Testimony of
Edward L. Yingling
On Behalf of the
AMERICAN BANKERS ASSOCIATION

Before the
Subcommittee on Commercial and Administrative Law
of the
Committee on the Judiciary
United States House of Representatives
May 16, 2002
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Mr. Chairman, thank you for inviting the American Bankers Association (ABA) to testify this afternoon. My name is Edward L. Yingling, and I am the Executive Director of Government Relations at the ABA. The American Bankers Association brings together all categories of banking institutions to best represent the interests of a rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

Mr. Chairman, in addition to my role in government relations at the ABA, I am also an attorney with over 25 years of experience in the banking field. Both in private practice and at the ABA, I have been directly involved for well over two decades in the Congressional and legal debates that led eventually, after so many years, to the enactment of the financial modernization legislation known as the Gramm-Leach-Bliley Act (GLBA). Hopefully, with this background, I can provide some useful insight to the Subcommittee with respect to the administrative process, as requested in your letter of invitation.
In my testimony today I would like to make the following points:

In enacting GLBA, Congress created a flexible, yet conservative regulatory process to allow banks to offer new services—-a process that the Federal Reserve Board and the Treasury Department have correctly followed.

We have grave concerns about the broader effects of the current controversy and whether it sets a precedent that could hinder future approvals of new services under GLBA. The Act was designed to keep our financial system up-to-date by delegating those decisions to the FRB and the Treasury. This goal is being frustrated by efforts to take the case for determining what is financial in nature back to Congress, placing Congress in the very role that it delegated in GLBA to the agencies with the greatest level of expertise.

The request by the American Bankers Association and others to have real estate brokerage and management approved fully meets the statutory standard contained within GLBA.

I. Overview

We believe it is quite evident that the Federal Reserve Board (FRB) and the Department of the Treasury are following the process laid down in GLBA, as well as the normal process under established principles of administrative law. Of course, we do not know, nor does anyone know at this point, what the result of this regulatory process will be, although we believe there is a strong case that real estate brokerage and management activities should be approved under the standards of GLBA.

While much of the public discussion during consideration of GLBA was on securities and insurance activities, which had been the focus of the most controversy over a number of years, it is quite clear that GLBA had a more general and broader purpose. In fact, the provision of GLBA under which the real estate issue has been raised is really the heart and soul of that Act. The primary purpose of GLBA was to create a mechanism to bring our financial services laws up-to-date both at the time of its enactment, and also going forward. It was widely believed that the contentiousness, turf wars, and delays that preceded GLBA were harmful to our financial system, our economy, and
the consumers of financial services. Therefore, Congress provided a mechanism to keep our financial system up-to-date going forward, and, importantly in this context, to remove the need to have Congress referee between industries every time any change to our financial system was proposed. It is ironic, but really very sad, that on the first issue of modernization raised under this new regulatory process, the Congress is being asked to ignore this primary purpose of GLBA, and to once again become a referee, deciding whether or not a specific industry should be exempt from the criteria Congress set up less than three years ago.

In enacting GLBA, Congress created a flexible, yet conservative, process. In order for a new activity to be approved, not one agency, but two, must approve it. The two agencies chosen were, not surprisingly, the FRB and the Treasury. These are the two agencies that have the most expertise with respect to the entire financial services industry, as well as the economy. They are also two conservative agencies. It is worth noting, since the National Association of Realtors (NAR) has raised the specter of banking and commerce, that the FRB has, for many years, been the primary opponent of breaching the wall between banking and commerce. Based on this record, one would certainly expect the FRB to look very closely at any question relating to commercial activities.

It is important, of course, to look at the specific language in the statute. Under the statute, the FRB and the Treasury determine whether or not a potential new activity is “financial in nature or incidental to a financial activity.” In making that determination, GLBA directs the regulators to consider a variety of factors. Those factors include: 1) the purposes of 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 the proposed activity is necessary or appropriate to allow a financial holding company to compete effectively with any company seeking to provide financial services in the United States.

