FINANCIAL SERVICES

OVERVIEW:

Both the Subcommittee on Financial Services and Technology and the Special Committee on the Year 2000 Technology Problem examined the financial services sector during the 105th Congress. Consequently, it has been the subject of more oversight than any other industry.

The financial services industry is particularly susceptible to the Y2K problem. The industry uses computers to calculate interest and mortgage payments, process stock trades and access account information. Without reliable systems, interest could be miscalculated, stock trades could vanish, and customers could have difficulty accessing their account balances or using their credit or debit cards. Such problems, even if only temporary, could create the type of uncertainty and chaos that has been responsible for major economic downturns in the past. Therefore, it is important not only to assure that the computer systems in this industry are remediated and tested, but that financial services organizations avoid consumer panic by communicating effectively with customers and business partners.

> ***A CONSUMER LOSS OF FAITH IN EITHER THE SOUNDNESS OF THEIR INVESTMENTS OR THEIR FINANCIAL SERVICE PROVIDERS COULD THROW THE ECONOMY INTO TURMOIL EVEN WITHOUT MAJOR Y2K DISRUPTIONS***

As a result of early attention to the problem and significant regulatory and Congressional oversight, the financial services sector ranks ahead of virtually all other industries in its remediation and testing efforts.

Even in this sector, however, much additional work will be required, particularly in the areas of contingency planning, and international operations and information exchange.

MAJOR INITIATIVES

Regulatory Survey

In February and again in April 1997, both Senators Bennett and D'Amato cosigned letters to each of the six federal financial institution regulatory agencies asking that they provide information about the Y2K readiness of their own computer systems as well as those in the industry sectors under their supervision. The responses raised serious questions about Year 2000 readiness in the financial services sector and the Chairman decided to use the hearing process to investigate further.

Hearings

<u>July 10, 1997: HEARING ON FINANCIAL SERVICES AND THE YEAR 2000 PROBLEM</u>

In the first hearing, the Subcommittee solicited testimony from a variety of individuals experienced in working with the Y2K issue. The issues raised in this first hearing would reemerge consistently throughout the following hearings.

Highlights:

- Large banks started their Y2K preparations well in advance of other industry sectors. However, interdependency, industry consolidation, external vendor reliance and a greater proportion of mission-critical systems makes the financial services industry particularly susceptible to Y2K problems.

- The panel endorsed direct and immediate federal and regulatory action. The Bank Administration Institute was given as an example of how industry groups could positively support the Y2K effort. As one panelist stated, the Year 2000 has the potential of falling prey to the tragedy of the commons—it is everyone's problem, therefore few are willing to take responsibility for it.

- Businesses have a special responsibility to inform the public of their Y2K preparedness. Loss of faith by consumers in either the soundness of their investments or their financial service providers could throw the economy into turmoil even without major Y2K disruptions.

- The "silver bullet" that defeats the Y2K problem is not technology, but solid project management. This includes engaging in triage to identify mission-critical systems and contingency planning, especially in smaller institutions or those bodies that have yet to initiate Y2K remediation. Time for a complete Y2K fix is rapidly diminishing.

THE "SILVER BULLET" THAT DEFEATS THE Y2K PROBLEM IS NOT TECHNOLOGY, BUT SOLID PROJECT MANAGEMENT.

Although the hearing on U.S. Financial Institutions and Federal Regulatory Agencies Management of the Year 2000 Computer Problem had already been scheduled for July 30, the July 10 hearing affirmed the Subcommittee's conclusion that regulators would play a critical role in Y2K preparedness.

