about it. In this bill, at least, we give them fair and adequate tools that do not infringe on our freedoms but, at the same time, allows them to catch up a lot more quickly.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mr. LEVIN. Mr. President, I wonder if the Senator from California would yield for a unanimous consent request.

Mrs. FEINSTEIN. I would be happy to yield.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that after the remarks of the Senator from California, I be recognized for the time allotted to me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, Americans tend to be a very open people. Americans, to a great extent, have looked at Government, saying: Just leave me alone. Keep Government out of my life. At least that is the way it was before September 11. What I hear post-September 11 are people saying: What is my Government going to do to protect me?

As we look back at that massive, terrible incident on September 11, we try to ascertain whether our Government had the tools necessary to ferret out the intelligence that could have, perhaps, avoided those events. The only answer all of us could come up with, after having briefing after briefing, is we did not have those tools. This bill aims to change that. This bill is a bill whose time has come. This bill is a necessary bill. And I, as a Senator from California, am happy to support it.

This legislation brings our criminal and national security laws in line with developing technologies so that terrorists will no longer be able to stay one step ahead of law enforcement. And believe me, they can today.

Right now, for example, terrorists can evade Foreign Intelligence Surveillance Act wiretaps, which are device-specific, by simply switching cell phones every few hours. This legislation fixes that and allows for roving FISA wiretaps, the same as are currently allowed for suspected criminals under the domestic law enforcement portions of the law known as title III.

And because modern communications often travel through countless jurisdictions before reaching their final destination, investigators must now get court orders from every one of those jurisdictions. They can have to get 15, 20 court orders to carry out a wiretap. This bill would change that, allowing for just one court order from the originating jurisdiction.

And the bill recognizes that voice mails and e-mails should be treated alike when law enforcement seeks access to them. Technology, as it changes, changes the ability to conduct an intelligence surveillance. This bill attempts to keep a very careful balance between the personal right to privacy and the Government's right to know, in an emergency situation, to be able to protect its citizens.

It also increases information sharing between the intelligence community and law enforcement. As a matter of fact, it mandates it. Criminal investigations often result in foreign intelligence. This information, up to this point, is not shared with the intelligence community. After this bill becomes law, it must be shared.

And it makes it easier for law enforcement to defeat those who would use the computers of others to do mischief.

For example, with the Zombie computer, I invade your computer and, by invading your computer, go into 1,000 other computers and am able to get one of them to open the floodgates of a dam. This bill prevents that.

Overall, this bill gives law enforcement and the intelligence community the tools they need to go after what is an increasingly sophisticated terrorist element.

I am very pleased this legislation also includes a number of provisions I drafted with Senator GRAHAM well before the events on September 11—title 9 of this bill. These provisions give the Director of the CIA, as head of the intelligence community, a larger role with regard to the analysis and dissemination of foreign intelligence gathered under FISA. These mandate that law enforcement share information with the intelligence community.

And title 9 improves the existing Foreign Terrorist Asset Tracking Center which helps locate terrorist assets. It authorizes additional resources to help train local law enforcement to recognize and handle foreign intelligence.

We now have these anti-terrorist teams throughout the country. They need to be trained, and they need to learn the tools of the trade and get the security clearances so they can tap into these databases.

I agree with the 4-year sunset included for certain surveillance provisions in the bill. In committee I suggested a 5-year sunset. The House had 2 years. It is now 4 years. That is an appropriate time. It gives us the time to review whether there were any outrageous uses of these provisions or whether uses were appropriate under the basic intent of the bill.

Let me briefly touch on a related topic of great importance in the war against terrorism. As an outgrowth of the Technology, Terrorism, and Government Information Subcommittee, today Senator JON KYL of Arizona and I held a press conference indicating a bill we will shortly introduce to create a new, central database, a database that is a lookout database into which information from intelligence, from law enforcement, from all Federal agencies will go. That database will be for every visa holder, every person who crosses borders coming in and out of this country. The legislation will provide for ''smart visa cards'', reform the visa waiver program, reform the unregulated student program, and improve and beef up identity documents.

I passed around at the press conference a pilot's license, easily reproducible, no biometric data, no photograph, perforated around the edges showing that it had been removed from a bigger piece. This is the pilot's license that every 747 pilot carries, every private pilot carries. It is amazing to me that this can be a Federal document and be as sloppy as it is in this time.

We intend to see that identity documents are strengthened to provide not only photographs, but biometric data as well (such as fingerprints or facial recognition information). And the data system would be such that it is flexible and scalable so as biometric technology and requirements progress, the database can keep up.

Both Senator KYL and I also met with Larry Ellison, the CEO of Oracle. Oracle has stated that they are willing to devote some 1,500 engineers to develop a national identity database. What we are proposing is different from that. He said they would devote their software free of charge.

The PRESIDING OFFICER. The time of the Senator has expired.

Mrs. FEINSTEIN. If I may just have 1 minute to conclude.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. We are not proposing a national identity card, but we do believe this kind of database could be prepared by a company such as Oracle—they have offered to give it to the Government for free or by NEC, which did a state-of-the-art fingerprint system for San Francisco. We believe this should be under the auspices of the Homeland Security Director, that these decisions need to be made rapidly, and that we need to get cracking to close the loopholes that have made the United States of America one giant sieve.

