NATIONAL ASSOCIATION OF REALTORS®

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700 11th Street, NW
Washington DC 20001

Martin Edwards, Jr. CCIM
President

Terrence M. McDermott
EVP/CEO

GOVERNMENT AFFAIRS
Jerry Giovaniello, Senior Vice President
Walt J. Witek, Vice President

202.383.1194 Fax 202.383.7568
www.realtors.org/federalissues

Statement
of
THE NATIONAL ASSOCIATION OF REALTORS®

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

SUBCOMMITTEE ON COMMERICAL AND ADMINISTRATIVE LAW

PRESENTED
BY
MARTIN EDWARDS, JR.
PRESIDENT, NATIONAL ASSOCIATION OF REALTORS®
Partner, Colliers Wilkinson & Snowden Inc., Memphis, TN.

May 16, 2002

STATEMENT OF THE
NATIONAL ASSOCIATION OF REALTORS
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Chairman Barr, Congressman Watt, and members of the Subcommittee. Thank you for inviting me to testify on this important issue. My name is Martin Edwards. I am a REALTOR® and a partner with Colliers, Wilkinson and Snowden, Inc. in Memphis,Tennessee. I am appearing here today as President of the NATIONAL ASSOCIATION OF REALTORS® (NAR) on behalf of over 800,000 REALTORS® engaged in all aspects of the commercial and residential real estate industry.

Mr. Chairman, we are pleased you are holding this hearing today to explore the process involved in the proposed rulemaking by the Federal Reserve Board and Treasury Department that would allow financial holding companies (FHCs) and national bank subsidiaries to operate real estate brokerage, leasing and management companies. As you know, we are opposed to this rule. We believe that redefining real estate brokerage, leasing and property management as a financial activity is an impermissible mixing of banking and commerce that Congress never intended to delegate to the regulators. Moreover, given the criteria Congress established for determining new financial activities under the Gramm-Leach-Bliley Act, we believe that the proposed rule does not conform with the intent of Congress.

The procedure followed by the regulators in proposing this rule raises many questions. It will be enlightening to hear responses to questions that would explain how and why the proposed rule came so soon after the law was enacted.

- What analysis was provided regarding the impact of the rule on the real estate industry?
- What role did the Office of Management and Budget play in reviewing the proposed real estate regulation?
- Congress authorized the Federal Reserve Board and the Treasury Department to jointly agree on new financial activities based on criteria established in Section 4(k)(3) of the Act. Do the Agencies view their authority to designate new financial activities as license to effectively hand entire industries over to FHCs and bank subsidiaries?
- Were all the criteria examined and met before the rule was issued? What weight, if any, was given to each of the enumerated criteria?
- How is it possible that in less than three months after the Act became public law the real estate industry, particularly brokerage, leasing and property management, could have changed so dramatically to merit consideration as a financial activity?
- Congress gave considerable attention to the regulation of insurance activities that are traditionally the purview of state regulators. Real estate is similarly regulated, yet the Act makes no provision to resolve conflicts of regulatory jurisdiction that most certainly will

occur should FHCs and national bank subsidiaries engage in real estate brokerage and management as proposed. Have the Federal Reserve and the Treasury Department considered how real estate activities of FHCs and bank subsidiaries would be regulated?

- Was federal preemption of state regulatory and licensing authority contemplated?

In February 2000, barely a month after the Gramm-Leach-Bliley Act became public law, several banking institutions and representatives petitioned the Federal Reserve Board and the Treasury Department to grant financial holding companies and national bank subsidiaries real estate brokerage and management powers. They argued that they were allowed to participate in virtually every aspect of the real estate transaction except for brokerage. What the bankers failed to recognize was that there is a clear difference between these other aspects of the real estate transaction and the brokerage activity--the brokerage service is a commercial one. It is the provision of advice, analysis, and marketing of a tangible piece of property—real estate. It is unlike a financial or fungible product that has some monetary value. It is just like an automobile, boat, jewelry, electronic equipment or groceries. To argue that the use of some financing mechanism grants banks the power to broker the sale of the underlying durable product is to argue for elimination of the separation of banking and commerce. That debate occurred during consideration of the Gramm-Leach-Bliley Act (GLBA) and Congress upheld the continued separation of these activities. The bankers cannot now gain by regulation what they failed to gain by legislation.

We believe that Congressional intent was clear that Section 4(k)(3)[1] was meant to authorize new powers to banks to assist in the delivery of existing *financial* products or those that evolved as the financial services industry changed over time. Such powers might include the authority to operate a new technology to assist in the electronic delivery of financial or investment instruments. Section 4(k)(3) was not meant to grant banks the authority to operate whole new commercial businesses. There is nothing in the law or legislative history to infer that such broad legislative powers were to be delegated to the regulators. The time to consider the granting of real estate powers was during debate on GLBA, not through regulation after the close of that debate.

Even if one were to believe that Congress intended to delegate this authority, the factors enumerated in Section 4(k)(3) have not been met by the regulators.

<u>The agencies did not address all the necessary factors</u>. Although the agencies recite in cursory fashion that they have considered all of these factors, the only one they actually discuss is the

[1] The Gramm-Leach-Bliley Act (GLBA) allows the Federal Reserve Board and the Treasury Department to determine activities that are "financial in nature." In their consideration, the regulators are required to examine several statutory factors. They are (1) the purposes of the Bank Holding Company Act (BHCA) and the GLBA; (2) changes or reasonably expected changes in the marketplace in which financial holding companies compete; (3) changes or reasonably expected changes in the technology for delivering financial services; and (4) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to: (i) compete effectively with any company seeking to provide financial services in the U.S.; (ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and (iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data. BHCA section 4(k)(3).

first prong of the fourth factor, dealing with competition with other companies seeking to provide financial services. There is no discussion of what weight the other three factors may have been given in the agencies' decision-making process.

