The segment of savings institutions and other depository institutions that are specialized mortgage lenders has decreased in size and market share and may continue to decrease. The establishment of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Government National Mortgage Association (Ginnie Mae) and the subsequent development of an extensive private secondary market for residential mortgages has challenged the Federal Home Loan Bank System as a source of intermediate- and long-term credit to support primary residential mortgages lenders.

For most depository institutions, residential mortgage lending has been incorporated into the product mix of community banking that typically provides a range of mortgage, consumer, and commercial loans in their communities.

Community banks, particularly those in rural markets, have a difficult time funding their intermediate- and long-term assets held in portfolio and accessing capital markets. For example, rural nonfarm businesses tend to rely heavily on community banks as their primary lender. Like the savings associations in the 1930's, these rural community banks draw most of their funds from local deposits. Longer-term credit for many borrowers in rural areas may therefore be difficult to obtain. In short, the economy of rural America may benefit from increased competition if rural community banks are provided enhanced access to capital markets.

Access to liquidity through the FHLB System benefits well-managed, adequately-capitalized community banks. For these banks, term advances reduce interest rate risk. In addition, the ability of a community bank to obtain advances to offset deposit decreases or to temporarily fund portfolios during an increase in loan demand reduces the bank's overall cost of operation and allows the institution to better serve their market and community.

Used prudently, the FHLB System is an integral tool to assist properly regulated, well-capitalized community banks, particularly those who lend in rural areas and underserved neighborhoods, a more stable funding resource for intermediate- and long-term assets.

With that in mind, I have introduced this legislation today to enhance the utility of the Federal Home Loan Bank System. I want the mission of the system to remain strong in the ability to help Americans realize the dream of home ownership, but equally as important: I want the System to enrich the communities in which Americans build their dreams.

America is the world capital of free enterprise. Free enterprise is the foundation on which the ''American Dream'' is built, and it is the engine by which ''American ingenuity'' is driven. My legislation will help nurture American free enterprise. That is why I call this bill the ''Enterprise Resource Bank Act.''

The Enterprise Resource Bank Act will strengthen the System's mission to promote residential mortgage lending (including mortgages on housing for low- and moderate-income families. Enterprise Resource Banks will facilitate community and economic development lending, including rural economic development lending. And Enterprise Resource Banks will facilitate this lending safely and soundly, through a program of collateralized advances and other financial services that provide long-term funding, liquidity, and interest-rate risk management to its stockholders and certain non-member mortgages.

Since 1932, the Bank System has served as a link between the capital markets and local housing lenders, quietly making more money available for housing loans at better rates for Americans. Today the Federal Home Loan Banks' 5,700 member financial institutions provide for one out of every four mortgage loans outstanding in this country, including many loans that would not qualify for funding under secondary market criteria. The Bank System accomplishes this without a penny of taxpayer money through an exemplary partnership between private capital and public purpose.

More than 3,500 of the Bank System's current members are commercial banks, credit unions and insurance companies that became eligible for Bank membership in 1989. They demonstrate the market's value of the Bank System by investing in the capital stock of the regional home loan banks. These institutions have recognized the advantages of access to the Bank System's credit programs and have responded to their local communities' needs for mortgage lending. As the financial marketplace grows larger and more complex, I envision the Bank System as a necessary vehicle for serving community lending needs especially in rural and inner-city credit areas.

The Federal Home Loan Bank System serves an active and successful role in financing community lending and affordable housing through the Affordable Housing Program (AHP) and the Community Investment Program (CIP). The AHP program provides low-cost funds for member institutions to finance affordable housing, and the CIP program supports loans made by members to community-based organizations involved in commercial and economic development activities to benefit low-income areas.

The Federal Home Loan Banks' loans (advances) to their members have increased steadily since 1992 to the current level of more than $122 billion. Since 1990, the Banks have made $7.1 billion in targeted Community Investment Program advances to finance housing units for low- and moderate-income families and economic development projects. In addition, the Banks have contributed more than $350 million through their Affordable Housing Programs to projects that facilitate housing for low- and moderate-income families.

