in sponsoring ''National Airborne Day'' to express our support for the members of the airborne community and also our gratitude for their tireless commitment to our Nation's defense and ideals.

AMENDMENTS SUBMITTED

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

DASCHLE (AND OTHERS) AMENDMENT NO. 302

Mr. SARBANES (for Mr. DASCHLE, for himself, Mr. SARBANES, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mr. REED, Mr. SCHUMER, Mr. BAYH, and Mr. EDWARDS) proposed an amendment to the bill (S. 900) to enhance competition in the financial services industry by providing a prudenital framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Financial Services Act of 1999''.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To enhance competition in the financial services industry, in order to foster innovation and efficiency.

(2) To ensure the continued safety and soundness of depository institutions.

(3) To provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services.

(4) To avoid duplicative, potentially conflicting, and overly burdensome regulatory requirements through the creation of a regulatory framework for financial holding companies that respects the divergent requirements of each of the component businesses of the holding company, and that is based upon principles of strong functional regulation and enhanced regulatory coordination.

(5) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial service providers and to provide a prudential framework for achieving that result.

(6) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.

(7) To enhance the competitiveness of United States financial service providers internationally.

(8) To ensure compliance by depository institutions with the provisions of the Community Reinvestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

(a) SECTION 20 REPEALED.—Section 20 of the Banking Act of 1933 (12 U.S.C. 377) (commonly referred to as the ''Glass-Steagall Act'') is repealed.

(b) SECTION 32 REPEALED.—Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is repealed.

(a) IN GENERAL.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended to read as follows:

''(8) shares of any company the activities of which had been determined by the Board by regulation under this paragraph as of the day before the date of enactment of the Financial Services Act of 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation, unless modified by the Board);''.

(b) CONFORMING CHANGES TO OTHER STATUTES.—

(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking '', to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,''.

(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: ''as of the day before the date of enactment of the Financial Services Act of 1999.''.

The Bank Holding Company Act of 1956 is amended by inserting after section 5 (12 U.S.C. 1844) the following new section:

''(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term 'financial holding company' means a bank holding company which meets the requirements of subsection (b).

''(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—

''(1) IN GENERAL.—No bank holding company may engage in any activity or directly or indirectly acquire or retain shares of any company under this section unless the bank holding company meets the following requirements:

''(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

''(B) All of the subsidiary depository institutions of the bank holding company are well managed.

''(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution under the Community Reinvestment Act of 1977.

''(D) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A) through (C).

''(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital and other operating standards to a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—

''(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph (1)(D) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—

''(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or

''(ii) the date of completion of the first examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.

''(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—

''(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

''(ii) the plan has been approved by such agency.

''(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

''(1) FINANCIAL ACTIVITIES.—Notwithstanding section 4(a), a financial holding company and a wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board and the Secretary of the Treasury have jointly determined, pursuant to paragraph (2) (by regulation or order), to be financial in nature or incidental to such financial activities.

''(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board and the Secretary of the Treasury shall take into account—

''(A) the purposes of this Act and the Financial Services Act of 1999;

''(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;

''(C) changes or reasonably expected changes in the technology for delivering financial services; and

''(D) whether such activity is necessary or appropriate to allow bank holding companies to—

''(i) compete effectively with any company seeking to provide financial services in the United States;

''(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

''(iii) offer customers any available or emerging technological means for using financial services.

''(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

''(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

''(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

''(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

''(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

''(E) Underwriting, dealing in, or making a market in securities.

''(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

''(G) Engaging, in the United States, in any activity that—

''(i) a bank holding company may engage in outside the United States; and

''(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1999) to be usual in connection with the transaction of banking or other financial operations abroad.

''(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

''(i) the shares, assets, or ownership interests are not acquired or held by a depository institution;

''(ii) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

''(iii) such shares, assets, or ownership interests are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

''(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

''(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

''(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

''(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);

''(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

''(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).

''(4) ACTIONS REQUIRED.—

''(A) REGULATION OF MERCHANT BANKING.—The Board may prescribe regulations and issue interpretations to implement paragraph (3)(H).

''(B) REGULATION OF OTHER ACTIVITIES.—The Board and the Secretary of the Treasury—

''(i) may jointly prescribe regulations and issue interpretations under paragraph (3), other than subparagraph (H); and

''(ii) shall jointly define, by regulation, activities described in paragraph (5), to the extent that they are consistent with the purposes of this Act, as financial in nature or incidental to activities that are financial in nature.

''(5) ACTIVITIES DESCRIBED.—The activities described in this paragraph are—

''(A) lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;

''(B) providing any device or other instrumentality for transferring money or other financial assets; and

''(C) arranging, effecting, or facilitating financial transactions for the account of third parties.

''(6) POST-CONSUMMATION NOTIFICATION.—

''(A) IN GENERAL.—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

''(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association or in paragraph (7) of this subsection, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.

''(7) NOTICE REQUIRED FOR LARGE COMBINATIONS.—

''(A) IN GENERAL.—No financial holding company or wholesale financial holding company shall directly or indirectly acquire, and no company that becomes a financial holding company or a wholesale financial holding company shall directly or indirectly acquire control of, any company in the United States, including through merger, consolidation, or other type of business combination, that—

''(i) is engaged in activities permitted under this subsection or subsection (g); and

''(ii) has consolidated total assets in excess of $40,000,000,000,

unless such holding company has provided notice to the Board, not later than 60 days prior to such proposed acquisition or prior to becoming a financial holding company or wholesale financial holding company, and during that time period, or such longer time period not exceeding an additional 60 days, as established by the Board, the Board has not issued a notice disapproving the proposed acquisition or retention.

''(B) FACTORS FOR CONSIDERATION.—In reviewing any prior notice filed under this paragraph, the Board shall take into consideration—

''(i) whether the company is in compliance with all applicable criteria set forth in subsection (b) and the provisions of subsection (d);

''(ii) whether the proposed combination represents an undue aggregation of resources;

''(iii) whether the proposed combination poses a risk to the deposit insurance system;

''(iv) whether the proposed combination poses a risk to State insurance guaranty funds;

''(v) whether the proposed combination can reasonably be expected to be in the best interests of depositors or policyholders of the respective entities; and

''(vi) whether the proposed transaction can reasonably be expected to produce benefits to the public.

''(C) REQUIRED INFORMATION.—The Board may disapprove any prior notice filed under this paragraph if the company submitting such notice neglects, fails, or refuses to furnish to the Board all relevant information required by the Board.

''(D) SOLICITATION OF VIEWS OF OTHER SUPERVISORY AGENCIES.—

''(i) IN GENERAL.—Upon receiving a prior notice under this paragraph, in order to provide for the submission of their views and recommendations, the Board shall give notice of the proposal to—

''(I) the appropriate Federal banking agency of any bank involved;

''(II) the appropriate functional regulator of any functionally regulated nondepository institution (as defined in section 5(c)(1)(C)) involved; and

''(III) the Secretary of the Treasury, the Department of Justice, and the Federal Trade Commission.

''(ii) TIMING.—The views and recommendations of any agency provided notice under this paragraph shall be submitted to the Board not later than 30 calendar days after the date on which notice to the agency was given, unless the Board determines that another shorter time period is appropriate.

''(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

''(1) IN GENERAL.—If a financial holding company is not in compliance with the requirements of subparagraph (A), (B), (C), or (D) of subsection (b)(1), the appropriate Federal banking agency of the subsidiary depository institution shall notify the Board which shall give notice of such finding to the company.

''(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(A) IN GENERAL.—Not later than 45 days after receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit),

the company and any relevant depository institution shall execute an agreement acceptable to the Board and the appropriate Federal banking agency to comply with the requirements applicable to a financial holding company.

''(B) CERTAIN FAILURES TO COMPLY.—A financial holding company shall not be required to divest any company held, or terminate any activity conducted pursuant to, subsection (c) solely because of a failure to comply with subsection (b)(1)(C).

''(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected—

''(A) the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company (other than a depository to institution or a subsidiary of a depository institution) as the Board determines to be appropriate under the circumstances; and

''(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or subsidiary of a depository institution as the appropriate Federal banking agency determines to be appropriate under the circumstances.

''(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a financial holding company or a depository institution affiliate of such company does not—

''(A) execute and implement an agreement in accordance with paragraph (2);

''(B) comply with any limitations imposed under paragraph (3);

''(C) in the case of a notice of failure to comply with subsection (b)(1)(A), restore each depository institution subsidiary to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the company (or such other period permitted by the Board); or

''(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

''(5) CONSULTATION.—In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies.

''(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

''(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

''(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions; and

''(3) the holding company complies with this section.

''(f) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

''(1) IN GENERAL.—Notwithstanding section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of enactment of the Financial Services Act of 1999 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

''(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

''(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

''(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1997, and other activities permissible under this Act.

''(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

''(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

''(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

''(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository institution controlled by a financial holding company shall not—

''(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or

''(B) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in subparagraph (A).

''(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a financial holding company or wholesale financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).

''(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of enactment of the Financial Services Act of 1999. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

''(g) DEVELOPING ACTIVITIES.—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

''(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

''(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

''(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;

''(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

''(5) the Board has not determined that the activity is not financial in nature or incidental to financial activities under subsection (c);

''(6) the holding company is not required to provide prior written notice of the transaction to the Board under subsection (c)(6); and

''(7) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

''(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act. For purposes of this section, the appropriate Federal banking agency shall have exclusive jurisdiction to determine whether an depository institution is well capitalized.

''(2) WELL MANAGED.—

''(A) IN GENERAL.—The term 'well managed' means—

''(i) in the case of an depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency, the achievement of—

''(I) a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

''(II) at least a rating of 2 for management, if that rating is given; or

''(ii) in the case of an depository institution that has not been examined, the existence and use of such managerial resources as the appropriate Federal banking agency determines are satisfactory.

''(B) EXISTING JURISDICTION PRESERVED.—For purposes of this section, the appropriate Federal banking agency shall have exclusive jurisdiction to determine whether a depository institution is well managed.''.

SEC. 104. OPERATION OF STATE LAW.

(a) AFFILIATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, from being affiliated directly or indirectly or associated with any person or entity, as authorized or permitted by this Act or any other provision of Federal law.

(2) INSURANCE.—With respect to affiliations between insured depository institutions or wholesale financial institutions, or any subsidiary or affiliate thereof, and persons or entities engaged in the business of insurance, paragraph (1) does not prohibit any State from—

(A) requiring any person or entity that proposes to acquire control of an entity that is engaged in the business of insurance and domiciled in that State (hereafter in this subparagraph referred to as the ''insurer'') to furnish to the insurance regulatory authority of that State, not later than 60 days before the effective date of the proposed acquisition—

(i) the name and address of each person by whom, or on whose behalf, the affiliation referred to in this subparagraph is to be effected (hereafter in this subparagraph referred to as the ''acquiring party'');

(ii) if the acquiring party is an individual, his or her principal occupation and all offices and positions held during the 5 years preceding the date of notification, and any conviction of crimes other than minor traffic violations during the 10 years preceding the date of notification;

(iii) if the acquiring party is not an individual—

(I) a report of the nature of its business operations during the 5 years preceding the date of notification, or for such shorter period as such person and any predecessors thereof shall have been in existence;

(II) an informative description of the business intended to be done by the acquiring party and any subsidiary thereof; and

(III) a list of all individuals who are, or who have been selected to become, directors or executive officers of the acquiring party or who perform, or will perform, functions appropriate to such positions, including, for each such individual, the information required by clause (ii);

(iv) the source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were, or are to be, obtained for any such purpose, and the identity of persons furnishing such consideration, except that, if a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(v) fully audited financial information as to the earnings and financial condition of each acquiring party for the 5 fiscal years preceding the date of notification of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days before the date of notification, except that, in the case of an acquiring party that is an insurer actively engaged in the business of insurance, the financial statements of such insurer need not be audited, but such audit may be required if the need therefor is determined by the insurance regulatory authority of the State;

(vi) any plans or proposals that each acquiring party may have to liquidate such insurer, to sell its assets, or to merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;

(vii) the number of shares of any security of the insurer that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at;

(viii) the amount of each class of any security of the insurer that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(ix) a full description of any contracts, arrangements, or understandings with respect to any security of the insurer in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, and identification of the persons with whom such contracts, arrangements, or understandings have been entered into;

(x) a description of the purchase of any security of the insurer during the 12-month period preceding the date of notification by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid, or agreed to be paid, therefor;

(xi) a description of any recommendations to purchase any security of the insurer made during the 12-month period preceding the date of notification by any acquiring party or by any person based upon interviews or at the suggestion of such acquiring party;

(xii) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the insurer and, if distributed, of additional soliciting material relating thereto; and

(xiii) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(B) requiring an entity that is acquiring control of an entity that is engaged in the business of insurance and domiciled in that State to maintain or restore the capital requirements of that insurance entity to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the entity, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A);

(C) taking actions with respect to the receivership or conservatorship of any insurance company; or

(D) restricting a change in the ownership of stock in an insurance company, or a company formed for the purpose of controlling such insurance company, for a period of not more than 3 years beginning on the date of the conversion of such company from mutual to stock form.

(3) PRESERVATION OF STATE ANTITRUST AND GENERAL CORPORATE LAWS.—

(A) IN GENERAL.—Nothing in paragraph (1) shall be construed as affecting State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws.

(B) DEFINITION.—For purposes of this paragraph, the term ''antitrust laws'' has the same meaning as in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition.

(b) ACTIVITIES.—

(1) IN GENERAL.—Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other entity or person, in any activity authorized or permitted under this Act.

(2) INSURANCE SALES.—

(A) IN GENERAL.—In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 116 S. Ct. 1103 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in any insurance sales, solicitation, or cross-marketing activity.

(B) CERTAIN STATE LAWS PRESERVED.—Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions which are substantially the same as, but no more burdensome or restrictive than, those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy solely because the policy has been issued or underwritten by any person who is not associated with such insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, when such insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product, unless such charge would be required when the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by an insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, that would cause a reasonable person to believe mistakenly that—

(I) a State or the Federal Government is responsible for the insurance sales activities of, or stands behind the credit of, the institution, affiliate, or subsidiary; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution, affiliate, or subsidiary.

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by

any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term ''services as an insurance agent or broker'' does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof) to any person or entity other than an officer, director, employee, agent, subsidiary, or affiliate of an insured depository institution or a wholesale financial institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurance company, agent, or broker in connection with transferring insurance in force on existing insureds of the insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurance company, agent, or broker; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services, or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from the insured depository institution, wholesale financial institution, a subsidiary or affiliate thereof, or a particular insurer, agent, or broker, other than a prohibition that would prevent any insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof—

(I) from engaging in any activity that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from an insured depository institution or wholesale financial institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, that a written disclosure be provided to the consumer (or prospective customer) indicating that his or her choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the insured depository institution or wholesale financial institution may impose reasonable requirements concerning the creditworthiness of the insurance provider and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by the insured depository institution or wholesale financial institution or, if appropriate, its subsidiaries or affiliates or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution, or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) LIMITATIONS.—

(i) OCC DEFERENCE.—Section 306(e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before March 4, 1999, and that is not described in subparagraph (B).

(ii) NONDISCRIMINATION.—Subsection (c) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before March 4, 1999, and that is not described in subparagraph (B).

(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 116 S. Ct. 1103 (1996) with respect to a State statute, regulation, order, interpretation, or other action that is not described in subparagraph (B).

(iv) LIMITATION ON INFERENCES.—Nothing in this paragraph shall be construed to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in this paragraph.

(3) INSURANCE ACTIVITIES OTHER THAN SALES.—State statutes, regulations, interpretations, orders, and other actions shall not be preempted under subsection (b)(1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act of March 9, 1945 (commonly known as the ''McCarran-Ferguson Act'');

(B) apply only to persons or entities that are not insured depository institutions or wholesale financial institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross-marketing activities; and

(D) are not prohibited under subsection (c).

(4) FINANCIAL ACTIVITIES OTHER THAN INSURANCE.—No State statute, regulation, interpretation, order, or other action shall be preempted under subsection (b)(1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (d); and

(D) it—

(i) does not distinguish by its terms between insured depository institutions, wholesale financial institutions, and subsidiaries and affiliates thereof engaged in the activity at issue and other persons or entities engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof engaged in the activity at issue, or any person or entity affiliated therewith, that is substantially more adverse than its impact on other persons or entities engaged in the same activity that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(iii) does not effectively prevent a depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(c) NONDISCRIMINATION.—Except as provided in any restrictions described in subsection (b)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of an insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and other persons or entities engaged in such activities, in a manner that is in any way adverse to any such insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, that is substantially more adverse than its impact on other persons or entities providing the same products or services or engaged in the same activities that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution or wholesale financial institution, or subsidiary or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and persons and entities engaged in the business of insurance.

(d) LIMITATION.—Subsections (a) and (b) shall not be construed to affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State, to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions.

(e) DEFINITION.—For purposes of this section, the term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

Section 3(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:

''(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.''.

SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.

(a) IN GENERAL.—Section 109(d) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(d)) is amended—

(1) by inserting '', the Financial Services Act of 1999,'' after ''pursuant to this title''; and

(2) by inserting ''or such Act'' after ''made by this title''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 109(e)(4) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(e)(4)) is amended by inserting ''and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)'' before the period.

SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.

Section 42(d)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting ''and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)'' before the period.

SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS.

(a) IN GENERAL.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

(1) in paragraph (2)(A)(ii)—

(A) by striking ''and'' at the end of subclause (IX);

(B) by inserting ''and'' after the semicolon at the end of subclause (X); and

(C) by inserting after subclause (X) the following new subclause:

''(XI) assets that are derived from, or incidental to, consumer lending activities in which institutions described in section 2(c)(2)(F) or section 2(c)(2)(H) are permitted to engage;'';

(2) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraphs:

''(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

''(C) any bank subsidiary of such company both—

''(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

''(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

''(D) after the date of enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).''; and

(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:

''(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(D), an overdraft is described in this paragraph if—

''(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

''(B) such overdraft—

''(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

''(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

''(C) such overdraft—

''(i) is permitted or incurred by or on behalf of an affiliate that is engaged predominantly in activities that are financial in nature, and is incurred solely in connection with an activity that is financial in nature, as determined under section 6(c); and

''(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a bank that is a member of the Federal Reserve System, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a bank that is not a member of the Federal Reserve System.

''(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

''(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

''(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.''.