As discussed more fully below, we believe that real estate brokerage and property management, in the context of the changes taking place in the marketplace for these services, clearly meet the criteria of the statute. However, that is something for the regulators ultimately to determine. One thing is for certain – it is quite clear that a strong case can be made that these criteria are met.
While many of the issues are discussed further below, at this stage it is worth emphasizing a couple of points. First, while the purchase of a home has many aspects, it is clearly the most important financial transaction for the great majority of people. It is not only the largest monetary transaction in which most people engage, but also the mechanism through which they accumulate a great portion of their wealth over time. Second, the criteria in the statute specifically refer to competing with companies providing financial services in the United States. It is a fact that a significant majority of insured depository institutions can already offer real estate brokerage services under the laws of many states and under federal statutes. More importantly, as demonstrated by the advertisements attached to this testimony, many real estate brokerage firms are actively engaged in providing financial services in direct competition with banks.

The NAR has tried to make a simplistic argument that the proposal involves “commerce” and is, therefore, beyond the scope of GLBA. However, the issue is not at all that simple. GLBA does not prohibit commercial activities; rather it sets out specific criteria to determine permissible activities. The authors of GLBA clearly recognized that there was no exact or permanent line to define financial services. That is why they set up a mechanism to have the FRB and Treasury make determinations going forward, and why they developed the specific criteria that are in the statute.

Despite comments to the contrary, anyone who paid attention to the debate over the many years that led up to GLBA would not have been surprised to see the current proposal. I can add from personal experience that over ten years ago I negotiated, at length, with my counterpart at the NAR, the rules under which banks would enter the real estate brokerage business. This negotiation took place with respect to criteria in a previous version of GLBA which was, in fact, much more restrictive than the criteria enacted in 1999. Thus, over ten years ago, the NAR recognized that even a more restrictive version of financial modernization could be interpreted as permitting banking companies to offer real estate brokerage. Furthermore, in 1995, NAR testified on another forerunner of GLBA before the House Banking Committee. In that testimony, NAR stated unequivocally that the language must be clarified to exclude brokerage and management. It was not clarified then, nor was it in GLBA. That bill, the “Financial Services Competitiveness Act of 1995,” contained similar, but less broad, language to that ultimately enacted in GLBA.
The NAR has conducted an extensive lobbying and public relations campaign on this issue. Yet, it has been unable to point to any specific language in the legislative history that supports its argument that Congress intended to exclude real estate brokerage. In fact, Congress did specifically exclude one aspect of real estate – real estate development and investment – in GLBA. Certainly the real estate brokerage issue would have been raised in that context, if it were going to be raised.

The FRB and Treasury have correctly followed the letter and intent of GLBA, as well as all administrative law requirements, in this matter. Their approach is precisely what Congress intended. It is NAR’s efforts to have Congress serve as referee that is a prime example of what Congress was seeking to avoid in enacting GLBA.

II. Legal Analysis

The Regulatory Process

The FRB and Treasury began the regulatory process over two years ago, on March 17, 2000, when the agencies published an interim rule in the Federal Register enumerating those activities determined specifically under the statute to be “financial in nature or incidental to such financial activity,” as well as proposing a process by which any party could seek to have additional activities included in the list. This process was approved by the FRB and Treasury without amendment and republished in the Federal Register on January 13, 2001.

The regulatory process adopted by the FRB and Treasury requires the petitioner to do the following: 1) identify and define the activity for which the determination is sought; 2) provide specific information about what the activity would involve and how it would be conducted; and 3) explain in detail why the activity should be considered financial in nature or incidental to a financial activity and provide information that is sufficient to support a finding that the activity is financial.

On July 25, 2000, the ABA petitioned the FRB and Treasury under the interim rule for a determination that real estate brokerage and real estate management activities were permissible activities for financial holding companies and financial subsidiaries under GLBA.
On January 3, 2001, the FRB and Treasury published a request for comments as to whether the agencies should determine that real estate brokerage and management were activities that were “financial in nature or incidental to a financial activity.” On April 30, 2001, ABA responded to the request, stating that real estate brokerage and management activities fall squarely within the language of GLBA. Authorizing these activities, we believe, would increase competition in the real estate markets and provide consumers with innovation, more choices and lower prices. The proposal raises no new consumer protection or safety and soundness concerns and will enable banks to compete with integrated real estate firms that currently provide brokerage and mortgage lending activities.