While these figures are impressive, the Federal Home Loan Bank System needs some fine tuning to enable it to continue to meet the needs of all its members in a rapidly changing financial marketplace. The Enterprise Resource Bank Act of 1996 recognizes the changes that have occurred in home lending markets in recent years, which is reflected in the present composition of the Bank System's membership. Enacting this legislation will enhance the attractiveness of the Banks as a source of funds for housing and related community development lending, and will encourage the Banks to maintain their well-recognized financial strength. Specifically, my legislation: targets the Bank System's mission in statute to emphasize the System's important role of supporting our nation's housing finance system and its potential role of supporting economic development by providing long term credit and liquidity to housing lenders; establishes voluntary membership and equal terms of access to the System for all institutions eligible to become Bank System members, and eliminates artificial restrictions on the Banks' lending to member institutions based on their Qualified Thrift Lender status; equalizes and rationalizes Bank members' capital stock purchase requirements, preserving the cooperative structure that has served the System well since its creation in 1932; separates regulation and corporate governance of the Banks that reflect their low level of risk ensuring the Banks can meet their obligations; and modifies the methodology for allocating the Bank System's annual $300 million REFCORP obligation so that the individual Banks, economic incentives are consistent with their statutory mission to support primary lenders in their communities.

Taken together, these interrelated provisions address the major issues identified in a recent series of studies of the Bank System that Congress required from the Federal Housing Finance Board (FHFB), the Congressional Budget Office (CBO), the General Accounting Office (GAO), the Department of Housing and Urban Development (HUD) and a Stockholder Study Committee comprised of 24 representatives of Federal Home Loan Bank shareholder institutions from across the country.

The Enterprise Resource Banks Act will make the Banks more profitable by enabling them to serve a larger universe of depository institution lenders more efficiently, and it will return control of the Banks to their regional boards of director who are in the best position to determine the needs of their local markets. At the same time, it will provide for the safety and soundness oversight necessary to ensure that this large, sophisticated financial enterprise maintains its financial integrity and continues to meet its obligations.

I first offered comprehensive legislation to modernize the Bank System in 1992. The legislation is the culmination of efforts over the last three years to address in a balanced way the concerns of the Banks' member institutions, community and housing groups, and various government agencies. Together with my respected colleague, Rep. PAUL KANJORSKI, I look forward to passage of this important legislation to modernize an institution that works to improve the availability of housing finance and the opportunity of credit for all Americans, particularly those who are underserved.

HOMEOWNERS' INSURANCE AVAILABILITY ACT OF 1997

HON. RICK LAZIO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 7, 1997

Mr. LAZIO of New York. Mr. Speaker, today I introduce the Homeowners' Insurance Availability Act of 1997 as a first step toward addressing the exploding costs of Federal natural disaster assistance. Between 1988 and 1994, the Federal Government spent more than $45 billion in disaster assistance, of which approximately half was for residential losses. Like coastal areas in many parts of the country, the shoreline homeowners in my Long Island district have been particularly hard hit by recent winter storms and nor'easters.

The force of such natural disasters have left Long Island's south shore coastline, and other coastal areas throughout our Nation, in a delicate state. In this environment, States have begun to experience declining homeowners insurance availability in disaster-prone areas. This bipartisan legislation provides a Federal backstop for state-operated insurance programs, and complements existing insurance industry efforts without encroaching upon the private sector. The bill allows State officials and local industry leaders to create the most appropriate solutions to State and local needs.

The Homeowners' Insurance Availability Act of 1997 authorizes the Secretary of the Treasury to offer annual Federal reinsurance contracts to eligible State insurance programs Covered losses include residential property losses resulting from earthquakes and hurricanes, as well as other losses determined appropriate by the Secretary. The bill requires neither States nor individuals to participate in the program, and envisions an entirely self-sustaining insurance fund with no direct taxpayer liability. Total Federal coverage is capped at $25 billion, and is phased in over a period of 4 years.

In introducing this bill, we pay tribute to the late Congressman BILL EMERSON and his efforts to provide protection for American families from the devastation of natural disasters. Over the last several years, Congressman EMERSON attempted to comprehensively address the multitude of issues surrounding natural disaster assistance. Although this bill will be devoted solely to providing State-run insurance programs with Federal reinsurance, I look forward to other free-standing legislation that addresses the variety of relevant issues.

Improving homeowners insurance availability in disaster-prone areas will be one of my highest priorities during the 105th Congress. The Homeowners' Insurance Availability Act of 1997 continues the working partnership between the Federal Government and States and provides improved safeguards that many homeowners in disaster-prone areas desperately need. The consequences of insurance illiquidity, in the form of lower property values and fewer home resales, must be addressed. I look forward to hearings across the country in our most vulnerable areas, listening to industry experts, State officials and families affected by catastrophe, as we perfect this legislation that is long overdue.

The following are a section-by-section analysis and background summary of the legislation to be included in the RECORD.