Furthermore, even as to the factors the agencies did consider, they undertook no factual investigation of their own. They simply cite, in a footnote, a petition from the American Bankers Association, reporting a review of various companies' websites. They merely repeat the bankers' plea to move into this area. Their analysis fails to consider the most important aspect of the issue—that real estate brokerage is a commercial activity. If anything, the mortgage is incidental to the commercial activity. Just the opposite of what the bankers argue.

Twenty percent of real estate transactions involve no institutional financing at all. They are either cash transactions, or owner financed sales. Here there is absolutely no bank involvement. There is still the commercial real estate brokerage transaction though. Logic dictates that the financing may complement certain real estate transactions, but to argue that the brokerage is incidental to the financing is to put the cart before the horse.

Congress held that commercial businesses and banks would compete in the financial services arena. This "gray area" consists of financial activities that support either a commercial or banking activity. For instance, automobile manufacturers such as General Motors provide financing for their auto purchases. Banks also provide financing for auto purchases. The competition comes in the financing arena—not in the sale of the auto. Likewise for real estate, boats, or jewelry. Congress has granted specific legislative authority to banks to include securities and insurance powers within that gray area. Thus you have both commercial firms and banks offering these products. But they were gained only by a legislative action. Even mortgage lending was granted by specific legislative authority. These examples make clear congressional intent that new industry powers can only be granted by legislation.

Existing mortgage activity in this gray area provides banks with little reason to complain. Commercial banks account for almost half of the mortgage originations in this country. Independent mortgage companies and savings and loans combined account for about the same amount. Credit Unions and real estate firm affiliated mortgage operations account for only about two percent of mortgage loan originations. The banks dominate this market already.[2]

While bankers argue that some 26 states allow their state chartered banks to conduct real estate brokerage and management, further analysis shows that in fact only eighteen state banks in six states were doing any kind of real estate brokerage last year. These banks typically served the smallest communities in those states, with 0.57 percent of the U.S. population.[3] There are even fewer thrifts operating real estate brokerages. There is no evidence to suggest that large national banks would serve smaller communities. Today, many of these communities have seen the local bank replaced by a national bank's ATM machine.

<u>The agencies do not explain what determination they are making</u>. Under the most natural reading of the GLB Act, an activity may be "financial in nature," or it may be "incidental" to

[2] See Mortgage Loan Origination chart
[3] See "State Banking and Real Estate Activity" chart

some other financial activity. The agencies lump these two concepts together, without explaining which determination they are making. If the agencies are claiming that real estate brokerage and management are "incidental" to some other financial activity, they should explain what that activity is.

<u>The agencies offer no explanation for why the regulations should apply to leasing of real estate</u>. The agencies' rationale for describing real estate brokerage as "financial in nature" rests on the theory that "banks and bank holding companies participate in most aspects of the typical real estate transaction other than brokerage." 66 Fed. Reg. at 309. That may be true as to residential purchases of real estate, for which banks commonly provide mortgages and incidental services like appraisals. But it is not generally true as to leasing of real estate, often a relatively simple transaction that does not require financing, appraisals, settlement services, escrow services, or insurance. Yet the proposed regulations would apply to brokerage for lessors and lessees of real estate, as well as purchasers and sellers. The agencies offer no explanation as to why bank affiliates should be permitted to engage in these activities.

<u>The agencies offer no explanation for why the regulations should apply to commercial real estate transactions</u>. The agencies' reasoning also appears to focus primarily on the purchase of residential real estate by individuals. <u>See</u> 66 Fed. Reg. at 310. Yet the proposed regulations would apply to both commercial and residential real estate brokerage. Commercial enterprises frequently buy, sell, or lease real estate. The agencies offer no explanation why such transactions should be viewed as "financial" activities, rather than as part of a business's ordinary commercial activities.

<u>There is no indication whether the Treasury Department's proposed regulation have been reviewed by OMB</u>. Under Executive Order No. 12,866 (3 C.F.R. 658 (1994)), any "significant regulatory action" by an Executive Branch agency must generally be reviewed by the Office of Management and Budget ("OMB").

> A "significant regulatory action" includes any action that is likely to result in a rule that may * * * [h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

<u>Id.</u> ' 3(f). Although that requirement does not apply to the Federal Reserve Board (an independent regulatory agency), it does apply to the Treasury Department. There is no indication in the proposed regulations whether Treasury considers them to be a "significant regulatory action," or whether it plans to submit them (or has submitted them) to OMB.

Congress needs to reassert its authority to prevent regulators from usurping the power to determine whether it is in the best interests of our country to mix banking and commerce. This decision should not be left to unelected regulators.

We are calling on Congress to enact The Community Choice in Real Estate Act (H.R. 3424/S. 1839) to clarify congressional intent to prohibit the mixing of banking and commerce. REALTORS® have let members of Congress know where they stand on the issue. More than 75,000 REALTORS® sent letters to their elected representatives urging support for *The Community Choice in Real Estate Act*. Before the legislation was even introduced, the Federal Reserve Board and the Treasury Department received more than 40,000 letters each opposing the proposed regulation that would allow financial holding companies and national bank subsidiaries to broker real estate and manage property. REALTORS® from all over the nation sent over 50,000 letters to President Bush urging his support.

But REALTORS® are not alone on this issue. A number of diverse trade associations and consumer groups stand with the NATIONAL ASSOCIATION OF REALTORS®. Consumers Union testified before the House Financial Institutions Subcommittee and raised significant questions about the diminished consumer choices and quality of service that would likely follow from banks brokering and managing real estate. The National Community Reinvestment Coalition, the National Fair Housing Alliance, and the National Association of Hispanic Real Estate Professionals have formally urged members of Congress to support H.R. 3424 and S.1839.