This bill, which I am so happy to support, takes a giant step forward in that direction. I thank both the chairman of the committee and the ranking member for their diligence on this bill.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, the antiterrorism bill which the Senate is about to pass reflects the sentiments the American people have expressed since the events of September 11—that we must act swiftly and strongly to defend our country without sacrificing our most cherished values. The Senate antiterrorism legislation meets that test. It responds to these dangerous times by giving law enforcement agencies important new tools to use in combating terrorism without denigrating

the principles of due process and fairness embedded in our Constitution.

The bill is not perfect. In fact, during the Senate's consideration of its bill, I supported three amendments offered by Senator FEINGOLD. Each of the Feingold amendments would have strengthened privacy protections for American citizens without undermining law enforcement efforts to investigate terrorists. One amendment would have maintained limits in Federal and State law on law enforcement access to personal records, particularly with regards to sensitive medical and financial information. A second amendment would have required law enforcement to ascertain that a surveillance target under the antiterrorism bill's expanded wiretap authority was actually in the house that was bugged or using the phone that was tapped before surveillance could be initiated. The third amendment that I supported would have placed sensible limits on the government's ability to intercept computer communications. Among these limits were the type of investigation and the length of surveillance in which the government could utilize new surveillance authority provided in the antiterrorism bill.

While the amendments I supported were not adopted the bill before us is much stronger from a civil liberties standpoint than the legislation that was initially proposed by the administration. This is due in large part to the strong commitment to civil liberties and the tireless efforts of Senate Judiciary Committee Chairman PATRICK LEAHY.

The bill also bolsters Federal criminal laws against terrorism in several important areas, including extending the statute of limitations for terrorist offenses and modernizing surveillance laws to permit investigators to keep pace with new technologies like cell phones and the Internet.

Michigan's economy and security depend on the Federal Government providing adequate resources for inspection and law enforcement at the State's northern border. I am pleased that the final bill now before us also includes significant new funding to increase security and improve traffic flow at the northern border.

Finally, this legislation includes a landmark set of provisions that I have been proud to sponsor that will strengthen and modernize U.S. anti-money laundering laws. Osama bin Laden has boasted that his modern new recruits know the ''cracks'' in ''Western financial systems'' like they know the ''lines in their hands.'' Enactment of this bill will help seal the cracks that allow terrorists and other criminals to use our financial systems against us.

The final money laundering provisions appear in Title 3 of the bill and represent a significant advance over existing law. Here are some of the anti-money laundering provisions that I authored and that are included in the final bill.

For the first time, all U.S. financial institutions—not only banks but securities firms, insurance companies, money transmitters, and other businesses that transfer funds or engage in large cash transactions—will have a legal obligation to exercise due diligence before allowing a foreign financial institution to open a correspondent account with them and thereby gain entry into the U.S. financial system.

For the first time, U.S. banks and securities firms will be barred from opening accounts for foreign shell banks that have no physical presence anywhere and no affiliation with another bank.

For the first time, U.S. prosecutors will be able to freeze and seize a depositor's funds in a foreign financial institution's correspondent account to the same extent under civil forfeiture laws as a depositor's funds in other U.S. financial accounts.

For the first time, foreign corruption offenses such as bribery and misappropriation of funds by a public official will qualify as predicate offenses that can trigger a U.S. money laundering prosecution.

Still other provisions in the bill give U.S. law enforcement a host of new tools to investigate and prosecute money laundering crimes, especially crimes involving a foreign financial institution.

Here are some of the other key provisions in the bill that make landmark changes in U.S. anti-money laundering laws.

For the first time, all U.S. financial institutions will have a legal obligation to verify the identity of their customers, and all customers will have a legal obligation to tell the truth about who they are.

For the first time, all U.S. financial institutions will be required to have anti-money laundering programs.

For the first time, the U.S. Treasury Secretary will have legal authority to designate specific foreign financial institutions, jurisdictions, transactions or accounts as a ''primary money laundering concern'' and use special measures to restrict or prohibit their access to the U.S. marketplace.

For the first time, bulk cash smuggling over U.S. borders will be a prosecutable crime, and suspect funds will be subject to forfeiture proceedings.

Just like we are tightening our border controls to restrict access to the United States across its physical borders, the bill's anti-money laundering provisions will tighten our financial controls to restrict access into the U.S. financial system. They will require our financial institutions to take new steps, to do more work, and to exercise greater caution before opening up the financial system of the United States.

When the anti-money laundering provisions first passed the Senate on October 11, I gave a floor statement explaining a number of the provisions that had been taken from the Levin-Grassley anti-money laundering bill, S. 1371. While I do not want to repeat all of that legislative history here, some important improvements were made during the House-Senate negotiations that I would like to comment on in order to explain their intent and impact.

First is the shell bank ban in Section 313 of the final bill. That provision appeared in both the House and Senate bills, with only a few differences. The primary difference is that the House provision applied only to ''depository institutions,'' while the Senate bill was intended to ban both U.S. banks and U.S. securities firms from opening accounts for shell banks. The final bill takes the broader approach advocated by the Senate and applies the shell bank ban to both U.S. banks and U.S. securities firms. This broader ban is intended to make sure that neither U.S. banks nor U.S. securities firms open accounts for shell banks, which carry the highest money laundering risks in the banking world. This broader ban means, for example, that a bank that had shell banks as clients and was required to close those accounts under this provision would not be able to circumvent the ban simply by switching its shell bank clients to accounts at an affiliated broker-dealer. The goal instead is to close off the U.S. financial system to shell banks and institute a broad ban on shell bank accounts.