While I will outline the compelling market and technological factors in a moment, the point that existing federal and state laws protect consumers from the potentially adverse effects of combining banking and real estate brokerage is also an important one. The simple fact is the same potential for abuse the NAR alleges will occur if banks offer real estate brokerage services exists any time one of the many real estate firms engaged in financial services deals with a customer. However, while these firms, along with some insured depository institutions, have been selling real estate and funding mortgages for years, there has been no outcry about these conflicts of interest. Why? — Because the Real Estate Settlement Procedures Act (RESPA) requires realtors affiliated with lenders to disclose that fact to customers before the purchase occurs.

The RESPA disclosure, which must be on a separate piece of paper, must state the relationship between the real estate agent and the lender and provide the estimated charges or range of charges by the lender. It must also notify the customer that he or she is not required to use the lender and is free to shop around for a better deal. If the real estate agent requires the use of its affiliated lender, that agent violates the kickback and unearned fee provisions of Section 8 of RESPA. The customer is expected to sign an acknowledgement of the disclosure.

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1 12 U.S.C. § 2601 et seq
2 The requirement for affiliated business disclosures is part of the regulations of the Department of Housing and Urban Development that implement RESPA. 24 C.F.R. § 3500.15.
Bank involvement in real estate brokerage and management services is also consistent with safe and sound banking. First, providing these services will help to diversify the income stream of these institutions and help to improve their financial base. Real estate brokerage and management services are activities where a bank acts only as an agent for a third party, but does not take an ownership position in the property. By their very nature, agency activities pose very little risk to the safety and soundness of depository institutions.

Second, under GLBA, the bank regulators must deem a bank to be well-capitalized and well-managed before a banking organization can participate in any of the expanded financial activities permitted under the GLB Act, including real estate brokerage and property management. Thus, only financially strong institutions would be authorized to engage in these activities.

Third, banking organizations are also subject to Sections 23A and 23B of the Federal Reserve Act, which limit the amount of credit and other forms of support a bank could provide to a real estate brokerage affiliate or subsidiary. Such limits ensure the safety and soundness of the bank will not be negatively impacted by its subsidiaries or affiliates.

Fourth, many banking organizations already have years of experience in providing real estate activities. In fact, the purchase, sale and management of real estate are frequently significant aspects of fiduciary asset management in many bank trust departments. Because banks currently have trust personnel who provide real estate brokerage and management services on a daily basis to trust customers, providing the service outside of the trust department would not be a new activity in which banking organizations lack expertise. Thus, no new safety and soundness issues would be raised.

Finally, a precedent already exists for bank involvement in real estate activities. In over half of the states, state banking regulators have the authority (either explicitly, through regulatory interpretations, and through wildcard and parity statutes) to allow state-chartered banking organizations to engage in real estate activities. (See the attached state-by-state listing developed by the Conference of State Bank Supervisors.) Moreover, savings institutions and credit unions already have brokerage authority. Thus well over a majority of federally insured depository institutions
already have this authority. Allowing all banks the same rights and privileges should enhance the competition for real estate services.

In July, it will be two years since the filing of the original petition requesting a determination that real estate brokerage and management be deemed financial in nature. It is now certain that this determination will not be made until 2003. As you are aware, in a letter to Congressman Michael G. Oxley, dated April 22, 2002, Treasury Secretary Paul H. O’Neill indicated, in consultation with the FRB, the Treasury will not make a final decision on this proposed rule until next year.

A fundamental purpose of GLBA was to enable banking institutions to compete with other financial services providers, and ABA has amply demonstrated that the competition is touting the advantages of one-stop homebuying services. While we as an industry have always looked at real estate brokerage and management as providing us with more options to compete in the long term, with each passing day, real estate firms become more deeply involved in financial services such as mortgage and insurance. And with each passing day, the case for allowing banks to offer real estate services only gets stronger.