The issue of banks in real estate cuts across the entire spectrum of real estate and related industries, and the FHCs' aggressive attempts to use regulations to define real estate brokerage and property management as financial activities in order to expand their powers threatens other related industries. Consequently, other trade groups representing both residential and commercial real estate interests have sent comment letters to the Federal Reserve and the Treasury Department opposing the proposed regulation. The National Association of Real Estate Professionals (NAREP), the National Association of Home Builders (NAHB), the National Association of Real Estate Investment Trusts (NAREIT), the Real Estate Roundtable, the Institute for Real Estate Management (IREM), the International Council of Shopping Centers, and the National Apartment Association are all standing with the NATIONAL ASSOCIATION OF REALTORS® in keeping large banks out of real estate brokerage and property management.

We look forward to the testimony and questions at this hearing and hope they will shed further light on how this process unfolded. Our written materials include further information and data from surveys conducted on this issue.

Well over a year ago, the Federal Reserve and the Treasury Department issued a proposed rule that would allow financial holding companies (FHCs) and financial subsidiaries of national banks to engage in real estate brokerage, leasing, and property management activities. The NATIONAL ASSOCIATION OF REALTORS® (NAR) strongly opposed this regulation on the grounds that real estate brokerage and property management are not financial activities, nor are they incidental to finance, and approval of the proposed rule would thus effect a mixing of banking and commerce. This regulation would not only result in negative market and consumer consequences. An affirmative decision by the Federal Reserve and Treasury on this proposal would also violate Congressional intent, evident in several key banking laws which make it very clear that Congress specifically intended to maintain the separation of banking and commerce.

Congress adopted the Gramm-Leach-Bliley Act in 1999, which established a legal and regulatory framework for financial subsidiaries of banks and financial holding companies to engage in designated financial activities under the new law. The Act created a new entity, the financial holding company that would compete in the financial services area offering services that were prohibited to bank holding companies. By distinguishing the permissible activities of bank holding companies from financial holding companies, the Act also reaffirmed the longstanding national policy that separated banking from commerce because of the unique powers and advantages granted to banking institutions by their federal charters.

NAR-supported legislation was introduced in both the U.S. House of Representatives and the U.S. Senate (H.R. 3424 and S.1839) that will clarify Congressional intent that real estate brokerage and management are not incidental or complimentary to a financial activity. The proposed legislation, *The Community Choice in Real Estate Act,* will maintain the status quo regarding FHCs ability to expand into real estate brokerage and property management activities through regulation. *The Community Choice in Real Estate Act* returns the issue back to its proper forum – the U.S. Congress.

The NATIONAL ASSOCIATION OF REALTORS®-supported legislation and its position on this issue is based primarily on two strong beliefs:

1 The Congress, *not* the Board of Governors of the Federal Reserve or the Secretary of the Treasury, is the proper judge of what is commerce and what is banking or financial services. The 535 elected Congressional representatives, not the seven Federal Reserve Board Governors or the Secretary of the Treasury, should be responsible for any changes in current law that would result in a dramatic restructuring of the real estate industry. Real estate brokerage and property management are clearly *commercial activities.* This view was central throughout the 25-year debate on the Glass-Steagall Act and the passage of the Gramm-Leach-Bliley Act of 1999, and clearly is reflected in historical and present Congressional intent.

2 Permitting financial holding companies and national bank subsidiaries to enter the real estate brokerage and management industry would have wide-ranging, adverse market effects. Industry concentration would increase, competition would decline, and consumer choice would be limited with no real benefits from economies of scale or scope. The unprecedented expansion of banking powers into the real estate brokerage/management industry would clearly expose the financial holding companies' and their banking subsidiaries' inherent conflicts of interest in selling financial services (banking products) rather than serving customers in the brokering of real estate property.

NAR's position was eloquently stated by Congressman Jim Leach of Iowa, the sponsor of the Gramm-Leach-Bliley Act:

"The movement to go beyond the integration of financial services and eliminate the traditional legal barriers between commerce and banking is simply a bridge we should not cross. It is a course fraught with risk and devoid of benefit and one for which there is no justification.

Such a step would open the door to a vast restructuring of the American economy and an abandonment of the traditional role of banks as impartial providers of credit, while exposing the taxpayer to liabilities on a scale far exceeding the savings and loan bailout. At issue with financial services modernization is increased competition. At issue with mixing commerce and banking is economic conglomeration, the concentration of ownership of corporate America."

Financial holding companies, their representative associations and other groups, including some large real estate brokerage companies, argue against the NATIONAL ASSOCIATION OF REALTORS® position. They claim that the Association is being "protectionist," and that the entry of banks into real estate would encourage more open competition in the real estate marketplace. On the contrary, the NATIONAL ASSOCIATION OF REALTORS® position promotes open and fair competition. Indeed, its members would welcome FHCs as competitors if FHCs truly competed in a free market without the advantages of their bank subsidiaries' federal charters and without creating the risks outlined by Chairman Leach.

Currently we have a balanced marketplace for commerce, banking and financial services. Real estate brokerage firms do not engage in banking. Financial holding companies do not engage in commercial activities, such as real estate brokerage and property management. Banking and commerce are separate. The arena of financial services allows competition from both financial holding companies *and* commercial firms. Both real estate brokerages and financial holding companies (banks) have diversified their business lines into financial services that have served as a buffer between commerce and banking activities. This was the intent of Congress throughout its deliberations on financial modernization.

