State, where costs are well above the national average, to other parts of the country. In my district alone, teaching hospitals would lose almost $12 million in the first five years this provision would be in effect. Teaching hospitals help train the next generation of physicians. It would be unwise to shortchange this investment for the future.

It is unfortunate that this provision was inserted at the last minute during the final negotiations, from which Democrats were frozen out. In addition, H.R. 3075 was brought up under suspension of the rules, allowing little debate and no opportunity to offer an amendment to rectify the situation.

America's hospitals need relief from the deep cuts made in 1997. I hope that we will find a way to do this without pitting states against each other.

H.R. 3196—FOREIGN OPERATIONS APPROPRIATIONS BILL

HON. MIKE McINTYRE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 8, 1999

Mr. McINTYRE. Mr. Speaker, for the record, this is to clarify that the ''no'' vote I cast on November 5, 1999, against the foreign Operations Appropriations bill is by no means an indication that I am opposed to foreign aid for Israel, India, Greece, or Cyprus. Indeed, my voting record with regard to aid for these countries clearly exemplifies my strong support for them. Our country should value our relationships with these and other nations who are allies and partners for peace. In fact, I voted for the Young Amendment to the Foreign Operations bill because it is critical to our national security interests that we provide assistance to implement the Wye River Accord between Israel, the Palestinian Authority, and Jordan. The reason I voted against the Foreign Appropriations bill is because we, as a Nation, have an obligation to take care of our own families first and provide them with the aid they need especially in times of dire emergencies. The citizens of North Carolina are facing an imminent crisis in the wake of three major hurricanes that must be addressed immediately by Congress with the passage of an emergency relief bill. Until that happens, it is improper for us to place the needs of other countries ahead of the needs of our own taxpayers.

CONFERENCE REPORT ON S. 900, GRAMM-LEACH-BLILEY ACT

SPEECH OF

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 4, 1999

Mr. LAFALCE. Madam Speaker, I rise in strong support of the conference report on S. 900, the Gramm-Leach-Bliley Financial Modernization Act of 1999.

In July, the House passed its version of financial modernization (H.R. 10), with a broad bipartisan vote of 343–86. The Senate passed a partisan product (S. 900) by a narrow margin of 54–44, a bill which the White House indicated it would veto because of its negative impact on the national bank charter, highly problematic provisions on the Community Reinvestment Act (CRA) and its nonexistent privacy protections.

The conference report necessarily represents a compromise between the two versions. But it is a good and balanced compromise. It effectively modernizes our financial system, while ensuring strong protections for consumers and communities. As a result, the Administration strongly supports the conference report.

There are clear gains for our financial services system, for consumers and for communities in this bill is enacted. There are clear losses if it is not.

Without this bill, banks will continue to expand into securities and insurance business as they have been doing for some years under current law. However, they will do so without CRA coverage; without privacy protections; without the regulatory oversight and regulatory protections enhanced in this bill; and with artificial structural limitations that will place the U.S. financial services industry at a clear competitive disadvantage. Without this bill, commercial firms will continue to move more and more into the banking business, with no real limitations.

I would like to review the major provisions of the bill and the intent of those provisions.

FINANCIAL MODERNIZATION

This bill permits the creation of new financial services holding companies which can offer a full range of financial products under a strong regulatory regime based on the principle of functional regulation. Banks currently engage in securities and insurance activity under existing law and court interpretations of that law, including the Bank Holding Company Act, the Federal Reserve Act, the National Banks Act, and various state laws. This conference report ensures that such activities will occur, in the future, with appropriate regulatory oversight based on the principle of functional regulation. The conference report also provides for appropriate ''umbrella'' authority at the holding company level by the Federal Reserve, and essential consumer and community protections.

The conference report, in contrast to the Senate bill, clearly preserves the strength of the national bank charter by giving institutions a choice of corporate structure through which they can conduct their business consistent with the original House product.