As an industry we have grave concerns about the broader effects of this controversy and whether it sets a precedent that could hinder future approvals of new powers under GLB. The Act was designed to keep our financial system up-to-date by delegating those decisions to the FRB and Treasury. This goal is being frustrated by efforts to take the case for determining what is appropriate back to Congress, placing Congress in the very role that it delegated to the agencies with the greatest level of expertise to make these decisions based on specific statutory criteria.

H.R. 3424 not only frustrates the GLBA process, it reduces consumer choice. Consumers would have fewer choices of whom to do business with; agents would have fewer choices of whom to work for; and businesses would have fewer choices for joint marketing, fewer potential merger partners, and fewer potential buyers. We believe a competitive market is the best way to provide quality real estate brokerage and management services.
The Statutory Standard

Congress did not give the FRB and the Treasury unfettered discretion to make the determination that an activity is appropriate for approval. GLBA specifically sets forth certain traditional banking activities that Congress knew were clearly financial in nature.

In addition to these currently-recognized activities, the Act authorizes activities that the FRB and Treasury determine, by regulation or order, to be “financial in nature or incidental to such financial activity.” This authority to permit new financial activities is considerably broader than the FRB’s comparable authority before GLBA was enacted, which had only extended to a new activity that was “so closely related to banking as to be a proper incident thereto.”

One specific aspect of this new authority is that the FRB is directed to define the extent to which three types of activities are “financial in nature:” 1) lending, exchanging, and engaging in certain other transactions with financial assets other than money or securities; 2) providing any device or instrumentality for transferring money or other financial assets; or 3) arranging, effecting, or facilitating financial transactions for the account of third parties. ABA believes the proposed real estate activities qualify under the first and third statutory categories. For example, real estate brokerage is generally the business of negotiating a contract for the purchase, sale, exchange, lease, or rental of real estate – which we believe is a financial asset – for others.

The FRB and Treasury, in their request for public comment, note that many of the essential aspects of real estate brokerage are already permissible under national bank “finder” authority. The regulators already authorize financial holding companies, as well as national banks and their subsidiaries, to act as finders in bringing together buyers and sellers for financial or nonfinancial transactions. Permissible finder activities include “identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction...” This description of finders authority is the essence of every real estate transaction.

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3 12 CFR 7.1002.
Apart from their authority with respect to these three specified activities, the FRB and Treasury have broad discretion to determine that other types of activities are “financial in nature or incidental to such activity.” In making such a determination, the regulators are directed to consider a number of factors. Among the specific factors to be considered are:

- Changes or reasonably expected changes in the marketplace in which financial holding companies compete or the technology for delivering financial services; and
- Whether the proposed activity is necessary or appropriate to allow a financial holding company to –
  - Compete effectively with any company seeking to provide financial services;
  - Efficiently deliver information and services that are financial in nature through the use of technology, including applications involving systems for data transmission or financial transactions; and
  - Offer customers any available or emerging technological means for using financial services or for the document imaging of data.

The GLBA standard is a significant expansion of the FRB and Treasury’s capacity to consider the competitive realities of our nation’s financial marketplace when determining permissible activities for financial holding companies and financial subsidiaries. It is our contention that the marketplace, and the technology associated with it, in the case of real estate brokerage and property management, have already changed and will continue to change dramatically in ways that significantly impact the ability of banks to effectively compete with other companies that provide financial services.

Finally, in addition to the newly-authorized financial activities described above, the Act authorizes financial holding companies to engage in certain nonfinancial activities. Specifically, a financial holding company may engage in a nonfinancial activity, or acquire a company engaged in a nonfinancial activity, if the FRB and Treasury determine by regulation or order that the activity: 1) is complementary to a financial activity; and 2) does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.
III. The Marketplace and Technology

Clearly, combining real estate brokerage and banking services is not a new or unusual activity. Real estate firms do it. Insurance companies do it. Securities firms do it. And well over half the federally insured depository institutions in this country, including many of the largest banks and savings institutions, can do it. The ABA believes that all banks should have the same opportunity to provide services that meet the needs of our customers.