The reality is that the entry of federally chartered banks or financial holding companies into the real estate brokerage business would tilt this balanced marketplace toward the FHCs. It would pit government-subsidized banking companies (putting taxpayer money at risk) against privately funded real estate enterprises. Furthermore, if FHCs are permitted to enter the real estate business, REALTORS® and builders would be placed in the awkward position of having to go to banks which are subsidiaries of FHCs – their direct competitors – for loans and financial services.

WHY REALTORS® SUPPORT *THE COMMUNITY CHOICE IN REAL ESTATE ACT*

The Community Choice in Real Estate Act of 2001 was introduced by Congressmen Ken Calvert of California and Paul Kanjorski of Pennsylvania. The Act, H.R. 3424 was introduced with more than 30 original cosponsors and today has more than 225 co-sponsors. The legislation, along with its companion bill in the Senate, S.1839, is designed to address concerns expressed by both real estate professionals and consumers if financial holding companies and subsidiaries of national banks (FHCs) are permitted to engage in real estate brokerage and property management activities.

In brief, *The Community Choice in Real Estate Act* stipulates that federal regulators prohibit these financial institutions from engaging in real estate brokerage and management activities. More specifically, H.R. 3424 and S.1839 specify that the Federal Reserve Board and the Secretary of the Treasury may not determine that real estate brokerage or real estate management activities are financial in nature, incidental to any financial activity, or complementary to a financial activity.

THE COMMUNITY CHOICE IN REAL ESTATE ACT RETURNS THE ISSUE TO THE PROPER FORUM – THE U.S. CONGRESS

The NATIONAL ASSOCIATION OF REALTORS® position on banks entering the real estate business aligns with both historical and current Congressional intent. The legislative history of banking laws demonstrates that real estate brokerage has been consistently interpreted as a commercial, not a financial activity. Although the Gramm-Leach-Bliley Act of 1999 (GLB) made specific reforms in the nation's banking and financial services laws, the separation of banking from commerce remains a tenet of national policy. And while the Federal Reserve and the Secretary of the Treasury are authorized by Gramm-Leach-Bliley to expand the list of financial activities, Congress has clearly indicated its intent to maintain the separation of banking and commerce.

Financial modernization – the term that advocates used to characterize the legal changes that allowed banks, securities firms and insurance companies to enter each other's businesses – has been interpreted by some as removing all barriers to banks entering non-banking businesses. But in its deliberations on the Gramm-Leach-Bliley Act, Congress stopped short of mixing banking and commerce. The GLB Act was quite specific from the outset in describing what a financial activity may be. The current activities of banks and financial holding companies principally relate to financial instruments: loans, checking accounts, mortgages, etc. While these represent value between two parties (usually a bank and a depositor or borrower), they are not tangible goods and rarely take any physical form.

Commercial activities, such as real estate brokerage and property management, offer to consumers something that is tangible – a house, an appliance, a car, for example. Although banks argue that real estate has financial attributes, even the Federal Reserve Board and the Secretary of the Treasury in the proposed real estate regulation observed that bank-ascribed financial attributes might not be enough to treat real estate as a financial asset.[4] And while purchasing tangible assets, such as a car, computer, or a home, may entail the use of financial instruments – usually cash or loans – this does not mean that commerce is "financial in nature" or "incidental to a financial activity." Rather, it can be argued that financial activity *is incidental to the real estate transaction*.

In the GLB Act, Congress enumerated those activities that it deemed to be financial in nature, but *specifically omitted real estate brokerage and management*. (For specifics, see 12 *U.S.C. 1843 (k)(4)*).[5] Congress did make provisions to expand the list of financial activities. It devised specific criteria that such activities must meet, based on new technological developments to deliver financial products to consumers and how the marketplace itself evolved. Congress also authorized the Federal Reserve Board and the Treasury Department to agree on such new financial activities.

However, Congress did not anticipate nor intend for that list of financial activities to include commercial ones. There has been no significant change in the relevant technology, or in the business of real estate brokerage or management, since enactment of the GLB Act in late 1999. The businesses of real estate brokerage and management remain, for all practical intents and purposes, the same today as they were on the date of enactment: the transfer of real property and such commercial activities related to such transactions. The very purpose of the regulation proposed by the Federal Reserve and the Treasury Department is to overturn the long-held understanding that real estate is commerce by re-designating it as a financial activity for purposes of the Gramm-Leach-Bliley Act. The proposal from the Federal Reserve and the Secretary of the Treasury runs counter to Congressional intent.

The proposal to redefine real estate brokerage as a financial activity has met opposition from a full spectrum of consumer and industry groups. In support of that opposition, Congress is reasserting its authority in the arena by introducing *The Community Choice in Real Estate Act.* This bill amends the Bank Holding Company Act to preclude any such action by the Federal Reserve or Treasury, and clarifies Congressional intent by prohibiting banks and financial holding companies from entering real estate brokerage or property management. The bill's intent is to maintain the status quo; it does not seek to preclude any current activities that banks and their affiliated businesses are authorized to do. It reasserts Congressional intent in maintaining the separation of banking and commerce.

Members of Congress overwhelmingly are signaling their support for retaining the commercial distinction of real estate activities and their intention to maintain the separation of banking and commerce. In fewer than five months after *The Community Choice in Real Estate Act* was introduced in Congress, more than 225 members of the House of Representatives and at least 10 members of the Senate signed on as co-sponsors of the bills.

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[4] See Federal Register, Vol.66, No.2, Wednesday, January 3, 2001, p.310.

[5] Further evidence of Congressional intent regarding holding company expansion into non-financial areas can be discerned by the vote in the House of Representatives in 1998 in which an effort to permit banks to engage in commerce – up to five percent of their annual net revenue and five percent of their total assets – was defeated by a vote of 229 to 193.