In my floor statement of October 11, I explained the related requirement in Section 313 that U.S. financial institutions take reasonable steps to ensure that other foreign banks are not allowing their U.S. accounts to be used by shell banks. The purpose of this language is to prevent shell banks from getting indirect access to the U.S. financial system by operating through a correspondent account belonging to another foreign bank. That requirement was included in both the House and Senate bills, and in the final version of the legislation. It is a key provision because it will put pressure on all foreign financial institutions that want to do business in the United States to cut off the access that shell banks now enjoy in too many countries around the world.

I also explained on October 11 that the shell bank ban contains one exception that is intended to be narrowly construed to protect the U.S. financial system from shell banks to the greatest extent possible. This exception, which is identical in both the House and Senate bills and is unchanged in the final version of the legislation, allows U.S. financial institutions to open an account for a shell bank that meets two tests: the shell bank is affiliated with another bank that maintains a physical presence, and the shell bank is subject to supervision by the banking regulator of that affiliated bank. The intent of this exception is to allow U.S. financial institutions to do business with shell branches of large, established banks on the understanding that

the bank regulator of the large, established bank will also supervise the established bank's branch offices worldwide, including any shell branch. As explained in my earlier floor statement, U.S. financial institutions are cautioned not to abuse this exception, to exercise both restraint and common sense in using it, and to refrain from doing business with any shell operation that is affiliated with a poorly regulated bank.

The House-Senate negotiations also added a new provision to Section 313 giving U.S. financial institutions a 60-day period to wind up and close any existing accounts for shell banks and to institute the reasonable procedures called for to ensure that other correspondent accounts with foreign financial institutions are not being used by shell banks. As I suggested on October 11, one possible approach with respect to other correspondent accounts would be for the U.S. financial institution to develop standard language asking the foreign financial institution to certify that it is not and will not allow any shell bank to use its U.S. accounts and then to rely on that certification absent any evidence to the contrary.

A second provision I want to discuss in detail is the due diligence requirement in Section 312 of the final bill. This provision also appeared in both the House and Senate bills, again with only a few differences in wording. This provision is intended to tighten U.S. anti-money laundering controls by requiring all U.S. financial institutions to exercise due diligence when opening or managing correspondent or private banking accounts for foreign financial institutions or wealthy foreign individuals. The purpose of this requirement is to function as a preventative measure to stop rogue foreign financial institutions, terrorists or other criminals from using U.S. financial accounts to gain access to the U.S. financial system.

The most important change made to the due diligence requirement during the House-Senate negotiations was to make the definitional provisions in section 311 also apply to section 312. Specifically, the House and Senate negotiators amended what is now Section 311(e) to make sure that its provisions would be applied to both the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318 created by Sections 311, 312 and 313 of the final bill.

As I mentioned in my floor statement on October 11, one of the key changes that the Senate Banking Committee made to the due diligence requirement when they took that provision from the Levin-Grassley bill, S. 1371, was to make the due diligence requirement apply to all U.S. financial institutions, not just banks. The Banking Committee expanded the scope of the due diligence requirement by deleting the Levin-Grassley references to ''banks'' and substituting the term ''financial institutions'' which, in Section 5312(a)(2) of the Bank Secrecy Act, includes not only banks, but also securities firms, insurance companies, money exchanges, and many other businesses that transfer funds or carry out large cash transactions. The House Financial Services Committee adopted the same approach as the Senate Committee, using the term ''financial institution'' in its due diligence provision rather than, for example, the term ''depository institution'' which the House Committee used in its version of the shell bank ban. The bottom line, then, is that both the House and Senate expanded the due diligence provision to apply to all U.S. financial institutions, not just banks.

During the House-Senate negotiations on the final version of the anti-money laundering legislation, Section 311(e) of the bill was amended to make it applicable to both the due diligence requirement created by Section 312 and to the shell bank ban created by Section 313. Section 311(e) establishes several new definitions for such terms as ''account'' and ''correspondent account,'' and also directs or authorizes the Treasury Secretary to issue regulations to clarify other terms. By making those definitions and regulatory authority applicable to the due diligence requirement and shell bank ban, the House-Senate negotiators helped ensure that the same terms would be used consistently across Sections 311, 312 and 313. In addition, the change helps clarify the scope of the due diligence and shell bank provisions in several respects.

First, the change makes the definition of ''account'' applicable to the due diligence requirement. This definition makes it clear that the due diligence requirement is intended to apply to a wide variety of bank accounts provided to foreign financial institutions or private banking clients, including checking accounts, savings accounts, investment accounts, trading accounts, or accounts granting lines of credit or other credit arrangements. The clear message is that, before opening any type of account for a foreign financial institution or a wealthy foreign individual and giving that account holder access to the United States financial system, U.S. financial institutions must use due diligence to evaluate the money laundering risk, to detect and report possible instances of money laundering, and to deny access to terrorists or other criminals.

The definition also ensures that the shell bank ban applies widely to bar a shell bank from attempting to open virtually any type of financial account available at a U.S. financial institution.

Second, the change makes it clear that the definition of ''correspondent account'' applies to the due diligence requirement. This clarification is important, because the definition makes it clear that ''correspondent accounts'' are not confined to accounts opened for foreign banks, as specified in S. 1371, but encompass accounts opened for any ''foreign financial institution.'' This broader reach is in keeping with the effort of the Senate Banking Committee and the House Financial Services Committee to expand the due diligence requirement to apply to all financial institutions, not just banks. It means, for example, that U.S. financial institutions must use due diligence when opening accounts not only for foreign banks, but also for foreign securities firms, foreign insurance companies, foreign exchange houses, and other foreign financial businesses.