(b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended by inserting before the period at the end '', or that is otherwise permissible for a bank controlled by a company described in section 4(f)(1)''.

SEC. 109. REPORTS ON ONGOING FTC STUDY OF CONSUMER PRIVACY ISSUES.

With respect to the ongoing multistage study being conducted by the Federal Trade Commission on consumer privacy issues, the Commission shall submit to the Congress an interim report on the findings and conclusions of the Commission, together with such recommendations for legislative and administrative action as the Commission determines to be appropriate, at the conclusion of each stage of such study and a final report at the conclusion of the study.

SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMUNITY BANKS AND OTHER SMALL FINANCIAL INSTITUTIONS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the projected economic impact that the enactment of this Act will have on financial institutions which have total assets of $100,000,000 or less.

(b) REPORT TO THE CONGRESS.—The Comptroller General of the United States shall submit a report to the Congress before the end of the 6-month period beginning on the date of the date of enactment of this Act containing the findings and conclusions of the Comptroller General with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

Subtitle B—Streamlining Supervision of Financial Holding Companies

SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY SUPERVISION.

Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

''(c) REPORTS AND EXAMINATIONS.—

''(1) REPORTS.—

''(A) IN GENERAL.—The Board from time to time may require any bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

''(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and

''(ii) compliance by the company or subsidiary with applicable provisions of this Act.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

''(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

''(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

''(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its subsidiary depository institutions or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

''(C) DEFINITION.—For purposes of this subsection, the term 'functionally regulated nondepository institution' means—

''(i) a broker or dealer registered under the Securities Exchange Act of 1934;

''(ii) an investment adviser registered under the Investment Advisers Act of 1940, or with any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

''(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

''(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

''(2) EXAMINATIONS.—

''(A) EXAMINATION AUTHORITY.—

''(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.

''(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

''(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

''(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

''(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

''(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

''(ii) inform the Board of—

''(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

''(II) the systems for monitoring and controlling such risks; and

''(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

''(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

''(i) the bank holding company; and

''(ii) any subsidiary of the holding company that, because of—

''(I) the size, condition, or activities of the subsidiary;

''(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company; or

''(III) the centralization of functions within the holding company system,

could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

''(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

''(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

''(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

''(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;

''(iii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

''(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

''(3) CAPITAL.—

''(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

''(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority; or

''(ii) is properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State.

''(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

''(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, if the investment company is not—

''(i) a bank holding company; or

''(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, where the shares owned by the bank holding company have a market value equal to more than $1,000,000.

''(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—

''(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

''(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

''(i) examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under section 5;

''(ii) approve or disapprove applications or transactions under section 3;

''(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

''(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

''(C) AGENCY ORDERS.—Section 9 of this Act and section 105 of the Bank Holding Company Act Amendments of 1970, shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

''(5) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—

''(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

''(B) the relevant State securities authorities with regard to all interpretations of, and the enforcement of, applicable State securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, and investment advisers; and

''(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of insurance companies and insurance agents.''.

SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT FOR FINANCIAL HOLDING COMPANIES.

(a) PREVENTION OF DUPLICATIVE FILINGS.—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: ''A declaration filed in accordance with section 6(b)(1)(D) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.''.

(b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(e)(1)) is amended—

(1) by striking ''Financial Institutions Supervisory Act of 1966, order'' and inserting ''Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

''(A) order''; and

(2) by striking ''shareholders of the bank holding company. Such distribution'' and inserting ''shareholders of the bank holding company; or

''(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

''The distribution referred to in subparagraph (A)''.

SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following new subsection:

''(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

''(A) such funds or assets are to be provided by—

''(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934; or

''(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

''(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.

''(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

''(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

''(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.''.

SEC. 114. PRUDENTIAL SAFEGUARDS.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting after subsection (g) (as added by section 113 of this subtitle) the following new subsection:

''(h) PRUDENTIAL SAFEGUARDS.—

''(1) IN GENERAL.—The Board and the appropriate Federal banking agency may, jointly, by regulation or order, impose, modify, or eliminate restrictions or requirements on relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution which the Board and the appropriate Federal banking agency jointly find is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1999, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).

''(2) STANDARDS.—The Board and the appropriate Federal banking agency may exercise joint authority under paragraph (1) if they find that such action would—

''(A) avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund;

''(B) enhance the financial stability of bank holding companies;

''(C) avoid conflicts of interest or other abuses;

''(D) enhance the privacy of customers of depository institutions; or

''(E) promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.

''(3) REVIEW.—The appropriate Federal banking agency shall regularly—

''(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

''(B) propose the modification or elimination of any restriction or requirement that it finds is no longer required for such purposes.

''(4) FOREIGN BANKS.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a foreign bank and any affiliate in the United States of such foreign bank that the Board finds are consistent with the public interest, the purposes of this Act, the Financial Services Act of 1999, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States, and the standards in paragraphs (2) and (3).''.

SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.

(a) EXCLUSIVE COMMISSION AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(2) PROHIBITION ON BANKING AGENCIES.—Except as provided in paragraph (3), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(3) CERTAIN EXAMINATIONS AUTHORIZED.—Nothing in this subsection prevents the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(2) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(3) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' has the same meaning as in section 3(z) of the Federal Deposit Insurance Act.

(4) REGISTERED INVESTMENT COMPANY.—The term ''registered investment company'' means an investment company which is registered with the Commission under the Investment Company Act of 1940.

(5) SAVINGS AND LOAN HOLDING COMPANY.—The term ''savings and loan holding company'' has the same meaning as in section 10(a)(1)(D) of the Home Owners' Loan Act.

SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 10 the following new section:

''SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

''(a) LIMITATION ON DIRECT ACTION.—

''(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

''(A) the financial safety, soundness, or stability of an affiliated depository institution; or

''(B) the domestic or international payment system.

''(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against

the affiliated depository institution or against depository institutions generally.

''(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

''(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

''(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term 'regulated subsidiary' means any company that is not a bank holding company and is—

''(1) a broker or dealer registered under the Securities Exchange Act of 1934;

''(2) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

''(3) an investment company registered under the Investment Company Act of 1940;

''(4) an insurance company or an insurance agency subject to supervision by a State insurance commission, agency, or similar authority; or

''(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.''.

SEC. 117. INTERAGENCY CONSULTATION.

(a) PURPOSE.—It is the intention of Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of an insured depository institution, wholesale financial institution, or financial holding company.

(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, an insured depository institution, wholesale financial institution, or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to an insured depository institution, wholesale financial institution, or bank holding company or any affiliate thereof under any provision of law.

(e) CONFIDENTIALITY AND PRIVILEGE.—

(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) PRIVILEGE.—The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) APPROPRIATE FEDERAL BANKING AGENCY; INSURED DEPOSITORY INSTITUTION.—The terms ''appropriate Federal banking agency'' and ''insured depository institution'' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) BOARD; FINANCIAL HOLDING COMPANY; AND WHOLESALE FINANCIAL INSTITUTION.—The terms ''Board'', ''financial holding company'', and ''wholesale financial institution'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

SEC. 118. EQUIVALENT REGULATION AND SUPERVISION.

(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of—

(1) section 5(c) of the Bank Holding Company Act of 1956 (as amended by this Act) that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on bank holding companies and their nonbank subsidiaries; and

(2) section 10A of the Bank Holding Company Act of 1956 (as added by this Act) that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to bank holding companies and their nonbank subsidiaries,

shall also limit whatever authority that the Federal Deposit Insurance Corporation might otherwise have under any statute to require reports, make examinations, impose capital requirements or take any other direct or indirect action with respect to bank holding companies and their nonbank subsidiaries (including nonbank subsidiaries of depository institutions), subject to the same standards and requirements as are applicable to the Board under such provisions.

(b) CERTAIN EXAMINATIONS AUTHORIZED.—Nothing in this section shall prevent the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILIATES AND SUBSIDIARIES.

Section 11(a)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking ''to benefit any shareholder of'' and inserting ''to benefit any shareholder, affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act), or subsidiary of''.

Subtitle C—Subsidiaries of National Banks

SEC. 121. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.

(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—Chapter one of title LXII of the Revised Statutes of United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A (12 U.S.C. 25a) as section 5136C; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

''SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.

''(a) ACTIVITIES PERMISSIBLE.—

''(1) IN GENERAL.—A subsidiary of a national bank may—

''(A) engage in any activity that is permissible for the parent national bank;

''(B) engage in any activity that is authorized under the Bank Service Company Act, section 25 or 25A of the Federal Reserve Act, or any other Federal statute that expressly authorizes national banks to own or control subsidiaries; and

''(C) engage in any activity that is permissible for a bank holding company under any provision of section 6(c) of the Bank Holding Company Act of 1956, other than—

''(i) paragraph (3)(B) of that section (relating to insurance activities), insofar as that paragraph (3)(B) permits a bank holding company to engage as principal in insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or in providing or issuing annuities; and

''(ii) paragraph (3)(I) of that section (relating to insurance company investments).

''(2) ACTIVITY LIMITATIONS.—In addition to any other limitation imposed on the activity of subsidiaries of national banks, a subsidiary of a national bank may not, pursuant to paragraph (1)—

''(A) engage as principal in insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than in connection with credit-related insurance) or in providing or issuing annuities; or

''(B) engage in real estate investment or development activities,

(except to the extent that a Federal statute expressly authorizes a national bank to engage directly in such an activity).

''(3) SIZE FACTOR WITH REGARD TO FREE-STANDING NATIONAL BANKS.—A national bank which has total assets of $10,000,000,000 or more may not control a subsidiary engaged in activities pursuant to paragraph (1) or (2) unless such national bank is a subsidiary of a bank holding company.

''(b) REQUIREMENTS APPLICABLE TO NATIONAL BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) IN GENERAL.—A financial subsidiary of a national bank may engage in activities pursuant to subsection (a)(1)(C) only if—

''(A) the national bank is well capitalized, is well managed, and achieved the rating described in section 6(b)(1)(C) of the Bank Holding Company Act of 1956, during the most recent examination of the bank by the Comptroller of the Currency;

''(B) each insured depository institution affiliate of the national bank is well capitalized, is well managed, and achieved the rating described in section 6(b)(1)(C) of the Bank Holding Company Act of 1956, during the most recent examination of the institution by the appropriate Federal banking agency;

''(C) the national bank and each of the subsidiary depository institutions of the same bank holding company have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution under the Community Reinvestment Act of 1977; and

''(D) the national bank has received the approval of the Comptroller of the Currency by regulation or order.

''(2) CORRECTIVE PROCEDURE.—

''(A) IN GENERAL.—If a national bank that controls a financial subsidiary, or any insured depository institution affiliated with such national bank, fails to meet the requirements of paragraph (1), the Comptroller shall give written notice to the national bank to that effect, describing the conditions giving rise to the notice.

''(B) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(i) CONTENT OF AGREEMENT.—Not later than 45 days after the date on which the national bank receives a notice under subparagraph (A) (or such additional period of time as the Comptroller may permit), the national bank or its insured depository institution affiliate failing to meet the requirements of paragraph (1) shall provide a plan to the appropriate Federal banking agency for such institution to correct the conditions described in the notice.

''(ii) COMPTROLLER MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice referred to in clause (i) are corrected, the Comptroller may (notwithstanding any other provision of law) impose such limitations on the conduct of the business of the national bank or the financial subsidiary of the national bank as the Comptroller determines to be appropriate under the circumstances.

''(iii) CERTAIN FAILURES TO COMPLY.—A national bank shall not be required to divest any financial subsidiary held, or terminate any activity conducted pursuant to, subsection (a) solely because of a failure to comply with subsection (b)(1)(D).

''(C) FAILURE TO CORRECT.—If the conditions described in the notice under subparagraph (A) are not corrected before the end of the 180-day period beginning on the date on which the bank receives the notice, the Comptroller may (notwithstanding any other provision of law) require, under such terms and conditions as the Comptroller may impose—

''(i) that the national bank divest control of each financial subsidiary engaged in an activity that is not permissible for the bank to engage in directly; or

''(ii) that each financial subsidiary of the national bank cease any activity that is not permissible for the bank to engage in directly.

''(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) AFFILIATE.—The term 'affiliate' has the same meaning in section 3 of the Federal Deposit Insurance Act.

''(2) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means a company that—

''(A) is a subsidiary of an insured bank; and

''(B) is engaged in any financial activity that is not otherwise permissible under subparagraph (A) or (B) of subsection (a)(1) of this section.

''(3) SUBSIDIARY.—The term 'subsidiary' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

''(4) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act. For purposes of this section, the appropriate Federal banking agency shall have exclusive jurisdiction to determine whether an insured depository institution is well capitalized.

''(5) WELL MANAGED.—The term 'well managed' means—

''(A) in the case of an insured depository institution that has been examined, the achievement of—

''(i) a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the insured depository institution; and

''(ii) at least a rating of 2 for management, if that rating is given; or

''(B) in the case of an insured depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended—

(1) by redesignating the item relating to section 5136A as section 5136C; and

(2) by inserting after the item relating to section 5136 the following new item:

''5136A. Subsidiaries of national banks.''.

SEC. 122. SUBSIDIARIES OF STATE BANKS.

(a) SUBSIDIARIES OF STATE BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—Section 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)) is amended by adding at the end the following new paragraphs:

''(4) CONDITIONS ON CERTAIN ACTIVITIES.—

''(A) IN GENERAL.—No subsidiary of a State bank shall engage as principal in an activity that is not described in subparagraph (A) or (B) of section 5136A(a)(1) of the Revised Statutes of the United States unless the State bank is in compliance with the requirements of subsection (b) of that section 5136A and receives the approval of the appropriate Federal banking agency.

''(B) APPLICATION OF SECTION 5136A OF REVISED STATUTES.—For purposes of applying section 5136A of the Revised Statutes of the United States to the activities of a subsidiary of a State bank under this paragraph—

''(i) all references in that section to a national bank shall be deemed to be references to a State bank;

''(ii) all references in that section to the Comptroller of the Currency shall be deemed to be references to the appropriate Federal banking agency with respect to such State bank; and

''(iii) all references to regulations and orders of the Comptroller shall be deemed to be references to regulations and orders of the appropriate Federal banking agency.

''(C) NOTIFICATION OF NONCOMPLIANCE.—The Board of Governors of the Federal Reserve System, the Corporation, the Comptroller of the Currency, and the Office of Thrift Supervision shall establish procedures for notifying the appropriate Federal banking agency if a national bank, State bank, or savings association that is affiliated with a State bank under this paragraph fails to meet the requirements described in subparagraph (A).''.

(b) FINANCIAL SUBSIDIARIES OF STATE MEMBER BANKS.—The 20th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by adding at the end the following new sentence: ''To the extent permitted under State law, a State member bank may acquire, establish, or retain a financial subsidiary (as defined in section 5136A(c) of the Revised Statutes of the United States), except that all references in subsection (b) of that section 5136A to the Comptroller of the Currency, the Comptroller, or regulations or orders of the Comptroller, shall be deemed to be references to the Board or regulations or orders of the Board.''.

SEC. 123. SAFETY AND SOUNDNESS FIREWALLS BETWEEN BANKS AND THEIR FINANCIAL SUBSIDIARIES.

(a) PURPOSES.—The purposes of this section are—

(1) to protect the safety and soundness of any insured bank that has a financial subsidiary;

(2) to apply to any transaction between the bank and the financial subsidiary (including a loan, extension of credit, guarantee, or purchase of assets), other than an equity investment, the same restrictions and requirements as would apply if the financial subsidiary were a subsidiary of a bank holding company having control of the bank; and

(3) to apply to any equity investment of the bank in the financial subsidiary restrictions and requirements equivalent to those that would apply if—

(A) the bank paid a dividend in the same dollar amount to a bank holding company having control of the bank; and

(B) the bank holding company used the proceeds of the dividend to make an equity investment in a subsidiary that was engaged in the same activities as the financial subsidiary of the bank.

(b) SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 45. SAFETY AND SOUNDNESS FIRE WALLS APPLICABLE TO SUBSIDIARIES OF BANKS.

''(a) LIMITING THE EQUITY INVESTMENT OF A BANK IN A SUBSIDIARY.—

''(1) CAPITAL DEDUCTION.—In determining whether an insured bank complies with applicable regulatory capital standards, the appropriate Federal banking agency shall deduct from assets and tangible equity of the bank the aggregate amount of the outstanding equity investments of the bank in the financial subsidiaries of the bank, and the assets and liabilities of such financial subsidiaries shall not be consolidated with those of the bank.

''(2) INVESTMENT LIMITATION.—An insured bank may not, without the prior approval of the appropriate Federal banking agency, purchase or make an investment in the equity securities of a financial subsidiary that would, at the time of such purchase or investment, exceed the amount that the bank could pay as a dividend without obtaining prior regulatory approval.

''(b) OPERATIONAL AND FINANCIAL SAFEGUARDS FOR THE BANK.—An insured bank that has a financial subsidiary shall maintain procedures for identifying and managing financial and operational risks posed by the financial subsidiary.

''(c) MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.—

''(1) IN GENERAL.—Each insured bank shall ensure that the bank maintains and complies with reasonable policies and procedures to preserve the separate corporate identity and legal status of the bank and any financial subsidiary or affiliate of the bank.

''(2) EXAMINATIONS.—The appropriate Federal banking agency, as part of each examination, shall review whether an insured bank is observing the separate corporate identity and separate legal status of any subsidiaries and affiliates of the bank.

''(d) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section, the term 'financial subsidiary' has the same meaning as section 5136A(c) of the Revised Statutes of the United States.

''(e) REGULATIONS.—The appropriate Federal banking agencies shall jointly prescribe regulations implementing this section.''.

(c) LIMITING THE CREDIT EXPOSURE OF A BANK TO A FINANCIAL SUBSIDIARY TO THE AMOUNT OF PERMISSIBLE CREDIT EXPOSURE TO AN AFFILIATE.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

''(e) RULES RELATING TO BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term 'financial subsidiary' has the same meaning as section 5136A(c) of the Revised Statutes of the United States.

''(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank that is not a financial subsidiary), and notwithstanding subsection (b)(2) of this section and section 23B(d)(1)—

''(A) the financial subsidiary of the bank—

''(i) shall be an affiliate of the bank and of any other subsidiary of the bank that is not a financial subsidiary; and

''(ii) shall not be deemed a subsidiary of the bank; and

''(B) a purchase of or investment in equity securities issued by the financial subsidiary shall not be deemed to be a covered transaction.