THE ACT SUPPORTS A DIVERSIFIED REAL ESTATE SERVICES MARKETPLACE

During the past two decades, the financial services marketplace has grown substantially due, in part, to the entry of both commercial firms and banking companies. Commercial firms that are involved in the selling and/or brokering of durable goods (such as refrigerators, automobiles and homes) have naturally expanded into financial services to facilitate the transaction by offering consumer financing that is complementary to their primary service – the brokering/selling of a tangible product. Similarly, banking companies that are involved in the selling of banking services (such as consumer loans and commercial and industrial loans) have also expanded into financial services so that they can capture a greater market share by offering their customers financial services that complement their primary service – banking.

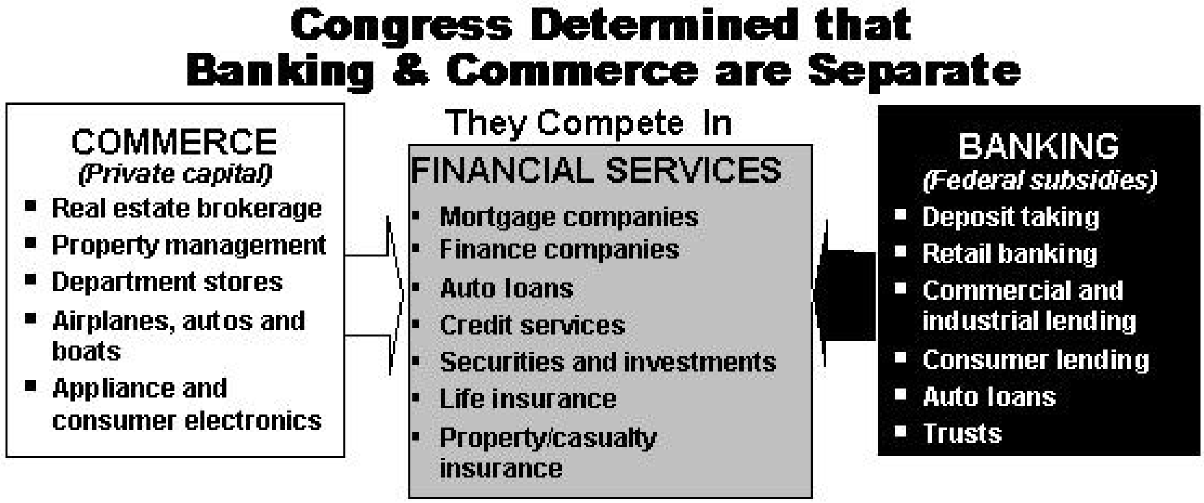
However, unlike a commercial firm, which risks its own capital funds, a bank's ability to expand its powers and diversify into financial activities has historically been constrained by Congressional oversight. Because of the "special nature" of banks and the many federal subsidies that flow through a bank (e.g., deposit insurance, privileged access to credit), Congress has continually repeated its intent to separate banking activities from commerce activities in an effort to avoid conflicts of interest, adverse market outcomes and fairness issues that can be caused by a bank's special privileges.

The Gramm-Leach-Bliley Act provided an opportunity for financial holding companies to expand their product/service lines into financial activities and activities that are incidental to finance. It is very clear that the GLB Act set the foundation for a shared competitive playing field for both commercial firms and banks—the financial services marketplace. Commercial firms that have subsidiaries involved in financial activities compete head on with bank-owned financial subsidiaries. This competition was not "created" by the GLB Act; it already existed because bank-affiliated mortgage lenders already existed and, in fact, dominated – and still dominate – mortgage originations. (In 1999, commercial banks and subsidiaries of commercial banks accounted for the largest market share – 44 percent – of mortgage originations, according to the Home Mortgage Disclosure Act. The top 25 diversified real estate brokerage firms accounted for only 0.8 percent of mortgage originations.) For example, the General Motors Acceptance Corporation (GMAC) – a financial services subsidiary of General Motors competes against Wells Fargo and other banks to sell financing services to customers purchasing a General Motors automobile. Similarly, Circuit City competes directly with Bank America to sell financing services to customers purchasing Circuit City- electronic products.

In the real estate marketplace, companies like John Doe, REALTOR®, compete directly with banks, like BankAmerica, in the financial services marketplace by providing real estate–related financial services – principally mortgage brokering services and title insurance – to customers purchasing a home that was brokered/sold by John Doe, REALTOR®. Both the real estate brokerage company and the bank offer a number of real estate related financial services to homebuyers and sellers.

In the post-GLB Act marketplace, the real estate brokerage company does not offer banking services and banks do not offer commercial services – real estate brokerage and management.

The separation of banking and commercial activities is intact. The *competition is in the financial services arena where it belongs*. Consumers benefit from this arrangement because the direct competition for financial services between commercial companies and banks results in greater consumer choice and customer service. Prohibitions against the encroachment of federally subsidized banks into the world of commerce limit conflicts of interest or unfair competition.



The ability of real estate brokerage companies to diversify their business lines into the financial services marketplace has produced a number of diversified real estate services companies to better serve consumers. Even the smaller and less diversified real estate brokerage companies now look to offer ancillary services to their homebuying and selling clients. Moreover, there are examples where banks and real estate brokerage companies have joint ventured in the financial services marketplace. A prominent example is Prosperity Mortgage, which couples Wells Fargo Bank and Long and Foster, REALTORS®.

Diversified real estate brokerage companies compete directly against the large financial holding companies (banks) in the financial services marketplace each and every day. The competitive dynamics in this marketplace are no different from the competitive nature of the automobile and electronics marketplaces. The beneficiaries in all of these markets are consumers.