HOMEOWNERS' INSURANCE AVAILABILITY ACT OF 1997

BACKGROUND

The rising toll from natural disasters has placed a severe strain on homeowners' insurance markets in many parts of the country in recent years. Events such as Hurricane Andrew and the Northridge Earthquake have demonstrated that insurers face the risk of insolvency if they are overly concentrated in areas prone to large earthquakes or hurricanes. As a result, many insurers have withdrawn from these markets or stopped underwriting new business, thereby making homeowners' insurance difficult to obtain.

State insurance commissioners and state legislatures have created programs to prevent or forestall an insurance availability crisis in several instances. These efforts include the Florida Catastrophe Reinsurance Fund, a state-mandated, privately funded pool providing a backstop to residential insurers after a major hurricane; the California Earthquake Authority, a state-run, privately funded entity offering earthquake insurance coverage to homeowners throughout the state, and the Hawaii Hurricane Relief Fund, the sole source of residential hurricane insurance coverage throughout the islands.

Besides the programs mentioned above, proposals are under varying degrees of consideration in Texas, Louisiana, New York, North Carolina and Virginia. In New York, more than 62,000 homes and businesses in inter-city and coastal communities currently are covered by the New York Property Insurance Underwriting Authority, a state-sanctioned insurer of last resort. Other proposals, including one similar to the Florida Catastrophe Reinsurance Fund, are likely to be proposed in Albany in coming months.

It is appropriate that solutions to address insurance availability originate at the state level. The magnitude of risk, as well as the size and nature of the local insurance market, differs from one jurisdiction to the next. What works in one locale may not be viable in another. State insurance commissioners and state legislatures are in the best position to determine the proper design for any program to address local needs.

However, there are certain limitations to what a state can do. A state program will likely have sufficient capacity to cover the vast majority of possible catastrophes. However, some events are so large as to drain even the most carefully constructed state program. Even though the chances of such an event are low, the very possibility of one has a chilling effect on the creation of state programs as well as the recovery of the private insurance market.

The Florida Catastrophe Reinsurance Fund, the California Earthquake Authority and the Hawaii Hurricane Relief Fund all share the problem of being unable to cover losses from the worst-case disasters. For example,, both the Florida fund and the California authority would be insolvent after disasters causing more than $10 billion in insured residential losses. While that level of loss is higher than that experienced to date, including the Northridge Earthquake and Hurricane Andrew, the possibility of events in the $10 billion plus range are certainly possible. Similarly, the Hawaii fund also has a limit well below the theoretical exposure in the state. The fund's maximum capacity is $1.5 billion, which is roughly the loss from Hurricane Iniki.

In the aftermath of a large disaster that exceeds a state program's capacity, it is likely that many homeowners insured by these programs will not be immediately or fully compensated for their losses. In fact, the California and Hawaii programs must, by law, prorate claims if funds are inadequate to cover all losses. Because there are no precedents, one can only speculate what the consequences of these funding shortfalls might be. However, an increase in mortgage defaults and a drop in real estate values are likely.

Lacking some additional backstop, state residential insurance programs are destined to fail at precisely the moment they are most needed. That is why a complimentary program at the federal level is so critical. Such a program will improve the effectiveness of state initiatives and help ensure that claims after a major catastrophe will be paid in full. In addition, maintaining the integrity of state programs even after large losses will help stabilize private insurance markets and encourage new protection of homeowners' investments.

Creating a federal insurance backstop to state homeowners' insurance availability programs has several advantages over other proposals that have been considered.

Unlike plans directly involving the federal government in the business of providing homeowners insurance to consumers or reinsurance coverage to individual insurance companies, this legislation limits federal involvement to a direct relationship with the states.

The federal program is completely voluntary. It does not compel any state to participate. In fact, the sale of federal insurance can only occur once a state has gone to the trouble and assumed the risk inherent in creating a homeowner's insurance availability program. If the private market is functioning adequately, or if local availability problems can be addressed without the need of a larger solution, then the federal program is a non-issue.

HOMEOWNERS' INSURANCE AVAILABILITY ACT OF 1997—SECTION-BY-SECTION ANALYSIS

Section 1: Title cited as ''Homeowners' Insurance Availability Act of 1997''

Section 2: Congressional Findings that homeowners' insurance is becoming increasingly difficult to purchase, due to increased natural disasters and that there is a federal role in providing a reinsurance program for states that meet those needs beyond the capacity of the state's claims paying capacity.

Section 3: Program Authority to the Secretary of Treasury to provide a federal reinsurance program through reinsurance contracts through a Disaster Reinsurance Fund (Fund) in Sec. 9.

Section 4: Eligible Purchasers are state insurance programs and state reinsurance programs.

