

Opening Statement
Chairman Michael G. Oxley
Committee on Financial Services

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“Protecting Consumers and Promoting Competition in Real Estate Services”

Good morning. Today we have the honor of receiving testimony from the authors of one of the most significant pieces of financial legislation ever enacted – the Gramm-Leach-Bliley Act, which repealed anti-competitive restrictions on the financial services industry that had been in statute since the Great Depression. These gentlemen have agreed to come before the Committee this morning to explain the intent of this Act and to highlight the reasons particular provisions were drafted in the manner that they were. Unfortunately, Chairman Gramm was unable to join us, as he is tending to matters in Europe. In his place, I would like to thank our colleague, Representative Hensarling, a member of Chairman Gramm’s staff in a former life, for agreeing to deliver his comments for the record.

The Gramm-Leach-Bliley Act permitted financial holding companies to engage in activities that are financial in nature, or incidental or complementary to the offering of financial services. The effect of this landmark legislation was that banking, insurance, and securities services could, for the first time, be offered by a single entity. This Act modernized our financial industry and did away with artificial barriers to competition in these markets. In their wisdom, the authors understood that the financial marketplace was an evolving one and that if this legislation was to stand the test of time, it would have to be periodically updated. This flexibility was built into the Act through a provision that permitted the Treasury Department and the Federal Reserve Board to determine, through the rule making process, that other activities are financial in nature or incidental to such activities.

In 2001 the Federal Reserve Board and the Treasury Department exercised their authority under Gramm-Leach-Bliley by issuing a proposed regulation defining real estate brokerage and management services as financial in nature. The agencies have never been able to finalize their rule, however, because provisions have been inserted in every appropriations bill since 2001 at the behest of the National Association of Realtors prohibiting the Treasury Department from expending any funds to implement the regulation. I, along with the Ranking Member of the Committee, have consistently objected to legislating on appropriations bills in this manner. To that end the Ranking Member and I have introduced legislation, H.R. 2660, which would amend the Bank Holding Company Act to state that real estate brokerage and management services are financial in nature. I regret that it has come to this, but this Committee cannot sit idly by while the appropriators run roughshod over our jurisdiction and single-handedly frustrate the objectives of financial modernization that the distinguished Members of our first panel worked so long and hard to achieve.

We will hear the argument today that the offering of real estate brokerage and management services was specifically excluded under Gramm-Leach-Bliley because these services are commercial, not financial, in nature. The fact is that there is **nothing** in the Act or in the legislative history of the Act which speaks to the issue of real estate brokerage or management. On the contrary, while the Act specifically prohibits bank subsidiaries from engaging in real estate **development** and **investment**, it is utterly silent on the separate issues of real estate brokerage and management.

Moreover, particularly with housing prices at record levels, the purchase of residential real estate is, for most Americans, the most significant financial transaction that they will ever undertake. It is a transaction that often involves highly sophisticated financial instruments to finance it, and the vast majority of Americans' net worth resides in the value of their homes. Additionally, credit unions, thrift institutions and state-chartered banks in over half the states have long been permitted to offer real estate brokerage services.

Excluding one class of depository institution — national banks — from being able to compete on that same playing-field is inconsistent with the goals of the Gramm-Leach-Bliley and with the fundamental principles that should govern free-market economies.

Indeed, free market competition is the hallmark of growth and innovation in our country. Man-made barriers to entry into markets result in monopolies that set the terms of the market and dictate the price. That is what we have today with regard to real estate. The consumer will benefit if free market principles are applied to real estate brokerage and management. Lower prices, improved services, and greater access to affordable housing will be the result.

Regardless of whether banks are eventually permitted to provide real estate brokerage, Congress needs a better understanding of whether the current rules for residential real estate brokerage are in the best interests of consumers.

Few people understand how the NAR functions as a self-regulating organization. If its rules promote competition and consumers, why is the Justice Department suing the NAR over its rules blocking Internet brokers from displaying homes for sale on their websites? How are these rules consistent with a broker's fiduciary duty to the home seller?

Furthermore, what is the relationship between the NAR and state realtor associations? Could it possibly be in the interest of consumers for state realtor associations to ask state legislatures and realty commissions to adopt requirements preventing realtors from rebating part of their fees to consumers, or preventing consumers from choosing low-cost discount brokers? The Justice Department is suing the Kentucky Real Estate Commission over just such rules.

On March 15, Ranking Member Frank and I wrote to the Government Accountability Office asking it to survey the state of price competition in the market for real estate brokerage services. This follows my GAO request last November on whether there are barriers to electronic commerce in real estate. We need to look broadly at consumer protections for home buyers and sellers, and this Committee will continue to do so.

Let's forget about fighting among the various lobbyists and remember what's really important, and that is how can home buyers and sellers get the best real estate services at the lowest possible prices? Competition is always the answer to that basic question, choice is always the answer to that basic question. There is not enough competition in these real estate markets, and that is what we seek to remedy.

I look forward to hearing from the witnesses regarding the intent of the Gramm-Leach-Bliley Act and the impact that increased competition could have on the marketplace and on consumers.