THE COMMUNITY CHOICE IN REAL ESTATE ACT
WILL BENEFIT CONSUMERS AND THE REAL ESTATE INDUSTRY

The Community Choice in Real Estate Act will help to maintain a competitive, efficient, and balanced real estate marketplace, providing consumer choice at low cost and with no risk to the U.S. taxpayers. The entry of federally insured depository lending institutions into the real estate brokerage business would tilt the competitive playing field by pitting government–subsidized financial holding companies and national bank subsidiaries against privately funded real estate enterprises. Passage of the Act will help preserve a fiercely competitive real estate brokerage marketplace.

The real estate brokerage industry as it exists today has large numbers of independent real estate professionals and brokerages actively competing for prospective buyers and sellers. Competition is fierce, efficiencies are high, and there are relatively few barriers to entry. These characteristics make it highly unlikely that the proposed regulation would benefit either business or consumer interests.

The residential real estate brokerage industry is a competitive marketplace, where more three quarters of a million REALTORS®[6] and tens of thousands of real estate brokerages compete for customers' business each day. The underlying cost structure of the industry and the relative ease of entry into the market serve as checks to the concentration of market power. The large number of industry players ensures homebuyers and sellers access to service providers who best meet consumers' needs at the lowest price possible.

Real estate firms tend to compete actively for business in three different arenas. First, firms compete for the best real estate agents. Second, firms compete for sellers' listings and homebuyers against other real estate firms in their market area. Finally, real estate firms and agents compete against the other homebuying and selling options, including For Sale by Owner (FSBOs). The result of this three-pronged competition revenue and cost pressures that limit profitability for most real estate brokerages. But this competition also results in excellent service provided efficiently by real estate firms and agents for both buyers and sellers. *The Community Choice in Real Estate Act* would preserve this system.

MIXING BANKING AND COMMERCE WILL STIFLE COMPETITION IN THE REAL ESTATE INDUSTRY

Today any commercial firm can enter real estate brokerage, but FHCs have government-imposed barriers to entry. National banks and financial holding companies have long been able to own mortgage companies and engage in joint ventures with real estate firms. They now claim that real estate brokerage and management are financial activities, without acknowledging their current competition in this area through their existing mortgage lending affiliates. Financial holding

[6] There are approximately two million people who hold real estate licenses. However, not all of those are active practitioners. It should be noted that REALTOR®, REALTORS®, and REALTOR-ASSOCIATE® are registered collective membership marks that identify, and may be used only by, real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to is strict Code of Ethics.

companies now want to directly own commercial firms in the form of real estate firms and compete with other commercial firms using the federal subsidies available to their banking subsidiaries. This is not the sort of competition that Gramm-Leach-Bliley envisioned.

The expansion of banking powers that would permit FHCs to engage in real estate brokerage activities will have a detrimental effect on the real estate brokerage industry. The federal banking charter provides federal deposit insurance and privileged access to credit – advantages not offered to real estate brokerage firms. Most of the advantages of the bank charter directly add to bank profitability that would flow up to the financial holding company, thus offering FHCs and their real estate brokerage subsidiaries a competitive advantage over commercial firms in the real estate industry.

Allowing FHCs to provide brokerage, funding and investment services for real estate would increase the power of these integrated firms. This power could be used to limit the entry of new real estate firms and thus limit the competition characterizing the market today in two distinct ways.

First, FHCs would have the ability to fund new real estate brokerages with revenues from the banking side of the business, thus tilting the playing field towards FHCs. Financial holding companies would be able to use banking fees or even profits from their mortgage operations both to increase profitability and to subsidize their entry into insurance and other financial services. Few traditional real estate brokerages have access to outside income streams to subsidize the real estate brokerage business. The result could be an increase in industry concentration as real estate brokerages exit the industry unable to respond to their well-financed new competitors. The same dynamic would limit entry of new real estate firms.

Second, FHCs could leverage their privileged access to capital, access to numerous subsidiaries and outside income streams to engage in a sustained period of below-cost pricing designed to eliminate other firms providing the same service. This could damage any real estate brokerage firms that do not have the resources to defend themselves against a well-financed and subsidized FHC. Again, formerly viable real estate brokerages could be forced to dissolve – not because of an inability to provide efficient and quality service to consumers, but because below-cost pricing can unfairly eliminate the competition. The result could be a smaller number of firms that are less likely to provide the benefits that competition brings to today's real estate brokerage market.

MIXING BANKING AND COMMERCE HURTS CONSUMERS

The NATIONAL ASSOCIATION OF REALTORS® agrees with the message sent by the U.S. Congress: mixing commerce and banking will adversely affect the real estate industry. If big banks are allowed into the real estate business, the market could soon be dominated by a smattering of large banking conglomerates whose primary goal is to cross-sell various financial products, not to put people in homes and commercial properties. The end result could be fewer choices for consumers, higher fees and less competition.

In the banking industry a few dominant firms control a significant share of the total market. FHCs' entry into the real estate brokerage market would likely increase concentration and introduce unfair competition because of their federal subsidies. There is likely to be a significant decline in the number of firms and the number of small firms that represent a key segment of the industry. The real estate brokerage business could change from a localized, highly competitive industry to one that is dominated by nationwide federally chartered firms.

It is unclear what FHCs could bring to the market that would increase competition. Any additional entry will not necessarily lower costs. FHCs claim that consumer costs will go down, but those lower costs can only be realized by introducing economies of scale or scope, cross-subsidization, or predatory pricing. The latter two reasons are not permanent benefits for consumers. Only the first – economies of scale – enhances consumer welfare. Without an increase in efficiency, there would be no cost savings to pass along to consumers. But there are limited economies of scale in the real estate brokerage industry.

Even if FHCs were able to reduce real estate brokerage fees temporarily, any savings to homebuyers would be offset by higher costs for bank customers. Absent economies of scale, lower real estate brokerage fees can only come via cross-subsidization from other business arenas. The higher banking fees are likely to become permanent features of the banking system, given barriers to entry and concentration of market power, while reductions in real estate brokerage fees could be temporary as firms exit the industry.