Section 5: Qualified Lines of Coverage provide specifically for residential property and other losses as determined appropriate by the Treasury Secretary.

Section 6: Covered Perils include (i) earthquakes, (ii) perils ensuing from earthquakes (fire and tsunami) and, (iii) hurricanes.

Section 7: Terms of Reinsurance Contracts are no more than 1 year, with claim payments only to state insurance or reinsurance programs and a payout at the occurrence and level where disasters costs exceed the state's claim paying capacity. Qualified losses include only property covered under the contract that are paid within a 3 year period from the natural disaster event. Pricing is established by the Secretary, in consultation with the Independent Commission on Catastrophe Risks and Insurance Loss Costs and based on actuarial analysis, a risk load not less than 2 times the risk-based price and administrative costs. Finally, in cases where Treasury borrowing occurs, contract purchasers and recipients of aid from proceeds of borrowed funds are required to continue purchasing contracts until borrowed funds are repaid.

Section 8: Level of Retained Losses and Maximum Federal Liability is limited to contracts at $2 or $10 billion or any other amount determined by the Secretary with the limitation that contracts are greater than the current claims-paying capacity of the state operated plan with a maximum yearly liability of $25 billion. The Secretary is authorized to phase-in maximum yearly liability during the initial 4 years of the program. Annual adjustments are authorized.

Section 9: Disaster Reinsurance Fund is established within the Treasury Department to accept proceeds from the sale of contracts, borrowed funds, investments or other amounts. Borrowed funds are limited to an amount not to exceed the Fund's capacity to repay within 20 years, with appropriate interest. Except for borrowed funds or start-up costs in Section 10(g), no federal funds are authorized or appropriated for the Fund.

Section 10: National Commission of Catastrophe Risks and Insurance Loss Costs is established with an appropriation of $1 million for initial start-up costs.

Section 11: Report on Secondary Market Mechanism For Reinsurance Contracts requires the Treasury Secretary to create a mechanism to sell excess-loss contracts (at least 20 percent of the total written dollar value) in the capitol markets and report back to Congress, within 18 months, with recommendations for statutory change.

Section 11: Definitions.

AGRICULTURE ADVISORY BOARD

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 7, 1997

Mr. COSTELLO. Mr. Speaker, I rise today in recognition of a group of individuals who have been of great service to me during the past 2 years. This group is the Agriculture Advisory Board for the 12th Congressional District of Illinois. The 13 members of the Ag Advisory Board members represent each of the nine counties in the district. The group met several times throughout the 104th Congress.

This last Congress will be memorable one for the agricultural community. The recently implemented Farm Bill of 1996 has changed the way producers receive payments from the Federal Government. These payments, set at specified decreasing amounts each year for the next seven years, replaces the former system of deficiency payments, which payed farmers based on market conditions. The legislation also recognizes the need for greater exports of our American-grown commodities. Illinois is a leader in the production of corn, wheat and soybeans. The opportunities for greater exporting will improve the economy in each member's town and throughout the state.

I commented each member for giving of his time and insights to help make well-informed decisions. The members of my Agriculture Advisory Committee during the 104th Congress were Mike Campbell of Edwardsville, John Deterding of Modoc, Lawrence Dietz of DeSoto, Edwin Edleman of Anna, Greg Guenther of Belleville, Craig Keller of Collinsville, Marion Kennell of Thompsonville, Vernon Mayer of Culter, Dave Mueller of East Alton, Larry Reinneck of Freeburg, Bill Schulte of Trenton, Jim Taflinger of Cache, and Lyle Wessel of Columbia.

I am pleased that these gentlemen will be staying on the Ag Advisory Board during the 105th Congress. The Farm Bill has brought about spending cuts in many farm programs, and each board member's input will be critical to me as I review the various Federal programs in an oversight and appropriations capacity. I look forward to working with each member on agricultural matters during the 105th Congress. I ask my colleagues to join me in recognizing these individuals.

LENDING ENHANCEMENT THROUGH NECESSARY DUE PROCESS ACT

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 7, 1997

Mr. McCOLLUM. Mr. Speaker, I rise today to reintroduce the Lending Enhancement Through Necessary Due Process Act.

In the aftermath of the Savings and Loan [S&L] crisis, Congress empowered the Federal Deposit Insurance Corporation [FDIC], the Resolution Trust Corporation [RTC], and other agencies to prosecute the S&L crooks and pursue other wrongdoers through civil suits to collect damage awards to lessen the taxpayer costs of the thrift debacle.