I would like to clarify the intent of this legislation as it pertains to the market-making, dealing and other activities of securities affiliates of financial holding companies. Currently, bank holding companies are generally prohibited from acquiring more than five percent of the voting stock of any company whose activities are not closely related to banking. The Federal Reserve has determined that a securities affiliate of a bank holding company cannot acquire or retain more than five percent of the voting shares of a company in a market-making or dealing capacity. In addition, for purposes of determining compliance with this five-percent limit, the Federal Reserve has required that the voting shares held by the securities affiliate be aggregated with the shares held by other affiliates of the bank holding company.

I would like to make clear that, by permitting financial holding companies to engage in underwriting, dealing and market making, Congress intends that the five-percent limitation no longer apply to bona fide securities underwriting, dealing, and market-making activities. In addition, voting securities held by a securities affiliate of a financial holding company in an underwriting, dealing or market-making capacity would not need to be aggregated with any shares that may be held by other affiliates of the financial holding company. This is necessary under the bill so that bank-affiliated securities firms can conduct securities activities in the same manner and to the same extent as their non-bank affiliated competitors, which is one of the principal objectives of the legislation. The elimination of the restriction applies only to bona fide securities underwriting, dealing, and market-making activities and does not permit financial holding companies and their affiliates to control non-financial companies in ways that are otherwise impermissible under the bill.

The Conference Committee agreed to make the effective date of implementation of Title I, except for Section 104, 120 days from the date of enactment. We reached this decision to provide the regulators with an opportunity to implement this legislation effectively. It is the intent of the Conferees that Title I become effective 120 days after enactment even if the agencies are not able to complete all of the rulemaking required under the act during that time.

In addition, it should be noted that in some instances, no rule writing is required. For example, new Section 4(k)(4) of the Bank Holding Company Act, as added by Section 103 of the bill, explicitly authorizes bank holding companies which file the necessary certifications to engage in a laundry list of financial activities. These activities are permissible upon the effective date of the act without further action by the regulators. The Conferees recognize, however, that refinements in rulemaking may be necessary and desirable going forward, and for example, have specifically authorized the Federal Reserve and the Treasury Department to jointly issue rules on merchant banking activities. If regulators determine that any such rulemaking is necessary, the Conferees encourage them to act expeditiously.

COMMUNITY REINVESTMENT ACT (CRA)

DISCLOSURE AND REPORTING OF CRA AGREEMENTS

While I support the general concept of disclosure, the so-called ''sunshine'' provision could be pernicious because it could cast aspersions on the many constructive partnerships between banks and community groups that are helping to bring thousands of communities and millions of Americans into the financial mainstream.

Fortunately, however, the bill now substantially limits the scope, reporting requirements, and penalties for violating the disclosure requirements.

The ''sunshine'' amendment applies only to agreements that would ''materially impact'' a bank's CRA rating or a regulator's decision to approve a bank's application. Few if any agreements with major banks would have so large an impact. Indeed, it would neither make sense nor be workable to require annual reports for every contract between a bank and every community partner merely because they had discussed how to best meet CRA requirements. In addition, grants and cash payments under $10,000 and loans under $50,000 would be automatically exempted, as would most market rate loans that are not re-lent. I also strongly encourage the regulators to use their

authority to exclude agreements with service organizations such as civil rights groups and community groups providing housing or other services in low-income neighborhoods. We have no business interfering with such organizations just because they work with banks, and it is not Congress' intent to do so.

Community groups and other partners of banks would have to make annual reports of how the funds were used, but here again the conferees have substantially scaled back their requirements. The regulators are directed to ensure that the reporting requirements do not impose an undue burden on the parties and that proprietary and confidential information is protected. Organizations with multiple agreements with banks could file a single consolidated report. In addition, the Statement of Managers directs that a bank's partner may, ''in keeping with the provisions of this section, fulfill the requirements . . . . by the submission of its annual audited financial statement or its federal income tax return.''

