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TALKING POINTS ON THE TREASURY-FED AGREEMENT

- Late last night, after several weeks of negotiations that were entered into at the request of the Congressional Leadership, Treasury and the Federal Reserve reached agreement on the authority of national banks to engage in non-bank financial activities. That agreement is being submitted today to the conferees working on financial modernization legislation.

- The agreement represents a sound, balanced approach that preserves the principles important to both agencies. Treasury and the Fed, after lengthy, good faith negotiations, have met in the middle.

- Under today's agreement, both the Federal Reserve and the Treasury Department will have an important role in banking policy going forward, and national banks will for the first time have clear authority to engage in non-banking activities through subsidiaries. Thus, the agreement provides meaningful choice for financial institutions to choose the corporate structure that best suits their needs.

- The Federal Reserve and the Treasury will each have a role in determining what new financial activities are permissible in the future. (Under current law, the Federal Reserve alone defines what non-banking activities are permissible.)

- Subsidiaries of national banks will be permitted to underwrite and deal in securities and engage in a wide range of other financial activities. These subsidiaries will be supervised by the Comptroller of the Currency, along with the appropriate functional regulator. The viability of the national banking charter will be enhanced.

- In addition to the restrictions contained in H.R. 10, three new requirements for financial subsidiaries will be included. One restriction from H.R. 10 will be dropped.

  - The overly restrictive dividend limitation from H.R. 10 will be eliminated. Thus, a bank's investment in its subsidiaries will not be limited to its past three years' earnings.

  - Bank loans to and investments in subsidiaries will be subject to the same limits under section 23A of the Federal Reserve Act that currently apply to affiliates. Retained earnings of the subsidiary will not count against this limit, thereby allowing profitable subsidiaries to expand.

  - Banks will have to have an A- or better rating to establish a subsidiary. Currently the vast majority of the top 100 banks meet this requirement.

  - Subsidiaries of banks will not be allowed to exceed 80 percent of the size of their parent bank. This restriction will prevent smaller banks from having larger subsidiaries – the so-called "minnow-whale" problem.

- Even with these restrictions in place, national banks will be able to operate securities underwriting subsidiaries of substantial size. Almost all of the current section 20 affiliates could operate as subsidiaries.

- With respect to merchant banking, both agencies are concerned about the risks of merchant banking, and have concluded that stronger rulemaking authority is necessary to constrain those risks. Rulemaking authority will be shared between the Treasury and the Federal Reserve.

  - With respect to merchant banking in subsidiaries, the agencies have agreed to defer that question for five years. At that time, the agencies will jointly review the appropriateness of the activity in light of the experience with merchant banking in affiliates.

- As in H.R. 10, insurance underwriting will not be permitted in subsidiaries.

ADDITIONAL DEMOCRATIC TALKING POINTS

- Although the Administration has resolved its differences with the Federal Reserve, significant problems with the bill remain.
    - Resolution of this issue does not diminish the Administration's commitment to ensuring that any legislation preserve the relevance of the Community Reinvestment Act, protect the financial privacy of consumers, and assure the separation of banking and commerce.
    - To the contrary, with the subsidiary issue resolved, the Administration's focus on these issues will sharpen.
- The agreement with the Federal Reserve demonstrates unequivocally the Administration's willingness to work hard to achieve financial modernization legislation this year.
- With respect to CRA, the provisions of the House bill that are strongly supported by the Administration passed the House by a vote of 343-86. No Republican even proposed an amendment to strike them. They have elicited no objection from industry or from the majority of the Senate conferees.
- With respect to privacy, the House passed financial privacy legislation by a vote of 327-1. The great majority of conferees – including Senator Shelby and Rep. Roukema – agree that the final bill should provide additional protections, and the Administration strongly agrees.
    - Instead, the current mark guts the provisions of the House bill and refuses to add any additional protections.
- Without the subsidiary issue now settled, the conference must address these remaining, critical issues. The majority should speak, and financial modernization should be enacted.

Consumers Union
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OCTOBER 13, 1999

PRIVACY PROTECTION? NOT!

LET SHELBY-MARKEY-BRYAN FIX THIS BILL!

WASHINGTON, D.C. -- "The Chairmen's mark provides the strongest protections banks and other financial institutions have to continue to share their customers' private and sensitive financial records with anyone, but leaves consumers completely unprotected," said Frank Torres, Legislative Counsel in the Washington, D.C. office of Consumers Union. Consumers Union was participated, together with a varied group of organizations at a press conference denouncing the privacy provision of the financial modernization bill drafted by Chairmen Gramm, Leach and Bliley.

"The privacy provision must be changed," Torres said. "Senator Shelby, Congressman Markey and Senator Bryan want to protect consumer privacy and Consumers Union supports their efforts to amend the financial modernization bill to ensure consumers have notice, access, and control, and that states are allowed to protect their citizens' privacy."

"The Gramm/Leach/Bliley draft allows banks to easily get out of telling their customers what data is being collected, how that data is being used, and who it is being shared with," Torres said. "Customers aren't given a say in whether or not they want their financial information shared, nor will customers have access to that information to correct errors." He continued, "Not being able to fix mistakes in records result in higher interest rates for loans or credit cards and higher fees on other products -- hitting consumers right in the pocketbook."

"The draft effectively puts a stop to any further action by state Attorneys General to protect consumers' privacy by limiting the remedies available to consumers for abuses of their records and prevents states from enacting stronger laws to protect their citizens," Torres said.

Other ways the mark harms consumers:

- Lack of suitability standards for retail sales of insurance products.
- Preemption of stronger state consumer protection laws.
- Allowing mutual insurance companies to demutualize and avoid giving consumers holding policies their fair share.
- Failing to provide for affordable access to financial services for low- and moderate-income families.

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FINANCIAL PRIVACY COALITION

**AMERICAN CIVIL LIBERTIES UNION
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION
EAGLE FORUM
ELECTRONIC PRIVACY INFORMATION CENTER
FREE CONGRESS FOUNDATION
PRIVACY TIMES
US PUBLIC INTEREST RESEARCH GROUP**

AMERICANS DESERVE STRONG FINANCIAL PRIVACY PROTECTIONS IN THE FINANCIAL MODERNIZATION BILL

October 13, 1999

Dear Conferee:

As representatives of a broad array of organizations, we write to urge you to include comprehensive privacy protections in the financial modernization legislation that you are considering. The diversity of organizations that are a part of this effort reflects the overwhelming support of the American people for meaningful privacy protections.

Customers of financial institutions have a right to keep their personal information private. Our organizations believe that any privacy protections that are included in the financial modernization bill must be based on the common-sense principles of customer notice, access and control. First, customers must be told about the collection and use of their data. Second, customers must be able to correct erroneous information. Third, customers must be able say no to the sharing of information. Additionally, consumers must benefit from the strongest privacy protections whether embodied in federal or state law. Unfortunately, the privacy language offered by Chairmen Gramm, Leach and Bliley is a far cry from real privacy protection.

The privacy language offered by Chairmen Gramm, Leach and Bliley fails on all counts -- it fails to provide adequate notice to customers, fails to give customers access to correct wrong information, and fails to give customers control over the use of their private information. The Gramm/Leach/Bliley provision is so riddled with loopholes that it will not really prevent an institution from sharing private customer data with third parties nor will it stop financial institutions from sharing that data with affiliated companies. We fear that an inadequate provision, like that in the Gramm/Leach/Bliley draft, will also hurt consumers by undermining other efforts to provide bank customers with meaningful privacy protections

There is a better way. Senator Shelby, Congressman Markey and Senator Bryan are working to get real privacy protections in the bill consistent with the principles of customer notice, access and consent, and to preserve the ability of the states to take action to protect the privacy of their citizens.

We urge you to reject the so-called "privacy" provision in the Gramm/Leach/Bliley mark and support the efforts of Senator Shelby, Congressman Markey, and Senator Bryan to get real privacy protections in the financial modernization bill.

COALITION FOR FINANCIAL PRIVACY

AMERICAN CIVIL LIBERTIES UNION
CENTER FOR DEMOCRACY & TECHNOLOGY
CONSUMER FEDERATION OF AMERICA
CONSUMER ACTION
CONSUMERS UNION
EAGLE FORUM
ELECTRONIC PRIVACY INFORMATION CENTER
FREE CONGRESS FOUNDATION
JUNKBUSTERS
THE NAMED
PRIVACY RIGHTS CLEARINGHOUSE
PRIVACY TIMES
PUBLIC CITIZEN
US PUBLIC INTEREST RESEARCH GROUP

Basic Privacy Principles

1. **Notice:** Financial institutions must inform their customers in a clear and conspicuous manner when they plan to collect, use, and/or disclose personally identifiable information, and customers must be told the intended recipient of the information and the purpose(s) for which it shall be used.

2. **Access:** A customer must have access to personably identifiable information held by the financial institution to make sure it is accurate, timely and complete and customers must have the ability to correct erroneous information.

3. **Consent:** A financial institution must receive prior affirmative consent of the customer before it uses and/or discloses that customer's information for any other purpose than for which it was originally given. No customer can be denied any product or services by a financial institution for refusing to give consent to the disclosure of the customer's personal information except where necessary to determine eligibility for a specific financial product or service.

4. **Preemption:** Customers must benefit from the strongest privacy protections available, therefore, this federal privacy provision should not preempt state laws or other regulations that provide stronger protection for consumers.

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SUMMARY OF FINANCIAL MODERNIZATION ISSUES

Background

Procedural posture. Financial modernization legislation will be in conference soon. That conference should prove contentious. The House recently passed 343-86 a bill that had the Administration's support. The Senate in May passed a bill ___-___, largely on party lines. The President has said that he would veto the Senate bill.

History. Congress has been attempting for decades to pass a broad financial modernization bill. At its core, such legislation has two targets: (1) a provision of the Glass-Steagall Act (from 1933) prohibiting commercial banks from affiliating with investment banks; and (2) a provision of the Bank Holding Company Act of 1956 prohibiting commercial banks from affiliating with insurance underwriters. Although regulatory interpretations by the Federal Reserve have allowed commercial and investment banks to affiliate to some extent (J.P. Morgan's securities affiliate is one of the top-10 underwriters), the investment banking affiliates are subject to limits on how much business they can do. And the restriction on insurance underwriting has been interpreted as a complete ban.

Past attempts to revise these laws met opposition from industries trying to preserve a competitive advantage. In the 1980s, the investment banking industry feared competition from the banking industry and fought Glass-Steagall reform. Insurance companies and independent insurance agents have traditionally (and rightly) feared competition by banks, and fought legislation in the early 1990s.