<u>JULY 30, 1997: HEARING ON U.S. FINANCIAL INSTITUTIONS, AND FEDERAL REGULATORY AGENCIES MANAGEMENT OF THE YEAR 2000 COMPUTER PROBLEM</u>

As a result of the letters sent by Senators D'Amato and Bennett in February and April of 1997, the heads of the six financial institution regulatory agencies were prepared to address the concerns of the Subcommittee. While the Office of Thrift Supervision (OTS) claimed it could trace Y2K concerns back to thrift examinations in 1994 and the Governors of the Federal Reserve Board (FRB) pointed to the consolidation of the FRB mainframe 5 years ago as the beginning of the FRB's Y2K awareness, most agencies started to actively engage the Y2K issue in June 1996 in response to a Federal Financial Institutions Examination Council statement. This statement "strongly encouraged depository institutions to complete an inventory of core computer functions and to set priorities for compliance changes, keeping in mind that testing should be underway for mission-critical systems by December 31, 1998." Almost a year later, in May 1997, FFIEC issued a second statement which provided some guidance for banks and examiners on Y2K project management. Another, more detailed guidance statement was issued in December 1997.

INFORMATION NOT APPROPRIATELY DISTRIBUTED TO THE PUBLIC IN A TIMELY MANNER WILL INCREASE THE LIKELIHOOD OF PANIC.

Highlights:

- While examination information is confidential by law, the Subcommittee asked the regulators to consider ways in which they could disclose Y2K preparedness levels to the public. As a whole, the regulators' opinion fell to the side of maintaining the status quo. Defining Y2K as a safety and soundness issue, regulators argued that the examination results should remain confidential in accordance with current law. Financial institutions that fail to comply with Year 2000 regulatory guidelines will be subject to formal enforcement actions which, in contrast to examination reports, the regulators are required to publish by law. The Committee warned that information held by regulators, and not appropriately distributed to the public promptly, would increase the likelihood of panic.

- The securities industry also defended its current disclosure laws, while suggesting that individual consumers and investors would most influence disclosure. Arthur Levitt, Jr. of the Securities and Exchange Commission (SEC) claimed that current laws in place were "sufficient at this time to cover reporting obligations concerning any material impact of the Year 2000 on operations or costs." Moreover, "market forces are such that there is no regulatory action that would be as severe as the reaction of the marketplace."

- Senators Bennett and Dodd presented the idea of "safe harbor" legislation that would encourage institutions to focus on fixing the Y2K problem by offering some protection from Y2K liability for companies that demonstrate Y2K due diligence. The panel was reluctant to comment on an unwritten bill, but generally indicated that self-interest should be sufficient encouragement to address Y2K problems.

While commending the agencies' excellent Y2K efforts, the senators requested regular progress reports, especially to address certain weaknesses identified in the hearing. Two such areas were the under-preparedness of small institutions and international institutions. Senator Dodd also took the occasion to disagree with the SEC's view on disclosure, stating, "by the time the market reacts…we may have a problem on our hands."

OCTOBER 22, 1997: HEARING ON THE YEAR 2000 LIABILATY AND DISCLOSURE

Continuing the debate on liability and disclosure that started in the previous hearing, the October 22 hearing sought the perspective of a different set of witnesses: two lawyers intimately involved in Y2K, the president of Information Technology Association of America whose constituents may have significant Y2K liability exposure, and a professional investment analyst. The Chairman considered the need to protect companies from excessive Y2K-related litigation, balanced with a concern that public companies did not adequately disclose their Y2K efforts. The Director of the Division of Corporate Finance for the SEC was asked to respond to this last criticism, especially in light of Senate Bill 1518, which would require specific Y2K disclosure for public companies.

Highlights:

- Corporations could face liability risks from a range of sources at an aggregate cost of $1 trillion. The degree to which protection from litigation may be needed or warranted is unclear. Suggestions included prohibiting punitive damage awards in Y2K-related cases amending the Copyright Act to allow businesses to adapt software without acquiring licenses, and adapting a safe harbor law which would provide some liability protection upon the businesses' good faith pursuit and implementation of a Year 2000 remediation plan.

- It was reported that institutions are severely constrained from sharing Y2K-related information and possible solutions due to liability concerns. "They [businesses] are very concerned about leaving a smoking gun in the file where they may be seen as instructing another party as to what it takes to interface with their systems and, falling short, they may have missed something." (President of LaBoeuf Computing Technologies, Inc.)