In 1990 there were 150,000 residential real estate firms. Today there are about half that many. In this new, competitive environment, bankers and real estate professionals have much to offer to each other – and to consumers. Banks could provide needed capital and cross-marketing opportunities to support the growth of local real estate firms. Real estate professionals could provide the personalized services and experience that is their strength. Many real estate brokers have told the ABA that they would welcome approval of the proposal because it would provide a potential local partner to help them compete with the large national chains that are increasingly dominating the real estate market.

The benefits of competition are well known. In a free market, businesses choose to offer new products if they believe they can provide better services at competitive prices. Obviously, not all banking organizations will choose to offer real estate services, but those that do will enter the market because they believe they can meet or beat the competition. Increasing the number of providers raises the bar for all the participants, forcing improvements in efficiency, pricing and service levels – all to the benefit of homebuyers.

If banks were allowed to offer real estate brokerage and management services there would be more choices for everyone.

➢ More Choices for Consumers
More players in the real estate business mean more and better products for consumers. In any competitive market, new participants bring new, creative ideas to the market – all designed to provide better service and greater convenience, at reasonable prices. In fact, businesses can only be successful in new markets by providing services that meet the
needs of customers. Free competition among a wide variety of providers is the cornerstone of our economic system.

➤ More Choices for Real Estate Agents
Real estate agents pride themselves on being independent contractors, choosing the best companies to work for. If there are more companies to choose from, agents’ employment opportunities will be much broader. Banks will only be able to attract good agents by offering competitive commissions and other incentive-based compensation packages. And because the real estate business requires expertise, licensing, and other requirements, banks would look to hire experienced real estate agents. Banks know that converting tellers to real estate agents would be a poor business strategy.

➤ More Choices for Real Estate Companies
Forward-looking businesses are always looking for opportunities to improve their franchise value – strengthening, expanding, merging, or even selling their business. Allowing banks to engage in real estate brokerage and management services gives real estate companies more options for bringing additional capital and technology to the table, through joint ventures, for example. Banks also represent potential buyers if agencies choose to sell their businesses. Indeed, in some communities, partnering with the local bank may be the only way for the local real estate brokerage to compete with the growing national chains. This is one reason why many real estate firms also oppose H.R. 3424 and S. 1839. It is interesting to note that many insurance agencies thought that bank involvement was going to hurt their business – until they realized that it provided many more options than they had before.

The Marketplace is Changing - Real Estate and Banking Services Combined

Ironically, the NAR is now objecting to the very combinations that their members have undertaken – offering brokerage, mortgage banking, and, often, insurance under one roof. As I
previously noted, securities firms, insurance companies, credit unions, savings associations and state-chartered banks in half the states can offer end-to-end services.\(^4\)

Take, for example, two of the biggest real estate companies in the Washington D.C. area – Weichert and Long & Foster. Both offer the full range of financial services. Weichert calls it “One Stop Gold” and Long & Foster calls it “Real-Edge Services.” These packages provide cost, convenience and service options for customers. They may not be right for every consumer, but they give those consumers choices. These examples show the importance companies – and their customers – place on having the option to combine real estate brokerage, mortgage and insurance services. I’ve included as an attachment several pages of examples – in their own words – of real estate companies that offer both banking and brokerage services.

All banks should have the same options. In fact, according to NAR’s own survey in 1999 and a recent 2002 survey by Murray Consulting, not only is one-stop shopping viewed very positively by homebuyers, but banks, mortgage companies and real estate companies are all viewed equally as appropriate providers of these services.

Restricting some banking organizations from offering the same end-to-end combination of real estate services and mortgage lending as others will place those banks at a tremendous competitive disadvantage – losing not just an opportunity in the brokerage field, but also the opportunity to interact with the customer in the first place and to offer one of the most traditional of banking products – the mortgage loan.