''(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

''(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary (that is not a subsidiary of a bank) shall not be deemed to be a transaction between a subsidiary of a bank and an affiliate of the bank for purposes of section 23A or section 23B of this Act.

''(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of this paragraph and notwithstanding paragraph (4), the term 'affiliate' shall not include a bank, or a subsidiary of a bank that is engaged exclusively in activities permissible for a national bank to engage in directly or activities referred to in section 5136A(a)(1)(B) of the Revised Statutes of the United States.''.

SEC. 124. FUNCTIONAL REGULATION.

(a) PURPOSE.—The purpose of this section is to ensure that—

(1) securities activities conducted in a subsidiary of a bank are functionally regulated by the Securities and Exchange Commission to the same extent as if they were conducted in a nonbank subsidiary of a financial holding company; and

(2) insurance agency and brokerage activities conducted in a subsidiary of a bank are functionally regulated by a State insurance authority to the same extent as if they were conducted in a nonbank subsidiary of a financial holding company.

(b) FUNCTIONAL REGULATION OF FINANCIAL SUBSIDIARIES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 46. FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE AGENCY SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS.

''(a) BROKER OR DEALER SUBSIDIARY.—A broker or dealer that is a subsidiary of an insured depository institution shall be subject to regulation under the Securities Exchange Act of 1934, in the same manner and to the same extent as a broker or dealer that—

''(1) is controlled by the same bank holding company as controls the insured depository institution; and

''(2) is not an insured depository institution or a subsidiary of an insured depository institution.

''(b) INSURANCE AGENCY SUBSIDIARY.—An insurance agency or brokerage that is a subsidiary of an insured depository institution shall be subject to regulation by a State insurance authority in the same manner and to the same extent as an insurance agency or brokerage that—

''(1) is controlled by the same bank holding company as controls the insured depository institution; and

''(2) is not an insured depository institution or a subsidiary of an insured depository institution.

''(c) DEFINITIONS.—For purposes of this section, the terms 'broker' and 'dealer' have the same meanings as in section 3 of the Securities Exchange Act of 1934.''.

SEC. 125. MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1007 the following new section:

''§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates

''(a) IN GENERAL.—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.

''(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under title, imprisoned for not more than 1 year, or both.

''(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' with respect to a subsidiary or affiliate has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

''(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'affiliate', 'insured depository institution', and 'subsidiary' have same meanings as in section 3 of the Federal Deposit Insurance Act.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following new item:

''1008. Misrepresentations regarding financial institution liability for obligations of affiliates.''.

SEC. 126. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by striking the paragraph designated as ''(m)'' and inserting ''(m) [Repealed]''.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ESTABLISHED.

(a) DEFINITION AND SUPERVISION.—Section 10 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended to read as follows:

"SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.

''(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term 'wholesale financial holding company' means any company that—

''(A) is registered as a bank holding company;

''(B) is predominantly engaged in financial activities as defined in section 6(g)(2);

''(C) controls 1 or more wholesale financial institutions;

''(D) does not control—

''(i) a bank other than a wholesale financial institution;

''(ii) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2); or

''(iii) a savings association; and

''(E) is not a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

''(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(D)(iii),

the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period, not to exceed 5 years after becoming supervised under paragraph (1), as permitted by the Board.

''(b) SUPERVISION BY THE BOARD.—

''(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.

''(2) REPORTS.—

''(A) IN GENERAL.—The Board from time to time may require any wholesale financial holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

''(i) the company's or subsidiary's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and

''(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

''(ii) AVAILABILITY.—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

''(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

''(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.

''(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:

''(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.

''(II) The primary business of the company.

''(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

''(3) EXAMINATIONS.—

''(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each wholesale financial holding company and each subsidiary of such company in order to—

''(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;

''(ii) inform the Board regarding—

''(I) the financial and operational risks within the wholesale financial holding company system that may affect any depository institution owned by such holding company; and

''(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and

''(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the wholesale financial holding company and any of the company's other subsidiaries.

''(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a wholesale financial holding company under this paragraph to—

''(i) the holding company; and

''(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

''(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.

''(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

''(i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and

''(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

''(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any wholesale financial holding company or any subsidiary of such company.

''(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.

''(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.

''(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.

''(F) COSTS.—The cost of any examination conducted by the Board under this section may be assessed against, and made payable by, the wholesale financial holding company.

''(4) CAPITAL ADEQUACY GUIDELINES.—

''(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

''(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

''(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

''(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

''(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

''(I) is not a depository institution; and

''(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

''(iv) CERTAIN SUBSIDIARIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

''(v) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, if the investment company is not—

''(I) a bank holding company; or

''(II) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, where the shares owned by the bank holding company have a market value equal to more than $1,000,000.

''(vi) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

''(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

''(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

''(vii) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.

''(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

''(1) GRANDFATHERED ACTIVITIES.—

''(A) IN GENERAL.—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

''(i) on the date of enactment of the Financial Services Act of 1999, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

''(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of enactment of the Financial Services Act of 1999, and other activities permissible under this Act.

''(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

''(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph.

''(2) COMMODITIES.—

''(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such wholesale financial holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

''(B) LIMITATION.—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

''(3) CROSS MARKETING RESTRICTIONS.—A wholesale financial holding company shall not permit—

''(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or

''(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.

''(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—

''(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company (other than for purposes of subsection (c)), subject to such conditions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity and the requirements imposed on domestic banks and companies.

''(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial holding company unless the bank and company meet and continue to meet the following criteria:

''(A) NO INSURED DEPOSITS.—No deposits held directly by a foreign bank or through an affiliate (other than an institution described in subparagraph (D) or (F) of section 2(c)(2)) are insured under the Federal Deposit Insurance Act.

''(B) CAPITAL STANDARDS.—The foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested and which engages in any activity authorized only as a result of the application of subsection (c) or (g) of section 6, comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the foreign bank were a member bank.

''(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of paragraphs (1)(C) and (3) of section 9B(c) of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(4) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.

''(5) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.''.

(b) UNINSURED STATE BANKS.—Section 9 of the Federal Reserve Act (12 U.S.C. 321 et seq.) is amended by adding at the end the following new paragraph:

''(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to 'insured depository institution' shall be deemed to be a reference to 'uninsured State member bank' for purposes of this paragraph.''.

SEC. 132. AUTHORIZATION TO RELEASE REPORTS.

(a) FEDERAL RESERVE ACT.—The last sentence of the eighth undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: ''The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.''.

(b) COMMODITY FUTURES TRADING COMMISSION.—The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101(7) (12 U.S.C. 3401(7))—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(B) by inserting after subparagraph (F) the following new subparagraph:

''(G) the Commodity Futures Trading Commission; or''; and

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking ''and the Securities and Exchange Commission'' and inserting '', the Securities and Exchange Commission, and the Commodity Futures Trading Commission''.

SEC. 133. CONFORMING AMENDMENTS.

(a) BANK HOLDING COMPANY ACT OF 1956.—

(1) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following new subsections:

''(p) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

''(q) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

''(r) DEPOSITORY INSTITUTION.—The term 'depository institution'—

''(1) has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

''(2) includes a wholesale financial institution.''.

(2) DEFINITION OF BANK INCLUDES WHOLESALE FINANCIAL INSTITUTION.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by adding at the end the following new subparagraph:

''(C) A wholesale financial institution.''.

(3) INCORPORATED DEFINITIONS.—Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting '' 'insured bank','' after '' 'in danger of default',''.

(4) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is

amended by adding at the end the following: ''This subsection shall not apply to a wholesale financial institution.''.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

''(A) any State member insured bank (except a District bank) and any wholesale financial institution as authorized pursuant to section 9B of the Federal Reserve Act;''.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.

(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136A (as added by section 121(a) of this title) the following new section:

''SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

''(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

''(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

''(c) COMMUNITY REINVESTMENT ACT OF 1977.—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977, only if the wholesale financial institution has an affiliate that is an insured depository institution or that operates an insured branch, as those terms are defined in section 3 of the Federal Deposit Insurance Act.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 121(d) of this title) the following new item:

''5136B. National wholesale financial institutions.''.

(b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

''SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

''(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

''(1) APPLICATION REQUIRED.—

''(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

''(B) TREATMENT AS MEMBER BANK.—Any application under subparagraph (A) shall be treated as an application under, and shall be subject to the provisions of, section 9.

''(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.

''(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.

''(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—

''(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions; and

''(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

''(3) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such sections to an insured depository institution shall be deemed to include a reference to a wholesale financial institution.

''(4) CERTAIN OTHER STATUTES APPLICABLE.—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.

''(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank.

''(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by the Board and, in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale financial institution, with the approval of the Comptroller of the Currency.

''(7) ACTIVITIES OF OUT-OF-STATE BRANCHES OF WHOLESALE FINANCIAL INSTITUTIONS.—

''(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed to be a State bank and an insured State bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act, and a national wholesale financial institution shall be deemed to be a national bank for purposes of section 5155(f) of the Revised Statutes of the United States.

''(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):

''(i) HOME STATE.—The term 'home State' means—

''(I) with respect to a national wholesale financial institution, the State in which the main office of the institution is located; and

''(II) with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

''(ii) HOST STATE.—The term 'host State' means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.

''(iii) OUT-OF-STATE BANK.—The term 'out-of-State bank' means, with respect to any State, a wholesale financial institution whose home State is another State.

''(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

''(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

''(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

''(11) COMMUNITY REINVESTMENT ACT OF 1977.—A State wholesale financial institution shall be subject to the Community Reinvestment Act of 1977, only if the wholesale financial institution has an affiliate that is an insured depository institution or that operates an insured branch, as those terms are defined in section 3 of the Federal Deposit Insurance Act.

''(c) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) LIMITATIONS ON DEPOSITS.—

''(A) MINIMUM AMOUNT.—

''(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.

''(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.

''(B) NO DEPOSIT INSURANCE.—Except as otherwise provided in section 8A(f) of the Federal Deposit Insurance Act, no deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

''(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

''(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

''(A) to account for the status of wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

''(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.

''(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In

addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—

''(A) limitations on transactions, direct or indirect, with affiliates to prevent—

''(i) the transfer of risk to the deposit insurance funds; or

''(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

''(B) special clearing balance requirements; and

''(C) any additional requirements that the Board determines to be appropriate or necessary to—

''(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

''(ii) prevent the transfer of risk to the deposit insurance funds; or

''(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

''(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution, if the Board finds that such exemption is not inconsistent with—

''(A) the promotion of the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

''(B) the protection of the deposit insurance funds; and

''(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

''(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

''(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the Board's authority over member banks under any other provision of law, or to create any obligation for any Federal reserve bank to make, increase, renew, or extend any advance or discount under this Act to any member bank or other depository institution.

''(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

''(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.

''(2) NOTICE TO COMPANY.—The Board shall promptly provide notice to a company that controls a wholesale financial institution whenever such wholesale financial institution is not well capitalized or well managed.

''(3) AGREEMENT TO RESTORE INSTITUTION.—Not later than 45 days after the date of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

''(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

''(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status not later than 180 days after the date of receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.

''(6) WELL MANAGED DEFINED.—For purposes of this subsection, the term 'well managed' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

''(e) RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) CONSERVATORSHIP OR RECEIVERSHIP.—

''(A) APPOINTMENT.—The Board may appoint a conservator or receiver for a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank.

''(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

''(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a wholesale financial institution under paragraph (1), and the wholesale financial institution for which it has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver for a national bank and the national bank for which the conservator or receiver has been appointed.

''(3) BANKRUPTCY PROCEEDINGS.—The Comptroller of the Currency (in the case of a national wholesale financial institution) and the Board may direct the conservator or receiver of a wholesale financial institution to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the wholesale financial institution in lieu of otherwise applicable Federal or State insolvency law.

''(f) EXCLUSIVE JURISDICTION.—Subsections (c) and (e) of section 43 of the Federal Deposit Insurance Act shall not apply to any wholesale financial institution.''.

(c) VOLUNTARY TERMINATION OF INSURED STATUS BY CERTAIN INSTITUTIONS.—

(1) SECTION 8 DESIGNATIONS.—Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.

(2) VOLUNTARY TERMINATION OF INSURED STATUS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 8 the following new section:

''SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.

''(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—

''(1) the bank provides written notice of the bank's intent to terminate such insured status—

''(A) to the Corporation and the Board of Governors of the Federal Reserve System not less than 6 months before the effective date of such termination; and

''(B) to all depositors at such bank, not less than 6 months before the effective date of the termination of such status; and

''(2) either—

''(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or

''(B) the Corporation and the Board of Governors of the Federal Reserve System approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).

''(b) EXCEPTION.—Subsection (a) shall not apply with respect to—

''(1) an insured savings association; or

''(2) an insured branch that is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978.

''(c) ELIGIBILITY FOR INSURANCE TERMINATED.—Any bank that voluntarily elects to terminate the bank's insured status under subsection (a) shall not be eligible for insurance on any deposits or any assistance authorized under this Act after the period specified in subsection (f)(1).

''(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.

''(e) EXIT FEES.—

''(1) IN GENERAL.—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).

''(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

''(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—

''(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

''(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the

Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

''(g) ADVERTISEMENTS.—

''(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

''(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

''(h) NOTICE REQUIREMENTS.—

''(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

''(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—

''(A) sent to each depositor's last address of record with the bank; and

''(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.''.

(3) DEFINITION.—Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended by inserting '', or any wholesale financial institution subject to section 9B of this Act'' after ''such Act''.

(d) TECHNICAL AND CONFORMING AMENDMENTS TO THE BANKRUPTCY CODE.—

(1) BANKRUPTCY CODE DEBTORS.—Section 109(b)(2) of title 11, United States Code, is amended by striking ''; or'' and inserting the following: '', except that—

''(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and

''(B) a corporation organized under section 25A of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or''.

(2) CHAPTER 7 DEBTORS.—Section 109(d) of title 11, United States Code, is amended to read as follows:

''(d) Only a railroad and a person that may be a debtor under chapter 7 of this title, except that a stockbroker, a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, a corporation organized under section 25A of the Federal Reserve Act, or a commodity broker, may be a debtor under chapter 11 of this title.''.

(3) DEFINITION OF FINANCIAL INSTITUTION.—Section 101(22) of title 11, United States Code, is amended to read as follows:

''(22) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer,''.

(4) SUBCHAPTER V OF CHAPTER 7.—

(A) IN GENERAL.—Section 103 of title 11, United States Code, is amended—

(i) by redesignating subsections (e) through (i) as subsections (f) through (j), respectively; and

(ii) by inserting after subsection (d) the following:

''(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.''.

(B) WHOLESALE BANK LIQUIDATION.—Chapter 7 of title 11, United States Code, is amended by adding at the end the following:

''SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

''§ 781. Definitions for subchapter

''In this subchapter—

''(1) the term 'Board' means the Board of Governors of the Federal Reserve System;

''(2) the term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any wholesale bank;

''(3) the term 'national wholesale financial institution' means a wholesale financial institution established under section 5136B of the Revised Statutes of the United States; and

''(4) the term 'wholesale bank' means a national wholesale financial institution, a wholesale financial institution established under section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.

''§ 782. Selection of trustee

''Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.

''§ 783. Additional powers of trustee

''(a) The trustee under this subchapter has power, with permission of the court—

''(1) to sell the wholesale bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the wholesale bank among the consortium);

''(2) to merge the wholesale bank with a depository institution;

''(3) to transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

''(4) to transfer assets or liabilities to a depository institution;

''(5) to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter; or

''(6) to transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), (6), and (9) through (13), and subparagraphs (A) through (H) and (K) of paragraph (4) of section 11(n) of the Federal Deposit Insurance Act, except that—

''(A) the bridge bank shall be treated as a wholesale bank for the purpose of this subsection; and

''(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

''(b) Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

''§ 784. Right to be heard

''The Comptroller of the Currency (in the case of a national wholesale financial institution), the Board (in the case of any wholesale bank), or a Federal Reserve bank (in the case of a wholesale bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

''§ 785. Expedited transfers

''The trustee may make a transfer pursuant to section 783 without prior judicial approval, if the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) determines that the transfer would be necessary to avert serious adverse effects on economic conditions or financial stability.''.

(C) CONFORMING AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by adding at the end the following:

''781. Definitions for subchapter.
''782. Selection of trustee.
''783. Additional powers of trustee.
''784. Right to be heard.
''785. Expedited transfers.''.

(e) RESOLUTION OF EDGE CORPORATIONS.—Section 25A(16) of the Federal Reserve Act (12 U.S.C. 624(16)) is amended to read as follows:

''(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

''(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

''(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

''(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.''.

Subtitle E—Preservation of FTC Authority

SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.

Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting ''and, if the transaction also involves an acquisition under

section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval'' before the period at the end of the first sentence.

SEC. 142. INTERAGENCY DATA SHARING.

To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3, 4, or 6 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

(c) HART-SCOTT-RODINO AMENDMENT.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end thereof the following: '', except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) requires notice under section 6 of the Bank Holding Company Act of 1956; and (B) does not require approval under section 3 or 4 of the Bank Holding Company Act of 1956''.

SEC. 144. ANNUAL GAO REPORT.

(a) IN GENERAL.—By the end of the 1-year period beginning on the date of enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit a report to the Congress on market concentration in the financial services industry and its impact on consumers.

(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—

(1) the positive and negative effects of affiliations between various types of financial companies, and of acquisitions pursuant to this Act and the amendments made by this Act to other provisions of law, including any positive or negative effects on consumers, area markets, and submarkets thereof or on registered securities brokers and dealers which have been purchased by depository institutions or depository institution holding companies;

(2) the changes in business practices and the effects of any such changes on the availability of venture capital, consumer credit, and other financial services or products and the availability of capital and credit for small businesses; and

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.

Subtitle F—Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.

Section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by adding at the end the following new paragraph:

''(3) TERMINATION OF GRANDFATHERED RIGHTS.—

''(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(D) of the Bank Holding Company Act of 1956, or receives a determination under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

''(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.''.

SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.

Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:

''(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.''.

SEC. 153. REPRESENTATIVE OFFICES.

(a) DEFINITION OF ''REPRESENTATIVE OFFICE''.—Section 1(b)(15) of the International Banking Act of 1978 (12 U.S.C. 3101(15)) is amended by striking ''State agency, or subsidiary of a foreign bank'' and inserting ''or State agency''.

(b) EXAMINATIONS.—Section 10(c) of the International Banking Act of 1978 (12 U.S.C. 3107(c)) is amended by adding at the end the following: ''The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or other applicable Federal banking law.''.