Section 311(e)(4) authorizes the Treasury Secretary to further define terms used in subsection (e)(1), and Treasury may want to use that authority to issue regulatory guidance clarifying the scope of the term ''foreign financial institution'' to help U.S. financial institutions understand the extent of their due diligence obligation under the new 31 U.S.C. 5318(i). In fashioning this regulatory guidance, Treasury should keep in mind the intent of Congress in issuing this new due diligence requirement—to require all U.S. financial institutions to use greater care when allowing any foreign financial institution inside the U.S. financial system.

The significance of applying the ''correspondent account'' definition to the shell bank ban is, again, to ensure that the ban applies widely to bar a shell bank from opening virtually any type of financial account available at a U.S. financial institution.

Third, due to the change made by House-Senate negotiators, Section 311(e)(3) directs the Treasury Secretary to issue regulations defining ''beneficial ownership of an account'' for purposes of both the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318. How the regulations define ''beneficial ownership'' will have profound implications for these new provisions as well as for other aspects of U.S. anti-money laundering laws. Section 311(e)(3) directs Treasury to address three sets of issues in defining beneficial ownership: the significance of ''an individual's authority to fund, direct, or manage the account''; the significance of ''an individual's material interest in the income or corpus of the account''; and the exclusion of individuals whose beneficial interest in the income or corpus of the account is immaterial.''

The issue of beneficial ownership is at the heart of the fight against terrorists and other criminals who want to use our financial institutions against us. Terrorists and other criminals want to hide their identity as well as the criminal origin of their funds so that they can use their U.S. accounts without alerting law enforcement. They want to use U.S. and international payment systems to move their funds to their operatives with no questions asked. They want to deposit their funds in interest-bearing accounts to

increase the financial resources available to them. They want to set up credit card accounts and lines of credit that can be used to finance their illegal activities. Above all, they do not want U.S. financial institutions determining who exactly is the owner of their accounts, since that information can lead to closure of the accounts, seizure of assets, exposure of terrorist or criminal organizations, and other actions by law enforcement.

After the September 11 attack, it is more critical than ever that U.S. financial institutions determine exactly who is the beneficial owner of the accounts they open. Another provision of the final bill, Section 326 which was authored by House Financial Services Committee Chairman OXLEY, requires financial institutions to verify the identify of their customers. That provision gets at the same issue—that our financial institutions need to know who they are dealing with and who they are performing services for.

Some financial institutions have pointed out the difficulties associated with determining the beneficial owner of certain accounts. But these are not new issues, and they can be dealt with in common sense ways. U.S. tax administrators and financial regulators have years of experience in framing ownership issues. Switzerland has had a beneficial ownership requirement in place for years, and in fact requires accountholders to sign a specific document, called ''Form A,'' declaring the identify of the account's beneficial owner. The difficulties associated with determining beneficial ownership can be addressed.

There will, of course, be questions of interpretation. No one wants financial institutions to record the names of the stockholders of publicly traded companies. No one wants financial institutions to identify the beneficiaries of widely held mutual funds. That is why this section directs the Treasury Secretary to issue regulatory guidance in this area.

At the same time, there are those who are hoping to convince Treasury to turn the definition of beneficial ownership inside out, and declare that attorneys or trustees or asset managers who direct payments into or out of an account on behalf of unnamed parties can somehow qualify as the ''beneficial owner of the account.'' Others will want to convince Treasury that offshore shell corporations or trusts can qualify as the beneficial owner of the accounts they open. But those are exactly the types of accounts that terrorists and criminals use to hide their identities and infiltrate U.S. financial institutions. And those are exactly the accounts for which U.S. financial institutions need to verify and evaluate the real beneficial owners.

The beneficial ownership regulation will be a challenging undertaking. But there is plenty of expertise to draw upon, from FATF, the Basel Committee, U.S. financial and tax regulators, other countries with beneficial ownership requirements and, of course, from our own financial community.

Fourth, Section 311(e)(2) directs the Treasury Secretary to issue regulations clarifying how the term ''account'' applies to financial institutions other than banks. This authority should be read in conjunction with Section 311(e)(4) which allows, but does not require, the Secretary to issue regulations defining other terms in the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318. These two regulatory sections should, in turn, be read in conjunction with Section 312(b)(1) which directs the Secretary to issue regulations further clarifying the due diligence policies, procedures and controls required under that section. Together, these grants of regulatory authority provide the Treasury Secretary with ample authority to issue regulatory guidance to help different types of financial institutions understand what is expected of them in the area of due diligence. Such guidance may be needed by banks, securities firms, insurance companies, exchange houses, money service businesses and other financial institutions. The guiding principle, again, is to ensure that U.S. financial institutions exercise appropriate due diligence before opening accounts for foreign financial institutions or wealthy foreign individuals seeking access to the U.S. financial system.

These grants of regulatory authority can also be used by Treasury to ensure that the shell bank ban established by Section 313 is as broad and effective as possible to keep shell banks out of the U.S. financial system.

Next is due diligence and correspondent banking. Section 312 imposes an ongoing, industry-wide legal obligation on all types of financial institutions operating in the United States to exercise appropriate care when opening and operating correspondent accounts for foreign financial institutions to safeguard the U.S. financial system from money laundering. The general obligation to establish appropriate and specific due diligence policies, procedures and controls when opening correspondent accounts is codified in a new 31 U.S.C. 5318(i)(1).