The expansion of banking powers that would permit financial holding companies into the real estate brokerage business could also limit consumer choice in the selection of a real estate professional and other real estate-related service providers. FHCs have an inherent conflict of interest in selling financial services (banking products) rather than serving customers in the brokering of real property. The parental relationship between FHCs and their subsidiary real estate brokerage business would likely steer consumers to the FHCs' subsidiaries. Agents working for an FHC-owned real estate brokerage firm would have less incentive to find an outside loan provider or other real estate settlement service vendor that best fits their customers' needs.

There is also the likelihood that FHCs entering the real estate brokerage industry would retain their real estate agents as salary-based employees, rather than as commission-based independent contractors. As FHC employees, these real estate agents would focus on the FHC's profits, cross-selling the holding company's other services. This is contrary to the current real estate market where there is fierce competition among a large number of firms ensuring that consumers receive valuable, *impartial* advice when they most need it.

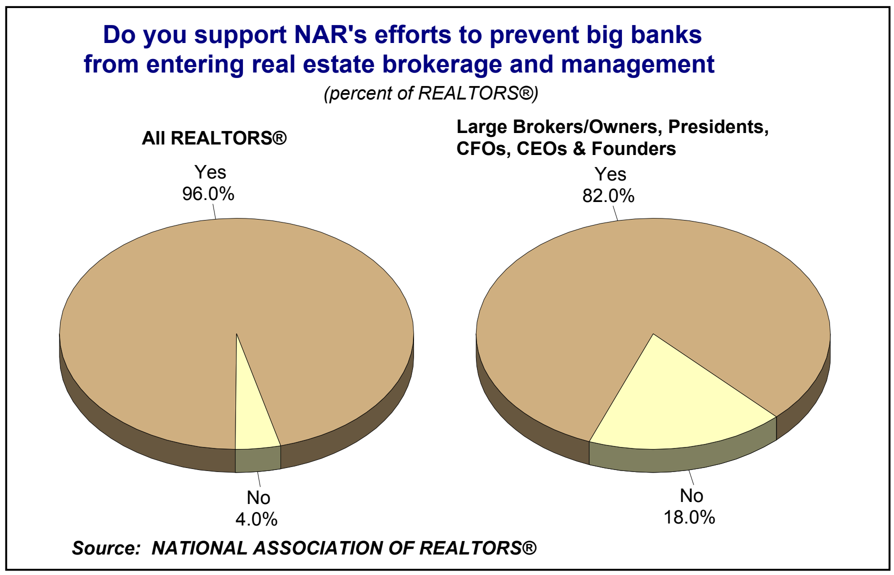
THE ACT BENEFITS CONSUMERS AND THE REAL ESTATE INDUSTRY

In summary, passage of *The Community Choice in Real Estate Act* will ensure more competition, and thus more consumer choice. More competition will maintain the lowest cost real estate brokerage services as well as lower banking fees. Taxpayers will be protected from risks associated with commercial endeavors underwritten by federally insured depository lending institutions. Consumers will continue to be served by real estate professionals whose interests are aligned with theirs.

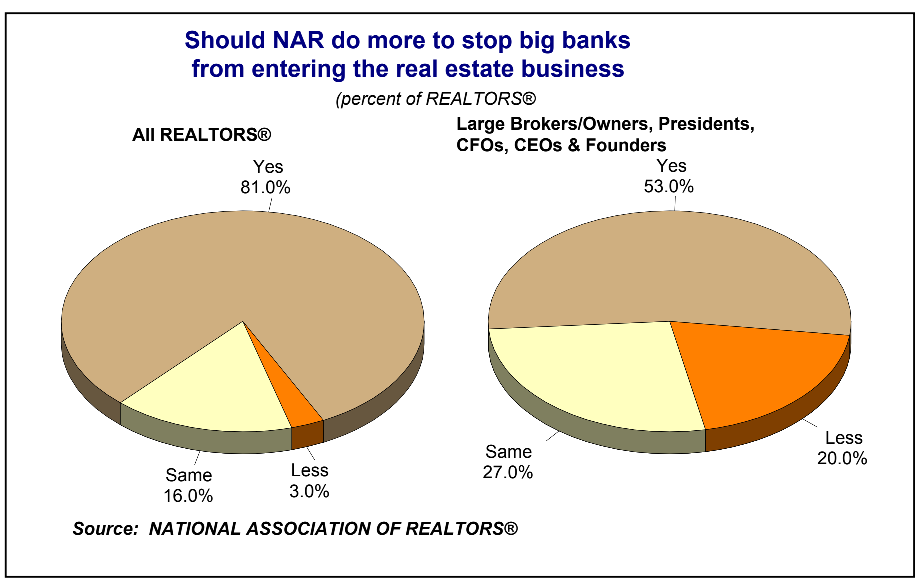
The Community Choice in Real Estate Act defines real estate brokerage and management as commercial activities, outside the scope of a federal bank charter. *The Community Choice in Real Estate Act* will limit banking institutions to activities permitted under their current charters, and maintain the current environment that provides for an efficient and competitive real estate brokerage market that benefits both the real estate industry and America's consumers.

OVERWHELMING INDUSTRY SUPPORT FOR THE NATIONAL ASSOCIATION OF REALTORS® POSITION

The NATIONAL ASSOCIATION OF REALTORS® represents all of its members and the real estate industry as a whole. In the last 14 months, the Association has spoken for its 800,000 members with one voice, as *The Voice for Real Estate*. A unified voice is crucial in maintaining a competitive and highly efficient real estate industry that serves America's property owners. It is even more vital on the issue of allowing financial holding companies and national bank subsidiaries (FHCs) to engage in real estate brokerage and property management activities.