More recently, however, the investment banks have seen the advantages of bank affiliation and now strongly support Glass-Steagall reform. The insurance underwriters now recognize banks as a low-cost distribution outlet for their products, to the displeasure of the insurance agents, who fear extinction. The insurance agents have fought hard to make sure that the legislation contains impediments to bank insurance sales, and have succeeded to some extent. Because the alternative -- no bill -- is even less attractive from the point of view of their long-term survival, they now support legislation as well.

One company has a special interest in seeing legislation enacted and has been its most ardent advocate: Citigroup. When Citibank merged with Travelers, it acquired both an investment bank, Salomon-Smith Barney, and an insurance undewriter, Travelers. Although the Fed's interpretation of Glass-Steagall is sufficiently flexible to allow Citigroup to retain Salomon-Smith Barney, Citigroup must divest the insurance underwriting activities of Travelers within 3 years unless the law is changed.

Thus, we have reached the point where all of the affected industries are working together to enact legislation. The obstacles to enactment are of relatively recent vintage, and the Administration is the chief protagonist in each.

CRA

Background.

As you know, the Community Reinvestment Act is a centerpiece of the Administration's efforts to bring capital to underserved communities. In addition, the Administration led a 1995 revision of the CRA regulations to reduce their burden on the banking industry, in particular small banks.

CRA is a mandate to banks to serve the convenience and needs of the communities in which they operate. Banks are examined for CRA compliance, but there is no general enforcement mechanism if a bank is found to be failing in its CRA duties. The Attorney General has confirmed that failing to adhere to the mandate of CRA is not a violation of law, and thus does not subject banks to the injunctive and civil money penalties that would attend a failure to comply with other banking laws.

The sole enforcement mechanism for CRA comes when a bank applies to expand: be it through a merger or acquisition or a new branch. At that point, the regulators seek public comment and assess the bank's record for meeting the convenience and needs of its community. If the bank has failed in its mission, the application can be denied.

Senator Gramm has argued that CRA is legalized extortion: that community groups use the threat of adverse comment and resulting delay to pressure banks to pay off the groups and make un-economic loans and investments.

Legislation

The two bills differ markedly on CRA. The House bill, crafted by Chairman Leach, Rep. LaFalce, and Treasury, enhances the effectiveness of CRA. Whereas a bank's CRA record is currently evaluated only when it is filing a banking application, H.R. 10 would require, as condition for a financial services company engaging in the new financial activities authorized under the bill, that each of its subsidiary banks have a satisfactory or outstanding CRA examination rating at the time of the application, and maintain that rating going forward. This requirement was non-controversial in the House and has not been opposed by the banking industry.

The Senate bill does not contain the "have and maintain" requirement of the House bill and actually takes steps to weaken CRA. First, the Senate bill exempts small banks from CRA -- something those banks and Senator Gramm have long sought on the grounds that such banks serve their communities by definition. This has been a veto issue for the Administration. A small bank exemption: (1) would exempt the banks that actually have the most unsatisfactory CRA ratings; (2) would begin a slippery slope towards elimination of CRA; and (3) cannot be justified on burden reduction grounds, as the 1995 re-write of the CRA regulations eliminated CRA reporting requirements for small banks.

Second, the Senate bill establishes a legal presumption against considering public comment on a banking application if the bank received a satisfactory rating in its last CRA exam. This so-called "safe harbor" for banks is intended to shield them from protest if their record has been good. However, due to resource constraints, community groups cannot be involved in every examination, and must save their resources for the largest application. Accordingly, Treasury has strongly opposed a safe harbor.

A third CRA provision of the Senate bill is more complicated. A so-called "sunshine" amendment was adopted on the Senate floor, without Democratic opposition. The amendment would require banks and community groups to make public any agreements entered into pursuant to CRA. Gramm pushed this amendment because he believed that it would stem abuses by community groups. Reaction from the community groups has varied. Treasury believes that the amendment has major flaws but could be fixed in principle.

Subsidiaries of Banks

Because the intention of both bills is to allow banking organizations to offer new financial products, an important question is where they should be offered. No one has contended that, as in European countries, the bank itself should be able to underwrite securities or insurance. The Administration has said that banks should have the choice of engaging in new financial activities either through subsidiaries or affiliates of banks. The Federal Reserve has said that new financial activities should be conducted solely in bank affiliates. The Fed is the exclusive supervisor of bank affiliates; supervision of subsidiaries follows the supervisor of the bank itself -- so, the Treasury's Comptroller of the Currency supervises subsidiaries of national banks, and the Fed or the FDIC supervise subsidiaries of state banks. This supervision is in addition to any functional regulation of an activity -- e.g., SEC supervision of broker-dealers.

The Administration's position is reflected in the House bill. It was strongly supported by the Banking Committee but opposed by the Commerce Committee (Reps. Bliley and Dingell), in part for Committee jurisidictional reasons, in part because of Rep. Dingell's historical distaste for banks and their regualtors. The Fed's position is largely reflected in the Senate bill, which allows subsidiaries only for small banks and agency activities. An amendment to insert the House language lost 53-47, but only after an ugly floor flight and extraordinary efforts by Senator Gramm and the Senate Leadership. Gramm reportedly told members he needed to beat the subsidiary to have leverage against the Administration in Congress.

The Administration's position is supported by both Republicans and Democrats, by the FDIC, and by independent economists, who have universally rejected the Fed's arguments that the subsidiary either receives a greater federal subsidy than an affiliate and thus has a competitve advantage or is a greater risk to the bank and its safety and soundness. Senator Gramm has taken up the Fed's cause as his own, and will be a formidable adversary. [Insert eventual Banking-Commerce conferee split.]

Financial Privacy

On May 4, the President outlined the Administration's "Financial Privacy and Consumer Protection in the 21st Century" initiative. Protecting financial privacy led the list of key principles for consumer protection. First, the President recommended enactment of legislation to provide consumers notice and choice before their financial information is shared or sold -- the right to say "no." Central to this policy is the idea that the self-portrait painted by one's financial information belongs to the consumer, not the financial institution that processes the transactions. His statement indicated, and Treasury has made clear, that this means the ability to opt out of sharing of information with either third parties or affiliates. The Administration has supported, however, appropriate exceptions where an opt out would be infeasible or counterproductive -- e.g., we would not give consumers a choice about whether a bank processes checks through a third party (assuming the third party makes no additional use of the information).

The banking industry strongly opposes such restrictions and has waged a remarkably ineffective lobbying campaign against them. This included denying that banks ever sell confidential customer information to third parties -- a contention rebutted on the eve of the House Commerce Committee markup when the Minnesota Attorney General sued U.S. Bancorp, alleging that it had sold to telemarketers customers names, social security numbers, and bank account numbers, receiving a cut of the profits in exchange. Customers then had their accounts charged without permission. With the help of Representative Markey, the Committee then passed something akin to what the President had proposed in May.

In the face of industry opposition to the bill, the House Rules Committee scaled the privacy provisions back to allow notice and opt out only when information is transferred to third parties. The House passed these restrictions as a floor amendment 417-1.

The Administration's position has been that the House bill's provisions should be a floor, not a ceiling as the bill enters Congress. Senator Gramm has said that he wishes to remove privacy from the bill, but has received no support from other Members.

Medical Privacy

The House bill also contains privacy protections for medical information held in financial services companies. The House provisions, however, include far wider exceptions than provided under upcoming HHS regulations and some current state law. The Administration has thus sought to have the House medical provisions removed in conference (in effect, receding to the Senate, which has none). There is some reason for hope in this area.

Redomestication of Mutual Insurance Companies

[ny issue]

Unitary Thrift Holding Companies
[possible NY issue--big LaFalce issue]

TALKING POINTS ON FINANCIAL MODERNIZATION

- We have long believed in the benefits of financial modernization legislation – if it is done in a way that truly benefits consumers, businesses and communities, while protecting the safety and soundness of our financial system.

- The House has passed a very good financial modernization bill with broad, bipartisan support (343-86). The Administration supported, and continues to support, that bill.

- The Senate passed a bill on a strict party-line vote. That bill is badly flawed, and the President has vowed to veto it if it ever reached his desk.

- We have four primary concerns about the Senate Banking bill.

- The first major concern that we have with the Senate Banking bill is the effect it would have on the Community Reinvestment Act.

    - The bill undermines the relevance of CRA by failing to link the bank's authority to conduct new activities with maintenance of a satisfactory CRA record; it unfairly burdens community groups by creating a formal presumption against even considering protests in many cases; and it allows smaller rural banks to avoid their CRA obligations entirely.

    - So, in summary, we find the Senate Banking bill's attack on CRA completely unacceptable.

- The second concern is the failure to give all national banks the option to conduct new financial activities through a subsidiary. The bill would deny the subsidiary option to all national banks except small banks with no holding companies. (Such banks hold only 1 percent of national bank assets.)

    - Companies that own banks should have same freedom as other businesses to organize themselves in the way they judge best. This includes the choice between a subsidiary and an affiliate.

    - The FDIC and other independent observers agree that–with the safeguards in the House Banking bill–subsidiaries are in no way inferior to, and in certain ways better than, affiliates from the standpoint of safety and soundness.

- The third concern is financial privacy. The President in May set forth his belief that customers should have notice and choice about the sharing or sale of their financial information. The House recognized this principle with respect to third-party sharing, but not inter-affiliate sharing. We believe that the House provisions must be considered a floor, not a ceiling for privacy protections in conference.

- We have other serious concerns with the Senate Banking bill, although in some instances they apply to the House Banking bill as well.

  - We are troubled by provisions that allow mixing of depository institution and commercial activities, and our concerns have been heightened by the economic instability overseas during the past two years.

  - We remain very concerned about provisions that fail to focus the Federal Home Loan Banks on lending to community banks, rather than an exploiting a taxpayer subsidy for arbitrage activities.

- We think that successful financial modernization legislation is within reach. Many of the surrounding circumstances are more favorable than ever before. But much depends on the choices that various participants in the legislative process make over the coming months. We believe that the House has shown the way.

file

community
Reinvestment
Act (CRA)

for moi.

DRAFT

Tentative Agreement on Financial Modernization Bill Draft
Provisions Dealing with Community Reinvestment

I. The bill does not alter existing CRA obligations of insured depository institutions in any way.

II. Requires a "Satisfactory" CRA rating to expand in new lines of business – The bill directs the regulators to prohibit a financial holding company or an insured depository from commencing a new activity, directly or indirectly, or acquiring or merging with a company in the newly authorized lines of business unless all of the subsidiary or affiliate banks have at least a "Satisfactory" rating on their last CRA exam. This requirement applies each and every time the bank or holding company enters these new lines of business.