Simply put, if real estate services and other financial products are already combined by real estate firms, securities firms, insurance companies, credit unions, savings associations and state-chartered banks in half the states, there is no reason why all banks should not be accorded the same opportunities to provide these products to their customers.

\(^4\) For example, recently several credit unions in Wisconsin jointly purchased a majority interest in one of the state’s larger real estate brokerage firms.
Many Real Estate Agents Support Open Competition and Oppose H.R. 3424

Many agents and real estate companies are not concerned by the prospect of banking organizations offering real estate services. Many look forward to the opportunity to partner with a local bank. Independent agents who provide good service today know that they will be competitive with anyone, whether the competitor is another independent agent or one affiliated with a bank. Here are a few examples of comments filed by real estate agents with the regulators on this proposal:

- A real estate broker in North Carolina writes: “I am a 38-year veteran of the real estate industry and do not agree with our National Association of [Realtors]... There are several reasons I feel this way, primarily because our small family-owned business has always faced stiff competition from large real estate firms, yet we have been able to earn a good, honest living. I believe that competition is the American way and if you’re good at what you do, you can survive whether large or small.”

- A real estate broker in Wisconsin writes: “I don’t recall the NAR concerning themselves with real estate brokers having access to on-line companies therefore cutting the independent mortgage banker and local lender out of the transaction.”

- Another real estate agent notes: “I would welcome the hopefully more professional business management that banks would likely bring to this business. With most real estate being part-time people with limited training, the real estate business is full of misinformation, poor service, etc., a situation that could be improved with bank involvement. Furthermore, the American consumer deserves more true competition in this business. Bank owned real estate agencies may be able to lower transactions costs to consumers through aggregation of services benefiting the public as a whole.”

- A broker from California writes: “Additional competition will be healthy for the industry. Banks and other financial institutions have learned how to meet the needs of consumers and to handle their financial matters. One’s home is the biggest financial asset most consumers will ever deal with. If agents are so special for consumers, then they have nothing to fear. Maybe we could see commissions come down!”
Another real estate agent writes: “NAR [National Association of Realtors] predicted the doom and gloom many, many years ago when franchise brokerage was in its formative stages. ERA, RE/MAX, Coldwell Banker et al were all predicted to end ‘mom and pop’ real estate firms. These franchises have come, many have gone or merged with others. And yet still, ‘mom & pop’ brokerage firms continue to survive because of the personal attention. I welcome the competition, and I will continue to survive.”

Many Real Estate Companies Also Support Open Competition and Many Oppose H.R. 3424

For example, Paul Harrington, president of DeWolfe New England, which is one of the largest real estate firms in the Northeast, was quoted in the Boston Globe as saying: “We believe that banks ought to be able to compete with us as long as there are safeguards to insure that deposits are not being improperly invested. It would be hypocritical for us to say otherwise because we promote the fact that we offer customers convenience through one-stop shopping.”

The Realty Alliance - comprised of many of the nation’s largest and most successful independent real estate companies with a total of 62,000 agents - went on record in February in opposition to NAR’s position. In its letter to NAR, the Realty Alliance stated: “Our members favor and support a fair, free-market environment unbound by legislative restrictions. We find it hypocritical and fundamentally wrong to ask that national bank subsidiaries be barred from real estate brokerage activity, while real estate brokerages operate mortgage banking, insurance and title insurance businesses… We believe, in fact, that consumers would benefit from the influx of capital that may result from nationally chartered banks entering this arena. We also believe that increased competition from companies of size would benefit consumers by making all of us sharpen our skills and improve the services we provide. In our view, the role of government is not to limit competition, as your legislation would do, but rather to foster a business environment in which

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5 The Boston Globe, February 25, 2001
consumers benefit from competition. The members of The Realty Alliance look forward to working, and prospering, in such an environment.”

This is an Issue for All Banks, Not Just Large Banks

Despite the rhetoric about “big” banks, small banking organizations have a deep interest in this issue. It is also a misconception that all national banks are large. More than 40 percent of all banks - over 4,000 institutions - have fewer than 25 employees. As Chart 1 demonstrates, over ninety percent of national banks are community banks. These are truly small businesses that would like the option to broaden the financial products they can offer their customers and to compete with real estate firms offering loans and homeowners insurance.