Although the government's efforts have been successful in carrying out Congress' mandate, government agencies have launched a zealous civil litigation campaign against anyone even remotely connected to a failed bank or thrift. Litigation against marginal defendants and the use of highly-paid outside counsel have aggravated the credit crunch in the early 1990's. Directors and officers in financial institutions are reluctant to make character loans or business loans with any element of risk for fear that they could be accused of negligence by the regulators if the loan ever failed. Currently, banks and thrifts have found it difficult to attract qualified bank directors and officers because of the campaign of fear brought on by the regulators.

Taxpayer funds have been wasted and the lives and reputations of countless individuals are being ruined. In their fervor to squeeze every last dollar out of S&L and bank professionals, the RTC and the FDIC are spending an inordinate amount of time and money pursuing marginal cases in which the culpability of the defendants is highly questionable. Faced with an enormous pool of potential individuals to sue, the FDIC and the RTC have employed over 2400 law firms, paying them more than $504 million in 1992 alone. These law firms had little incentive to reduce taxpayer costs and every incentive to bill thousands of hours in the pursuit of former directors and officers, regardless of their culpability. Meanwhile, defending these suits is a costly, demeaning, and time consuming enterprise. Many defendants have agreed to costly settlements, regardless of guilt, in order to avoid bankruptcy.

The Lending Enhancement Through Necessary Due Process Act will remedy these types of abuses and still allow the regulators to pursue culpable individuals. First, accused directors and officers will be allowed to assert defenses to overreaching accusations. One example is the business judgment defense. The courts in all of the States recognize the business judgement rule either by case law or by statute. This bill will establish defenses for business judgement, regulatory actions and unforseen economic consequences.

Second, this legislation would require that regulators have good cause to obtain the personal financial records of potential defendants. The current practice is to ask for the financial records of all parties and then sue the richest, regardless of culpability. This bill requires that the regulators demonstrate a violation of the law and the likelihood that the individual will dissipate assets.

Third, this act will give defendants additional protection to prevent the freezing of their assets without good cause. Finally, the standard for director and officer liability will be clarified by stating that the standard is gross negligence rather than simple negligence. I understand the Supreme Court has seen it necessary to take a closer look at the standard of negligence as it applies to these cases.

Mr. Speaker, although most of these cases have been brought to their final disposition, I strongly believe that changes need to be made so the abuses I described do not continue during the resolution of future failures. While I understand, but do not necessarily agree with, the need to use excessive force to resolve the S&L debacle, the time has come for the pendulum to swing back to the center. This bill will accomplish this.

COMMENTS UPON INTRODUCTION OF THE RATEPAYER PROTECTION ACT

HON. CLIFF STEARNS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 7, 1997

Mr. STEARNS. Mr. Speaker, I rise today to introduce legislation that will not only save American consumers billions of dollars, but also reduce Federal regulation and promote competition in the electric power industry.

My bill will prospectively repeal section 210 of the Public Utility Regulatory Policies Act of 1978—PURPA. Section 210 mandates utilities to buy power from a certain privileged class of generators of electricity at prices set not by the free market but by the government. In fact, the independent Utility Data Institute estimates that consumers pay as much as $8 billion a year more for their electric energy as a consequence of this anti-competitive mandate.

Simply put, PURPA is a Federal barrier to a more efficient, cost-effective, and competitive electricity industry. Each day we wait to deal with PURPA is another day that this mandate distorts electric markets and creates liabilities that will become stranded investments. Already, PURPA is estimated to have burdened the market with over $38 billion in stranded costs.

As I said upon introduction of virtually identical legislation during the 104th Congress, my only interest in introducing this bill lies in achieving the most efficient and most cost-effective means of electric generation for America's consumers. I am prepared to move forward with this bill as introduced, or as a part of a much broader legislative effort. Indeed, I am anxious to work with Chairman SCHAEFER, Chairman BLILEY, the House Committee on Commerce, and all other interested parties as Congress moves forward with its comprehensive examination of the industry. But it must be noted that we can take an important step toward the laudable end with the timely and sagacious elimination of PURPA's unnecessary and costly Federal mandate.

Everyone will agree that we must begin to explore a move toward an electricity industry that is based on competition, market force, and lower prices for ratepayers. This is certainly my objective as I introduce this imperative aspect of electricity reform legislation.

INTRODUCTION OF THE MEDICARE PREVENTIVE BENEFIT EXPANSION ACT OF 1997

HON. WILLIAM M. THOMAS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 7, 1997

Mr. THOMAS. Mr. Speaker, today I join with Mr. BILIRAKIS and Mr. CARDIN in introducing a