- This is a flat prohibition. Any violation would be subject to the full range of penalties available to bank regulators for noncompliance, including cease and desist orders, civil money penalties, removal of officers and directors, and divestiture.

- This is an ongoing requirement. The bank or holding company is bound by the same requirements concerning each and every future expansion. That is, if the bank or its holding company fails to maintain a satisfactory record under CRA it is prohibited from commencing a new activity, directly or indirectly, acquiring or merging with a company in these newly authorized lines of business until all of its insured depository institutions have come into compliance with the CRA.

- This preserves the structural integrity of CRA which is currently enforced through the application process for bank mergers with and acquisitions of other banks, and extends it to insured depository institutions engaging in these new activities.

- Under current law, CRA enforcement applies at the time of bank or holding company acquisitions or mergers *only with other banks*. Previously, a bank could acquire or become engaged in insurance and securities activities to the limited extent permitted without any consideration of its CRA record at all.

III. Disclosure of CRA Agreements – The bill requires the disclosure of the full text of agreements between banks and community groups made pursuant to, or in connection with the fulfillment of the Community Reinvestment Act of 1977, with the following limitations:

Scope: The provision covers only those agreements (or sum of agreements over a 12-month period) that provide grants or consideration to the other party over $10,000 annually, or for loans to the other party over $50,000 annually. To be covered, these agreements must meet a list of factors that the bank regulator determines have a material impact on the regulator's decision to approve or disapprove an application reviewed under CRA, or a material impact in assigning a CRA rating. The provision excludes any agreement with a group or person who has not commented on, testified about, or discussed with, or otherwise contacted the institution concerning CRA. The provision also excludes any market-rate individual mortgage, business or farm loan, where the purpose of loan does not include re-lending. The regulators may provide further appropriate exemptions.

Reporting: Both the bank and the community group must report annually on their performance under the terms of the agreement. The community group may meet this reporting requirement by filing with the bank, and the bank will then pass this information on to the regulator. This report must include a list of how funds were spent. The legislation directs the regulators to provide for procedures to allow any community group that is a party to a large number of agreements covered under this section to a make a single or consolidated filing with the bank or regulator.

Violations:

- If an insured depository institution fails to comply with the disclosure and reporting requirements of this section, it is a violation of the Federal Deposit Insurance Act which provides for penalties including fines up to $1 million per day.

- If the community group, after a having been given notice and reasonable opportunity to perform or comply with this disclosure and reporting requirement, willfully fails to comply in a material way, the agreement is unenforceable.

- If an individual diverts funds contrary to the purposes of the agreement for personal financial gain, that individual may be subject (at the regulator's discretion) to mandatory repayment of misappropriated funds and a prohibition from participating in CRA agreements for up to 10 years. Such penalties do not apply to the community group, only to the offending individual.

- Inadvertent or de minimus errors are not subject to any penalties.

- Nothing in this section would limit applicable civil or criminal law.

IV. **Small Bank CRA Examinations** – The time period between routine CRA examinations for banks with more than $250 million in assets is not affected by this provision.

- For banks under $250 million in assets, both urban and rural, the bill extends the time period between examinations for those banks with an "outstanding" CRA rating to every 5 years. Banks with a "satisfactory" CRA rating would be examined every 4 years. Banks with less than satisfactory records would be examined as the regulators deem appropriate.

- Nothing in this provision would affect examinations in connection with bank applications.

- Regulators retain discretion to examine any bank, regardless of its CRA rating, at any time for reasonable cause.

V. **Wholesale Financial Institutions (WFIs)** – Under this bill, WFIs may not be owned by or affiliated with banks or bank holding companies. WFIs, which may be owned by other entities, may engage only in wholesale commercial activities. WFIs shall not have depository insurance. WFIs are prohibited from accepting deposits below $100,000. WFIs may not be owned by, or affiliated with banks.

- Consistent with the principle that any WFI owned by or affiliated by a bank must be covered by CRA, the WFIs authorized under this bill, which may not be owned by or affiliated with any bank or bank holding company, are not covered by CRA.

VI. **CRA Study** – The bill authorizes two studies of CRA:

- The Federal Reserve Board will conduct a study of the default rates, delinquency rates and profitability of loans made under the CRA.

- The Treasury Department will conduct a study of the extent to which adequate services are being provided as intended by the CRA.

VII. **Protection of CRA** -- The bill provides that nothing in the Act shall be construed to repeal any provision of the CRA.

The Financial Modernization Bill Keeps CRA Strong
CRA Applies to Newly Authorized Activities

The final bill assures that CRA remains vital and relevant in the new financial landscape. The legislation preserves the current CRA review and comment process when a bank acquires or merges with another bank, and also updates CRA with changes designed to improve its effectiveness.

- **For the first time, CRA will apply to banks and their holding companies in the context of expansion into newly authorized activities, such as securities, insurance underwriting and merchant banking.** For the first time, having and maintaining satisfactory CRA performance is an essential condition for a bank or its holding company expanding into non-banking activities. Each and every time the holding company commences such an activity, or acquires a company in these new areas, all of its insured depositories must meet this test. Until now, regulators have permitted banks to make very large acquisitions of securities and other non-bank activities without any statutory CRA performance requirements at all.

- **The bill deletes the Senate bill's CRA exemption for small rural banks.** The small bank provisions of the original S. 900 would have exempted from CRA a full 38 percent of all banks, many of which are the only significant credit sources in rural communities. The final bill deletes this loophole. Although many small rural banks serve their communities well, their record is not uniform -- small banks receive a disproportionately high number of less-than-satisfactory CRA ratings.

- **The bill deletes the Senate's "CRA safe harbor" that would block community comments on most banks' CRA applications.** A bank's CRA performance can change over time for a variety of reasons, including mergers or changes in management. S.900 created a presumption that a bank was compliant with CRA even if its last satisfactory rating was based on a 'stale' evaluation. This unwarranted safe harbor has been dropped.

- **The bill deletes Senate's unfair burden of proof requirements on the public.** Instead of allowing regulators to consider all legitimate CRA-related comments fairly, S. 900 would have blocked regulators' consideration of public comments unless they met a substantial legal hurdle. This is an unfair burden for community groups, which often provide information based on first-hand experience that is quite valuable to regulators making CRA evaluations. The final bill deletes this unfair provision.

- **For small banks, the bill targets CRA regulatory resources on banks with the poorest CRA records, creating an incentive for better community reinvestment performance.** The bill provides that regulators will examine banks with less than satisfactory CRA ratings much more frequently than banks with satisfactory or outstanding ratings. These provisions complement streamlined CRA exam procedures for small banks put in place in 1995, which focus regulatory efforts on five performance measures and impose no data collection or reporting burdens on these banks.

- **The bill provides for appropriate "sunshine" on CRA,** while protecting communities from undue reporting burdens. The bill also provides for targeted penalties to ensure that community reinvestment funds are used for the community.

PRESS RELEASE

For Immediate Release:
October 21, 1999

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PROVISIONS IN FEDERAL BILL H.R. 10 WILL FACILITATE LOSS OF OVER $100 BILLION TO 35 MILLION POLICYHOLDERS ACROSS COUNTRY

New Financial Analyses Quantify Damage of Federal "Redomestication" Provisions By State

Cambridge, MA -- Over 35 million policyholders of mutual insurance companies nationwide are at risk of losing $94.7 billion in equity, or $1,700 each, according to an analysis of recently enacted state laws the impact of which will be exacerbated by the Financial Services Act of 1999 now being considered by Congress. The detailed state-by-state analyses by the Cambridge-based Center for Insurance Research reportedly show that the federal provision in H.R. 10 that facilitates mutual insurance company conversions to stock form without compensation to policyholder-owners (as traditional law requires) will have a devastating impact on consumers in every state. The federal provision would allow mutual insurers based in New York State alone – where such conversions have been rejected by the Legislature – to deprive 17.5 million policyholders nationwide of $28 billion.

The adverse impact of the federal bill, which promotes the mutual-to-stock conversions in which policyholder-owners are not compensated, is best seen in contrast to the proposed traditional stock conversions of two of the nation's largest mutual insurers. Prudential and John Hancock are both preparing to convert to stock next year, and will distribute a combined estimated $30 billion to 15 million policyholders nationwide in doing so. Had just these two mutual insurers attempted to use the novel mutual holding company conversion method facilitated by H.R. 10, <u>none</u> of these mutuals' $30 billion in assets would have been returned to their policyholder-owners upon conversion. (Prudential is based in New Jersey where the novel conversions were outlawed, but under H.R. 10 it could move to another state and return none of its $24 billion in assets to policyholders.)

"H.R. 10 is purportedly designed to strip away the decades-old legal barriers between the banking and insurance businesses to benefit the market and consumers alike. However, it contains a harmful provision that facilitates the controversial-type of mutual-to-stock conversions which threatens to deprive millions of consumers of billion of dollars in property rights," Adkins said. "The devastating aspect of that insurer-backed provision has been kept from the public and members of Congress until now," he said.

For the first time, this analysis allows the public to measure the potential adverse impact of the controversial-type mutual conversion laws and to examine how the "redomestication" provisions (Sections 311-316) of H.R. 10 will magnify the public harm if it becomes law. Those provisions of H.R. 10 would allow mutual insurance companies based in states that do not permit the controversial form of mutual-to-stock conversions to move to another state that permits it.

The Center's analyses show that about 52% of the nearly $100 billion in potential losses from mutual conversions would be suffered by policyholders in the 27 states that have rejected or not enacted mutual holding company conversion legislation. The analyses further show, as discussed above, that 17.5 million policyholders nationwide who own policies with New York-based mutual insurers, would be at risk of losing $28 billion in equity, or an average of $1,466 each, under H.R. 10. See chart entitled "New York Mutual Insurers Listed by Total Participating Policyholder Equity" (Tab A) for more details.

"Since the New York legislature rejected the anti-consumer mutual holding company conversion method after considerable debate, these 17.5 million policyholder-owners across the country are now protected," said Adkins. "But if the current pro-industry provisions in H.R. 10 become law, these policyholders alone could be stripped of $28 billion," he said. "Members of Congress must be unaware of the scope of this looming catastrophe, or they would reject these amendments which serve the interests of mutual executives (who stand to get rich on stock options) at the expense of so many of their voting constituents." said Adkins. "If enacted, the mutual redomestication provisions of H.R. 10 will also precipitate a race to the bottom as states compete for insurers' tax dollars by offering the most anti-consumer and pro-industry legislation they can devise to encourage mutuals to move to their state," he said. It would also effectively overrule the legislatures that have not enacted the pro-industry laws.