Subtitle G—Federal Home Loan Bank System Modernization

SEC. 161. SHORT TITLE.

This subtitle may be cited as the ''Federal Home Loan Bank System Modernization Act of 1999''.

SEC. 162. DEFINITIONS.

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) in paragraph (1), by striking ''term 'Board' means'' and inserting ''terms 'Finance Board' and 'Board' mean'';

(2) by striking paragraph (3) and inserting the following:

''(3) STATE.—The term 'State', in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.''; and

(3) by adding at the end the following new paragraph:

''(13) COMMUNITY FINANCIAL INSTITUTION.—

''(A) IN GENERAL.—The term 'community financial institution' means a member—

''(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

''(ii) that has, as of the date of the transaction at issue, less than $500,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

''(B) ADJUSTMENTS.—The $500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.''.

SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.

(a) FEDERAL HOME LOAN BANK MEMBERSHIP.—Section 5(f) of the Home Owners' Loan Act (12 U.S.C. 1464(f)) is amended to read as follows:

''(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.''.

(b) WITHDRAWAL.—Section 6(e) of the Federal Home Loan Bank Act (12 U.S.C. 1426(e)) is amended by striking ''Any member other than a Federal savings and loan association may withdraw'' and inserting ''Any member may withdraw''.

SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.

(a) IN GENERAL.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and indenting appropriately;

(2) by striking ''(a) Each'' and inserting the following:

''(a) IN GENERAL.—

''(1) ALL ADVANCES.—Each'';

(3) by striking the second sentence and inserting the following:

''(2) PURPOSES OF ADVANCES.—A long-term advance may only be made for the purposes of—

''(A) providing funds to any member for residential housing finance; and

''(B) providing funds to any community financial institution for small businesses, agricultural, rural development, or low-income community development lending.'';

(4) by striking ''A Bank'' and inserting the following:

''(3) COLLATERAL.—A Bank'';

(5) in paragraph (3) (as so designated by paragraph (4) of this subsection)—

(A) in subparagraph (C) (as so redesignated by paragraph (1) of this subsection) by striking ''Deposits'' and inserting ''Cash or deposits'';

(B) in subparagraph (D) (as so redesignated by paragraph (1) of this subsection), by striking the second sentence; and

(C) by inserting after subparagraph (D) (as so redesignated by paragraph (1) of this subsection) the following new subparagraph:

''(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans, in the case of any community financial institution.'';

(6) in paragraph (5)—

(A) in the second sentence, by striking ''and the Board'';

(B) in the third sentence, by striking ''Board'' and inserting ''Federal home loan bank''; and

(C) by striking ''(5) Paragraphs (1) through (4)'' and inserting the following:

''(4) ADDITIONAL BANK AUTHORITY.—Subparagraphs (A) through (E) of paragraph (3)''; and

(7) by adding at the end the following:

''(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

''(6) DEFINITIONS.—For purposes of this subsection, the terms 'small business', 'agriculture', 'rural development', and 'low-income community development' shall have the meanings given those terms by rule or regulation of the Finance Board.''.

(b) CLERICAL AMENDMENT.—The section heading for section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended to read as follows:

''SEC. 10. ADVANCES TO MEMBERS.''.

(c) CONFORMING AMENDMENTS RELATING TO MEMBERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—Section 10(e)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)(1)) is amended in the second sentence, by inserting before the period ''or, in the case of any community financial institution, for the purposes described in subsection (a)(2)''.

SEC. 165. ELIGIBILITY CRITERIA.

Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended—

(1) in paragraph (2)(A), by inserting, ''(other than a community financial institution)'' after ''institution''; and

(2) by adding at the end the following new paragraph:

''(3) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).''.

SEC. 166. MANAGEMENT OF BANKS.

(a) BOARD OF DIRECTORS.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(1) by striking ''(d) The term'' and inserting the following:

''(d) TERMS OF OFFICE.—The term''; and

(2) by striking ''shall be two years''.

(b) COMPENSATION.—Section 7(i) of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by striking '', subject to the approval of the board''.

(c) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).

(d) SECTION 12.—Section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432) is amended—

(1) in subsection (a)—

(A) by striking '', but, except'' and all that follows through ''ten years'';

(B) by striking '', subject to the approval of the Board'' each place that term appears;

(C) by striking ''and, by its Board of directors,'' and all that follows through ''agent of such bank,'' and inserting ''and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank''; and

(D) by striking ''Board of directors'' each place that term appears and inserting ''board of directors''; and

(2) in subsection (b), by striking ''loans banks'' and inserting ''loan banks''.

(e) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

(1) ISSUANCE OF NOTICES OF VIOLATIONS.—Section 2B(a) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(a)) is amended by adding at the end the following new paragraphs:

''(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the bank, executive officer, or director is about to engage in, any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the bank, or any written agreement entered into by the bank with the agency, in accordance with the procedures provided in section 1371(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a bank or any executive officer or director of a bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

''(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners' Loan Act.

''(7) To sue and be sued, by and through its own attorneys.''.

(2) TECHNICAL AMENDMENT.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting ''Federal Housing Finance Board,'' after ''Director of the Office of Thrift Supervision,''.

(f) ELIGIBILITY TO SECURE ADVANCES.—

(1) SECTION 9.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—

(A) in the second sentence, by striking ''with the approval of the Board''; and

(B) in the third sentence, by striking '', subject to the approval of the Board,''.

(2) SECTION 10.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(A) in subsection (c)—

(i) in the first sentence, by striking ''Board'' and inserting ''Federal home loan bank''; and

(ii) in the second sentence, by striking ''held by'' and all that follows before the period;

(B) in subsection (d)—

(i) in the first sentence, by striking ''and the approval of the Board''; and

(ii) by striking ''Subject to the approval of the Board, any'' and inserting ''Any''; and

(C) in subsection (j)(1)—

(i) by striking ''to subsidize the interest rate on advances'' and inserting ''to provide subsidies, including subsidized interest rates on advances'';

(ii) by striking ''Pursuant'' and inserting the following:

''(A) ESTABLISHMENT.—Pursuant''; and

(iii) by adding at the end the following new subparagraph:

''(B) NONDELEGATION OF APPROVAL AUTHORITY.—Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.''.

(g) SECTION 16.—Section 16(a) of the Federal Home Loan Bank Act (12 U.S.C. 1436(a)) is amended—

(1) in the third sentence—

(A) by striking ''net earnings'' and inserting ''previously retained earnings or current net earnings''; and

(B) by striking '', and then only with the approval of the Federal Housing Finance Board''; and

(2) by striking the fourth sentence.

(h) SECTION 18.—Section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking paragraph (4).

SEC. 167. RESOLUTION FUNDING CORPORATION.

(a) IN GENERAL.—Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended to read as follows:

''(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

''(i) IN GENERAL.—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).

''(ii) ANNUAL DETERMINATION.—The Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of $300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.

''(iii) PAYMENT TERM ALTERATIONS.—The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the banks is equivalent to the value of an annuity referred to in clause (ii).

''(iv) TERM BEYOND MATURITY.—If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on January 1, 1999. Payments made by a Federal home loan bank before that effective date shall be counted toward the total obligation of that bank under section 21B(f)(2)(C) of the Federal Home Loan Bank Act, as amended by this section.

Subtitle H—Direct Activities of Banks

SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS.

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: ''In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).''.

Subtitle I—Deposit Insurance Funds

SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.

(a) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation shall conduct a study of the following issues with regard to the Bank Insurance Fund and the Savings Association Insurance Fund:

(1) SAFETY AND SOUNDNESS.—The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—

(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

(B) the affiliation of insured depository institutions with other financial institutions pursuant to this Act and the amendments made by this Act.

(2) CONCENTRATION LEVELS.—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to which either fund is exposed to higher risks due to a regional concentration of members or an insufficient membership base relative to the size of member institutions.

(3) MERGER ISSUES.—Issues relating to the planned merger of the funds, including the cost of merging the funds and the manner in which such costs will be distributed among the members of the respective funds.

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 9-month period beginning on the date of enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall submit a report to the Congress on the study conducted pursuant to subsection (a).

(2) CONTENTS OF REPORT.—The report shall include—

(A) detailed findings of the Board of Directors with regard to the issues described in subsection (a);

(B) a description of the plans developed by the Board of Directors for merging the Bank Insurance Fund and the Savings Association Insurance Fund, including an estimate of the amount of the cost of such merger which would be borne by Savings Association Insurance Fund members; and

(C) such recommendations for legislative and administrative action as the Board of Directors determines to be necessary or appropriate to preserve the safety and soundness of the deposit insurance funds, reduce the risks to such funds, provide for an efficient merger of such funds, and for other purposes.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

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

(2) BIF AND SAIF MEMBERS.—The terms ''Bank Insurance Fund member'' and ''Savings Association Insurance Fund member'' have the same meanings as in section 7(*l*) of the Federal Deposit Insurance Act.

SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RESERVES.

(a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by striking subparagraph (L).

(b) DIF SPECIAL RESERVES.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is amended—

(1) by striking subsection (b); and

(2) in subsection (d)—

(A) by striking paragraph (4);

(B) in paragraph (6)(C)(i), by striking ''(6) and (7)'' and inserting ''(5), (6), and (7)''; and

(C) in paragraph (6)(C), by striking clause (ii) and inserting the following:

''(ii) by redesignating paragraph (8) as paragraph (5).''.

Subtitle J—Effective Date of Title

SEC. 191. EFFECTIVE DATE.

Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 270-day period beginning on the date of enactment of this Act.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

SEC. 201. DEFINITION OF BROKER.

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

''(4) BROKER.—

''(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

''(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

''(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

''(I) such broker or dealer is clearly identified as the person performing the brokerage services;

''(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

''(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

''(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

''(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;

''(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

''(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;

''(VIII) the bank does not carry a securities account of the customer except in a customary custodian or trustee capacity; and

''(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

''(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and (in either case)—

''(I) is primarily compensated for such transactions on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees, consistent with fiduciary principles and standards; and

''(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

''(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

''(I) commercial paper, bankers acceptances, or commercial bills;

''(II) exempted securities;

''(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

''(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

''(iv) CERTAIN STOCK PURCHASE PLANS.—

''(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

''(bb) the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.

''(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

''(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

''(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

''(cc) the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.

''(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

''(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;

''(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

''(cc) the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.

''(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

''(aa) comparable in scope or nature to that permitted by the Commission as of the date of enactment of the Financial Services Act of 1999; or

''(bb) otherwise permitted by the Commission.

''(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

''(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

''(I) a registered broker or dealer; or

''(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

''(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

''(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

''(II) at any time after the date that is 1 year after the date of enactment of the Financial Services Act of 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this title, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

''(III) effects transactions exclusively with qualified investors.

''(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

''(I) IN GENERAL.—The bank, as part of customary banking activities—

''(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

''(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

''(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or

''(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law.

''(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

''(ix) BANKING PRODUCTS.—The bank effects transactions in traditional banking products, as defined in section 206(a) of the Financial Services Act of 1999.

''(x) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

''(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

''(i) the bank directs such trade to a registered broker dealer for execution;

''(ii) the trade is a cross trade or other substantially similar trade of a security that—

''(I) is made by the bank or between the bank and an affiliated fiduciary; and

''(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

''(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

''(D) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION AUTHORITY.—The exception to being considered a broker for a bank engaged in activities described in subparagraphs (B) and (C) shall not affect the authority of the Commission under any other provision of this Act or any other securities law.

''(E) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term 'fiduciary capacity' means—

''(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

''(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

''(iii) in any other similar capacity.

''(F) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

''(i) was, immediately prior to the enactment of the Financial Services Act of 1999, subject to section 15(e); and

''(ii) is subject to such restrictions and requirements as the Commission considers appropriate.''.

SEC. 202. DEFINITION OF DEALER.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

''(5) DEALER.—

''(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

''(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

''(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

''(I) commercial paper, bankers acceptances, or commercial bills;

''(II) exempted securities;

''(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

''(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

''(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

''(I) for the bank; or

''(II) for accounts for which the bank acts as a trustee or fiduciary.

''(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.

''(iv) BANKING PRODUCTS.—The bank buys or sells traditional banking products, as defined in section 206(a) of the Financial Services Act of 1999.

''(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

''(I) to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer;

''(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or

''(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).''.

SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.

Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (i) the following new subsection:

''(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the 6-month period preceding the date of enactment of the Financial Services Act of 1999, engaged in effecting such sales.''.

SEC. 204. SALES PRACTICES AND COMPLAINT PROCEDURES.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

''(s) SALES PRACTICES AND COMPLAINT PROCEDURES WITH RESPECT TO BANK SECURITIES ACTIVITIES.—

''(1) REGULATIONS REQUIRED.—Each Federal banking agency shall prescribe and publish in final form, not later than 6 months after the date of enactment of the Financial Services Act of 1999, regulations which apply to retail transactions, solicitations, advertising, or offers of any security by any insured depository institution or any affiliate thereof other than a registered broker or dealer or an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. Such regulations shall include—

''(A) requirements that sales practices comply with just and equitable principles of trade that are substantially similar to the Rules of Fair Practice of the National Association of Securities Dealers; and

''(B) requirements prohibiting (i) conditioning an extension of credit on the purchase or sale of a security; and (ii) any conduct leading a customer to believe that an extension of credit is conditioned upon the purchase or sale of a security.

''(2) PROCEDURES REQUIRED.—The appropriate Federal banking agencies shall jointly establish procedures and facilities for receiving and expeditiously processing complaints against any bank or employee of a bank arising in connection with the purchase or sale of a security by a customer, including a complaint alleging a violation of the regulations prescribed under paragraph (1), but excluding a complaint involving an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. The use of any such procedures and facilities by such a customer shall be at the election of the customer. Such procedures shall include provisions to refer a complaint alleging fraud to the Securities and Exchange Commission and appropriate State securities commissions.

''(3) REQUIRED ACTIONS.—The actions required by the Federal banking agencies under paragraph (2) shall include the following:

''(A) establishing a group, unit, or bureau within each such agency to receive such complaints;

''(B) developing and establishing procedures for investigating, and permitting customers to investigate, such complaints;

''(C) developing and establishing procedures for informing customers of the rights they may have in connection with such complaints;

''(D) developing and establishing procedures that allow customers a period of at least 6 years to make complaints and that do not require customers to pay the costs of the proceeding; and

''(E) developing and establishing procedures for resolving such complaints, including procedures for the recovery of losses to the extent appropriate.

''(4) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraphs (1) and (2), after consultation with the Securities and Exchange Commission.

''(5) PROCEDURES IN ADDITION TO OTHER REMEDIES.—The procedures and remedies provided under this subsection shall be in addition to, and not in lieu of, any other remedies available under law.

''(6) DEFINITION.—As used in this subsection—

''(A) the term 'security' has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934;

''(B) the term 'registered broker or dealer' has the same meaning as in section 3(a)(48) of the Securities Exchange Act of 1934; and

''(C) the term 'associated person' has the same meaning as in section 3(a)(18) of the Securities Exchange Act of 1934.''.

SEC. 205. INFORMATION SHARING.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

''(t) RECORDKEEPING REQUIREMENTS.—

''(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

''(2) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission.''.

SEC. 206. DEFINITION AND TREATMENT OF BANKING PRODUCTS.

(a) DEFINITION OF TRADITIONAL BANKING PRODUCT.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5)), the term ''traditional banking product'' means—

(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(2) a banker's acceptance;

(3) a letter of credit issued or loan made by a bank;

(4) a debit account at a bank arising from a credit card or similar arrangement;

(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(A) to qualified investors; or

(B) to other persons that—

(i) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; and

(6) any derivative instrument, whether or not individually negotiated, involving or relating to—

(A) foreign currencies, except options on foreign currencies that trade on a national securities exchange;

(B) interest rates, except interest rate derivative instruments that—

(i) are based on a security or a group or index of securities (other than government securities or a group or index of government securities);

(ii) provide for the delivery of one or more securities (other than government securities); or

(iii) trade on a national securities exchange; and

(C) commodities, other rates, indices, or other assets, except derivative instruments that—

(i) are securities or that are based on a group or index of securities (other than government securities or a group or index of government securities);

(ii) provide for the delivery of one or more securities (other than government securities); or

(iii) trade on a national securities exchange.

(b) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

''(i) TRANSACTIONS INVOLVING HYBRID PRODUCTS.—

''(1) COMMISSION AUTHORITY.—

''(A) IN GENERAL.—The Commission may, after consultation with the Board, determine, by regulation published in the Federal Register, that a bank that effects transactions in, or buys or sells, a new product should be subject to the registration requirements of this section.

''(B) LIMITATION.—The Commission may not impose the registration requirements of this section on any bank that effects transactions in, or buys or sells, a product under this subsection unless the Commission determines in the regulations described in subparagraph (A) that—

''(i) the subject product is a new product;

''(ii) the subject product is a security; and

''(iii) imposing the registration requirements of this section is necessary or appropriate in the public interest and for the protection of investors.

''(2) OBJECTION TO COMMISSION REGULATION.—

''(A) FILING OF PETITION FOR REVIEW.—The Board, or any aggrieved party, may obtain review of any final regulation described in paragraph (1) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside.

''(B) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

''(C) EXCLUSIVE JURISDICTION.—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

''(D) STANDARD OF REVIEW.—

''(i) IN GENERAL.—The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether the subject product—

''(I) is a new product, as defined in this subsection;

''(II) is a security; and

''(III) would be more appropriately regulated under the Federal securities laws or the Federal banking laws, giving equal deference to the views of the Commission and the Board.

''(ii) CONSIDERATIONS.—In making a determination under clause (i)(III), the court shall consider—

''(I) the nature of the subject new product;

''(II) the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal securities laws; and

''(III) the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws.

''(E) JUDICIAL STAY.—The filing of a petition by the Board or an aggrieved party pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the court makes a final determination under this paragraph, of—

''(i) any Commission requirement that a bank register as a broker or dealer under this section, because the bank engages in any transaction in, or buys or sells, the new product that is the subject of the petition; and

''(ii) any Commission action against a bank for a failure to comply with a requirement described in clause (i).

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'Board' means the Board of Governors of the Federal Reserve System; and

''(B) the term 'new product' means a product or instrument offered or provided by a bank that—

''(i) was not subject to regulation by the Commission as a security under this title before the date of enactment of this subsection; and

''(ii) is not a traditional banking product, as defined in paragraphs (1) through (6) of section 206(a) of the Financial Services Act of 1999.''.