Finally, penalties only apply to a community group or another partner of a bank if the party makes a willful and material misrepresentation on a report and then fails to correct the problem after notification and a reasonable period. Only in such a case would an agreement between the bank and its partner become unenforceable.

This summarizes the essential and substantial changes that have been made to the original Senate disclosure provision. However, these provisions are of such potential import that I would like to elaborate in considerable detail on the history of the provision and the intent of the conferees in making the substantial changes reflected in the conference report.

LEGISLATIVE HISTORY

DISCLOSURE PROVISION

Some legitimate concerns have been raised over the potential burden imposed by the disclosure and reporting requirements contained in Section 711 of the bill. The provision in the final bill involved intensive negotiations by both the minority and majority parties which significantly narrowed the scope of the provision, the reporting requirements, and the circumstances under which violations may be found to have occurred and penalties imposed.

The statute provides in new section 48(h)(2)(A) of the Federal Deposit Insurance Act that the appropriate Federal banking agency ''shall . . . ensure that the regulations prescribed by the agency do not impose an undue burden on the parties and that proprietary and confidential information is protected. . . .'' This is a central component of the provision as agreed to by the conferees. It is the conferees' understanding that this subsection is intended to prevent any overly broad or unduly burdensome reading of the reporting and disclosure requirements of this provision, including the requirements of section 48(c), the reporting requirements placed on non-insured depository institutions that are parties to agreements covered by this provision.

The prohibition in section 48(h)(2)(A) against placing an ''undue burden'' on the parties applies fully to every subsection of section 48. Section 48(c), which provides for reporting of information by nongovernmental entities or persons, is to be interpreted in light of subsection (h)(2)(A), to prevent any ''undue burden'' from falling on the parties to a covered agreement. As the Statement of Managers' provides:

> The Federal banking agencies are directed, in implementing regulations under this provision, to minimize the regulatory burden on reporting parties. One way in which to accomplish this goal would be whenever possible and appropriate with the purposes of this section, to make use of existing reporting and auditing requirements and practices of reporting parties, and thus avoid unnecessary duplication of effort. The Managers intend that, in issuing regulations under this section, the appropriate federal supervisory agency may provide that the nongovernmental entity or person that is not an insurer depository institution may, where appropriate and in keeping with the provisions of this section, fulfill the requirements of subsection (c) by the submission of its annual audited financial statement or its federal income tax return.

It is intended that, for example, subsection (c)(3) be read to require a ''list'' of the ''categories'' of uses to which funds received by the reporting party under covered agreements have been made.

It is not the intent that subsection (c)(3) require a reporting of any particular expense. A reporting entity might, however, include, if applicable an item in their report entitled ''administrative expenses,'' together with the amount, if any, of the funds received under a covered agreement or agreements, if any, expended for such purpose, or, the report might simply consist of an annual financial statement or federal income tax return. As the Statement of Managers states, this requirement could in most instances be fulfilled by the filing of an annual financial statement or federal income tax return.

The statute also directs the appropriate Federal supervisory agency to ''establish procedures to allow any nongovernmental entity or person who is a party to a large number of agreements described in subsection (a) to make a single or consolidated filing of a report under subsection (c) to an insured depository institution or an appropriate Federal banking agency.'' An organization with a large number of such agreements could simply file one summary report, summarizing the information requirement to be provided with respect to covered agreements in a single set of data in a single report, with the depository institution or regulator.

The conferees significantly modified the scope of agreements as to which this provision applies.

First, under subsection (h)(2)(A), this section is to be interpreted so as to avoid placing an ''undue burden'' on the parties.