- Banks and insurance agencies can pressure businesses to address Y2K issues by factoring Y2K preparedness into applications for credit or insurance coverage. Banks have started to consider Y2K risk in credit applications, but have not yet discovered a solution for Y2K exposure in their loan portfolios. Due to a soft market, Property and Casualty insurers have been much slower to factor Y2K into insurance coverage. However, reinsurers are excluding Year 2000 liability in their reinsurance treaties.

- The SEC reiterated its position that current guidelines are

> sufficient to compel Y2K disclosure, while acknowledging the need for further awareness. According to the SEC representative, "[t]here appears to be a problem in the sense that we aren't getting as many disclosures as we would expect…there is a concern that companies may not understand that this is another issue that's impacted by the federal securities laws."

The Chairman finished the hearing by informing the Subcommittee of the results of a GAO report assessing the National Credit Union Association (NCUA). The report, requested just after the previous hearing, indicated that the NCUA was not as far along in its assessment of Year 2000 compliance as the Office of Management and Budget and GAO guidelines recommended. He encouraged the NCUA to accelerate its Y2K activities, and warned the other regulatory agencies that GAO would visit them soon.

NOVEMBER 4, 1997: HEARING ON MANDATING YEAR 2000 DISCLOSURE BY PUBLICLY TRADED COMPANIES

The fourth hearing of the Subcommittee featured the testimony of Edward Yardeni, Chief Economist at Deutsch Morgan Grenfell. The hearing was one of many steps taken to pressure public companies to provide greater Y2K disclosure. Yardeni, who gave an estimated 40% chance of a worldwide recession in 2000 lasting at least 12 months, felt very strongly that a new, comprehensive disclosure law was necessary. In his testimony he stated, "The current disclosure system simply will not provide policy-makers with the information they need as soon as possible to anticipate and to prepare for plausible worst-case scenarios."

FEBRUARY 10, 1998: HEARING ON FDIC'S YEAR 2000 PREPAREDNESS

The fifth hearing of the Subcommittee provided a public forum for examining the results of GAO's assessment of the Federal Deposit Insurance Corporation's Y2K efforts. While the report noted that the FDIC had made significant strides in its Year 2000 project, it still lagged behind OMB and GAO guidelines. The FDIC acknowledged its shortcomings and provided the Subcommittee with details regarding its ongoing and future Y2K efforts. The Subcommittee discussed the idea of a "drop dead" (i.e., shutdown) date for noncompliant institutions and the need to provide customers with meaningful disclosure on their banks' Y2K readiness.

FEBRUARY 17, 1998: FIELD HEARING IMPLICATIONS OF THE YEAR 2000 COMPUTER PROBLEM

Senator Dodd chaired the sixth hearing in Hartford, Connecticut to illustrate the breadth and pervasiveness of the Y2K problem. Seven witnesses described their Y2K programs and the implications for their customers in a variety of areas, including banking, insurance, medical facilities and airway transportation. Participants reaffirmed the interdependent nature of business and encouraged consumers to ask their product and service providers about their Y2K efforts.

<u>MARCH 18, 1998: HEARING ON OFFICE OF THRIFT SUPERVISION YEAR 2000 PREPAREDNESS</u>

The Subcommittee heard a positive report from GAO on OTS's Y2K efforts, with particular praise directed at OTS's internal systems work. The OTS was criticized for not having completed its contingency plans, and ignoring the interrelationships between its internal systems. However, the OTS had improved on NCUA's and FDIC's initial member assessments, and therefore had a better base from which to determine its regulated entities' preparedness levels. At the time, OTS estimated less than 22% of its regulated entities "needed improvement" and around 1% were "unsatisfactory" in their Y2K efforts.

During the course of the hearing the Chairman asked whether the FFIEC had become a bottleneck for information. Although the OTS representative hesitated to agree, she did mention that the OTS would issue its own testing guidance in the following weeks, and contingency planning guidance toward the end of April.