Subsection 5318(i)(2) specifies additional, minimum standards for enhanced due diligence policies, procedures and controls that must be established by U.S. financial institutions for correspondent accounts opened for two specific categories of foreign banks: banks operating under offshore banking licenses and banks operating in foreign countries that have been designated as raising money laundering concerns. These two categories of foreign banks were identified due to their higher money laundering risks, as explained in the extensive staff report and hearing record of the Permanent Subcommittee on Investigations, copies of which I released earlier this year.

Subsection 5318(i)(2) provides two alternative ways in which a foreign country can be designated as raising money laundering concerns. The first way is if a country is formally designated by an intergovernmental group or organization of which the United States is a member. Currently, the most well known such group is the Financial Action Task Force on Money Laundering, also known as FATF, which is composed of about 30 countries and is the leading international group fighting money laundering. In 2000, after a lengthy fact-finding and consultative process, FATF began issuing a list of countries that FATF's member countries formally agreed to designate as noncooperative with international anti-money laundering principles and procedures. This list, which names between 12 and 15 countries, is updated periodically and has become a powerful force for effecting change in the listed jurisdictions. The second way a country may be designated for purposes of the enhanced due diligence requirement is if the country is so designated by the Treasury Secretary under the procedures provided in the new Section 5318A. This second alternative enables the United States to act unilaterally as well as multilaterally to require U.S. financial institutions to take greater care in opening correspondent accounts for foreign banks in jurisdictions of concern.

The House and Senate bills contained one minor difference in the wording of the provision regarding foreign country designations by an intergovernmental group or organization under the new 31 U.S.C. 5318(i)(2)(A)(ii)(I). The House bill included a phrase, not in the Senate bill, stating that the foreign country designation had to be one with which the Secretary of Treasury concurred, apparently out of concern that an intergovernmental group or organization might designate a country as noncooperative over the objection of the United States. The final version of the provision includes the House approach, but uses statutory language making it clear that U.S. concurrence in the foreign country designation may be provided by the U.S. representative to the relevant international group or organization, whether or not that representative is the Secretary of Treasury or some other U.S. official.

The new 31 U.S.C. 5318(i)(2) states that the enhanced due diligence policies, procedures and controls that U.S. financial institutions must establish for correspondent accounts with offshore banks and banks in jurisdictions designated as raising money laundering concerns must include at least three elements. They must require the U.S. financial institution to ascertain the foreign bank's ownership, to carefully monitor the account to detect and report any suspicious activity, and to determine whether the foreign bank is allowing any other banks to use its U.S. correspondent account and, if so, the identity of those banks and related due diligence information.

The three elements specified in Section 5318(i)(2) for enhanced due diligence policies, procedures and controls are not meant to be comprehensive. Additional reasonable steps would be appropriate before opening or operating accounts for these two categories of foreign banks, including steps to check the foreign bank's past record and local reputation, the jurisdiction's regulatory environment, the bank's major lines of business and client base, and the extent of the foreign bank's anti-money laundering program. Moreover, other categories of foreign financial institutions will also require use of enhanced due diligence policies, procedures and controls including, for example, offshore broker-dealers or investment companies, foreign money exchanges, foreign casinos, and other foreign money service businesses.

Now I would like to discuss due diligence and private banking. The new Section 5318(i) also addresses due diligence requirements for private banking accounts. The private banking staff report issued by the Permanent Subcommittee on Investigations explains why these types of private banking accounts are especially vulnerable to money laundering and why initial and ongoing due diligence reviews are needed to detect and report any suspicious activity.

The House and Senate versions of this provision were very similar. The primary difference between them is that the House bill included a definition of ''private banking accounts'' that originally appeared in the Levin-Grassley bill, S. 1371, while the Senate left the term undefined. The final version of Section 5318(i) includes the House definition. It has three elements. First, the account in question must require a $1 million minimum aggregate of deposits. Second, the account must be opened on behalf of living individuals with a direct or beneficial ownership interest in the account. Third, the account must be assigned to, administered, or managed in part by, a financial institution employee such as a private banker, relationship manager or account officer. The purpose of this definition is to require U.S. financial institutions to exercise due diligence when opening and operating private banking accounts with large balances controlled by wealthy foreign individuals with direct access to the financial professionals responsible for their accounts.

U.S. financial institutions with private banking accounts are required by the new Section 5318(i)(1) to establish appropriate and specific due diligence policies, procedures and controls with respect to those accounts. Section 5318(i)(3) states that, at a minimum, the due diligence policies, procedures and controls must include reasonable steps to ascertain the identity of the accountholders, including the beneficial owners; to ascertain the source of funds deposited into the account; and to monitor the account to detect and report any suspicious activity. If the account is opened for or on behalf of a senior foreign political figure or a close family member or associate of the political figure, the U.S. financial institution must use enhanced due diligence policies, procedures and controls with respect to that account, including closely monitoring the account to detect and report any transactions that may involve the proceeds of foreign corruption. The enhanced due diligence requirements for private banking accounts involving senior foreign political figures are intended to work in tandem with the guidance issued on this subject by Treasury and federal banking regulators in January 2001.