The Center's analyses also quantify the possible adverse financial impact of mutual holding company ("MHC") conversions on policyholders on a state-by-state basis. For example, there are 1.7 million policyholders in New Jersey, 5.9 million policyholders in New York, 637,000 million in Georgia, 542,000 million in Indiana, and 643,000 policyholders in Virginia who own policies with mutuals based in the minority of states that have adopted mutual holding company laws. If these mutuals were to convert to MHCs, New Jersey policyholders would lose $3.7 billion, New York policyholders $12.4 billion, Georgia policyholders $1.2 billion, Indiana policyholders $962 million and Virginia policyholders $1.9 billion. None of these states have MHC laws.

"While H.R. 10 will directly affect those policyholders in the 27 states that do <u>not</u> allow the controversial-type conversions, passage of the federal legislation could give a green light to hundreds of mutuals in the 23 states with such laws that Congress has turned its back on millions of their constituents," said Brendan Bridgeland, Policy Director for the Center. "That could open the flood-gates for mutual executives hoping to convert to stock so they can themselves receive stock options, without having to compensate their policyholder-owners," he said.

The analyses are based on the 1997 financial data reported by the nation's mutual insurance companies to state insurance regulators. The analyses are part of a larger study designed to quantify what the financial impact would be on mutual policyholders nationally if their mutuals converted to stock under the controversial MHC laws which have been enacted in just 23 of the 50 states.

The analysis assumes that each policyholder owns one policy, thus making the average loss per policyholder a conservative estimate. The number of policyholders affected would decrease if it were assumed that many policyholders (e.g., 10%) own more than one policy, and the average loss in equity per policyholders would increase proportionally. However, the estimated economic impact in a state would remain the same.

The federal bill, H.R. 10, now represents the greatest potential disaster to consumers, particularly in the 27 states that have not enacted MHC laws. As noted above, the starkest example can be seen in New York State. (See accompanying chart titled "New York Mutual Insurers Listed by Total Participating Policyholder Equity.") New York-based mutual insurance giants such as Metropolitan Life, New York Life and dozens of others are currently prohibited from converting to mutual holding companies because the New York Legislature rejected the anti-consumer mutual holding company bill in 1997. If the redomestication provision in H.R. 10 is included in the final law, thus permitting these insurers to move to another state that permits such reorganizations, and they do so convert, policyholders nationally could lose over $28 billion, or almost $1,500 each, in policyholder equity. On top of it all, <u>over 60% of the loss will be felt by policyholders in states that have not passed mutual holding company legislation</u>.

Besides the New York chart mentioned above, two basic types of charts show the effects of mutual holding company laws: 1) charts that demonstrate potential losses of policyholder equity for a particular state, and 2) charts that show actual or potential loss of policyholder equity on a national level.

Below are some of the findings, followed by a description of charts containing the underlying data.

1. What is going to happen to the policyholders in a particular state if most of the major mutual insurers convert to a mutual holding company structure?

The analysis shows, for example, what would happen to the average participating policyholder (assuming each policyholder has one policy) in the following states if all the major mutuals converted to a mutual holding company structure:

- New York's 5.9 million policyholders would lose a total of $12.4 billion, with the average policyholder losing over $1,800.
- New Jersey's 1.7 million policyholders would lose a total of $3.7 billion, with the average policyholder losing about $1,600.
- Massachusetts's 2 million policyholders would lose a total of $5.6 billion, with the average policyholder losing over $1,600.
- Minnesota's 613,000 policyholders would lose a total of $2 billion, with the average policyholder losing over $1,800.
- Michigan's 1.1 million policyholders would lose a total of $2.25 billion, with the average policyholder losing over $1,800.
- Virginia's 643,000 policyholders would lose a total of $1.9 billion, with the average policyholder losing over $1,900.
- Georgia's 637,000 policyholders would lose a total of $1.2 billion, with the average policyholder losing about $1,900.
- Indiana's 542,000 policyholders would lose a total of $962 million, with the average policyholder losing about $1,800.

For details and further analysis, including data on a company by company basis, find the "Impact of MHC Laws on States" chart (Tab B) for a particular state.

2. What is the total amount of policyholder equity already at risk nationally?

The analysis demonstrates the following actual and potential effects of mutual holding company conversions nationally: 1) even in states that do not have mutual holding company laws, policyholders can lose thousands of dollars each, and 2) even though only the regulators of an insurer's home state have to approve a mutual holding company conversion, most of the loss from that conversion will likely be felt outside the insurer's home state. For example:

- If all mutual insurers studied converted to a mutual holding company structure, 35.5 million participating policyholders nationally would lose $94.7 billion, with the average participating policyholder losing about $1,700.

- Most of the loss, or 52%, would be suffered by participating policyholders in states that do not have mutual holding company legislation.

- On average, the mutual insurers studied wrote about 79% of their business outside of their home state. For example, Northwestern Mutual, whose 3.8 million policyholders own about $7.4 billion in equity, does 94% of its business outside its home state of Wisconsin. Mutual of Omaha, whose 55,000 policyholders own about $1.5 billion in equity (for a whopping $27,000 each), does 98% of its business outside its home state of Nebraska.

  For details and further analysis, including data on a company by company information, find the "Mutual Insurers Listed by Total Participating Policyholder Equity" chart (Tab C).

3. **How much have policyholders already lost to mutual holding company conversions?**

The analysis also shows the damage already done by some of the largest mutual holding company conversions. For example:

- An estimated 3.2 million participating policyholders have already lost $10.5 billion in equity.

- The average participating policyholder in these conversions would have received about $3,200 (more than twice the national average) if their insurer had chosen to demutualize – a fact never disclosed by these insurers to their voting policyholders.

For details and further analysis, including data on a company by company basis, find the chart titled "Mutual Insurance Holding Company Subsidiaries Listed by Total Participating Policyholder Equity" (Tab D). This chart, which again includes a boxed summary of important data,

Other charts show how much, on the other hand, policyholders have received (or will receive) in exchange for their membership interests in traditional mutual-to-stock company conversions (that is, a "demutualization"), and how much is at risk nationally for policyholders of mutual life, health, and property/casualty insurers, respectively and in the aggregate (Tab E). For example:

69 Lydecker Street
Nyack, New York 10960
Phone: 914-358-2300
Fax: 914-358-2818

Presidential Life Insurance Company

Fax

To:	Neera ~~Tandem~~ Nicole	**From:**	Herbert Kurz
Fax:	212-563-4259	**Date:**	October 21, 1999
Phone:		**Pages:**	(Including cover) 8
Re:		**CC:**	

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FROM: MAC REED

TELEPHONE NUMBER: 202-395-3563

FAX NUMBER: (202) 395-7294

DATE: 10/22/99 **NO. OF PAGES (INCLUDING COVER):** 6

COMMENTS:

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

October 21, 1999

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus RGD
General Counsel

SUBJECT: Proposed Executive Order Entitled "Amendment to Executive Order 11623"

Attached is a proposed Executive order entitled "Amendment to Executive Order 11623." that was prepared by the Selective Service System.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning this proposal. If you have any comments or objections, they should be received no later than close of business Tuesday, November 2, 1999. Please be advised that agencies that do not respond by the deadline will be recorded as not objecting to the proposal.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed (202-395-3563) or Carla Stone (202-395-9177) of this office or fax to 202-395-7294.

Thank you.

Attachments - Distribution List
Proposed Executive Order

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EXECUTIVE ORDER____________

To amend EXECUTIVE ORDER 11623

Section 2 of Executive Order 11623 is amended to read as follows:

Sec. 2. (a) In carrying out the provisions of this Order, the Director shall cause any rule or regulation which he proposes to issue hereunder to be published in the FEDERAL REGISTER as required by section 13(b) of the Act. Prior to such publication, the Director shall request the views of the Secretary of Defense and the Attorney General with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation.

THE WHITE HOUSE

National Archives and Records Administration
Federal Register

Executive Order 11623--Delegating to the Director of Selective Service authority to issue rules and regulations under the Military Selective Service Act

Source: The provisions of Executive Order 11623 of Oct. 12, 1971, appear at 36 FR 19963, 3 CFR, 1971-1975 Comp., p. 614, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and statutes of the United States, including the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 *et seq.*, hereinafter referred to as the Act), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. The Director of Selective Service (hereinafter referred to as the Director) is authorized to prescribe the necessary rules and regulations to carry out the provisions of the Act. Regulations heretofore issued by the President to carry out such provisions shall continue in effect until amended or revoked by the Director pursuant to the authority conferred by this Order.

Sec. 2. (a) In carrying out the provisions of this Order, the Director shall cause any rule or regulation which he proposes to issue hereunder to be published in the Federal Register as required by section 13(b) of the Act. Prior to such publication, the Director shall request the views of the Secretary of Defense, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Transportation (when the Coast Guard is serving under the Department of Transportation), the Director of the Office of Emergency Preparedness, and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation.

(b) Any proposed rule or regulation as published by the Director shall be furnished to the officials required to be consulted pursuant to subsection (a). The Director may (not less than 30 days after publication in the Federal Register) issue such rule or regulation as published unless, within 10 days after being furnished with the proposed rule or regulation as published, any such official shall notify the Director that he disagrees therewith and requests that the matter be referred to the President for decision.

(c) Any rule or regulation issued by the Director pursuant to this Order shall be published in the Federal Register with (1) a statement reciting compliance with the prepublication requirement of section 13(b) of the Act, and (2) either (i) approval of such rule or regulation by the President, or (ii) a certification of the Director that he has requested the views of the officials required to be consulted pursuant to subsection (a) and that none of them has timely requested that the matter be referred to the President for decision. Such rule or regulation shall be effective upon such publication in the Federal Register or on such later date as may be specified therein.

[Sec. 2 amended by Executive Order 12608 of Sept. 9, 1987, 52 FR 34617, 3 CFR, 1987 Comp., p. 245]

Sec. 3. Nothing in this Order shall be deemed to (i) authorize the exercise by the Director of the President's authority to waive the requirements of section 13(b) of the Act, or (ii) derogate from the authority of the President himself to waive the requirements of such section 13(b), or (iii) derogate from the authority of the President himself to issue such rules or regulations as he may deem necessary to carry out the provisions of the Act.

Editorial note: Executive orders amending the Selective Service regulations, which were issued prior to the delegation of authority under Executive Order 11623 and which are still in effect, are codified at 32 CFR Chapter XVI.