Second, an agreement must be made ''pursuant to or in connection with the fulfillment of the Community Reinvestment Act,'' as defined in subsection (e). The term ''fulfillment'' means a list of factors that the appropriate Federal banking agency determines has a material impact on the agency's decision—(A) to approve or disapprove an application for a deposit facility, or (B) to assign a rating to an insured depository institution under an examination under the Community Reinvestment Act. As noted in the Manager's Statement, the regulator's assessment of material impact is to be based on factors that the regulator ''would attach importance to'' in approving or disapproving an application or in assigning a particular rating under CRA.

Third, the statute only pertains to agreements in which a party to the agreement receives grants or other consideration in excess of $10,000, or receives loans in excess of $50,000 under the agreement. An agreement under which nothing of value exceeding these amounts is revealed by the party is not covered by this provision.

Fourth, the statute provides for additional safe harbors from the provision. All individual mortgage loans are not covered. Other loans, unless they are substantially below market or involve re-lending to another party, are not covered. Agreements with a nongovernmental entity or person ''who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act'' are also not covered. As noted in the Manager's Statement this exception could include a broad range of organizations providing services in low and moderate income areas, including ''service organizations such as civil rights groups, community groups providing housing or other services in low-income neighborhoods, the American Legion, community theater groups, and so forth.'' The conferees are aware that insured depository institutions may list contributions to these organizations as a factor to be evaluated in applications subject to CRA or in examinations under CRA. It is not the conferees' intent that the undertaking of such activities, and listing of such activities in an application or examination by an insured depository institution have any bearing whatsoever on the determination of whether an agreement is required to be disclosed, and as to which reporting is required to be made, under this section.

Fifth, the Federal Reserve Board may, under 48(h)(3)(B), prescribe regulations ''to provide further exemptions . . . consistent with the purposes of this section.'' It is the conferees intent that, consistent with the purposes of this section, including the requirement of subsection (h)(2)(A), the Federal Reserve Board broadly construe its authority to provide for further such exemptions.

In drafting this provision, the conferees were concerned about not ''chilling'' the atmosphere between community groups and banks by creating uncertainty over whether a particular CRA agreement was covered by the provision. A bank and a community group should be able to determine clearly, up-front under implementing regulations whether their CRA agreement is covered by this provision. The conferees intend that implementing regulations should make clear whether this provision applies to any given CRA agreement. To the greatest extent possible, we do not want community groups and banks to have to report unnecessarily, and we do not want to deter community groups and banks from entering these arrangements by creating confusion. The bank regulators should promulgate regulations so that parties know in advance whether their agreement is covered or not, consistent with the purposes of the provision.

''HAVE AND MAINTAIN'' PROVISIONS

The requirement that a banking organization have a ''satisfactory'' CRA rating is an ongoing requirement in order for it to expand into these new areas. Each and every time that a bank or its holding company seeks to expand into these newly authorized nonbanking lines of business—such as securities underwriting or insurance—their insured depository affiliates must have a ''satisfactory'' CRA rating. This

requirement applies each time the banking organization commences one of these nonbanking activities, or acquires or merges with another company in a nonbanking area. The Conference Report would therefore extend enforcement of CRA, in that under the Act, a bank's CRA record would be taken into consideration in determining whether the bank or its holding company can expand into nonbanking activities.

Today, banks are permitted to expand into nonbanking activities—to the extent permitted by current law—without any consideration of their CRA performance at all. The Federal Reserve Board reports that it has approved thousands of applications for such expansions, and the current law does not impose any CRA review on these nonbank expansions at all. Under the Conference Report, each of the insured depository affiliates of banking organizations must have a ''satisfactory'' CRA rating at the time it expands into the nonbanking area. This is a new requirement, and for the first time makes satisfactory CRA performance a prerequisite to entering these nonbanking lines of business.