The accounts covered by the private banking definition are not confined to accounts at U.S. banks, but also cover accounts opened at other types of financial institutions, including securities firms which have developed lines of business offering similar types of accounts to wealthy foreign individuals. In addition, the section is intended to cover not only private banking accounts physically located inside the United States, but also private banking accounts that are physically located outside of the United States but managed by U.S. personnel from inside the United States. For example, the private banking investigation conducted by my Subcommittee found that it was a common practice for some U.S. private banks to open private banking accounts for foreign clients in an offshore or bank secrecy jurisdiction, but then to manage those accounts using private bankers located inside the United States. In such cases, the U.S. financial institution is required to exercise the same degree of due diligence in opening and managing those private banking accounts as it would if those accounts were physically located within the United States.

Another area of inquiry involves the $1 million threshold. Some financial institutions have asked whether the $1 million minimum would be met if an account initially held less than the required threshold, or the account's total deposits dipped below the threshold amount on one or more occasions, or the same individual held accounts both inside and outside the private bank and kept the private bank account's total deposits below the threshold amount. Such inquires are reminiscent of structuring efforts undertaken to avoid certain anti-money laundering reporting requirements. Such structuring efforts have not been found acceptable in avoiding other anti-money laundering requirements, and the language of the private banking provision is intended to preclude such maneuvering here.

The purpose of the private banking provision is to require U.S. financial institutions to exercise due diligence when opening or managing accounts with large deposits for wealthy foreign individuals who can use the services of a private banker or other employee to move funds, open offshore corporations or accounts, or engage in other financial transactions that carry money laundering risks. Because it is the intent of Congress to strengthen due diligence controls and protect the U.S. financial system to the greatest extent possible in the private banking area, the private banking definition should be interpreted in ways that will maximize the due diligence efforts of U.S. financial institutions.

Finally, the House-Senate negotiators adjusted the effective date of the due diligence provision. The new effective date gives the Treasury Secretary 180 days to issue regulations clarifying the due diligence policies, procedures and controls required under the new 31 U.S.C. 5318(i). These regulations are, again, intended to provide regulatory guidance to the range of U.S. financial institutions that will be compelled to exercise due diligence before opening a private banking or correspondent banking account. Section 312(b) states that, whether or not the Treasury Secretary meets the 180-day deadline for regulations, the due diligence requirement will go into effect no later than 270 days after the date of enactment of the legislation. That means, whether or not the Treasury Secretary issues any regulations, after 270 days, U.S. financial institutions will be legally required to establish appropriate and specific due diligence policies, procedures and controls for their private banking and correspondent accounts, including enhanced due diligence policies, procedures and controls where necessary.

In addition to due diligence and the Shell Bank provisions, my October 11 floor statement discusses several other bill provisions including those that add foreign corruption offenses to the list of crimes that can trigger a U.S. money laundering prosecution, and those that close a forfeiture loophole applicable to correspondent accounts for foreign financial institutions. I will not repeat that legislative history again, but I do want to mention one other provision that I authored to expand use of Federal receivers in money laundering and forfeiture proceedings.

The Federal receivers provision is contained in Section 317 of the final bill, and I want to make three points about it. First, this provision comes out of the work of the Permanent Subcommittee on Investigations which found that many money laundering crimes include such complex flows of money across international lines that the average prosecutor does not have the time or resources needed to chase down the money, even when that money represents savings stolen or defrauded from hundreds of crime victims in the United States. In too many money laundering cases, the crime victims will never see one dime of their lost savings. The Federal receiver provision in Section 317 is intended to provide Federal prosecutors and the Federal and State regulators working with

them the option of using a court-appointed receiver to chase down the laundered funds.

Second, the provision is intended to allow any U.S. district court to appoint a Federal receiver in a money laundering or forfeiture proceeding, whether criminal or civil, if so requested by the Federal prosecutor or Federal or State regulator associated with the proceeding. The only restriction is that the court must have jurisdiction over the defendant whose assets the receiver will be pursuing. Jurisdiction may be determined in the context of the criminal or civil proceeding before the court, including under new language in other parts of Section 317 making it clear that a district court has jurisdiction over any foreign financial institution that has a correspondent account at a U.S. financial institution; over any foreign person who has committed a money laundering offense involving a financial transaction occurring in whole or in part in the United States; and over any foreign person that has converted to their own use property that is the subject of a U.S. forfeiture order, as happened in the Swiss American Bank case described in the Subcommittee's staff report.

The third point about the Federal receiver provision is that it is intended to make it clear that Federal receivers appointed under U.S. money laundering laws may make requests and may obtain financial information from the U.S. Financial Crimes Enforcement Network in Treasury and from foreign countries as if the receiver were standing in the shoes of a federal prosecutor. This language is essential to increase the effectiveness of receivers who often have to work quickly, in foreign jurisdictions, in cooperation with foreign law enforcement and financial regulatory personnel, and who need clear statutory authority to make use of international information sharing arrangements available to assist U.S. law enforcement. The provision is intended to make it clear that the Federal receiver has the same access to international law enforcement assistance as a Federal prosecutor would if the prosecutor were personally attempting to recover the laundered funds. The language is also intended to make it clear that Federal receivers are bound by the same policies and procedures that bind all Federal prosecutors in such matters, and that Federal receivers have no authority to exceed any restrictions set by the Attorney General.