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Office of the Federal Register

National Archives and Records Administration

Consumers Union
Publisher of Consumer Reports

ALERT!

HOUSE AND SENATE CONFEREES DEBATING FINANCIAL MODERNIZATION BILL: CONFEREES TAKE A WALK ON CONSUMER ISSUES

House and Senate Conferees are still working on the financial services modernization bill, also known as HR 10/S 900. This bill will allow banks, insurance companies and securities firm to merge into financial conglomerates. The bill has been the financial industry's dream for over 12 years and includes their wish list for the new millennium.

<u>What's in the bill for American consumers? At this point not much.</u>

What's still up in the air:

- **Will consumer get strong privacy protections?**

The financial industry defeated a series of amendments that would have required they get a customer's prior approval before sharing that customer's information with affiliates or third parties or, at a minimum allowed a customer to stop an institution from sharing their private financial records. A range of advocacy organizations from the EagleForum and Free Congress Foundation to the ACLU and Public Citizen supported this bipartisan privacy amendment offered by Senators Shelby and Bryan and Congressman Markey. Chairman Gramm indicated that consumers who didn't like a bank sharing their information could simply vote with their feet. Unfortunately the reality is that almost all banks don't allow their customers to have control over personal financial information in any meaningful way. A survey of the privacy policies of the top banks in the country shows that all of them do not provide customers any say in sharing personal information with affiliated companies. In short, customers have no where to go to keep their information private.

The existing language on privacy in the bill is ineffective and unacceptable. Those provisions offer no real privacy protections because of loopholes designed to allow banks to continue to share information with anyone they want so long as such sharing is covered by an "agreement." Thus, with a wink and a nod a bank will be able to conduct business as usual. Likewise, privacy protections are meaningless if they do not extend to information sharing with affiliates.

- **Will there be strong safeguards for bank customers?**

The bill will create a new world of one-stop-shopping. Whether this will be good for consumers remains unseen. The question to be answered is how well will consumers buying financial products and services be protected. Some complex financial transactions, like the sale of investments, require that any product sold be "suitable" for the investor. Under the bill, banks selling other complex products, like insurance, will not be subject to similar suitability rules.

These rules would simply ensure that banks recommend product to consumers that are tailored to fit their financial needs.

There are some other protections that the Conferees should keep in the bill. For example, the bill requires banks to inform their customers when products are not FDIC- insured and physically separate deposit taking from non-deposit sales activities. The bill also includes anti-coercion rules that would prohibit banks from selling insurance products to loan customers while a loan application is pending. The bill contains a mechanism to enable consumers to recover losses when banks violate the rules.

- **Will banks get to thumb their nose at state consumer protection laws?**

Consumers deserve the best available protections, whether at the state or federal level. The bill must clarify that all banks, including national banks, must comply with stronger state consumer laws. The bill currently contains several provisions that would allow banks to avoid having to comply with state consumer protection efforts, such as curbs predatory lending, limits on ATM fees, and caps on sky-high interest rates. Those preemption provisions could also put an end to state Attorneys General efforts to protect the financial privacy of consumers.

In addition to saying "no" to strong privacy protections, the Conference Committee has said "no" to some other changes that would have helped consumers:

- **No to Basic Banking Accounts:**

The Conferees voted no to an amendment offered by Congresswoman Maxine Waters to require financial institutions to offer affordable basic banking accounts. At a time when big banks are charging bigger fees and, according to the FDIC and Fed Chairman Greenspan, require increased scrutiny because if they it will be a substantial cost to taxpayers, it seems that the least banks can do is offer affordable accounts.

There are over 12 million unbanked Americans, many of whom cite bank fees as a reason why they don't have a bank account. Congress passed on an opportunity to help them as well as other middle class families stung by high bank fees by failing to provide for low cost accounts in this bill.

- **No to stopping mutual insurance companies from redomesticating:**

It is only fair that when mutual insurance companies convert to stock companies that their policyholders get some benefit. The bill contained a provision that will allow a mutual insurance companies to avoid compensating their existing policyholders when converting to stock. This is unfair for the policyholders. Today the Conferees defeated an amendment that would have removed this bad provision.

###

Consumers Union
Publisher of Consumer Reports

October 20, 1999
Contact: Frank Torres
202-462-6262

RESPONSES TO BANK'S REASONS WHY THEY CAN'T KEEP THEIR CUSTOMERS' PERSONAL FINANCIAL RECORDS PRIVATE

(1) The bill is good because it provides an opt-out for third party sharing. UNFORTATELY, few customers may actually be given an opt-out because of a loophole that allows a financial institution to avoid having to provide an opt-out as long as it enters into a contractual agreement with the third party.

(2) The bill is good because there is a provision that prevents a bank from sharing account numbers with third parties. BUT -- this is only limited to use for marketing purposes. This limitation would not have prevented Charter Pacific Bank in California from selling the account numbers to the ex-felon. In that case it was sold so that the ex-felon's company could verify the accounts for merchants -- not a marketing purpose and therefore outside the scope of the bill.

(3) An opt out would prevent banks from stopping fraud. THIS is a bogus argument. Most advocacy groups would agree that information could be shared for the purpose of preventing fraud. But the institution shouldn't then be able to use the information obtained to prevent fraud for another purpose.

(4) Customers won't be able to access services or won't benefit from having a relationship with an institution (i.e., good customer discounts, etc.). THIS is another bogus argument. Institutions can still advertise, or otherwise let customers know about any deals and let the customer decide if the deals warrant giving up personal data. All we are saying is give customers the ability to say no if they don't want their information shared or if they get bombarded with rotten deals, or if their information is used in inappropriate ways to make decisions about the interest rates or fees they are forced to pay for products or services.

(5) It will cost too much to change their computer systems -- reprogramming, altering, systems, etc. And new phone based systems and Internet-based delivery systems may face new and more complex operations reducing their value. THE fact is that other industries, such as telephone companies, are living with customers having control of their private records. Additionally, U.S. Bancorp agreed to an opt-out in its settlement agreement, indicating that an "opt-out" approach is workable. Second, the new systems may be focused on selling something and not about providing customer service. A recent article in Fast Company magazine explained how one credit card company's computers are so advanced they can tell from the number you call in on who you are, and calling up all the information they have on you the computer can then determine what product or service in their current offerings you would be most willing to buy. All before the company's representative answers the phone. So while you may be calling to complain the operator, who may take care of your complaint, will use that opportunity to sell you something. Does an institution's concern about such a system warrant sacrificing the customer's privacy rights and should it preclude a customer's ability to stop such use of his or her private information?

Consumers Union
Publisher of Consumer Reports

CLARIFY THAT STATE CONSUMER PROTECTION LAWS APPLY:

We are very concerned that several provisions will wreak havoc on the ability of states to protect consumers and undermine longstanding preemption precedent.

To clarify the rights of states vis-à-vis consumer laws, we have suggested the following new section:

> **Preservation of State Consumer Protection Laws: The consumer protection laws of any state shall apply to all depository institutions doing business with a resident of the state except to the extent those laws are inconsistent with a specific provision of federal law, and then only to the extent of the inconsistency.**

- Under the Chairmen's mark, national banks will be able to circumvent state laws and give carte blanche to federal regulators to exempt national banks from important consumer protection laws. The result -- a chilling effect on states that are being lobbied and pushed by banks not to enact consumer protections, claiming the state laws will not apply to them.

- The Chairmen's mark threatens states' authority to regulate businesses that operate within their borders and to protect their citizens. States should be able to protect consumers from price gouging on deposit accounts, predatory lending and exorbitant ATM surcharges.

- The bill should clarify that all banks, including national banks must comply with state consumer laws unless such laws are inconsistent with a clear requirement of federal law, and then only to the extent that of the inconsistency.

Preemption and Functional Regulation:

(1) Preemption of State Law -- Authority of State Law: sec. 104: We are very concerned that several provisions will wreak havoc on the ability of states to protect consumers and undermine longstanding preemption precedent. As you know, we have been extremely concerned about the preemption activities of federal bank regulators. Most recently, the OCC weighed in on Connecticut's ATM surcharge ban arguing states did not have authority to enforce such a law on national banks. This position is harmful to consumers, particularly where the OCC is not willing to enforce the state law on national banks. Provisions in this bill will open further the ability of national banks to circumvent state laws and give carte blanche to federal regulators to exempt national banks from important consumer protection laws. The result – a chilling effect on states that are being lobbied and pushed by banks not to enact consumer protections, claiming the state laws will not apply to them.

Washington Office
1666 Connecticut Avenue, Suite 310 • Washington, D.C. 20009-1039 • (202) 462-6262

- Section 104(c)(1): This section is an attempt to ensure that states do not prevent banks from affiliating with insurance companies and investment firms but the language goes too far with the "prevent or *restrict*" standard applying to affiliations permitted under "any other provision of federal law." This may tie the hands of states to prevent banks from affiliating with firms that harm consumers, e.g., high-cost payday lending firms and check cashing outlets, even when there is no federal law on the subject. Note: It appears that proponents of this preemption language are using Barnett, an insurance case, to make new preemption law for many, possibly all bank affiliation activities, which will undermine states' ability to protect consumers.

- Section 104(d)(1): We understand the intent is to ensure states do not unfairly prevent banks from engaging in insurance or securities activities but the language goes much further. The standard "prevent or *restrict*" is overly broad and will limit the ability of states to protect consumers. Further, "any activity authorized under this Act" could be broadly interpreted in light of the long list of financial activities authorized for the holding company in previous sections.

- Section 104(d)(2): Another preemption standard is introduced in this section on insurance sales – "prevent or significantly interfere" – creating confusion and undermining longstanding preemption principles. As we have stated in the past, the laundry list approach to preserving certain state laws is dangerous precedent, preempting some current state laws and tying the hands of states to enact protections in the future, particularly when the nondiscrimination standard under 104(e) is the standard. Examples of current laws that would be preempted for national banks involve privacy protections and anti-coercion rules that prohibit banks from selling insurance pending the loan approval. In addition, the repeated reference to and inclusion of "cross-marketing" is very disturbing and paves the way for preemption of any meaningful privacy protections for consumers at the state level.

- Section 104(d)(3): We are very concerned about the unintended consequences of this section. The intent is to provide a framework for insurance regulation other than sales but it appears that states will be limited in their ability to regulate banks engaged in certain kinds of insurance activities. For example, if a bank serves as an insurance claims administrator and is unfairly denying claims of consumers, this section could prevent states from applying their unfair claims denial laws against the bank acting in such a capacity, leaving consumers unprotected.