(c) CLASSIFICATION LIMITED.—Classification of a particular product or instrument as a traditional banking product pursuant to this section or the amendments made by this section shall not be construed as finding or implying that such product or instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(d) NO LIMITATION ON OTHER AUTHORITY TO CHALLENGE.—Nothing in this section or the amendments made by this section shall affect the right or authority of the Board of Governors of the Federal Reserve System, any appropriate Federal banking agency, or any interested party under any other provision of law to object to or seek judicial review as to whether a product or instrument is or is not appropriately classified as a traditional banking product under paragraphs (1) through (6) of section 206(a).

(e) INCORPORATED DEFINITIONS.—For purposes of this section—

(1) the term ''appropriate Federal banking agency'' has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(2) the term ''bank'' has the same meaning as in section 3(a)(6) of the Securities Exchange Act of 1934;

(3) the term ''Board'' means the Board of Governors of the Federal Reserve System;

(4) the term ''government securities'' has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934, and, for purposes of this subsection, commercial paper, bankers acceptances, and commercial bills shall be treated in the same manner as government securities; and

(5) the term ''qualified investor'' has the same meaning as in section 3(a)(55) of the Securities Exchange Act of 1934, as amended by this Act.

SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED INVESTOR DEFINED.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:

''(54) DERIVATIVE INSTRUMENT.—

''(A) DEFINITION.—The term 'derivative instrument' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include a traditional banking product, as defined in section 206(a) of the Financial Services Act of 1999.

''(B) CLASSIFICATION LIMITED.— Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

''(55) QUALIFIED INVESTOR.—

''(A) DEFINITION.—For purposes of this title, the term 'qualified investor' means—

''(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

''(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

''(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

''(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

''(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

''(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

''(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

''(viii) any associated person of a broker or dealer other than a natural person;

''(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

''(x) the government of any foreign country;

''(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments;

''(xii) any natural person who owns and invests on a discretionary basis, not less than $10,000,000 in investments;

''(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

''(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

''(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a 'qualified investor' as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.''.

SEC. 208. GOVERNMENT SECURITIES DEFINED.

Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—

(1) by striking ''or'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting ''; or''; and

(3) by adding at the end the following new subparagraph:

''(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.''.

SEC. 209. EFFECTIVE DATE.

This subtitle shall take effect at the end of the 270-day period beginning on the date of enactment of this Act.

SEC. 210. RULE OF CONSTRUCTION.

Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

Subtitle B—Bank Investment Company Activities

SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

(a) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking ''(f) Every registered'' and inserting the following:

''(f) CUSTODY OF SECURITIES.—

''(1) Every registered'';

(3) by redesignating the second, third, fourth, and fifth sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

(4) by adding at the end the following new paragraph:

''(6) SERVICES AS TRUSTEE OR CUSTODIAN.—The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.''.

(b) UNIT INVESTMENT TRUSTS.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

''(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).''.

(c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) in paragraph (1), by striking ''or'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (2) the following:

''(3) as custodian.''.

SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(a)) is amended—

(1) by striking ''or'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; or''; and

(3) by adding at the end the following new paragraph:

''(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.''.

SEC. 213. INDEPENDENT DIRECTORS.

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

''(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

''(I) the investment company;

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

''(III) any account over which the investment company's investment adviser has brokerage placement discretion,'';

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

''(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

''(I) the investment company;

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

''(III) any account for which the investment company's investment adviser has borrowing authority,''.

(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(B)) is amended—

(1) by striking clause (v) and inserting the following new clause:

''(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

''(I) any investment company for which the investment adviser or principal underwriter serves as such;

''(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

''(III) any account over which the investment adviser has brokerage placement discretion,'';

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

''(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

''(I) any investment company for which the investment adviser or principal underwriter serves as such;

''(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

''(III) any account for which the investment adviser has borrowing authority,''.

(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking ''bank, except'' and inserting ''bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.

SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.

Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

''(a) MISREPRESENTATION OF GUARANTEES.—

''(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

''(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

''(B) has been insured by the Federal Deposit Insurance Corporation; or

''(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

''(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

''(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the same meanings as in section 3 of the Federal Deposit Insurance Act.''.

SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:

''(6) The term 'broker' has the same meaning as in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.''.

SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:

''(11) The term 'dealer' has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking ''investment company'' and inserting ''investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser''.

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

''(26) The term 'separately identifiable department or division' of a bank means a unit—

''(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

''(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.''.

SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as follows:

''(3) The term 'broker' has the same meaning as in section 3 of the Securities Exchange Act of 1934.''.

SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as follows:

''(7) The term 'dealer' has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

SEC. 220. INTERAGENCY CONSULTATION.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 210 the following new section:

''SEC. 210A. CONSULTATION.

''(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

''(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—

''(A) of any—

''(i) bank holding company;

''(ii) bank; or

''(iii) separately identifiable department or division of a bank, that is registered under section 203 of this title; and

''(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

''(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.

''(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

''(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.''.

SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking ''or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian'' and inserting ''or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

''(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)) is amended by inserting before the period the following: '', if—

''(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

''(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

''(i) advertised; or

''(ii) offered for sale to the general public; and

''(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law''.

SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following new subsection:

''(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

''(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

''(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(B) if it holds the shares in a trustee or fiduciary capacity with respect to any person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

''(i) transfer the power to vote the shares of the investment company through to—

''(I) the beneficial owners of the shares;

''(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

''(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

''(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.

''(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

''(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

''(4) CHURCH PLAN EXEMPTION.—Paragraph (1) does not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares in such a capacity, if such investment adviser or such affiliated person is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986.''.

SEC. 223. CONFORMING CHANGE IN DEFINITION.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking ''(A) a banking institution organized under the laws of the United States'' and inserting ''(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)''.

SEC. 224. CONFORMING AMENDMENT.

Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following new subsection:

''(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''.

SEC. 225. EFFECTIVE DATE.

This subtitle shall take effect 90 days after the date of enactment of this Act.

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by redesignating subsection (i) as subsection (l); and

(2) by inserting after subsection (h) the following new subsections:

''(i) INVESTMENT BANK HOLDING COMPANIES.—

''(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

''(A) IN GENERAL.—An investment bank holding company that is not—

''(i) an affiliate of a wholesale financial institution, an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956), or a savings association;

''(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or

''(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this

section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

''(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission, or within such shorter time period as the Commission, by rule or order, may determine.

''(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—

''(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

''(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

''(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

''(A) RECORDKEEPING AND REPORTING.—

''(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

''(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

''(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

''(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

''(I) a balance sheet and income statement;

''(II) an assessment of the consolidated capital of the supervised investment bank holding company;

''(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

''(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

''(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

''(C) EXAMINATION AUTHORITY.—

''(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

''(I) inform the Commission regarding—

''(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

''(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

''(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

''(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the 'Bank Secrecy Act') and regulations thereunder.

''(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

''(I) the company; and

''(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

''(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

''(4) HOLDING COMPANY CAPITAL.—

''(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

''(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

''(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

''(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

''(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

''(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

''(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

''(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

''(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

''(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

''(6) DEFINITIONS.—For purposes of this subsection and subsection (j)—

''(A) the term 'investment bank holding company' means—

''(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

''(ii) the associated persons of the investment bank holding company;

''(B) the term 'supervised investment bank holding company' means any investment bank holding company that is supervised by the Commission pursuant to this subsection;

''(C) the terms 'affiliate', 'bank', 'bank holding company', 'company', 'control', and 'savings association' have the same meanings as in section 2 of the Bank Holding Company Act of 1956;

''(D) the term 'insured bank' has the same meaning as in section 3 of the Federal Deposit Insurance Act;

''(E) the term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978; and

''(F) the terms 'person associated with an investment bank holding company' and 'associated person of an investment bank holding company' mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

''(j) COMMISSION BACKUP AUTHORITY.—

''(1) AUTHORITY.—The Commission may make inspections of any wholesale financial holding company that—

''(A) controls a wholesale financial institution;

''(B) is not a foreign bank; and

''(C) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association,

and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the wholesale financial holding company with the Federal securities laws.

''(2) LIMITATION.—The Commission shall limit the focus and scope of any inspection under paragraph (1) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by the wholesale financial holding company or any affiliate with the Federal securities laws.

''(3) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for the purposes of this subsection, the reports of examinations—

''(A) made by the Board of Governors of the Federal Reserve System of any wholesale financial holding company that is supervised by the Board;

''(B) made by or on behalf of any State regulatory agency responsible for the supervision of an insurance company of any licensed insurance company; and

''(C) made by any Federal or State banking agency of any bank or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

''(4) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

''(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraphs:

''(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

''(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

''(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

''(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

''(iv) the Commission in the case of all other such institutions.''.

(2) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—

(A) by striking ''this title'' and inserting ''law''; and

(B) by inserting '', examination reports'' after ''financial records''.

Subtitle D—Studies

SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND CONSUMERS OF UNINSURED PRODUCTS.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy, costs, and benefits of requiring that any depository institution that accepts federally insured deposits and that, directly or through a contractual or other arrangement with a broker, dealer, or agent, buys from, sells to, or effects transactions for retail investors in securities or consumers of insurance to inform such investors and consumers through the use of a logo or seal that the security or insurance is not insured by the Federal Deposit Insurance Corporation.

SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED WITH ACQUIRING FINANCIAL PRODUCTS.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy and benefits of uniformly limiting any commissions, fees, markups, or other costs incurred by customers in the acquisition of financial products.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.

The Act entitled ''An Act to express the intent of the Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.), commonly referred to as the ''McCarran-Ferguson Act'') remains the law of the United States.

SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.

No person or entity shall provide insurance in a State as principal or agent unless such person or entity is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104.

SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance sales activity of any person or entity shall be functionally regulated by the States, subject to section 104.

SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 305, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—

(1) as of January 1, 1997, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) DEFINITION.—For purposes of this section, the term ''insurance'' means—

(1) any product regulated as insurance as of January 1, 1997, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1997, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.

(a) AUTHORITY.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting of title insurance, other than title insurance underwriting activities in which such national bank or subsidiary was actively and lawfully engaged before the date of enactment of this Act.

(b) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank

and any subsidiary of the national bank may not engage in any activity involving the underwriting of title insurance pursuant to subsection (a).

(c) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate which provides insurance as principal and is not a subsidiary, the national bank may not engage in any activity involving the underwriting of title insurance pursuant to subsection (a).

(d) ''AFFILIATE'' AND ''SUBSIDIARY'' DEFINED.—For purposes of this section, the terms ''affiliate'' and ''subsidiary'' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FEDERAL REGULATORS.

(a) FILING IN COURT OF APPEALS.—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator as to whether any product is or is not insurance, as defined in section 304(c), or whether a State statute, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, either regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) EXPEDITED REVIEW.—The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) SUPREME COURT REVIEW.—Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) STATUTE OF LIMITATION.—No action may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination, or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) STANDARD OF REVIEW.—The court shall decide an action filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

SEC. 307. CONSUMER PROTECTION REGULATIONS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

''SEC. 45. CONSUMER PROTECTION REGULATIONS.

''(a) REGULATIONS REQUIRED.—

''(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of enactment of the Financial Services Act of 1999, consumer protection regulations (which the agencies jointly determine to be appropriate) that—

''(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

''(B) are consistent with the requirements of this Act and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

''(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

''(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

''(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of insurance products which prohibit an insured depository institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

''(1) the purchase of an insurance product from the institution or any of its affiliates or subsidiaries; or

''(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

''(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

''(1) DISCLOSURES.—

''(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

''(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.

''(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

''(iii) COERCION.—The approval of an extension of credit may not be conditioned on—

''(I) the purchase of an insurance product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

''(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

''(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

''(i) 'NOT FDIC–INSURED'.

''(ii) 'NOT GUARANTEED BY THE BANK'.

''(iii) 'MAY GO DOWN IN VALUE'.

''(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

''(D) CONSUMER ACKNOWLEDGMENT.—A requirement that an insured depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this paragraph with respect to such product.

''(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

''(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution; or

''(B) in the case of a variable annuity or other insurance product that involves an investment risk, the investment risk associated with any such product.

''(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

''(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

''(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

''(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

''(B) REFERRALS.—Standards which permit any person accepting deposits from the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

''(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

''(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

''(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance

claims, except as required or expressly permitted under State law.

''(2) SCOPE OF APPLICATION.—The prohibition contained in paragraph (1) shall apply to any insurance product which is sold or offered for sale, as principal, agent, or broker, by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

''(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that, by the end of the 30-month period beginning on the date of enactment of the Financial Services Act of 1999, the States should enact prohibitions against discrimination with respect to insurance products that are at least as strict as the prohibitions contained in paragraph (1).

''(4) DOMESTIC VIOLENCE DEFINED.—For purposes of this subsection, the term 'domestic violence' means the occurrence of 1 or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

''(A) Attempting to cause or causing or threatening another person with physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

''(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

''(C) Subjecting another person to false imprisonment.

''(D) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

''(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under this section, which mechanism shall—

''(1) establish a group within each regulatory agency to receive such complaints;

''(2) develop procedures for investigating such complaints;

''(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

''(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

''(g) EFFECT ON OTHER AUTHORITY.—

''(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

''(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

''(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.

''(2) COORDINATION WITH STATE LAW.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

''(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations prescribed under this section shall supersede the comparable provision of such State statute, regulation, order, or interpretation.

''(h) INSURANCE PRODUCT DEFINED.—For purposes of this section, the term 'insurance product' includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.''.

SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.

Except as provided in section 104(a)(2), no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of an insured depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

SEC. 309. PUBLICATION OF PREEMPTION OF STATE LAWS.

Section 5244 of the Revised Statutes of the United States (12 U.S.C. 43) is amended—

(1) by inserting ''or Federal savings association'' after ''national bank'' each place that term appears; and

(2) in subsection (c)(3)(B)(i), by inserting ''or savings associations'' after ''banks''.

Subtitle B—National Association of Registered Agents and Brokers

SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

(a) IN GENERAL.—The provisions of this subtitle shall take effect unless, not later than 3 years after the date of enactment of this Act, at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) DETERMINATION.—

(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.

(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

(g) UNIFORM LICENSING.—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the ''Association'').

(b) STATUS.—The Association shall—

(1) be a nonprofit corporation;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agent or instrumentality of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

SEC. 323. PURPOSE.

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.

The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the ''NAIC'').

SEC. 325. MEMBERSHIP.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.

(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) SUSPENSION AND REVOCATION.—The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) OFFICE OF CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

SEC. 326. BOARD OF DIRECTORS.

(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the ''Board'') for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.

(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with ⅓ of the directors to be appointed each year.

(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

SEC. 327. OFFICERS.

(a) IN GENERAL.—

(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) CRITERIA FOR CHAIRPERSON.—Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.

(a) ADOPTION AND AMENDMENT OF BYLAWS.—

(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY THE NAIC.—Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC PROCEEDINGS.—

(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) for such longer period as to which the Association consents.

(4) STANDARDS FOR REVIEW.—

(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) ALTERNATE PROCEDURE.—

(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) ABROGATION BY THE NAIC.—

(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be a final action.

(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.

(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a ''disciplinary action''), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC REVIEW OF DISCIPLINARY ACTION.—

(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) SCOPE OF REVIEW.—

(1) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

SEC. 329. ASSESSMENTS.

(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.

SEC. 330. FUNCTIONS OF THE NAIC.

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) EXAMINATIONS AND REPORTS.—

(1) EXAMINATIONS.—The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) REPORT BY ASSOCIATION.—As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

SEC. 332. ELIMINATION OF NAIC OVERSIGHT.

(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented, the following shall apply:

(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.

(2) PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.—

(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the NAIC shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) PRESIDENTIAL OVERSIGHT.—

(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(c) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

SEC. 333. RELATIONSHIP TO STATE LAW.

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

(b) PROHIBITED ACTIONS.—No State shall—

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

SEC. 334. COORDINATION WITH OTHER REGULATORS.

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

SEC. 335. JUDICIAL REVIEW.

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

SEC. 336. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) HOME STATE.—The term ''home State'' means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

(2) INSURANCE.—The term ''insurance'' means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) INSURANCE PRODUCER.—The term ''insurance producer'' means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(4) STATE.—The term ''State'' includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) STATE LAW.—The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLDING COMPANIES WITH COMMERCIAL AFFILIATES.

(a) IN GENERAL.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

''(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—

''(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after March 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

''(i) under paragraph (1)(C) or (2); or

''(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.

''(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

''(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on March 4, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and that—

''(i) meets and continues to meet the requirements of paragraph (3); and

''(ii) continues to control not fewer than 1 savings association that it controlled on March 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date, or the successor to such savings association.

''(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction that—

''(i) involves solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

''(ii) involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

''(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

''(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

''(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on March 4, 1999, or a subsequent date, pursuant to an application pending before the Office of Thrift Supervision on or before March 4, 1999; and

''(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since March 4, 1999, or a subsequent date, pursuant to an application pending before the Office of Thrift Supervision on or before March 4, 1999.''.

(b) CONFORMING AMENDMENT.—Section 10(o)(5)(E) of the Home Owners' Loan Act (15 U.S.C. 1467a(o)(5)(E)) is amended by striking '', except subparagraph (B)'' and inserting ''or (c)(9)(A)(ii)''.

SEC. 402. OPTIONAL CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS TO NATIONAL BANKS.

Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following new paragraph:

''(5) CONVERSION TO A NATIONAL BANK.—Notwithstanding any other provision of law, any Federal savings association chartered and in operation before the date of enactment of the Financial Services Act of 1999, with branches in 1 or more States, may convert, with the approval of the Comptroller of the Currency, into 1 or more national banks, each of which may encompass one or more of the branches of the Federal savings association in 1 or more States, but only if the resulting national bank or banks will meet any and all financial, management, and capital requirements applicable to a national bank.''.

SEC. 403. RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.

Section 2 of the Act entitled ''An Act to enable national banking associations to increase their capital stock and to change their names or locations'', approved May 1, 1886 (12 U.S.C. 30), is amended by adding at the end the following new subsection:

''(d) RETENTION OF 'FEDERAL' IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

''(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of enactment of the Financial Services Act of 1999 may retain the term 'Federal' in the name of such institution if such depository institution remains an insured depository institution.

''(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the same meanings as in section 3 of the Federal Deposit Insurance Act.''.