In fact, the ability to offer real estate brokerage may be more important for smaller institutions. Rural communities may lack real estate agents or are served only by branches of brokers in other towns because there is insufficient business to warrant a local brokerage office. In such small communities, the bank is perceived as the place that will have the greatest amount of information on what properties are for sale, including farmland acreage in agricultural communities.

As such, in communities where there are no real estate firms, community banks would typically contemplate establishing a subsidiary and hiring real estate brokers (fully subject, of course, to state real estate licensing provisions). In other instances, small banks are likely to partner with existing real estate brokers to provide these services.

Moreover, of the ten largest banking companies, four already have depository institutions which have authority to engage in real estate activities. There certainly has been no market disruption from the fact that well over half of the depository institutions in this country have the ability to offer real estate brokerage and management services today.
The GLB Act Was Designed to Allow Flexibility to Adjust to the Marketplace

Technological innovations have also had a dramatic impact on real estate markets. Perhaps the biggest change is the development of the secondary market for mortgage loans and the efficient process that bundles individual home loans into highly liquid, globally-traded securities (see Chart 2).

The increasing importance of the secondary market has facilitated the rapid growth of mortgage lending outside traditional banking and savings institutions (see Chart 3). In fact, securitization has significantly changed the very nature of mortgage funding, enabling real estate firms to establish their own mortgage companies and to offer end-to-end real estate transactions – helping a buyer find a home, finance it, and insure it. The result is that traditional deposit-based lenders – banks and thrifts – are often bypassed completely. These are exactly the kinds of technological changes the GLB Act authorized the Treasury and the Fed to address.

The dominance of the secondary market is clear evidence that this form of funding for plain vanilla mortgage loans is generally superior in terms of costs to funding with bank deposits. If banks somehow enjoyed some special benefit from deposits, or deposit insurance (which banks pay for through premiums and extensive regulatory costs), banks would not be selling into the secondary
market, and the secondary market would not control an ever-increasing share of the marketplace. More importantly, access to this secondary market source of funding is available equally to mortgage and banking organizations, and is clearly why real estate companies increasingly are affiliating with mortgage banking companies.

**Conclusion**

Mr. Chairman, increased competition clearly benefits consumers and the economy. It is a catalyst for innovation, more customer choice, better service, and competitive prices.

In fact, promoting competition in financial markets was the primary motivation for passage of the GLB Act. Congress also recognized the need for regulatory flexibility in an environment where the bright lines between financial activities and between financial providers has all but disappeared. Providing real estate brokerage and property management is no exception to this rule. We strongly believe that both real estate brokerage and property management meet the criteria set forth by Congress in enacting the GLB Act.

Not only would consumers benefit from bank involvement in real estate services, but also bank involvement is consistent with safe and sound banking. All consumer protections that apply to independent realtors would apply to bank-affiliated real estate agents – plus bank-affiliated agents would be subject to additional anti-tying regulations. And because brokerage and management are agency activities, they pose no financial risk to the safety and soundness of the banking organization.