- Section 104(d)(4): We appreciate the intent of this section to limit the preemption provisions to insurance but there appears yet another preemption standard that would limit the application of state law to banks if it had an "adverse" or "substantially adverse impact" on banks compared to its application to other entities. Our reading of this language means that *any* law that applies specifically to banks would be suspect if it had an "adverse" (unclear meaning) impact. This prevents states from enacting laws that address depository institution specific problems; even when there is a substantial and pressing need for such law. We are concerned that states will have little to no power left to enforce any law on depository institutions.

- Section 104(e): Another standard – nondiscrimination – further limits the ability of states to protect their consumers from abusive or deceptive practices by banks. This standard is overly broad. Banks can argue any insurance law is preempted under this standard if it "distinguishes by its terms", "as interpreted or applied, has or will have an impact," "effectively prevents," or "conflicts with" the ability of banks to conduct their activities.

PRESS RELEASE

For Immediate Release:
October 21, 1999

For more information contact:
Jason Adkins or Paula Isola (617) 367-1040
Brendan Bridgeland, (617) 441-2900

PROVISIONS IN FEDERAL BILL H.R. 10 WILL FACILITATE LOSS OF OVER $100 BILLION TO 35 MILLION POLICYHOLDERS ACROSS COUNTRY

New Financial Analyses Quantify Damage of Federal "Redomestication" Provisions By State

Cambridge, MA -- Over 35 million policyholders of mutual insurance companies nationwide are at risk of losing $94.7 billion in equity, or $1,700 each, according to an analysis of recently enacted state laws the impact of which will be exacerbated by the Financial Services Act of 1999 now being considered by Congress. The detailed state-by-state analyses by the Cambridge-based Center for Insurance Research reportedly show that the federal provision in H.R. 10 that facilitates mutual insurance company conversions to stock form without compensation to policyholder-owners (as traditional law requires) will have a devastating impact on consumers in every state. The federal provision would allow mutual insurers based in New York State alone – where such conversions have been rejected by the Legislature – to deprive 17.5 million policyholders nationwide of $28 billion.

The adverse impact of the federal bill, which promotes the mutual-to-stock conversions in which policyholder-owners are not compensated, is best seen in contrast to the proposed traditional stock conversions of two of the nation's largest mutual insurers. Prudential and John Hancock are both preparing to convert to stock next year, and will distribute a combined estimated $30 billion to 15 million policyholders nationwide in doing so. Had just these two mutual insurers attempted to use the novel mutual holding company conversion method facilitated by H.R. 10, <u>none</u> of these mutuals' $30 billion in assets would have been returned to their policyholder-owners upon conversion. (Prudential is based in New Jersey where the novel conversions were outlawed, but under H.R. 10 it could move to another state and return none of its $24 billion in assets to policyholders.)

"H.R. 10 is purportedly designed to strip away the decades-old legal barriers between the banking and insurance businesses to benefit the market and consumers alike. However, it contains a harmful provision that facilitates the controversial-type of mutual-to-stock conversions which threatens to deprive millions of consumers of billion of dollars in property rights," Adkins said. "The devastating aspect of that insurer-backed provision has been kept from the public and members of Congress until now," he said.

For the first time, this analysis allows the public to measure the potential adverse impact of the controversial-type mutual conversion laws and to examine how the "redomestication" provisions (Sections 311-316) of H.R. 10 will magnify the public harm if it becomes law. Those provisions of H.R. 10 would allow mutual insurance companies based in states that do not permit the controversial form of mutual-to-stock conversions to move to another state that permits it.

The Center's analyses show that about 52% of the nearly $100 billion in potential losses from mutual conversions would be suffered by policyholders in the 27 states that have rejected or not enacted mutual holding company conversion legislation. The analyses further show, as discussed above, that 17.5 million policyholders nationwide who own policies with New York-based mutual insurers, would be at risk of losing $28 billion in equity, or an average of $1,466 each, under H.R. 10. See chart entitled "New York Mutual Insurers Listed by Total Participating Policyholder Equity" (Tab A) for more details.

"Since the New York legislature rejected the anti-consumer mutual holding company conversion method after considerable debate, these 17.5 million policyholder-owners across the country are now protected," said Adkins. "But if the current pro-industry provisions in H.R. 10 become law, these policyholders alone could be stripped of $28 billion," he said. "Members of Congress must be unaware of the scope of this looming catastrophe, or they would reject these amendments which serve the interests of mutual executives (who stand to get rich on stock options) at the expense of so many of their voting constituents." said Adkins. "If enacted, the mutual redomestication provisions of H.R. 10 will also precipitate a race to the bottom as states compete for insurers' tax dollars by offering the most anti-consumer and pro-industry legislation they can devise to encourage mutuals to move to their state," he said. It would also effectively overrule the legislatures that have not enacted the pro-industry laws.

The Center's analyses also quantify the possible adverse financial impact of mutual holding company ("MHC") conversions on policyholders on a state-by-state basis. For example, there are 1.7 million policyholders in New Jersey, 5.9 million policyholders in New York, 637,000 million in Georgia, 542,000 million in Indiana, and 643,000 policyholders in Virginia who own policies with mutuals based in the minority of states that have adopted mutual holding company laws. If these mutuals were to convert to MHCs, New Jersey policyholders would lose $3.7 billion, New York policyholders $12.4 billion, Georgia policyholders $1.2 billion, Indiana policyholders $962 million and Virginia policyholders $1.9 billion. None of these states have MHC laws.

"While H.R. 10 will directly affect those policyholders in the 27 states that do <u>not</u> allow the controversial-type conversions, passage of the federal legislation could give a green light to hundreds of mutuals in the 23 states with such laws that Congress has turned its back on millions of their constituents," said Brendan Bridgeland, Policy Director for the Center. "That could open the flood-gates for mutual executives hoping to convert to stock so they can themselves receive stock options, without having to compensate their policyholder-owners," he said.

The analyses are based on the 1997 financial data reported by the nation's mutual insurance companies to state insurance regulators. The analyses are part of a larger study designed to quantify what the financial impact would be on mutual policyholders nationally if their mutuals converted to stock under the controversial MHC laws which have been enacted in just 23 of the 50 states.

The analysis assumes that each policyholder owns one policy, thus making the average loss per policyholder a conservative estimate. The number of policyholders affected would decrease if it were assumed that many policyholders (e.g., 10%) own more than one policy, and the average loss in equity per policyholders would increase proportionally. However, the estimated economic impact in a state would remain the same.

The federal bill, H.R. 10, now represents the greatest potential disaster to consumers, particularly in the 27 states that have not enacted MHC laws. As noted above, the starkest example can be seen in New York State. (See accompanying chart titled "New York Mutual Insurers Listed by Total Participating Policyholder Equity.") New York-based mutual insurance giants such as Metropolitan Life, New York Life and dozens of others are currently prohibited from converting to mutual holding companies because the New York Legislature rejected the anti-consumer mutual holding company bill in 1997. If the redomestication provision in H.R. 10 is included in the final law, thus permitting these insurers to move to another state that permits such reorganizations, and they do so convert, policyholders nationally could lose over $28 billion, or almost $1,500 each, in policyholder equity. On top of it all, <u>over 60% of the loss will be felt by policyholders in states that have not passed mutual holding company legislation</u>.

Besides the New York chart mentioned above, two basic types of charts show the effects of mutual holding company laws: 1) charts that demonstrate potential losses of policyholder equity for a particular state, and 2) charts that show actual or potential loss of policyholder equity on a national level.

Below are some of the findings, followed by a description of charts containing the underlying data.

1. **What is going to happen to the policyholders in a particular state if most of the major mutual insurers convert to a mutual holding company structure?**

The analysis shows, for example, what would happen to the <u>average</u> participating policyholder (assuming each policyholder has one policy) in the following states if all the major mutuals converted to a mutual holding company structure:

- New York's 5.9 million policyholders would lose a total of $12.4 billion, with the average policyholder losing over $1,800.
- New Jersey's 1.7 million policyholders would lose a total of $3.7 billion, with the average policyholder losing about $1,600.
- Massachusetts's 2 million policyholders would lose a total of $5.6 billion, with the average policyholder losing over $1,600.
- Minnesota's 613,000 policyholders would lose a total of $2 billion, with the average policyholder losing over $1,800.
- Michigan's 1.1 million policyholders would lose a total of $2.25 billion, with the average policyholder losing over $1,800.
- Virginia's 643,000 policyholders would lose a total of $1.9 billion, with the average policyholder losing over $1,900.
- Georgia's 637,000 policyholders would lose a total of $1.2 billion, with the average policyholder losing about $1,900.
- Indiana's 542,000 policyholders would lose a total of $962 million, with the average policyholder losing about $1,800.

For details and further analysis, including data on a company by company basis, find the "Impact of MHC Laws on States" chart (Tab B) for a particular state.

2. **What is the total amount of policyholder equity already at risk nationally?**

The analysis demonstrates the following actual and potential effects of mutual holding company conversions nationally: 1) even in states that do not have mutual holding company laws, policyholders can lose thousands of dollars each, and 2) even though only the regulators of an insurer's home state have to approve a mutual holding company conversion, most of the loss from that conversion will likely be felt <u>outside</u> the insurer's home state. For example:

- If all mutual insurers studied converted to a mutual holding company structure, 35.5 million participating policyholders nationally would lose $94.7 billion, with the average participating policyholder losing about $1,700.
- Most of the loss, or 52%, would be suffered by participating policyholders in states that do not have mutual holding company legislation.
- On average, the mutual insurers studied wrote about 79% of their business outside of their home state. For example, Northwestern Mutual, whose 3.8 million policyholders own about $7.4 billion in equity, does 94% of its business outside its home state of Wisconsin. Mutual of Omaha, whose 55,000 policyholders own about $1.5 billion in equity (for a whopping <u>$27,000 each</u>), does 98% of its business outside its home state of Nebraska.

For details and further analysis, including data on a company by company information, find the "Mutual Insurers Listed by Total Participating Policyholder Equity" chart (Tab C).

3. How much have policyholders already lost to mutual holding company conversions?

The analysis also shows the damage already done by some of the largest mutual holding company conversions. For example:

- An estimated 3.2 million participating policyholders have already lost $10.5 billion in equity.
- The average participating policyholder in these conversions would have received about <u>$3,200</u> (more than twice the national average) if their insurer had chosen to demutualize – a fact never disclosed by these insurers to their voting policyholders.