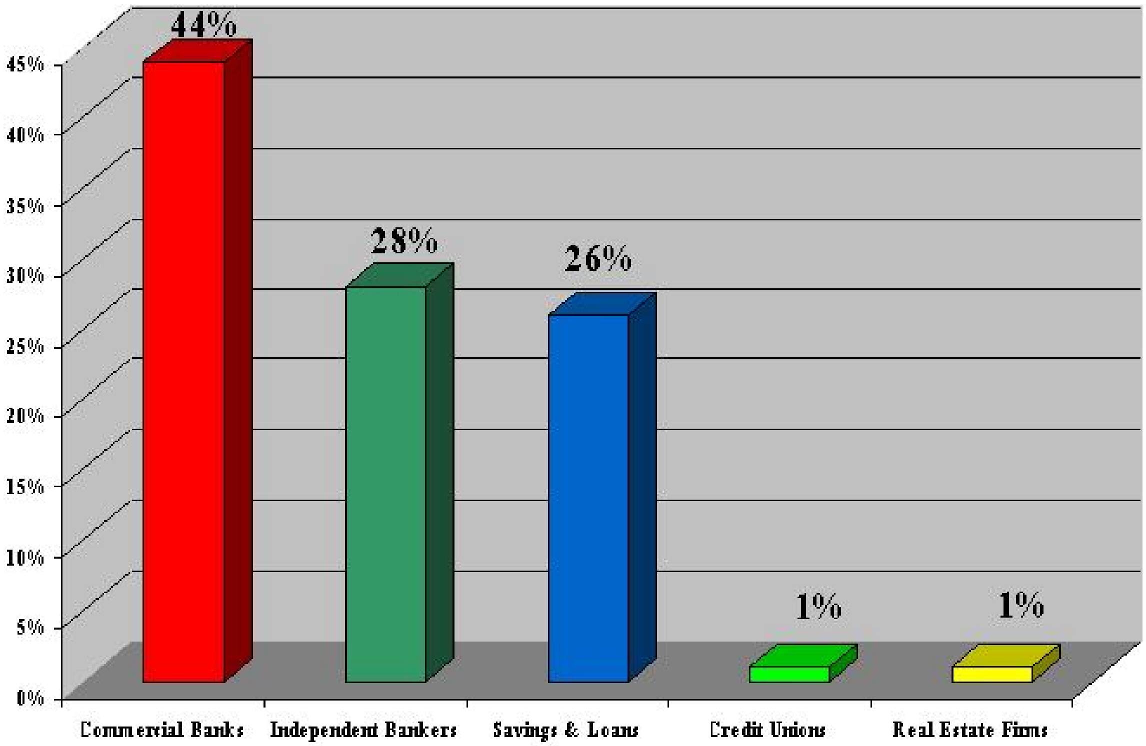


Recent research indicates that the NATIONAL ASSOCIATION OF REALTORS® *does* speak for an overwhelming majority of its members who oppose FHCs' entry into the real estate brokerage and management business. In a recent survey (February 2002), more than nine out of 10 REALTORS® oppose the pending Federal Reserve and Treasury Department rule that would allow big banking conglomerates to enter real estate brokerage and management. Perhaps more importantly, 96 percent support efforts by the NATIONAL ASSOCIATION OF REALTORS® to prevent FHCs from entering real estate brokerage management.



The survey found widespread support among broker-owners as well as sales agents. Some 82 percent of large brokers support NAR's position, according to the survey. The survey also found that 81 percent of REALTORS® want NAR to be even more aggressive in its efforts, and majority of large brokers also want NAR to do more to stop FHCs from entering the real estate business.

Mortgage Loan Originations



* Data according to 1999 Home Mortgage Disclosure Act

State Banking and Real Estate Activity

Few state-chartered banks engage in real estate brokerage

- Only 6 states have banks with residential real estate brokerage operations
- Only 18 banks in these states have residential real estate brokerage operation
- These banks represent 0.2 percent of all banks and serve areas with 0.57 percent of U.S. population.

	State	Bank Name	City	County	County Pop
1	Iowa	Tama State Bank	Marshalltown	Marshall	39,311
2		Northwest Federal Savings Bank	Storm Lake	Buena Vista	20,411
3		Sac City State Bank Real Estate	Sac City	Sac	11,529
4		Mercantile Bank-Rock Rapids	Rock Rapids	Lyon	11,763
5		United Bank of Iowa	Odebolt	Sac	11,529
6		First Central Bank	Dewitt	Clinton	50,149
7		Maquoketa State Bank	Maquoketa	Jackson	20,296
8		Hardin County Savings Bank	Eldor	Hardin	18,812
9		St. Angar State Bank	St. Angar	Mitchell	10,874
10		First Federal Bank	Sioux City	Woodbury	103,877
11		Tranor State Bank	Tranor	Pottawattami	87,704
12	Georgia	Community Bank	Cornelia	Habersham	35,902
				Jackson	41,589
				Stephens	25,435
13	Wisconsin	Bank of Alma	Alma	Buffalo	13,804
14		Anchor Bank	Madison	Dane	426,526
15		Union State Bank	Kewaunee	Kewaunee	20,187
				Brown	226,778
16	Michigan	First Bank	Excanaba	Delta	38,520
17	North Carolina	People's Bank	Newton	Catawaba	141,685
18	Nebraska	Security First	Lincoln	Lancaster	250,291
				TOTAL POP	1,606,972

Source: Research conducted by the NATIONAL ASSOCIATION OF REALTORS® July 2001. Information collected through telephone calls with state banking and real estate regulators and state REALTOR associations.