I thank you, Mr. Chairman, for this opportunity to present the views of the American Bankers Association.
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<td>Statute &amp; Regulation</td>
<td>7-1-261, operational powers of banks; Regulation 80-5-5</td>
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<td>Guam</td>
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<td>Hawaii</td>
<td>No³</td>
<td>No</td>
<td>Wildcard</td>
<td>NR</td>
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<td>Idaho</td>
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<td>NR</td>
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<td>Illinois</td>
<td>No</td>
<td>No</td>
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<td>N/A - Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities</td>
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<td>Indiana</td>
<td>Yes</td>
<td>No</td>
<td>Statute</td>
<td>I.C. 28-1-3.1</td>
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<td>Iowa</td>
<td>Yes</td>
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<td>Statute</td>
<td>Section 524.802</td>
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<td>Kansas</td>
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<td>Maine</td>
<td>Yes⁴</td>
<td>No</td>
<td>Regulation</td>
<td>Maine 98 Section 131(6-A); 98 Section 446-A; Regulation #7</td>
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<td>Maryland</td>
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<td>Massachusetts</td>
<td>Yes</td>
<td>Yes</td>
<td>Statute</td>
<td>G.Lc167F §2 p. 25</td>
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<td>Michigan</td>
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<td>MCL 48/14104(1)</td>
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<td>Minnesota</td>
<td>No</td>
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<td>Statute is Silent</td>
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<td>Mississippi</td>
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<td>Missouri</td>
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<td>Nebraska</td>
<td>Yes</td>
<td>No</td>
<td>Incidental Powers</td>
<td>Department Statement of Policy #9</td>
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<td>Nevada</td>
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<tr>
<td>New Hampshire</td>
<td>Yes⁶</td>
<td>No</td>
<td>Regulation</td>
<td>Ban 525, Federal Savings Associations Powers</td>
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<td>New Jersey</td>
<td>Yes</td>
<td>No</td>
<td>Regulation</td>
<td>NJAC 3:11-11.5(a)(4)</td>
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## Real Estate Brokerage

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<th>State</th>
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<th>Citation</th>
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<td>New Mexico</td>
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<td>No</td>
<td>Wildcard</td>
<td>58-1-54</td>
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<td>New York</td>
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<td>North Carolina</td>
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<td>Statute</td>
<td>NCGS 53-47c(3)</td>
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<td>North Dakota</td>
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<td>Pennsylvania</td>
<td>Yes</td>
<td>No</td>
<td>Parity Statute</td>
<td>155.73.2</td>
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<td>Puerto Rico</td>
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<td>South Dakota</td>
<td>Yes</td>
<td>No</td>
<td>Interpretation</td>
<td>51-A-2-14(3)</td>
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<td>Tennessee</td>
<td>Yes</td>
<td>No</td>
<td>Statute, Regulation</td>
<td>&amp; Wildcard T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105</td>
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<td>Texas</td>
<td>Yes</td>
<td>No</td>
<td>Statute</td>
<td>Texas Real Estate License Act</td>
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<td>Utah</td>
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<td>Vermont</td>
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<tr>
<td>Washington</td>
<td>Yes²</td>
<td>No</td>
<td>Wildcard Authority</td>
<td>RCW 30.04.127</td>
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<td>West Virginia</td>
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<td>Wisconsin</td>
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<td>Statute &amp; Regulation</td>
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**SUMMARY**

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<thead>
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NR: Not Reported.
N/A: Not Applicable.

1. The activity is permissible through a subsidiary. It may also be conducted directly under the authority provided by the “closely related activities” statute [Sect 36a-250(a)(40) of CT General Statutes] or “wild card” statute [Sect. 36a-250(a)(41) of the CT General Statutes]. To date, The Department has not formally acted on any request to conduct the activity.

2. The DC Office of Banking & Financial Institutions is presently modernizing its bank, mortgage banking, trusts, savings and loan, and credit union statutes, regulations and chartering requirements.

3. Real estate brokerage is expressly prohibited by state law, unless otherwise allowed through wildcard authority because the activity is permissible for national banks.

4. The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.

5. Depository Trust Companies have real estate brokerage powers under 362.105

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6 Effective March 16, 2001, Ban 525 allows commercial banks, trust institutions and savings banks to engage in activities and make any investment in the same manner and to the same extent that the activity is permissible for federal savings associations.

7 See also the following: Pursuant to RCW 30.04.215(3), 32.08.140(16) and 32.08.146, banks can perform the same activities federal banks can, provided that the activities are approved by the Director of the Department of Financial Institutions.

NOTE: The data included in this table is provided for information purposes only. It should not be construed to be legal guidance.
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Source: http://www.bairdwarner.com/about/default.asp

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*To participate, the buyer must elect to use Weichert Financial Services to obtain a mortgage, Weichert Insurance Agency to obtain homeowners insurance and Weichert Title Agency or Weichert Closing Services to obtain title insurance.

Source: http://www.weichert.com/