For details and further analysis, including data on a company by company basis, find the chart titled "Mutual Insurance Holding Company Subsidiaries Listed by Total Participating Policyholder Equity" (Tab D). This chart, which again includes a boxed summary of important data,

Other charts show how much, on the other hand, policyholders have received (or will receive) in exchange for their membership interests in traditional mutual-to-stock company conversions (that is, a "demutualization"), and how much is at risk nationally for policyholders of mutual life, health, and property/casualty insurers, respectively and in the aggregate (Tab E). For example:

- If Metropolitan Life demutualizes as currently planned, its 10.1 million participating policyholders will receive close to $13 billion, with the average participating policyholder receiving about $1,300.
- Participating policyholders nationwide of mutual life insurers have $59.3 billion in equity at risk, with 55% of the potential damage potentially occurring in states without mutual holding company laws.

Note that while New York-based Metropolitan Life currently has plans to demutualize, there can be no guarantee what will happen if H.R. 10 passes.

For More Information Contact:

Jason Adkins or Paula Isola (617) 367-1040

Brendan Bridgeland, (617) 441-2900

The Center for Insurance Research, Inc., established in 1991, is a non-profit, tax-exempt 501(c)(3) organization that conducts studies and advocates on behalf of the public interest in insurance matters in Massachusetts and nationwide.

A QUICK GLANCE AT THE H.R. 10 IMPACT ON MUTUAL POLICYHOLDERS

For a stark look at the looming disaster if H.R. 10 becomes law, take the example of New York State. The New York charts enclosed show two different views of the potential effect.

The first chart, at Tab A, titled "New York Mutual Insurers Listed by Total Participating Policyholder Equity," shows what would happen if New York mutuals – currently prohibited from converting to mutual holding companies because New York rejected the mutual holding company bill – took advantage of H.R. 10, redomiciled, and converted under some other state's mutual holding company law. The chart shows that policyholders nationally could lose over $28 billion in policyholder equity and the average policyholder could lose almost $1,500. On top of it all, over 60% of the loss will be felt by policyholders in states that have not passed mutual holding company legislation.

The second chart, at Tab B, titled "Impact of MHC Laws on States: Estimated Participating Policyholder Equity at Risk" (in New York) shows what would happen to mutual policyholders whose mutuals are based in states with mutual holding company laws if they converted. The boxed summary at the top shows, for example, that the 5.9 million participating policyholders in New York would lose $12.4 billion, or an average of almost $1,600 each (assuming each policyholder has one policy), among other things. The main body of the chart presents similar information on a company by company basis: for example, if Northwestern, a Wisconsin insurer, converted to a mutual holding company structure, Northwestern's 289,000 participating policyholders in New York would lose a total of $565 million in equity, or on average almost $2,000 each.

#62 Scheduling

PRESIDENTIAL LIFE INSURANCE COMPANY

NYACK, NEW YORK 10960
(914) 358-2300

Herbert Kurz, *Chairman of the Board*

October 21, 1999

First Lady Hillary Rodham Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mrs. Clinton:

With the speed the banking bill is moving, it might be helpful for me to be in Washington to discuss the ramifications of this with the Senior Members of the Administration.

Kelly Craighead suggested that I take the suggestion to you for approval and that I ask for your help in arranging the meetings. She suggested that I meed with Laurence Summers, Gene Sperling, Doug Sosnik and Mellane Verveer.

I can be in Washington by mid-afternoon today and/or all day Friday. I believe that these meetings will be fruitful.

Sincerely,

Herbert Kurz

Kate
Schedule
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Financial Modernization: Last week, the Financial Modernization Conference Committee began its markup of the Chairmen's mark of the bill. Chairmen Leach (R-IA), Gramm (R-TX), and Bliley (R-VA) removed the bill from the usual conference process and produced a mark without any substantive input from the Democrats. The Committee has thus far accepted a compromise agreement between Treasury and the Federal Reserve on the operating subsidiary issue, rejected a Community Reinvestment Act amendment offered by Representative LaFalce (D-NY) which we supported, and rejected a financial privacy amendment offered by Senators Shelby (R-AL) and Bryan (D-NV). The Conference Committee will reconvene at 2:00 PM on Monday. Outstanding major issues are privacy and CRA.

Dow Jones News Service via Dow Jones

By Dawn Kopecki

WASHINGTON (Dow Jones)--Lawmakers working out the final details of a sweeping financial services bill Friday debated much but passed little as members of Congress laid the stage for a show down next Monday on consumer privacy and community investment rules.

A conference of more than 50 Senate and House legislators is trying to reconcile two separate financial service packages each chamber passed earlier this year. The industry and GOP leaders have pressured negotiators to deliver a final document to the president before Oct. 20.

While the administration will likely protest a number of changes made this week to the legislation, the only two issues left that White House officials have said they will veto the bill over are privacy and the Community Reinvestment Act or CRA. The fair-lending law requires banks to extend credit to disadvantaged individuals.

Friday's debate was colored by behind-the-scenes visits from the Rev. Jesse Jackson, who was trying to broker a deal between the Clinton administration and Senate Banking Chairman Phil Gramm, R-Texas, on CRA.

The fair-lending law threatens to unravel all the work that's been done to streamline the nation's finance laws, allowing banks, brokerage firms and insurers to merge in large, one-stop financial service shops. Gramm has publicly boasted about single-handedly killing last year's financial service bill over CRA.

Jackson met privately with Sen. Gramm in a utility closet outside the conference room where Gramm agreed to a first-ever meeting with the National Community Reinvestment Coalition as well as other community groups sometime in the next few days.

The issue has become another high-stake game of chicken where either the administration or Gramm could crash the entire bill.

Many in Washington have speculated whether the White House would veto a financial service bill that didn't give the administration what it wants on CRA but did deliver on two or three other areas key to winning the president's support. Lawmakers have already cleared away two major issues previously seen as veto-bait.

"What was clear to me from meeting with Gene Sperling is that the

White House would not trade away CRA," Jackson said to reporters after meeting with the White House chief economic advisor Friday morning and Sen. Gramm that afternoon. Sperling is the director of the White House National Economic Council.

Gramm is just as resolute with his position on CRA.

The vociferous senator claims his bill not only keeps CRA in tact, it expands the law to a new kind of depository institution permitted under the proposed legislation.

In any case, CRA provisions currently in the legislation loosen CRA reporting requirements and examinations for banks with less than $250 million in assets. In addition, Gramm included a "sunshine" amendment that forces banks and community groups to disclose private agreements made over the anti-redlining law.

The chairman is similarly persistent in defeating an attempt to broaden consumer privacy protections passed by the House earlier this year.

Sen. Gramm inserted a list of exceptions to that privacy language. Those exceptions, if passed, would allow banks to share consumer data with almost any business that had a joint marketing agreement with the bank. "This is sort of a sham," Sen. Richard Shelby, R-Ala., said of privacy provisions amended by Sen. Gramm and currently included in the base bill.

The conservative Alabama senator surprised many of his GOP colleagues when he championed what was thought to be a liberal, Democratic cause that was quickly embraced by the White House.

His public support for a proposal promoted by liberal Rep. Ed Markey, D-Mass., brought out other Republican endorsements.

"The exceptions devour the rule," GOP Sen. Richard Bryan of Nevada said, also commenting on Sen. Gramm's changes. "They are so broad you could drive a Mack truck through them."

Sen. Shelby sponsored an amendment with broad privacy protections, requiring banks to get permission from consumers before their information could be shared or sold to outside companies.

It failed 14-6, to which Gramm said, 'I think this resounding vote settles it on privacy."

His comment was met with a burst of laughter and shouts of "no."

Lawmakers are expected to offer several other privacy changes, as well as those on CRA, when they resume debate Monday.

-By Dawn Kopecki; Dow Jones Newswires; 202-862-6637
dawn.kopecki@dowjones.com

(END) DOW JONES NEWS 10-15-99

04:19 PM

THE WHITE HOUSE

WASHINGTON

October 7, 1999

The Honorable Jim Leach
Chairman
Committee on Banking and Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This Administration has been a strong proponent of financial modernization legislation that would reduce costs and increase access to financial services for consumers, businesses, and communities. However, the President has made clear that there are some principles that he will not sacrifice in order to pass legislation. In particular, he has said that he will veto a bill that would compromise any of the following four principles.

First, the bill must preserve the ability of banking organizations to choose the structure that best serves their customers -- be it through an affiliate or subsidiary structure -- in a way that preserves the current balance of authority among financial regulators and provides business with two viable options.

Second, the new financial system that this bill would create must preserve the relevance of CRA. This means that CRA rules and procedures should continue to apply to all banks; as under current law the comments of affected communities on CRA performance of any bank applying to expand should be considered; and banks should have and maintain a satisfactory CRA record as a condition for engaging in the new financial activities authorized by the bill.

Third, the bill must provide adequate consumer protections. While we are providing industry with expanded powers, we must protect consumers financial privacy and insure that investors are not exposed to greater risk.

Finally, the bill must limit 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.

While these are the most critical issues to the Administration, there are other important provisions in the bill that will have an important impact on the success of our financial regulatory system and therefore, affect the acceptability of any bill.

HP OfficeJet
Personal Printer/Fax/Copier/Scanner

Fax History Report for
Hillary 2000
(202) 783-6479
Oct-19-99 4:01am

Last Fax

Date	Time	Type	Identification	Duration	Pages	Result
Oct 19	3:58am	Sent	12125634259	2:17	7	Jammed

Passing legislation is important for our financial system and for the American people but it needs to be the right legislation. We very much want a financial modernization bill that the President can sign and we remain hopeful that together, through a bipartisan congressional process, we can achieve it this year. However, if the legislation compromises our core beliefs, the President will not hesitate to veto the bill.

Sincerely,

John Podesta
Chief of Staff

cc: Ranking Member John LaFalce
Chairman Phil Gramm
Ranking Member Paul Sarbanes
Chairman Thomas Bliley
Ranking Member John Dingell

Congress Daily Thursday, Oct. 14, 1999 BANKING

Treasury, Fed Negotiate Deal On Operating Subsidiaries

A major obstacle to the enactment of financial services reform legislation was removed today, as the Treasury Department and the Federal Reserve released the details of a deal reached late Wednesday night on operating subsidiaries. The agreement comes as the House-Senate conference committee on financial services reform kicked off its markup.

Treasury Secretary Summers, who appeared today before a conference hosted by the Office of the Comptroller of the Currency, declined to elaborate on the "opsub" agreement, but called it a "prudent middle ground compromise" that is mutually acceptable to both agencies. Federal Reserve Chairman Greenspan subsequently seconded that view in a joint letter with Summers that was transmitted to Capitol Hill as the conferees began their work.