Finally, I would like to take note of two other provisions that are included in the final bill. They are Section 352 authored by Senate Banking Committee Chairman SARBANES to require all U.S. financial institutions to establish anti-money laundering programs, and Section 326 authored by House Financial Services Committee Chairman OXLEY to require all U.S. financial institutions to verify the identity of their customers. Both are strong requirements that apply to all U.S. financial institutions and, in the case of the Oxley provision, to all financial accounts. Both represent important advances in U.S. anti-money laundering laws by codifying basic anti-money laundering requirements. I commend my colleagues for enacting these basic anti-money laundering controls into law and filling in some of the gaps that have made our anti-money laundering safeguards less comprehensive than they need to be.

The clear intention of both the House and the Senate bills, and the final bill being enacted by Congress today, is to impose anti-money laundering requirements across the board that reach virtually all U.S. financial institutions. Congress has determined that broad anti-money laundering controls applicable to virtually all U.S. financial institutions are needed to seal the cracks in our financial systems that terrorists and other criminals are all too ready to exploit.

There are many other noteworthy provisions of this legislation, from requirements involving legal service of subpoenas on foreign banks with U.S. accounts, to new ways to prosecute money laundering crimes, to new arrangements to increase cooperation among U.S. financial institutions, regulators and law enforcement to stop terrorists and other criminals from gaining access to the U.S. financial system. There just is not sufficient time to go into them all.

To reiterate, the antiterrorism bill we have before us today would be very incomplete—only half of a toolbox—without a strong anti-money-laundering title to prevent foreign terrorists and other criminals from using our financial institutions against us. With the anti-money-laundering provisions in this bill, the antiterrorism bill gives our enforcement authorities a valuable set of additional tools to fight those who are attempting to terrorize this country.

Osama bin Laden has boasted that his modern new recruits know, in his words, the ''cracks'' in ''Western financial systems'' like they know the ''lines in their own hands.'' Enactment of this bill with these provisions will help seal those cracks that allow terrorists and other criminals to use our own financial systems against us.

The intention of this bill is to impose anti-money-laundering requirements across the board that reach virtually all U.S. financial institutions.

Our Permanent Subcommittee on Investigations, which I chair, spent 3 years examining the weaknesses and the problems in our banking system with respect to money laundering by foreign customers, including foreign banks. Through 6 days of hearings and 2 major reports, one of which contained case studies on 10 offshore banks, we developed S. 1371 to strengthen our anti-money-laundering laws. A strong bipartisan group of Senators joined me in pressing for its enactment, including Senators GRASSLEY, SARBANES, KYL, DEWINE, BILL NELSON, DURBIN, STABENOW, and KERRY.

The major elements of S. 1371 are part of the legislation we are now considering.

Finally, Mr. President, I want to give a few thank-yous. First, I thank Senator SARBANES, chairman of the Senate Banking Committee. He saw the significance of the money laundering issue in the fight against terrorism, and I thank him for his quick action, his bipartisan inclusive approach, and his personal dedication to producing tough, meaningful legislation. I also thank him for allowing my staff to participate fully in the negotiations to reconcile the anti-money-laundering legislation passed by the House and the Senate.

I extend my thanks and congratulations to the Senate Banking Committee and the House Financial Services Committee for a fine bipartisan product that will strengthen, modernize, and revitalize U.S. anti-money-laundering laws. Congressman OXLEY and Congressman LAFALCE jumped right into the issue, committed themselves to producing strong legislation, and did the hard work needed to produce it. The negotiations were a model of House-Senate collaboration, with bipartisan, productive discussions leading to a legislative product that is stronger than the legislation passed by either House and which is legislation in which this Congress can take pride.

I also extend my thanks to Senator DASCHLE, Senator LOTT, and Senator LEAHY for taking the actions that were essential to ensure that the anti-money-laundering title was included in the antiterrorism bill. Senator DASCHLE made it very clear that without these provisions no antiterrorism bill would be complete. Senator LEAHY took actions of all kinds to make sure that, in fact, the anti-money laundering provisions were included in the final bill.

I thank Senator GRASSLEY who joined me in this effort early on and who worked with me every step of the way win enactment of the anti-money laundering legislation into law.

Senator STABENOW I thank for her quick and decisive action during the Banking Committee's consideration of this bill. Without her critical assistance, we would not be where we are today. I also thank Senator KERRY for his consistent, strong and informed role in fashioning this landmark legislation.

Finally I want to give a few thank-yous to staff. Elise Bean of my staff first and foremost deserves all of our thanks for her heroic efforts on this legislation. She and Bob Roach of our Subcommittee staff led the Subcommittee investigations into money laundering and did very detailed work on private banking and correspondent banking that laid the groundwork for the legislation we are passing today. I want to thank them both.

I want to thank Bill Olson of Senator GRASSLEY's office for jumping in whenever needed and lending strong support to this legislative effort. Similar thanks go to John Phillips of Senator KERRY's office who was there at all hours to make sure this legislation happened.

Similar thanks go to Senator SARBANES' staff on the Senate Banking Committee—especially Steve Harris, Marty Gruenberg, Patience Singleton and Steve Kroll, who put in long hours, maintained a high degree of both competency and professionalism, and provided an open door for my staff to work with them.

I also want to thank the staff of the House Financial Services Committee—Ike Jones, Carter McDowell, Jim Clinger and Cindy Fogleman. They put in long hours, knew the subject, and were dedicated to achieving a finished product of which we could all be proud.