There are two major enforcement provisions for this requirement. First, if the banking organization violates the prohibition against entering these nonbanking lines of business without its affiliated banks having a satisfactory CRA rating, all the penalties of the Federal Deposit Insurance Act apply. The FDIA penalties for noncompliance include divestiture and cease and desist orders, civil money penalties, and removal of officers and directors. Second, by not earning a ''satisfactory'' CRA rating, a bank and its holding company would be prohibited from entering these new lines of business. In effect, that imposes a high opportunity cost in missed business opportunities, and creates a powerful imperative for the holding company to ensure that its affiliated and subsidiary banks maintain at least a satisfactory CRA rating.

The bill does not affect the existing application process for banks acquiring or merging with other banks, in which the regulators review the banks' CRA record and the public has an opportunity to comment. The existing procedures for bank mergers or acquisitions with other banks are preserved fully intact. There are no changes.

SMALL BANK CRA EXAMINATION CYCLE

Although the statute sets a time line for examinations of banks under $250 million in assets that are currently rated ''outstanding'', the regulators nonetheless retain the full discretion to examine any bank at any time for reasonable cause. Section 712 of the statute states: ''a regulated financial institution described in subsection (a) may be subject to more frequent or less frequent examinations for reasonable cause under such circumstances as may be determined by the appropriate Federal financial supervisory agency.'' This means that regulators retain full discretion to examine any bank for CRA compliance at any time for reasonable cause. For example, the bank's local market conditions may have changed significantly so that the bank's lending should have adjusted accordingly, or a change in bank management may have redirected the bank's lending practices such that the regulators find reasonable cause to conduct a CRA examination outside the routine cycle. The public could send comments to the bank regulators at any time regarding the CRA performance of any banks—even if outside the routine CRA examination or application process—and if the regulators find reasonable cause to do so, they could conduct a CRA exam of that bank. The public may comment to the regulators regarding a particular bank so that regulators can make a fully informed judgment about whether there is ''reasonable cause'' to conduct a CRA exam outside the routine cycle. Of course, regulators must come to their own conclusions about whether such an ''off-cycle'' CRA exam is justified, but public comment to the regulators can be valuable to their decisionmaking.

With regard to section 712, this provision does not affect the regulators' judgment about when to examine banks under $250 million with a less than satisfactory rating. This provision is not indented by the conferees to limit the regulators from examining small banks with less than satisfactory records as they deem appropriate. My understanding is that the bank regulators' current practice is to conduct CRA examinations of banks with less than satisfactory CRA records as often as every 6–18 months. This provision does not restrict or direct their judgment for those banks. CRA examinations in connection with applications for bank mergers and acquisitions are also not affected by these provisions in any way. The provision also does not in any way affect the current law's requirements to take into account an institution's CRA record of meeting the credit needs of its community when banks are merging or acquiring other banks, or for any application for a depository facility.

PRIVACY

For the first time, this bill imposes substantial privacy protections for consumers under federal law in the financial services context. The privacy provisions of the bill:

Impose on all financial institutions an ''affirmative and continuing obligation'' to respect the privacy of customers and the security and confidentiality of their personal information;

Requires the federal regulators to issue institutional safeguards that will protect customers against unauthorized access to and use of their personal information;

Requires that consumers be provided with notice and an ''opt-out'' opportunity before their financial institutions can disclose any personal financial information to unaffiliated third parties;

Prohibits financial institutions from sharing with unaffiliated parties any credit card, savings and transaction account numbers or other means of access to such accounts for purposes of marketing;

Prohibits unaffiliated third parties that receive confidential information from sharing that information with any other unaffiliated parties;

Requires financial institutions to fully disclose to customers all of their privacy policies and procedures;

Amends the Fair Credit Reporting Act to strengthen and expand regulatory authority to detect and enforce against violations of credit reporting and consumer privacy requirements.

These are the very same privacy provisions that passed the House by a virtually unanimous 427–1 vote. In fact, the provisions actually represent a strengthening of the House product in two key respects. First of all, the disclosure requirement has been extended to cover a financial institution's practices on information-sharing within the affiliate structure, allowing consumers to comparison shop based on a company's privacy policies. Secondly, the conference report totally safeguards stronger state consumer protection laws in the privacy area.