TITLE V—FINANCIAL INFORMATION ANTI-FRAUD

SEC. 501. FINANCIAL INFORMATION ANTI-FRAUD.

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:

"TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

"SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This title may be cited as the 'Financial Information Anti-Fraud Act of 1999'.

''(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

"SEC. 1002. DEFINITIONS.

''For purposes of this title, the following definitions shall apply:

''(1) CUSTOMER.—The term 'customer' means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

''(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term 'customer information of a financial institution' means any information maintained by a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

''(3) DOCUMENT.—The term 'document' means any information in any form.

''(4) FINANCIAL INSTITUTION.—

''(A) IN GENERAL.—The term 'financial institution' means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

''(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term 'financial institution' includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

''(C) FURTHER DEFINITION BY REGULATION.—The Board of Governors of the Federal Reserve System may prescribe regulations further defining the term 'financial institution', in accordance with subparagraph (A), for purposes of this title.

"SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.

''(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

''(1) by knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information;

''(2) by knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or

''(3) by knowingly providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for

purposes of releasing the customer information.

''(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

''(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

''(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

''(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

''(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

''(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

''(e) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

''SEC. 1004. ADMINISTRATIVE ENFORCEMENT.

''(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act to enforce compliance with that title.

''(b) ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.—

''(1) IN GENERAL.—Compliance with this title shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act, in the case of—

''(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

''(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

''(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

''(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

''(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

''(2) VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

''(c) STATE ACTION FOR VIOLATIONS.—

''(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—

''(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

''(B) may bring an action on behalf of the residents of the State to recover damages of not more than $1,000 for each violation; and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

''(2) RIGHTS OF FEDERAL REGULATORS.—

''(A) PRIOR NOTICE.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission and, in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution and provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

''(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

''(i) to intervene in an action under paragraph (1);

''(ii) upon so intervening, to be heard on all matters arising therein;

''(iii) to remove the action to the appropriate United States district court; and

''(iv) to file petitions for appeal.

''(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.

''SEC. 1005. CIVIL LIABILITY.

''Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:

''(1) ACTUAL DAMAGES.—The greater of—

''(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure; or

''(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any nonmonetary consideration, as a result of the action which constitutes such failure.

''(2) ADDITIONAL DAMAGES.—Such additional amount as the court may allow.

''(3) ATTORNEYS' FEES.—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

''SEC. 1006. CRIMINAL PENALTY.

''(a) IN GENERAL.—Whoever violates, or attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

''(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

''SEC. 1007. RELATION TO STATE LAWS.

''(a) IN GENERAL.—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

''(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.

''SEC. 1008. AGENCY GUIDANCE.

''In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) shall issue advisories to depository institutions under the jurisdiction of the agency, in order to assist such depository institutions in deterring and detecting activities proscribed under section 1003.''.

SEC. 502. REPORT TO CONGRESS ON FINANCIAL PRIVACY.

Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Federal Trade Commission, the Federal banking agencies, and other appropriate Federal law enforcement agencies, shall submit to the Congress a report on—

(1) the efficacy and adequacy of the remedies provided in the amendments made by section 501 in addressing attempts to obtain financial information by fraudulent means or by false pretenses; and

(2) any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

TITLE VI—MISCELLANEOUS

SEC. 601. GRAND JURY PROCEEDINGS.

Section 3322(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting ''Federal or State'' before ''financial institution''; and

(2) in paragraph (2), by inserting ''at any time during or after the completion of the investigation of the grand jury,'' before ''upon''.

SEC. 602. SENSE OF THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS OF THE SENATE.

(a) FINDINGS.—The Committee on Banking, Housing, and Urban Affairs of the Senate finds that—

(1) financial modernization legislation should benefit small institutions as well as large institutions;

(2) the Congress made the subchapter S election of the Internal Revenue Code of 1986, available to banks in 1996, reflecting a desire by the Congress to reduce the tax burden on community banks;

(3) large numbers of community banks have elected or expressed interest in the subchapter S election; and

(4) the Committee on Banking, Housing, and Urban Affairs of the Senate recognizes that some obstacles remain for community banks wishing to make the subchapter S election.

(b) SENSE OF THE COMMITTEE.—It is the sense of the Committee on Banking, Housing, and Urban Affairs of the Senate that—

(1) the small business tax provisions of the Internal Revenue Code of 1986, should be more widely available to community banks;

(2) legislation should be passed to amend the Internal Revenue Code of 1986, to—

(A) increase the allowed number of S corporation shareholders;

(B) permit S corporation stock to be held in individual retirement accounts;

(C) clarify that interest on investments held for safety, soundness, and liquidity purposes should not be considered to be passive income;

(D) provide that bank director stock is not treated as a disqualifying second class of stock for S corporations; and

(E) improve the tax treatment of bad debt and interest deductions; and

(3) the legislation described in paragraph (2) should be adopted by the Congress in conjunction with any financial modernization legislation.

SEC. 603. INVESTMENTS IN GOVERNMENT SPONSORED ENTERPRISES.

Section 18(s) of the Federal Deposit Insurance Act (12 U.S.C. 1828(s)) is amended—

(1) by redesignating paragraph (4) as paragraph (6); and

(2) by inserting after paragraph (3) the following:

''(4) CERTAIN INVESTMENTS.—Paragraph (1) shall not apply with respect to investments lawfully made before April 11, 1996, by a depository institution in any Government sponsored enterprise.

''(5) STUDENT LOANS.—

''(A) IN GENERAL.—This subsection does not apply to any arrangement between a Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association, hereafter in this paragraph referred to as the 'Association') and a depository institution, if the Secretary approves the affiliation and determines that—

''(i) the reorganization of the Association in accordance with section 440 of the Higher Education Act of 1965 (20 U.S.C. 1087–3), will not be adversely affected by the arrangement;

''(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated, or on such earlier date as the Secretary determines to be appropriate, except that the Secretary may extend such period for not more than 1 year at a time (not to exceed 2 years, in the aggregate) if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization;

''(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

''(iv) the operations of the Association will be separate from the operations of the depository institution; and

''(v) until the dissolution date (as that term is defined in section 440(i)(2) of the Higher Education Act of 1965) has occurred, such depository institution will not use the trade name or service mark 'Sallie Mae' in connection with any product or service it offers, if the appropriate Federal banking agency for the depository institution determines that—

''(I) the depository institution is the only institution offering such product or service using the Sallie Mae name; and

''(II) the use of such name would result in the depository institution having an unfair competitive advantage over other depository institutions.

''(B) TERMS AND CONDITIONS.—In approving any arrangement referred to in subparagraph (A), the Secretary may impose any terms and conditions on the arrangement that the Secretary considers appropriate, including—

''(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

''(ii) restricting the use of proceeds from the issuance of such debt.

''(C) ADDITIONAL LIMITATIONS.—In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the investment portfolio of the Association shall not at any time exceed the lesser of—

''(i) the value of such portfolio on the date of enactment of the Financial Services Act of 1999; or

''(ii) the value of such portfolio on the date on which such an arrangement is consummated.

''(D) ENFORCEMENT.—The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 440 of the Higher Education Act of 1965.

''(E) DEFINITIONS.—For purposes of this paragraph, the following definition shall apply:

''(i) ASSOCIATION; HOLDING COMPANY.—Notwithstanding any provision in section 3, the terms 'Association' and 'Holding Company' have the same meanings as in section 440(i) of the Higher Education Act of 1965.

''(ii) INVESTMENT PORTFOLIO.—The term 'investment portfolio' means all investments shown on the consolidated balance sheet of the Association, other than—

''(I) any instruments or assets described in section 439(d) of the Higher Education Act of 1965 (20 U.S.C. 1087–2(d));

''(II) any direct non-callable obligations of the United States, or any agency thereof, for which the full faith and credit of the United States is pledged; or

''(III) cash or cash equivalents.

''(iii) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.''.

SEC. 604. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956.

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

''(f) [Reserved].''.

SEC. 605. SERVICE OF MEMBERS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

Notwithstanding the first undesignated paragraph of section 10 of the Federal Reserve Act, the vice chairman of the Board of Governors of the Federal Reserve System may serve as a member of the District of Columbia Financial Responsibility and Management Assistance Authority established by section 101 of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

SEC. 606. PROVISION OF TECHNICAL ASSISTANCE TO MICROENTERPRISES.

(a) IN GENERAL.—Title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following new subtitle:

''Subtitle C—Microenterprise Technical Assistance and Capacity Building Program

''SEC. 171. SHORT TITLE.

''This subtitle may be cited as the 'Program for Investment in Microentrepreneurs Act of 1999', also referred to as the 'PRIME Act'.

''SEC. 172. DEFINITIONS.

''For purposes of this subtitle—

''(1) the term 'Administrator' has the same meaning as in section 103;

''(2) the term 'capacity building services' means services provided to an organization that is, or is in the process of becoming a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs;

''(3) the term 'collaborative' means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this subtitle;

''(4) the term 'disadvantaged entrepreneur' means a microentrepreneur that is—

''(A) a low-income person;

''(B) a very low-income person; or

''(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator;

''(5) the term 'Fund' has the same meaning as in section 103;

''(6) the term 'Indian tribe' has the same meaning as in section 103;

''(7) the term 'intermediary' means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 175;

''(8) the term 'low-income person' has the same meaning as in section 103;

''(9) the term 'microentrepreneur' means the owner or developer of a microenterprise;

''(10) the term 'microenterprise' means a sole proprietorship, partnership, or corporation that—

''(A) has fewer than 5 employees; and

''(B) generally lacks access to conventional loans, equity, or other banking services;

''(11) the term 'microenterprise development organization or program' means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs or prospective entrepreneurs;

''(12) the term 'training and technical assistance' means services and support provided to disadvantaged entrepreneurs or prospective entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services; and

''(13) the term 'very low-income person' means having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section).

''SEC. 173. ESTABLISHMENT OF PROGRAM.

''The Administrator shall establish a microenterprise technical assistance and capacity building grant program to provide assistance from the Fund in the form of grants to qualified organizations in accordance with this subtitle.

''SEC. 174. USES OF ASSISTANCE.

''A qualified organization shall use grants made under this subtitle—

''(1) to provide training and technical assistance to disadvantaged entrepreneurs;

''(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

''(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

''(4) for such other activities as the Administrator determines are consistent with the purposes of this subtitle.

''SEC. 175. QUALIFIED ORGANIZATIONS.

''For purposes of eligibility for assistance under this subtitle, a qualified organization shall be—

''(1) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

''(2) an intermediary;

''(3) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

''(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

''SEC. 176. ALLOCATION OF ASSISTANCE; SUBGRANTS.

''(a) ALLOCATION OF ASSISTANCE.—

''(1) IN GENERAL.—The Administrator shall allocate assistance from the Fund under this subtitle to ensure that—

''(A) activities described in section 174(1) are funded using not less than 75 percent of amounts made available for such assistance; and

''(B) activities described in section 174(2) are funded using not less than 15 percent of amounts made available for such assistance.

''(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single organization or entity may receive more than 10 percent of the total funds appropriated under this subtitle in a single fiscal year.

''(b) TARGETED ASSISTANCE.—The Administrator shall ensure that not less than 50 percent of the grants made under this subtitle are used to benefit very low-income persons, including those residing on Indian reservations.

''(c) SUBGRANTS AUTHORIZED.—

''(1) IN GENERAL.—A qualified organization receiving assistance under this subtitle may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such rules and regulations as the Administrator determines to be appropriate.

''(2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of assistance received by a qualified organization under this subtitle may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

''(d) DIVERSITY.—In making grants under this subtitle, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities and racially and ethnically diverse populations.

''SEC. 177. MATCHING REQUIREMENTS.

''(a) IN GENERAL.—Financial assistance under this subtitle shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of each dollar provided by the Fund.

''(b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement in subsection (a).

''(c) EXCEPTION.—

''(1) IN GENERAL.—In the case of an applicant for assistance under this subtitle with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirements of subsection (a).

''(2) LIMITATION.—Not more than 10 percent of the total funds made available from the Fund in any fiscal year to carry out this subtitle may be excepted from the matching requirements of subsection (a), as authorized by paragraph (1) of this subsection.

''SEC. 178. APPLICATIONS FOR ASSISTANCE.

''An application for assistance under this subtitle shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

''SEC. 179. RECORDKEEPING.

''The requirements of section 115 shall apply to a qualified organization receiving assistance from the Fund under this subtitle as if it were a community development financial institution receiving assistance from the Fund under subtitle A.

''SEC. 180. AUTHORIZATION.

''In addition to funds otherwise authorized to be appropriated to the Fund to carry out this title, there are authorized to be appropriated to the Fund to carry out this subtitle—

''(1) $15,000,000 for fiscal year 2000;

''(2) $25,000,000 for fiscal year 2001;

''(3) $30,000,000 for fiscal year 2002; and

''(4) $35,000,000 for fiscal year 2003.

''SEC. 181. IMPLEMENTATION.

''The Administrator shall, by regulation, establish such requirements as may be necessary to carry out this subtitle.''.

(b) ADMINISTRATIVE EXPENSES.—Section 121(a)(2)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4718(a)(2)(A)) is amended—

(1) by striking ''$5,550,000'' and inserting ''$6,100,000''; and

(2) in the first sentence, by inserting before the period '', including costs and expenses associated with carrying out subtitle C''.

(c) CONFORMING AMENDMENTS.—Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4703(d)) is amended—

(1) in paragraph (2)—

(A) by striking ''15'' and inserting ''17''; and

(B) in subparagraph (G)—

(i) by striking ''9'' and inserting ''11'';

(ii) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(iii) by inserting after clause (iii) the following:

''(iv) 2 individuals who have expertise in microenterprises and microenterprise development;''; and

(2) in paragraph (4), in the first sentence, by inserting before the period ''and subtitle C''.

NOTICES OF HEARINGS

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Senate Committee on Health, Education, Labor, and Pensions will be held on Thursday, May 6, 1999, 10 a.m., in SD–628 of the Senate Dirksen Building. The subject of the hearing is ''ESEA: Safe Schools.'' For further information, please call the committee, 202/224–5375.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, May 11, 1999 and will commence at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on S. 25, the Conservation and Reinvestment Act of 1999; S. 446, the Resources 2000 Act; S. 532, the Public Land and Recreation Investment Act of 1999; S. 819, the National Park Preservation Act and the Administration's Lands Legacy proposal. The hearing also will examine the role of the Council on Environmental Quality in the decision-making and management processes of agencies under the Committee's jurisdiction—Department of the Interior, Department of Energy, and the U.S. Forest Service.

Because of the limited time available for each hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, 364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Kelly Johnson at (202) 224–4971.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce that on Tuesday, May 25, 1999, the Committee on Energy and Natural Resources will hold an oversight hearing on State Progress in Retail Electricity Competition. The hearing will be held at 9:30 a.m. in room 366 of the Dirksen Senate Office Building in Washington, D.C.

Those who wish to testify or submit a written statement should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Julia McCaul at (202) 224–6567.

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Subcommittee on National Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources. The purpose of this hearing is to review the Youth Conservation Corps and other job programs conducted by the National Park Service, Bureau of Land Management, Forest Service, and the U.S. Fish and Wildlife Service.

The hearing will take place on Wednesday, May 19, 1999 at 2:00 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole or Shawn Taylor of the committee staff at (202) 224–6969.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRAMM. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be allowed to meet on Tuesday, May 4, 1999, at 9:30 a.m. on TV violence.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GRAMM. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, May 4, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purposes of this hearing is to receive testimony on S. 25, the Conservation and Reinvestment Act of 1000; S. 446, the Resources 2000 Act; S. 532, the Public Land and Recreation Investment Act of 1999; S. 819, the National Park Preservation Act; and the Administration's Lands Legacy proposal.

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

COMMITTEE ON FINANCE

Mr. GRAMM. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Tuesday, May 4, 1999 beginning at 10:00 a.m. in room 215 Dirksen.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRAMM. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 4, 1999 at 10 a.m. to hold a hearing.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Tuesday, May 4, 1999 at 9:30 a.m. to conduct an Oversight Hearing on Census 2000, Implementation in Indian Country. The Hearing will be held in room 485 of the Russell Senate Office Building.

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. GRAMM. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Tuesday, May 4, 1999 at 2:00 p.m. to hold a hearing in room 226, Senate Dirksen Building, on ''S. 353, the Class Action Fairness Act of 1999.''

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

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS, AND COMPETITION

Mr. GRAMM. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Business Rights, and Competition, of the Senate Judiciary Committee, be authorized to hold a hearing during the session of the Senate on Tuesday, May 4, 1999 at 10 a.m. in room 226 of the Senate Dirksen Office Building, on: ''S. 467, the Antitrust Merger Review Act: Accelerating FCC Review of Mergers.''

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

SUBCOMMITTEE ON INTERNATIONAL TRADE

Mr. GRAMM. Mr. President, I ask unanimous consent that the Subcommittee on International Trade and Finance of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session on the Senate on Tuesday, May 4, 1999, to conduct a hearing on ''Effects of International Institutions on U.S. Agricultural Exports.''

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

ADDITIONAL STATEMENTS

TRIBUTE TO JOHN ELWAY

● Mr. CAMPBELL. Mr. President, on Sunday, May 2nd, John Elway, who for 16 seasons has been the uncontested leader of the Denver Broncos and a valuable civic leader and mentor for young Americans, officially announced his retirement from the NFL. He will be sorely missed. From extraordinary moments like ''The Drive'' in the 1986 AFC Championship Game to countless other picturesque instances, all we have are the many memories now. How do you replace a legend? You can't.

Exactly 16 years from the date of his announcement—May 2, 1983—the Denver Broncos acquired John Elway from, the then Baltimore Colts in return for offensive lineman Chris Hinton, quarterback Mark Herrman, and the Broncos' first round draft pick in the 1984 draft. That day will go down as arguably the best day in Broncos' history, and one of the best in football history.

I had the pleasure on January 27, 1998 of addressing my colleagues on the Senate floor regarding the accomplishments of one of the best quarterbacks in the history of the NFL, John Elway, with Senate Resolution 167. On February 3, 1999, I again had the honor of calling to my colleagues' attention the outstanding accomplishments of the Denver Broncos and John Elway for capturing another Super Bowl victory. Today I have the distinct honor of congratulating John Elway for a remarkable career and would like to thank him for all he contributed to Colorado and to our nation.