Our thanks also go to Laura Ayoud of the Senate Legislative Counsel's office who literally worked around the clock during the negotiations on this legislation and, through it all, kept a clear eye and a cheerful personality. Her work was essential to this product.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Before I make my statement and before Senator LEVIN leaves the floor, I wish to acknowledge the very substantial contribution that Senator LEVIN made to the money-laundering title that is in this bill, which I think is an extremely important title. In fact, you can't watch any program on television that has experts talking about what we ought to be doing with respect to this terrorism challenge when either the first or second thing they mention is to dry up the financial sources of the terrorists, and that, of course, comes right back to the money laundering.

Senator LEVIN, over a sustained period of time, in the government operations committee, held some very important hearings, issued very significant reports, and formulated a number of recommendations. This title is, in part, built on the recommendations that Senator LEVIN put forward at an earlier time. I simply acknowledge his extraordinary contribution to this issue. I acknowledge Senator KERRY as well. There were two proposals. They both had legislation in them and we used those as building blocks in formulating this title. We think it is a very strong title and that it can be a very effective tool in this war against terrorism, and against drugs, and against organized crime. It should have been done a long time ago, but it is being done now.

Before the able Senator from Michigan leaves the floor, I thank him and acknowledge his tremendous contribution.

Mr. LEVIN. Again, I thank Senator SARBANES for his great leadership, along with Senator LEAHY, which made this possible.

Mr. SARBANES. Mr. President, I rise in very strong support of this legislation—in particular, title III, the International Money Laundering Abatement and Financial Antiterrorism Act, which was included as part of the antiterrorism legislation. Of course, that bill was approved yesterday by the House of Representatives and will be approved very shortly by this body.

Title III represents the most significant anti-money-laundering legislation in many, many years—certainly since money laundering was first made a crime in 1986. The Senate Committee on Banking, Housing, and Urban Affairs, which I have the privilege of chairing, marked up and unanimously approved the key anti-money-laundering provisions on October 4. Those provisions were approved unanimously, 21–0. Those were approved as Title III of S. 1510, the Uniting and Strengthening America Act on October 11 by a vote of 96–1. H.R. 3004, the Financial Antiterrorism Act, which contained many of the same provisions and added important additional provisions, passed the House of Representatives by a vote of 412–1 on October 17.

Title III of this conference report represents a skillful melding of the two bills and is a result of the strong contribution made by House Financial Services Committee and chairman MICHAEL OXLEY and ranking member JOHN LAFALCE, working with Senator GRAMM, the ranking member of the Senate committee, and myself.

President Bush said on September 24, when he took executive branch action on the money-laundering issue:

> We have launched a strike on the financial foundation of the global terror network.

Title III of our comprehensive antiterrorism package supplies the armament for that strike on the financial foundation of the global terror network. Terrorist attacks require major investments of time, planning, training, practice, and financial resources to pay the bills. Osama bin Laden may have boasted, ''Al-Qaida includes modern, educated youth who are as aware of the cracks inside the Western financial system as they are aware of the lines in their hands,'' but with title III, we are sealing up those cracks.

Money laundering is the transmission belt that gives terrorists the resources to carry out their campaigns of carnage, but we intend, with the money-laundering title of this bill, to end that transmission belt in its ability to bring resources to the networks that enable terrorists to carry out their campaigns of violence.

I need not bring to the attention of my colleagues the fact that public support across the country for anti-money-laundering legislation is extremely strong. Jim Hoagland put it plainly in the Washington Post:

> This crisis offers Washington an opportunity to force American and international banks to clean up concealment and laundering practices they now tolerate or encourage, and which terrorism can exploit.

This legislation takes up that challenge in a balanced and forceful way.

Title III contains, among other provisions, authority to take targeted action against countries, institutions, transactions, or types of accounts the Secretary of the Treasury finds to be of primary money-laundering concern.

It also contains critical requirements of due diligence standards directed at correspondent accounts opened at U.S. banks by foreign offshore banks and banks in jurisdictions that have been found to fall significantly below international anti-money-laundering standards.

It prohibits U.S. correspondent accounts for offshore shell banks, those banks that have no physical presence or employees anywhere and that are not part of a regulated and recognized banking company.

The title also contains an important provision from the House bill that requires the issuance of regulations requiring minimum standards for verifying the identity of customers opening and maintaining accounts at U.S. financial institutions, and it very straightforwardly requires all financial institutions to establish appropriate anti-money-laundering programs.

Title III also includes several provisions to enhance the ability of the Government to share more specific information with banks, and the ability of banks to share information with one another relating to potential terrorist or money-laundering activities.

In addition, it provides important technical improvements in anti-money-laundering statutes, existing statutes, and mandates to the Department of the Treasury to act or formulate recommendations to improve our anti-money-laundering programs.

This is carefully considered legislation. While the committee moved expeditiously, its movement was based upon and reflects the efforts which have been made over a number of years on this issue.

As I indicated earlier, Senator CARL LEVIN, Senator KERRY, and in addition, Senator CHARLES GRASSLEY have led farsighted efforts to keep money-laundering issues on the front burner. Others in the Congress have also been involved with this issue over time. The House Banking Committee, under the leadership of then-Chairman JIM LEACH and ranking member JOHN LAFALCE, approved a money-laundering bill in June of 2000 by a vote of 31–1. It was very similar to the legislation introduced by Senator KERRY.

As the successor to Congressman LEACH, House Financial Services Chairman OXLEY has continued the commitment to fighting money launderers to maintain the integrity of our financial system and, now, to help ensure the safety of our citizens.

We have been guided in our work by the testimony presented to the committee on September 26. We heard from a number of expert witnesses and from the Under Secretary of the Treasury