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Oral Testimony for July 24, 2003 Hearing

Chairman Bachus, Representative Waters and members of the subcommittee:

I am pleased to testify today on behalf of the National Association of REALTORS® , the National Association of Home Builders, and the National Auctioneers Association with a combined membership of over 1.25 million industry practitioners supporting H.R. 3424.

Mr. Chairman, in these precarious economic times, housing and the real estate industry are the shining light. In contrast, some of our country's largest corporate institutions are facing failure and bankruptcy due to accounting problems, cozy relationships and outright fraud. Ordinary Americans have seen their retirement accounts wither and their portfolios vanish, while corporate management has profited.

Fed Chairman Greenspan testified just last week that the continued strength of the housing and real estate sector are necessary elements to keep the economy on the right track. We are proud of this accomplishment, and point to it as strong evidence that the current system is not only working, but flourishing. It is important to note sixty-seven percent of all residential firms consist of a sales force of five or fewer agents. Three percent have a sales force of fifty agents or more.

Many of the troubles being experienced by the current crop of corporate failures can be traced to the rapid expansion and consolidation of businesses. Congress has determined that when the lines of separation are breached, as in accounting and consulting, too many conflicts of interest arise.

We believe that is why commerce and banking should remain separate. Real estate brokerage, leasing and property management are purely commercial activities.

Bankers will argue that a central tenet of Gramm-Leach-Bliley was the section to grant new powers to banks. We disagree; the purpose was for **Congress** to grant securities and insurance industry powers to financial holding companies and national bank subsidiaries.

Gramm-Leach-Bliley authorized the regulators to grant banks expanded financial powers, not whole industries. Although bankers have argued this is the first test of Gramm-Leach-Bliley, in fact, there has already been a rule finalized to allow financial holding companies to act as "finders" bringing parties to a transaction together. It specifically excludes finder activities that require a real estate license. Another proposed rule would allow financial holding companies greater entry into electronic data processing and new technologies to assist in the delivery of existing bank products. These are what we believe Congress intended as "incidental" or "complementary powers."

The diagram here shows the current reality of competition in the financial services arena. Currently we have a balanced marketplace for commerce, banking and financial services. 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.

Let's make this completely clear. Real estate companies do not offer banking services. Period. We do not take deposits, offer savings accounts, checking accounts, or certificates of deposit. Nor do we have deposit insurance or access to the federal discount window. We offer real estate brokerage, leasing, and property management services.

In addition, some real estate brokers also operate mortgage lending companies. It is in this area where real estate brokers and banks compete. This is no different than General Motors financing the purchase of its automobiles. In fact, close to forty-five percent of mortgage originations are from commercial banks. The next highest group only originates half of that amount, and REALTOR affiliated mortgage originations account for about five percent.

These are very specialized relationships governed by the Affiliated Business Arrangement provisions of the Real Estate Settlement Procedures Act. That act requires very specific consumer disclosures and maintains an arm's length relationship between the affiliated providers.

So why do the bankers seek this rule? Although they argue that local licensing would of course be followed, the bankers' actions speak louder than their words. Maybe we can look to the experience of the insurance industry since enactment of Gramm-Leach-Bliley. There have been several instances of national banks, joined by their regulator, the Comptroller of the Currency, seeking preemption of state consumer protection and insurance laws. The State of Massachusetts has recently filed suit against the OCC for preempting state laws on the sale of insurance by banks. Even Chairman Oxley has questioned the OCC about the propriety of their actions. These are good reasons for Congress to take a long hard look at how banks operating real estate brokers would be governed.

Real estate is one of the most locally regulated industries in this country. There are far too many questions and hurdles that arise under the proposed rule to let them be decided by the banking regulators rather than local and state authorities.

This rule would profoundly change the whole real estate industry. What bankers are seeking under the proposed rule is nothing short of **nationalization of the real estate industry**. Does Congress want the Federal Reserve Board, Treasury Department, and Federal Trade Commission to be the regulators of local land and housing matters? If so, **Congress** should enact legislation to accomplish this goal. By declaring real estate brokerage, leasing and property management financial in nature or incidental powers, the regulators would do just that. Yes, bankers will argue that they only seek to enter the market to be competitive, while abiding by all local real estate regulations. But their actions show a different approach that is sanctioned by their regulators on the federal level.

In closing, I would once again ask that Congress pass H.R. 3424. I look forward to answering any questions you may have. Thank you.