Mr. President, John Elway's career has been packed with astonishing statistics; 148 victories, the NFL record for a quarterback; nine Pro Bowl selections; 5 Super Bowl starts, another NFL record; two Super bowl Championships; 300 career touchdown passes; over 50,000 passing yards; Super Bowl XXXIII's Most Valuable Player; the NFL's Most Valuable Player in 1987; the American Football Conference's Most Valuable Player in 1993; and 47 fourth-quarter comebacks, to name just a few of the many highlights of a stellar career.

John Elway's leadership and dedication to excellence have benefitted the Broncos, the city of Denver, the state of Colorado, and America. John Elway, your place in Canton, Ohio in the Pro Football Hall of Fame awaits.

I thank the Chair and yield the floor.●

TRIBUTE TO JOHN ELWAY

● Mr. ALLARD. Mr. President, on May 2, 1999, John Elway retired concluding one of the most remarkable sports careers ever. After sixteen National Football League seasons, exactly sixteen years to the day after he was traded to the Denver Broncos by the Baltimore Colts, the Magnificent Number 7 bid farewell to the team he has led to five Super Bowls and two consecutive world championships.

John Elway has been among the most prolific quarterbacks ever. He is the all-time winningest quarterback with 148 wins as a starter. In 46 of those wins Elway engineered game winning fourth quarter drives. He stands second in all-time passing yards and third all-time in touchdown passes. He has been elected to nine Pro Bowls, starting in eight of them. He is the only quarterback to ever throw for 3,000 yards and rush for 200 in 7 consecutive seasons. Elway started in a record 5 Super Bowls, and last year was elected MVP of the game. In addition to his peerless offensive

production John Elway has been the model of leadership and consistency both on and off the field.

On the field Elway missed only 15 games in 16 years due to illness or injury. This toughness is amazing considering that in 256 career games he was sacked an NFL record 559 times. Former Broncos coach Dan Reeves says that it is Elway's mental toughness that has allowed this consistency. Current coach Mike Shanahan cites Elway's competitive hunger and his confidence. What is clear at the end of sixteen years is that Elway's combined physical gifts and the mettle of his character have made him an American icon.

Off the field Elway has worked tirelessly for numerous Colorado charities, and his John Elway Foundation has generated more than a million dollars in contributions since its inception. The stability and commitment of the Elway Foundation insures that it will continue to make Colorado a better place for years to come.

In an age when so many celebrities shrink under the intensity of the spotlight John Elway has carried himself with class and dignity. It is hard to define what John Elway means to Colorado, but it is clear to me that he is more than just a football player. He is more than just a superstar. He is a figure that stands for something good, something strong and dedicated. John Elway is the athlete you don't mind being a role model. It makes you feel good to see his jersey on a kid playing in the park. I believe that says far more than any statistic.

I know that the people of Colorado join me in wishing John Elway and his family the very best.●

SALUTE TO THE NATIONWIDE COMPANIES

● Mr. CLELAND. Mr. President, I rise today to recognize an exeptional company based in Atlanta, GA. The Nationwide Companies proudly established its national headquarters in Atlanta just 7 years ago, and through the progressive, dynamic leadership of its founder and president, Bill Case, it has succeeded in the marketplace from coast to coast.

Success earns recognition, and Money Maker's Monthly, the prestigious business journal, recently awarded this ever-growing company the distinction as ''The Company of the Month'' in the United States. The front-page feature, appropriately titled, ''The Nationwide Miracle,'' meticulously describes the amazing progress of Nationwide, and applauds the company's founder and president Bill Case for his leadership and unquestioned integrity. Perhaps the best description of Nationwide as a uniquely American business is the conclusion in the feature that Bill Case and his company are ''revolutionizing the way the American public earns and saves money.''

The Money Maker's Monthly feature is a tribute to a man's vision and the ability to transfer dreams into reality. In order that others may celebrate this wonderful and well-deserved award and perhaps be inspired each day to realize the American dream, Mr. President, I ask you to join me and our colleagues in saluting the many successes of Bill Case and the Nationwide Companies. I ask that the Money Maker's monthly article be printed in the RECORD.

The article follows:

THE NATIONWIDE MIRACLE—ONE MAN'S VISION PRODUCES UNIQUE NETWORK MARKETING BIZ

Bill Case dreamed for many years of a business where people could enjoy financial freedom. He already knew that network marketing was the wave of the future, but concluded that the industry had complications that disillusioned many able and talented people. He wanted to find the simplest way that a home-based entrepreneur could earn impressively through network marketing without spending hard-earned money on things like inventory and also avoid obstacles like unproductive downlines. In other words, could you build a business where financial freedom was obtainable through good, honest work?

After carefully researching other network marketing companies and interviewing a cross-section of successful networking entrepreneurs throughout the country, Case found the answer. The result became The Nationwide Companies, his seven-year-old business that is viewed by many observers as a miracle in the network marketplace.

''Instead of selling marked-up merchandise, we sell a benefits package which gives the owner the right to purchase popular items like cars, boats, furniture and health insurance with the same group buying power and low prices enjoyed by Fortune 500 Companies.'' Case emphasizes that the Nationwide Benefits Package is ''a hot item because of value in savings.'' Case says his network marketing business, which is headquartered in Atlanta, is revolutionizing the way the American public earns and saves money. Skeptics are few and far between as Case and his company gladly showcase a growing number of success stories from California to Florida who are earning six-figure incomes. Nationwide networkers called Independent Marketing Directors (IMDs), publicly and rather proudly state that they are enjoying genuine financial freedom as associates of Case's ''Team Nationwide.''

With evangelical drive, Case welcomes everyone to visit under the umbrella of The Nationwide Companies. ''We are truly one of a kind among network marketing companies,'' observes Case. ''We have a quality product that stands on its own in the marketplace because it allows purchasers to obtain items of genuine value.'' He emphasizes that the Nationwide Benefits Package can be purchased by anyone. It is a retail item in the truest sense of the word. The Benefits Package allows the owner, according to Case, to buy or lease cars, trucks, RVs, boats, along with furniture, eye care, health insurance, and even exotic vacations. ''Our Benefits Package saves consumers substantial amounts of good, hard dollars. The benefits are from recognizable Fortune 500 companies like ''the big three'' automakers, General Electric, United Parcel Service, Hertz and LensCrafters, just to name a few,'' says Case, adding that the Package is ''one of the best bargains in the country!''

WITHOUT BURDENS

Like other network marketing businesses, Nationwide operates through its IMDs from Hawaii to New York. From the company's Atlanta headquarters, Case's fast-growing enterprise provides marketing and sales information, computer support and state-of-the-art, easily accessible training for its IMDs. When asked what makes Nationwide different from other network marketers, Case, breaking into a wide grin, responds, ''Our IMDS don't have to buy or keep any inventory. There's no quota of any kind, no penalties, no competition and no levels of unpaid production.'' Case adds that Nationwide's system ''pays to infinity.'' ''You get paid what you are worth with Nationwide, and you only have to make two sales each year. We believe that our IMDs should earn good money without unnecessary difficulty,'' he says.

Case describes Nationwide's management as ''hands-on.'' ''We have a National Sales Training Coordinator for Nationwide who has created the lion's share of the effective marketing tools used in the company's training program. Lynda is a crown jewel,'' says Hendryx. ''Her training expertise gives our IMDS the head start they need in earning good, solid money as quickly as possible.''

One of the key players on Nationwide's team is Dick Loehr, president of Loehr's Auto Consultants in Ft. Lauderdale, Fla., who operates the benefits company for Nationwide. Loehr, who once owned nine automobile franchises, ranging from Porsche to Chrysler, has vast experience in the national automobile marketplace. A protégé of Lee Iococca (Loehr was an advisor to Iococca at Chrysler and still wears the lapel pin award given for his service to Iococca and Chrysler), Loehr is a virtual encyclopedia of knowledge of the automobile industry, including the complicated areas of financing and leasing. Nationwide recently produced a video interview with Loehr, which is a reservoir of vital information that any consumer would need to know before buying or leasing an automobile.

Loehr's joining Nationwide meant coming out of retirement. ''When I heard about Nationwide, I did my own investigation and knew this company was a winner,'' says Loehr. With Loehr's auto industry skills, Nationwide continues to be able to make popular items like automobiles available to its associates through the same group buying power enjoyed by Fortune 500 companies. Also, Loehr's heralded experience in the car market is invaluable to Nationwide. ''I understand pricing of automobiles and trucks, and financing and leasing is almost second-hand to me,'' says Loehr, who is not bragging, but stating fact.

One of the most recent benefits available to Nationwide associates is the availability of Program cars, which became possible through Loehr's esoteric knowledge of the automobile industry. Loehr says this makes the Benefits Package even more valuable. ''A Program car is a recent model, low mileage auto in top shape from a fleet program which we obtain for sale or lease. These are incredible bargains available to anyone owning the Nationwide Benefits Package.''

TRIBUTES FROM THE TRENCHES

Case describes his national network of IMD's as ''my field generals.'' ''I'm proud of the quality and high character of every one,'' he says. Robert and Donna Fason of Mount Vernon, Ark., are Nationwide's National Sales Directors who earned their lofty title through impressive success. ''Every day is a vacation to us,'' says Robert, adding, ''We are making more money than ever and our IMD's are truly excited about even greater earnings as we work together for financial freedom.''

Two key Team Nationwide Associates, says Case are Ruby and Ray Riedel of Yakima, Wash. Both are successful veteran network marketers who left one of the big

names in the industry for nationwide. Their story is a fascinating, personal endorsement of Case's network business dream. ''Unlike our previous company, we now have absolutely no inventory, monthly quotas or penalties,'' stated Ruby Riedel, ''How refreshing to be part of a genuine network company and to be free of all overhead, competition and no levels of unpaid production!'' In place of these obstacles, Ruby says that IMD's now have ''value with rewards,'' ''We and all others are paid what we're worth without limitations, under an amazing income system that pays to infinity.'' She hastens to add that Nationwide's regular training program deserves accolades. ''The intensive and effective support given to every IMD by people like Jack Hendryx and Lynda Davis keeps all of us going upward with our earnings. This training may be the very best in the network marketing industry.''

Perhaps no higher praise for Nationwide has been given than the observation of internationally respected and widely read author Alfred Huang. A Maui, Hawaii resident and Nationwide IMD, Huang says he became an associate of Case's team not solely because of its proven earnings and savings, but particularly because the system ''helps people to live a better life.'' ''The true spirit and value of Nationwide is caring of people.'' Huang is a best-selling author whose next book, ''The Century of the Dragon—Creating Your Success and Prosperity in the Next Century,'' is due for publication later this year. He is convinced that network marketing will soon be the mainstream solution for financial wellness.

''Nationwide,'' Huang says, ''is the best network marketing [company] I have ever known.'' A native of China, who was imprisoned for 13 years after being wrongly convicted and sentenced as an American spy (his conviction was overturned), plans to write a book about Nationwide. ''I want to tell people how to change their attitude and build their self-confidence by sharing the beauty of Nationwide, its philosophy, its system, its opportunity and its loving and caring of people.''

INCOME TESTIMONIALS

Nationwide, according to Case, is a 100 percent debt-free company that parallels the American Dream of entrepreneurial success. ''Just look at Jack Hendryx, says Case. ''No man in America could, I believe, exceed his professional marketing ability and wonderful reputation for honesty.'' As a matter of fact, one of Hendryx's presentations, which he gives live in regional meetings, and is recorded on one of Nationwide's video programs, concludes with Hendryx' advice to everyone, ''The Benefits Package will sell itself. All you have to do is tell the truth, the whole truth, and nothing but the truth. the rest is easy.''

Case's expectations for 1999 and into the next millennium are high. ''We turned the corner sometime back and this year and the next will see us explode with new sales. My projection is to have tens of thousands more IMD's on board, spread evenly throughout the geographical areas of America with resulting growth in sales of the Benefits Package.'' Case revealed that new benefits are scheduled to be added to the package soon, and as they are added, they will be placed retroactively into Benefits Packages already owned. ''Remember, we are family and we share,'' says Case with his engaging smile and twinkling eyes.

Every great American business pioneer has said, in one way or another, that a company is measured by the accomplishments of its people. Perhaps no better measure of Nationwide's enviable position in America's network marketplace can be found than in the successes of its IMDs. Many companies, for whatever reason, are reluctant to disclose individuals with verifiable earnings, but not Nationwide ''We want people who are looking for the best earnings opportunity in America today to contact our folks and ask them questions,'' Case says. ''They are going to hear revelations from our people whose lives have been transformed because of the Nationwide miracle. And, I might add, I am talking about genuinely impressive earnings.''

Joyce Ross, along with her husband Marvin, is a Nationwide Regional Director in Malden, MO. She revealed an upward transformation in income during her first year with Nationwide. ''For 26 years, we owned a combination barber and beauty shop in a lovely small town, but worked ourselves nearly to death with an accumulation of bills and not enough money for the work we were doing. Then came Nationwide,'' says Joyce. ''It would have taken me ten years to earn as a hairdresser what I have earned with Nationwide in less than two years.''

Similarly, Don Garrison of Lampe, MO discloses that he earned over $300,000 in the first year. ''This is the only way I want to live and work, as a free American citizen!'' David Hervey mirrors Garrison's success by revealing that he, too, earned beyond $300,000 during the past year as an associate of Team Nationwide. Hervey, it should be added, is a Nationwide Regional Director in Jackson, Miss. Lamar Adams, a Regional Director in Madison, Miss., earned over $10,000, he says ''. . . in just my first six months as a Nationwide IMD!''

Jack Hendryx, speaking from Nationwide's Atlanta head-quarters, confirms that there are ''large numbers of similar testimonials that we are delighted to share with anyone, anytime, who has a genuine interest in bettering their lives and the lives of their families.'' Hendryx has an abundance of examples. ''All of our Regional Directors have their own earnings success stories. Jack and Becky Hearrell, Fred and Betty Swindle, and Shelby Langston deserve special recognition, as does Bob and Judi Montgomery. The team is built upon the Regional Directors' Shoulders.

Case is inseparable from his wife, Carol. It is more than symbolic that he includes Carol in as many Nationwide activities as her time and schedule will permit. ''Carol was instrumental in providing me with some of the central ideas that made Nationwide possible.'' Case says, ''She, in an admirable way, has marketing and public relations talents that go well beyond what you might expect to find on Madison Avenue or even here on Peachtree Street in Atlanta. Plus, we believe in husbands and wives, along with their families, being the core of Team Nationwide.''

The IMD Honor Roll of Nationwide bears out Case's ''family'' vision. The Regional Directors are almost invariably in husband and wife pairs. IMD's everywhere, pictured on his large conference room walls, are there with their respective husbands and wives and occasionally, other family members. Dick Loehr and his wife, Mary Lou are main stays in the Nationwide miracle; likewise, Jack and Heide Hendryx. ''What a wonderful country this will continue to be if we have more businesses like Nationwide,'' says Case ''where the preservation and betterment of the family unit is not only encouraged, but made possible through the miracle of financial freedom!''

Nationwide's story is the embodiment of the American dream. Case believes that Nationwide is just beginning its revolution in the network marketplace. During 1999 and well beyond, he is committed to making Nationwide the national exemplar of true financial freedom. He and his key team players like Hendryx, Loehr and Davis are driven toward their goal of financial freedom for everyone who is willing to work for it. Every bit of evidence, out in the national field and within their own business data in Atlanta, indicates that they must be taken seriously.

Nationwide is on solid ground in the precarious mine field we call the marketplace. Leadership, from Bill Case on down through the chain of command, is top-notch. The determination to grow and expand, based upon time-honored business methods, is evidenced dramatically by its affiliation with Superior Bank. The respected financial institution provides consumer loans and mortgages as one of Nationwide's benefits. Standing on its own, this banking relationship is a network industry original but merits applause.

Case lives his dream everyday, only now it's real for others as well. His IMDs are earning handsomely through the Nationwide miracle because Case has blended the magic business ingredients of planning, managing, and training with honesty and integrity, and combined it with a valuable, unprecedented Benefits Package.

Case and his team are telling America that a dream becomes a reality through hard work. The road to financial freedom took some effort to locate, but they found it and have it available today. It's a very rewarding journey.●

TRIBUTE TO THE REVEREND MONSIGNOR R. DONALD KIERNAN

● Mr.COVERDELL. Mr. President, I rise today to pay tribute to an outstanding Georgian and a good friend, the Reverend Monsignor R. Donald Kiernan, of Dunwoody, who today celebrates his 50th Anniversary of service to the Church.

Monsignor Kiernan is a man of great warmth and humor, strong compassion for others, and deep devotion to God, the Church, and to his community. I have been privileged to work with Monsignor Kiernan as a member of the Selection Committee that assists me in choosing nominees for appointment to the United States military academies. His perception and judgment have been invaluable in making those always difficult selections. But that is only one example of the community service that has distinguished his career.

In 1962, Monsignor Kiernan was instrumental in founding the Georgia Association of Chiefs of Police, and served as that organization's director and chaplain for over twenty years. He has also served as a chaplain for the Georgia State Patrol, the Georgia Bureau of Investigation, the DeKalb County Police Department, the Atlanta office of the Bureau of Alcohol, Tobacco, and Firearms, the emergency medical technicians, and several other organizations. Three governors have recognized his dedication to the law enforcement community by appointing him to state commissions on crime.

He also plays leading roles as a member of the executive committee of the Atlanta Area Boy Scouts of America and on the Board of Directors of the United Service Organization.

The Monsignor's many civic activities have been an expression of his devoted service to the Church itself.

After graduating from Mount Saint Mary's Seminary in Emmitsburg, Maryland, he was ordained on May 4, 1949 by Richard Cardinal Cushing, Archbishop of Boston, at the Holy Cross Cathedral in Boston. He was assigned to serve as Assistant Rector at the Cathedral of St. John the Baptist in Savannah Georgia. He went on to serve as an assistant pastor and then pastor of nearly a dozen churches across the state of Georgia, currently serving All Saints Catholic Church in Dunwoody. In 1969 he was given the title Prelate of Honor (Reverend Monsignor) by Pope Paul VI. He was elevated to the highest rank of Monsignor by Pope John Paul I in 1979.

I could list many other honors and awards conferred upon Monsignor Kiernan, but perhaps his greatest achievement is in the many lives he has touched. By now he must be on the third generation of performing baptisms and marriages. His counsel, his example, and his leadership have been a comfort and an inspiration to many thousands of Georgians. His community service and his work raising money for the Church have benefitted many others.