An accompanying summary of the compromise language indicates the two agencies have split the difference on merchant banking activities being conducted in operating subsidiaries. Specifically, the new language would permit opsubs to engage in merchant banking — but only if the Fed and the Treasury "jointly agree" the activity is permissible. The agreement also retains the House language giving the Fed and the Treasury joint veto power over the definition of financial activities. And the agreement specifies that the OCC may require the divestiture of the financial subsidiary if it determines a bank is failing to remain "well capitalized and well managed."

At presstime, the financial services conference had completed little substantive work, approving just one amendment. That was a proposal offered by House Commerce Finance and Hazardous Materials Subcommittee Chairman Michael Oxley, R-Ohio, to create a national association of registered agents and brokers — the goal of which is to enhance the quality of state insurance regulation. In one procedural adjustment, House conferees convinced House Banking Chairman
Leach to reverse an earlier decision to bar House members from voting by proxy. Senate conferees also may vote by proxy.

Ranking Democrats on the conference committee in their opening comments expressed displeasure with the overall process — accusing the majority of failing to release the markup document soon enough for in-depth review and complaining that the documment had been drafted in a closed-door and partisan manner. Both Senate Banking ranking member Paul Sarbanes, D-Md., and House Commerce ranking member John Dingell, D-Mich., warned that the process is one that all but guarantees a presidential veto of the final product. Summers today repeated the administration's veto threat. He specifically said the final product would have to "preserve the relevance" of the Community Reinvestment Act by requiring that banks "have and maintain" at least a satisfactory CRA rating to be permitted to merge with a securities or insurance firm, have "adequate" protections of consumer privacy and protect consumers from "inappropriate risk," and limit the ability of banks and other depository institutions to affiliate with commercial firms.

— by Pamela Barnett and Julie Kosterlitz

DEPARTMENT OF THE TREASURY

TREASURY NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE
October 12, 1999

STATEMENT BY TREASURY SECRETARY LAWRENCE H. SUMMERS ON FINANCIAL MODERNIZATION

The Administration is disappointed by the recommendations on the Financial Modernization bill put forth by Chairmen Gramm, Leach and Bliley today. A flawed process risks producing flawed legislation. In important respects, the Chairmen's proposal abandons the bipartisan consensus that the House legislation achieved. On each of the four key areas cited by the President -- business choice, the Community Reinvestment Act, consumer protections, and banking and commerce-- the recommendations are inadequate. If the bill were presented to the President in its current form, the President would veto the bill.

The right financial modernization legislation can make an important contribution to the strength of our economy. We remain willing to work cooperatively toward a bill that meets the President's requirements.

-30-

LS-150

fin mod -

redomestication
demutualization

mutual ins co - often - decide for profit. IPO

current shareholders - pay off

NY - laws to protect shareholders of mutual
bill - Pataki - oriented

Bliley - inserted - provision - facilitate the re-mutualization -
screw the shareholders.

Pataki - intro'ed a bill - if Congress passes - may leave our State - more generous prov. - NY laws less protective.

talking points

5 pages long

→ Herb Kurtz - Dom asked to talk to.
pro-consumer side -

Pete Gramm

NewsDay editorial

Gramm - in new mark. set of talking points

TREASURY NEWS

FROM THE OFFICE OF PUBLIC AFFAIRS

FOR IMMEDIATE RELEASE
September 16, 1999
LS-91

**"FINANCIAL MODERNIZATION"
UNDER SECRETARY FOR DOMESTIC FINANCE GARY GENSLER
REMARKS BEFORE THE FINANCIAL SERVICES ROUNDTABLE
WASHINGTON, DC**

Introduction

I am pleased to be here today to discuss financial modernization and the prospects for legislation. At the outset, I would like to make three points.

First, the Administration strongly supports modernization of our financial services laws. This round of legislation began with introduction of a Treasury-proposed bill in 1997. We have made compromises and reached out to a broad range of groups. We are up on the Hill practically every day working on this bill.

Second, we believe that legislation is clearly achievable. The passage of H.R. 10 by a 343-86 vote, with your support and Administration backing, demonstrates that unequivocally.

Third, although the Administration would like to see financial modernization legislation enacted, we are ready to walk away if presented with a bad bill. We did it last year, and we will do it again if we must.

Status of Legislation

Let me now return to the bills that have passed the House and Senate.

Both bills take the fundamental actions necessary to modernize our financial system. They repeal the Glass-Steagall Act's prohibitions on banks affiliating with securities firms and repeal the Bank Holding Company Act prohibitions on insurance underwriting.

The House bill, however, takes three other steps that are of importance to the Administration:

- it preserves the relevance of the Community Reinvestment Act;
- it permits financial services firms to organize themselves in whatever way best serves their customers and their businesses; and
- it includes consumer protections, most notably financial privacy protections.

H.R. 10 demonstrates unequivocally that a broad consensus on financial modernization is possible.

The Senate bill, on the other hand, is a partisan measure that:

- seriously erodes the Community Reinvestment Act;
- denies financial services firms organizational choice;

- lacks appropriate consumer protections, such as privacy protections; and
- allows, through the guise of merchant banking, a substantial mixing of banking and commerce.

The President's March letter made it clear that he would veto a bill that took the form of the bill passed by the Senate.

Today, I would like to focus on why these issues are of such importance to the Administration.

Organizational Choice: The Subsidiary Option

First, the subsidiary. We believe that financial services firms should, like other companies, structure themselves in the way that best serves their customers -- be it through subsidiaries or affiliates.

We also believe that the subsidiary structure promotes safety and soundness. Risk to the deposit insurance funds will decrease, and taxpayers will benefit. A bank and its creditors -- including the FDIC -- effectively have one-way recourse with respect to the value of the subsidiary. If the subsidiary is profitable, the bank owns a valuable, diversified asset. If the subsidiary is unprofitable, the liability of the bank is limited by basic corporate law and the funding limitations of the bill.

The Senate bill, however, denies that choice to large or medium-sized firms.

Proponents of this approach have suggested that banks receive a substantial competitive advantage by virtue of the federal safety net. They further suggest that a subsidy would be more readily passed to subsidiaries than affiliates.

We see no evidence in the markets that banks have such a substantial competitive advantage. In addition, H.R. 10 imposes significant limits on a bank's ability to fund a subsidiary. A bank could provide no greater funding than it can currently provide an affiliate.

The Treasury, the FDIC, independent analysts, and economists -- including four whose studies were recently released by the Roundtable -- have uniformly concluded that any subsidy rationale for denying banks business choice is without merit. Furthermore, of the 18 other countries composing the European Union and the G-10, none requires the use of separate bank holding company affiliates for underwriting and dealing in securities. Of those authorizing links between banking and insurance underwriting, all but one allow the choice of a subsidiary or an affiliate. By allowing a choice of structure, the House bill is clearly in the mainstream of economic and legal thinking in this area.

Nonetheless, we have shown flexibility on the subsidiary issue. To jump start the legislative process this year, we made important compromises. The House bill reflects those compromises. First, banking organizations would be able to conduct insurance underwriting only in affiliates. Second, banks with over $10 billion in assets would be required to retain their holding companies. And third, the Federal Reserve would write the rules for merchant banking whether it takes place in subsidiaries or affiliates.

We have listened. We have compromised. And now we wait.

Community Reinvestment Act

Another issue critical to the Administration is preserving the relevance of the Community Reinvestment Act. As former Secretary Rubin stated, "this country will fall far short of its full economic potential, unless the least well off have a real opportunity to join the economic mainstream. Providing this opportunity is not simply a social issue or a moral issue, but an economic issue of fundamental importance to all of us."

As we work to modernize our financial system, we need to make sure that CRA keeps working for our communities. The House-passed bill does just that. It requires that federally insured depository institutions have and maintain an adequate record on CRA as a condition for engaging in newly authorized financial activities.

By contrast, the Senate bill would seriously weaken CRA. It fails to include this "have and maintain" requirement; it exempts small banks from CRA; it provides banks and thrifts with a "safe harbor" from CRA; and it imposes new reporting burdens on banks for a wide range of activities under CRA.

Privacy Issues

I would now like to focus on the Administration's views on the protection of personal financial information.

Today many Americans increasingly feel their privacy threatened by those with whom they do business. Americans want the ability to earn, invest, and spend their money without having to expose their lives to those who process their transactions. Just as they would not expect a letter carrier to read their mail or record their correspondents, they do not expect a bank processing a check to record, store, and evaluate their personal behavior.

On May 4, the President outlined the Administration's "Financial Privacy and Consumer Protection in the 21st Century" initiative. Protecting financial privacy led the list of key principles for consumer protection. In particular, the President recommended enactment of legislation to provide consumers notice and choice before their financial information is shared or sold -- the right to say "no."

When the President announced this agenda in May, some may have viewed his proposals as ambitious. But only two months later, the House passed with overwhelming bipartisan support a bill providing notice and choice before personal financial information can be shared with third parties.

Although the House bill was an important step forward, we believe that it should be improved.

First, we believe that customers must have notice about how financial services firms share information with affiliates. It strikes many as untenable to suggest that a customers' personal financial information should be transferred without their knowledge, even if to an affiliate.

Second, we believe that customers should be able to exercise choice about whether confidential financial information is shared even if among affiliates. We believe that Americans should have the opportunity to participate in the modern means of electronic payments and receipts without subjecting themselves to behavioral profiling. Our buying patterns and preferences. Our assets, liabilities, earnings history and net worth. Even our accidents and losses. This is among our most personal information. In many ways, it describes who we are as individuals. Many Americans would not expect such information to be recorded, consolidated, and used to make decisions about them without their knowledge and consent.

Third, we need to ensure that any privacy protection regime is workable. It must balance the consumer's need for privacy with the need to maintain efficient banking and payment systems.

Fourth, we believe that medical privacy should be addressed in comprehensive legislation rather than incompletely and ineffectively in a financial modernization bill.

Fifth, an affiliate-sharing exception is far broader than most may realize. H.R. 10 would allow any financial services firm not affiliated with a bank or thrift to share information with any affiliate, financial or non-financial -- anything from a tax preparer to a private investigator. Even with respect to financial services holding companies that do include banks, the affiliate sharing exception of H.R. 10 is extremely broad. A bank could share information with a telemarketer without customer notice and choice provided that the telemarketer were a portfolio company of a merchant banking or insurance investment affiliate. And a bank could share information with any company engaging in activities "incidental" or "complementary" to financial activities -- travel agents, for example.

Sixth, we should ensure that any new federal legislation add to as we believe H.R. 10 does, but should