Section 502(d) of the conference report contains a broad prohibition against the disclosure of a consumer's account number or similar form of access device by a financial institution to any non-affiliated third party for use in direct marketing. The agencies with rulemaking authority under the legislation may grant exceptions to this prohibition if ''deemed consistent with the purposes of this subtitle.'' The report language makes clear that any exceptions to this strict prohibition are to be narrowly drawn and my be deemed consistent with the purposes of the bill only where three factors are present: (1) The customer account number or access device is encrypted, scrambled or decoded, (2) the customer provides express consent to the financial institution to make such disclosure prior to the time of the disclosure; in other words, the customer ''opts–in'' to such disclosure with the financial institution, and (3) such disclosure is necessary to service or process a transaction that the customer expressly requests or authorizes.

The joint marketing provision sought to narrow the potentially unequal application of privacy restrictions between larger financial entities that operate through affiliates and smaller banks and credit unions that must contract with outside institutions to provide basic financial services such as credit cards or mortgages to customers. It is important to note that the provision contains at least four levels of restrictions to limit its application. The joint marketing exception applies only to agreements under which one financial institution markets the products of another or markets financial products on the other institution's behalf. Permissible joint agreements and financial products would be limited by federal regulation and any sharing of information must be clearly disclosed and subject to strict confidentiality contracts.

OTHER CONSUMER AND COMMUNITY PROTECTIONS

The bill contains important other new consumer and community protections.

It:

Provides extensive new consumer protections in connection with bank sales of insurance products, including prohibitions against tying, misrepresentation or conditioning of credit on purchases of other products; clear disclosure of the risks associated with insurance products; separation of insurance sales from routine banking activity; and new federal procedures to resolve consumer complaints;

Provides new consumer protections as prerequisites for bank sales of investment products, including full disclosures regarding potential risks and the uninsured status of the products, and sales practices standards restricting such sales to qualified brokers and to areas separated from routine banking activity;

Expands small business and rural development lending by making Federal Home Loan Bank advances available for small business, small farm and agribusiness lending by smaller community banks;

Creates a new federal ''Program for Investment in Microentrepreneurs'' (PRIME) to provide technical assistance and capacity building grants for small or disadvantaged business with less than five employees that have limited access to business financing;

Prohibits discrimination against victims of domestic violence in the underwriting, pricing,

sale, renewal of any insurance product and in the settlement of any claim;

States Congressional intent that financial advisors shall provide financial advice and products to women in an equal, nondiscriminatory manner.

MUTUAL REDOMESTICATION

A bill of this breadth will inevitably include some elements that are highly problematic and objectionable. I strongly oppose the conference report language on redomestication of mutual insurers.

This provision is not only not in the public interest, it is blatantly anti-consumer. It would circumvent well-designed and carefully considered state policy regarding the redomestication of mutual insurance companies. It has little or nothing to do with financial services modernization. Rather it serves to undermine state law, which seeks to protect our constituents, for the benefit of a few.

The conference report could place as many as 35 million policyholders at risk of losing $94.7 billion in equity. This amounts to a Congressionally approved taking of consumers' personal property. I believe this provision will not withstand legal scrutiny and should and will be the subject of legal challenge in the courts.

This provision would allow mutual insurers domiciled in states whose legislatures have elected not to allow mutual insurers to form mutual holding companies to escape that legislative determination. It would allow mutual insurers to move simply because a state, through its duly elected representatives, has determined that formation of mutual holding companies is not in the best interest of the state or its mutual insurance policyholders who are, after all, the owners to the company. This conference report will preempt the mutual insurance laws in approximately 30 states.

CONCLUSION

Overall, the conference report represents a reasonable and fair balance on a wide variety of difficult issues. Because of the many benefits this legislation provides for consumers, communities and the U.S. financial services industry, I offer my strong support to the legislation.