Those of us fortunate enough to know Monsignor Kiernan are thankful that we do and so I am pleased, Mr. President, to congratulate Monsignor Kiernan on reaching this milestone and to thank him for his many years of outstanding service to our state, our nation, and to God.●

UPCOMING ELECTIONS IN INDONESIA AND THE FUTURE OF EAST TIMOR

● Mr. KERRY. Mr. President, there are two issues of critical importance to the future of Indonesia, the region, and the international community which has interest in securing a stable and democratic future for Southeast Asia: the upcoming elections in Indonesia and the political status of East Timor. If the June national elections in Indonesia are determined to be free, fair and transparent, the ballot for East Timor's political future has a much better chance of being conducted under the same conditions. The U.S. and the international community must make a strong effort now to ensure that these conditions are established and upheld.

For the first time in forty-five years, Indonesians have a chance to participate in a free and fair election and to establish a government with popular support and legitimacy. For the first time in twenty-four years, the Indonesian government is willing to consider an East Timor that is independent of Indonesian rule, pending the decision of the East Timorese, themselves. Indonesia, indeed, stands at a cross-roads.

We must be sure that the U.S. and the international community stands there with it to guide Indonesia down the correct path. The path that leads to democracy and free-market economic growth. Not the one headed into chaos and economic downturn. It is clear that the stakes are high.

Indonesia boasts the fourth largest population, and is a crucial player in Asia, where American economic and political interests overlap. In 1996, the United States benefitted from some $3 billion in exports to Indonesia and American firms had invested over $5.1 billion in Indonesia's growing economy. The Asian financial crisis reversed this course of economic expansion, crippling Indonesia's economy and exposing the inherent weakness in Indonesia's political structure under the Suharto regime.

The resulting disintegration, which I saw first-hand during my trip to Indonesia in December, is overwhelming. Indonesia's GNP fell by fifteen percent in 1998, and is predicted to experience another decline this year. Unemployment stands at over 20 million, up from 8 million last May. Forty percent of Indonesia's 218 million people live below the poverty line. But, this is not the end of it.

Economic instability has exacerbated the already prevalent political and social tensions. Student protests, attacks on Chinese businessmen, conflicts between Ambonese Christians and Muslims, and paramilitary violence in East Timor is evident across the country. Separatist forces on Aceh, Irian Jaya and other islands in Indonesia's multi-ethnic archipelago are gaining sway as Timorese independence moves closer to reality. The Indonesian government must take strong and decisive steps now to reduce these tensions and build respect for the rule of law and human rights. This is necessary and crucial in order to create an atmosphere conducive to holding democratic elections and determining, peacefully, the future political status of East Timor.

I must, however, commend the actions that President Habibie has taken thus far to open the political process and set the stage for democratic elections in June. In February, 1999, he signed legislation that established guidelines and procedures for conducting national elections. Forty-eight parties are now registered to compete in the June election, as opposed to three in the Suharto era. The military's representation in the parliament has also been reduced. Seats will be allocated by proportional representation, rather than the winner take all strategy which favored the Golkar party.

I am pleased to cosponsor legislation introduced by Senator Robert TORRICELLI which supports these efforts of the Indonesian government to achieve a real and peaceful transition to democracy. This bill calls upon the government to make necessary preparations to ensure that free, fair and transparent national elections will occur in June and that there is a strong commitment to uphold the results of them. It also asks all parties involved in determining the status of East Timor to seek an equitable and workable resolution to this issue. I have cosponsored similar legislation in the past which affirmed the right of the East Timorese to have a referendum on self-determination, encouraged the Indonesian government to protect human rights and fundamental freedoms and urged the Indonesian political leaders to implement political and economic reforms. I will continue to support such efforts in the future.

The reforms that the Indonesian government has implemented —however encouraging—do not on their own guarantee free and fair elections, nor do they help to reduce the tensions related to East Timor's political status. Violence has been on the rise. The world has witnessed increased hostilities in recent months among groups that have cultural and political interest in what the future shape of East Timor will be. The Indonesian government has a responsibility to resolve these tensions. I believe it can begin by abandoning its plan to employ civilian militias to combat violence and dismantling existing militias, whose abuses are already heightening the potential for violence. The government must help the military find means for handling violent outbursts effectively, without abuse.

Allegations of the Indonesian military's direct involvement in committing human rights abuses and perpetuating violence led me to support a restriction on U.S. arms sales and International Military Education and Training (IMET) aid to Indonesia which was initiated by Congress in 1993. I was, and still am, concerned that the Indonesian armed forces might use U.S. arms, military training, and financial assistance to commit human rights violations against innocent civilians. It remains necessary to keep these restrictions in place until it is clear that the Indonesian military is committed to upholding democratic principles.

I am encouraged that the leaders of the Indonesian military, the pro-Indonesia militias and the pro-Independence rebels signed a peace agreement on April 21, 1999 that calls for an end to the violence and a laying down of arms. It also establishes a Peace and Stability Commission which may help to determine the process by which full disarmament can occur and the political status of East Timor can be determined. These are significant steps forward and I believe lay the groundwork for real stability and peace.

Mr. President, it must not stop there, however. The Indonesian government—with the support and commitment of its military—must continue its dialogue with all competing factions, both those that support and those that oppose independence. Together, they must seek to resolve outstanding issues—such as disarmament and the question that will be asked on the ballot—in the most expeditious way possible. I am pleased that East Timor groups favoring independence from Indonesia have been included in recent

discussions regarding the future political status of East Timor. It is important for all parties to be at the table since all parties must ultimately abide by the agreement if it is to be credible and enduring.

While the exact details of the tripartite negotiations that occurred last month between Indonesia, Portugal and the U.N. are not fully clear at this time, the world community will be watching closely when they are released. The August ballot is supposed to determine the political future of East Timor. Whether the East Timorese choose independence or continued unity with Indonesia, the voting process and the period following the vote must be free of violence and intimidation. The world community can play an active role in helping the Indonesian government see that this happens.

The Administration has pledged $30 million to assist Indonesia during its national election. However, I believe we, and others in the international community, should do more to make sure that sufficient funds are available both for a free and fair election to occur in June and to help the Indonesian government conduct a free and fair ballot for East Timor in August. The United Nations already has agreed to send a civilian police force to East Timor to monitor the vote. I believe this is a good first step. The U.N. presence should, though, be supplemented by international, non-governmental organizations, or equivalent Indonesian groups, which can help monitor and facilitate the ballot process.

The time is now for the U.S. and the international community to focus on Indonesia and East Timor. The national election for Indonesia is less than six weeks away and the ballot for East Timor is only about eight weeks after that. I believe, as one long involved in Southeast Asia, that it is important for those who have interest in the future stability of this region to start creating a positive atmosphere in which both of these events can occur.●

OLDER AMERICANS MONTH

● Mr. GRASSLEY. Mr. President, since 1963, May has traditionally been designated Older Americans Month. I would like to take this opportunity to thank these valuable citizens and share an article that was recently printed in the Des Moines Register. The author reminds us of the many contributions older Americans make to our communities.

As we prepare for one of the largest demographic shifts in the history of our nation, we as policy makers often focus on the challenges presented by a graying nation. However, as suggested by Francis Keith in his article, ''Celebrate the Old Folks, Iowa's Assets,'' it would be a shame not to take the time to recognize and appreciate the vital role that seniors play in our communities.

Today more than ever, seniors are continuing to play active roles in their communities. In my home state of Iowa, I know many seniors who perform both paid and volunteer work well into their later years. Their wisdom and experience are a valuable resource that we should not allow to go to waste.

Mr. Marion Tierney, of Des Moines, Iowa recently spoke at an Aging Committee event. He is a perfect example of an older American who continues to be an active participant in his community. He made a career change half a lifetime ago because he was looking for a new challenge in sales and increased earning potential. Today, at the age of eighty, he serves nearly 100 customers of Iowa Machinery and Supply.

In a highly competitive business, Mr. Tierney says hard work is the key to success. He brings know-how, experience, relationships, and trust to customers as he assists them in developing solutions to improve their productivity through the use of his company's industrial products. He stays on top of new technology and products and retrains frequently to effectively meet customer needs. In turn, his field experience helps the company decide which new product lines to acquire.

His employer cites Mr. Tierney's willingness to share knowledge and experience with younger salesmen as a major contribution to the business.

Mr. Tierney is just one example of the many contributions older Americans make to their communities. I hope you will join me in honoring Mr. Tierney and all Older Americans for their many contributions. Not just during the month of May, but all year long.

I ask an article regarding Older Americans be printed in the RECORD.

The article follows:

[From the Des Moines Register, Apr. 27, 1999]

CELEBRATE THE 'OLD FOLKS,' IOWA'S ASSETS

(By Francis Keith)

In recent months there have been numerous stories about the aging of Iowa. The news reporters say our older population is a burden. They say that the increasing numbers of older people will be a liability for all the younger people who still work and pay taxes in Iowa. The graying of Iowa it's called.

There are predictions that as this trend continues, the problem of so many old people will become acute and drag the state into some economic quagmire that will have a negative effect on everyone living here.

I take a different and more positive view. I am retired, over 65; I was born in Iowa, I worked my whole life in Iowa and I retired in Iowa. Most of my peers and close friends are over 65. Many are over 70 and some over 80. For the most part, we ''old Iowans'' remain very active in our community and church and we know we are an asset to the state. We pay our own way and we make a contribution. We old people are a renewable resource.

We pay property taxes and help pay for the public schools, yet none of us has children still in school. We don't drive as much as when we worked and chauffeured our children to school and activities. Still, we pay our share of the street budget and we don't wear out the roads.

We pay income taxes, like everyone else, on our pensions, on interest earned on our savings, even on part of our Social Security.

We don't go to jail very often. As a group, we have a very low crime rate. Few of us are druggies, abuse children, speed, rob banks or use excess alcohol. We don't tie up the courts or fill the jails.

We pay our share of sales tax. We still buy things locally and support the stores and shops of Iowa. We eat out more often. while we may not have as much income as when we worked, we have more disposable income.

Most of our income is fixed, which has its limitations. But on the other hand, we aren't caught in economic downturns, layoffs, unemployment, labor strikes and other crises of the work years. Our income is limited, but dependable.

We know how to work. While it's true we don't run as fast as we used to, we are steady and dependable and we're not afraid to work. Some of us still have business interests and work every day. When we do have a business, we employ Iowans and contribute to the economic well-being of our state.

We work for free. We volunteer. We serve on boards and committees of many community activities and at hospitals and care centers, libraries, churches and schools. We give our time; some of us almost as much as a full-time job. We baby-sit our grandchildren.

We're a stable population. We don't move around much. Not that we don't travel for fun. We do that whenever we can, but we aren't job-hopping. We don't have to prove ourselves anymore by buying a bigger house or a bigger car, just to impress our peers. Been there, done that. We've been in the rat race—we know sometimes the rat wins. We've learned to rest a little, to see the world up close and far away. We look at sunsets and flowers and people in a little different way now. We have learned patience and tolerance and we are more thankful and appreciative of little things.

We even contribute when we are sick, which some doomsayers point out derisively as a negative of being old. Even our being in the hospital more than our younger friends contributes to the economy of Iowa. We keep people working as nurses, therapists, lab technicians and so on. We all die sometime, and for us it's likely to be sooner. Even that gives a job to someone.

Wouldn't any state like to have a group of honest, reliable, stable, sociable, tax-paying citizens who are willing to work without pay, who support our local businesses and who never go on strike?

Well, look around, Iowa, we're already here. We're your retired citizens. And we're working hard to keep Iowa the great state we choose to retire in.

We're nice people to have around. We know we're pretty darned good citizens and we have our pride. We have beaten the system. We have reached retirement with all its promises, most of which are true. Let's celebrate all the ''old folks'' in Iowa, not put them down as a liability.●

JAPANESE CAR CARRIER TRADE

● Mr. HOLLINGS. Mr. President, with our trade deficit continuing to grow and with Japanese vehicle manufacturers continuing to increase exports to the United States, I rise to remind my colleagues that competitive U.S. companies continue to be thwarted in their efforts to break down the walls of ''kereitsu'' relationships built up over decades in Japan. With Prime Minister Obuchi making his first official state visit to the United States, I thought it useful to review our economic relationship, or lack thereof.

As my colleagues know, the Japanese economy has been in a recession for quite some time. Unfortunately, it would appear the country has sought to export its way out of the problem and to continue to shield inefficient domestic companies from international competition. For instance, just last week the Commerce Department determined that Japanese steel imports were being dumped by margins of up to nearly 70%. Such actions are not acceptable. As the office of USTR recently said,

[A]s its demand for imports declines and its firms redouble their efforts to sell to healthier markets abroad, the effects of Japan's economic policies will continue to hit the United States. In 1998, the U.S. goods trade deficit with Japan reached $64.1 billion, an increase of $8.4 billion (14.2 percent) from the 1997 level. . . . U.S. merchandise exports to Japan fell to $57.9 billion, a decrease of 11.9 percent from the 1997 level. . . . Japan is more dependent on the U.S. market to absorb its exports than it has been for many years. In 1998, the United States bought about 31 percent of Japan's exports, the highest level since 1990, and close to the all-time high of 36 percent in 1986.

It will come as little surprise to Senators who are concerned about our steel industry and other sectors that Japan accounted for approximately one-fourth of our entire trade deficit in 1998. It is a mistake to suppose that such huge amounts of money can continue indefinitely to move one way across the exchange with reciprocal movement in the other direction blocked. In view of this situation, the USTR said in its report: ''The United States attaches top priority to opening Japan's markets to U.S. goods and services.'' I trust the President will share our government's concerns in his meeting with Prime Minister Obuchi, and will urge him to take steps to increase U.S. access to the Japanese market.

I also believe Japan can, and should, take additional steps to increase its defense sharing burden. Let me give one example. In the early 1990s, Congress and the Department of Defense recognized that more needed to be done to augment our strategic sealift capacity. Our experience in Desert Storm demonstrated a critical shortage of U.S.-flagged, U.S.-manned roll-on roll-off strategic sealift vessels. We therefore undertook new construction of a fleet of military ships of this type. Even with this new construction, however, there will continue to be a deficiency of lifting capacity.

To meet this deficiency, under the leadership of then-Senator Bill Cohen, Congress created the National Defense Features program. Under the program, U.S. companies have been invited to build vessels equipped with special military features for operation in normal commercial service but available in times of national emergency.

Under one proposal, a fleet of refrigerated car carriers would be built in the United States for operation in the U.S.-Japan trade. In normal commercial service, the vessels would carry vehicles to the United States and refrigerated products to Japan. In times of national emergency, the vessels would carry tanks, heavy trucks, and other military equipment, as well as substantial amounts of live ammunition.

Unfortunately, notwithstanding support from the Congress and the Secretary of Defense, the project has met with no interest or actual resistance in Japan. This is particularly disturbing because implementation of the project would, at no economic cost to the Government of Japan, enhance the mutual security of our two nations. Especially at a time when the Government of Japan wishes to play a greater role in advancing shared defense objectives, I am disappointed that it has not given more serious attention to this proposal.

I hope the Administration will continue to press the Government of Japan to take steps to reduce our trade deficit and enhance our mutual security. I also hope the Government of Japan will use the occasion of the Prime Minister's state visit to make further commitments to doing so.●

COMMEMORATING BRANDON BURLSWORTH

● Mr. HUTCHINSON. Mr. President, it is not often that I rise to speak about specific individuals, but the individual I want to talk about today was a man of extraordinary character, Brandon Burlsworth.

Last Wednesday, I was saddened to learn about the tragic and untimely death of Brandon Burlsworth. Brandon was only 22 years old when a car accident ended his life. While his time on this earth was short, his impact on our world will be long lasting. Brandon was a hero to the community of Harrison, the Razorback family, and the entire state of Arkansas.

Brandon lived the kind of life that would make any parent proud. He led a wholesome life, and was a devout Christian who used his faith and strong work ethic to become a success in every facet of life.

Brandon was not a highly recruited athlete coming out of Harrison High School. Several small colleges expressed interest in him, but Brandon had his sights on walking on at Fayetteville and becoming a Razorback. While the odds were long, Brandon worked hard and not only made the team, but went on to start for the Razorbacks for three years. Last year, he earned All-American honors, while leading Arkansas to the SEC West Co-Championship and a berth in the Citrus Bowl. Last month, the Indianapolis Colts selected Brandon in the third round of the National Football League draft.

Not only was Brandon a disciplined player on the field, he was an outstanding student in the classroom as well. Brandon earned a bachelor's degree in marketing management and a master's in business administration, all in 4½ years. In addition, he was a three time member of the SEC Academic Honor Roll.

Today, newspapers and newscasts are often filled with stories about athletes and their brushes with the law. Brandon became a symbol of how student athletes should conduct themselves. The manner in which he conducted himself on and off the field will be Brandon's legacy. He was a young man of great character and dedication. While I recognize that words alone provide little comfort in times such as these, I hope that Brandon's family knows how many lives this young man has touched.●

ORDERS FOR WEDNESDAY, MAY 5, 1999

Mr. GRAMM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, May 5. I further ask that on Wednesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and that the Senate then proceed to vote on the adoption of S. Res. 94, which is at the desk.

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

Mr. GRAMM. I now ask unanimous consent that it be in order to ask for the yeas and nays on S. Res. 94.

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

Mr. GRAMM. Mr. President, I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAMM. I ask unanimous consent that immediately following the vote, there be a period of morning business until 11 a.m., with the time equally divided. I further ask that the first half of the time be allocated to Senator COVERDELL and the second half of the time to be allocated to Senator DORGAN or his designee.

I also ask consent that at 11 a.m. the Senate resume consideration of S. 900, the financial modernization bill, and the pending Sarbanes amendment.

I finally ask that the time until 12 noon be equally divided between Senator GRAMM and Senator SARBANES, and that Senator GRAMM be recognized at 12 noon to make a motion to table the pending Sarbanes amendment to S. 900.

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

PROGRAM

Mr. GRAMM. For the information of all Senators, the Senate will convene on Wednesday at 9:30 a.m. and will immediately proceed to a rollcall vote on adoption of S. Res. 94. Following the vote, the Senate will be in a period of morning business until 11 a.m. At 11

a.m., the Senate will resume consideration of Senator SARBANES' substitute amendment to S. 900, the Financial Services Modernization Act, with a vote on the Gramm motion to table occurring at approximately 12 noon. Additional amendments are expected, and therefore Senators can expect votes throughout Wednesday's session of the Senate.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. GRAMM. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:08 p.m., adjourned until Wednesday, May 5, 1999, at 9:30 a.m.