<u>JUNE 10, 1998: HEARING ON DISCLOSING YEAR 2000 READINESS</u>

THE SEC AND OTHER EXPERT WITNESSES AGREED THAT WHILE THE QUANTITY OF DISCLOSURES IMPROVED, THE QUALITY DID NOT.

On June 10, 1998, Chairman Bennett called the SEC back to the witness table to report on the progress of its efforts to improve Y2K disclosure among publicly traded corporations. After the introduction of Senate Bill 1518, the Computer Remediation and Shareholder (CRASH) Protection Act, the SEC requested the opportunity to address the problem of disclosure on its own, without additional legislation. In the months that followed, the SEC attempted to improve the quality of disclosure by educating publicly traded companies about their obligations under existing law. Unfortunately, the SEC's efforts were only moderately successful. The SEC and other expert witnesses agreed that while the quantity of disclosure improved, the quality did not.

Highlights:

- The SEC reiterated its commitment to improving Year 2000 disclosure. It promised to heighten its efforts by releasing specific guidance on Y2K disclosure. This interpretive release "may form the basis of enforcement action regarding their Year 2000 issues," and "will remedy the apparent misconception that costs relating to fixing Year 2000 problems must be disclosed only if these costs are material. It will clarify that companies must determine materiality based on the potential consequences of their failure to resolve their Year 2000 readiness."

- Supporting the need for better disclosure, Triaxsys Research provided the Subcommittee with statistics from a survey of the largest 250 publicly held companies. As of April 17, 1998, nearly half of these companies disclosed no information, or so little information that it was impossible to glean anything meaningful about their Y2K progress. Another witness observed that the Y2K disclosure of many institutions looked as if lawyers had heavily edited them. "Clearly, corporations have violated the SEC guideline requiring specifics rather than boilerplates."

> ***CLEARLY, CORPORATIONS HAVE VIOLATED THE SEC GUIDELINES REQUIRING SPECIFICS RATHER THAN BOILER-PLATES.***

- The Subcommittee discussed the possibility of changing the incentive structure so that companies would be biased toward the disclosure of information. Disincentives, such as the use of disclosed information against a company in litigation, abound. Tying limits on Y2K liability and litigation to disclosure of information and efforts to fix a company's problem may be one way to neutralize the disincentives to disclose.

Although not directly within the scope of the Subcommittee's jurisdiction, the hearing finished with a debate on the pros and cons of providing liability protection to corporate boards and senior management. The Chairman requested that the participating legal experts avail themselves to Senator Kyl, who is the Chairman of the Judiciary Subcommittee on Technology, Terrorism, and Government Information for further discussion.

<u>JULY 6, 1998: FIELD HEARING IN ASSESSING THE YEAR 2000 PREPAREDNESS OF FOREIGN COUNTRIES AND DETERMINING JUST WHERE AND HOW THE UNITED STATES MAY BE VULNERABLE</u>

In this hearing, representatives from the U.S. financial services arena confirmed that international preparedness poses a real, but unquantified, risk to U.S. companies. Witnesses could point to such international efforts as the Joint Year 2000 Council (sponsored jointly through the Basle Committee, the G-10 Central Bank Governors' Committee on Payment and Settlement Systems, the International Association of Insurance Supervisors, and the International Organization of Securities Commissions), but little tangible information was available. The few pieces that were available were disheartening. Quoting a Moody's investment report, one witness noted that 49 Japanese banks planned to spend $249 million as a group on Y2K compliance. This amount is only a fraction of Citicorp's planned $600 million program.

<u>SEPTEMBER 17, 1998: HEARING ON Y2K AND PENSIONS AND MUTUAL FUNDS</u>

Since pension and mutual funds are the primary vehicle through which Americans invest in the stock market, the Committee held a hearing on fund managers' efforts to address the Year 2000 problem. The attending pension and mutual fund company representatives reported that their internal systems were well on their way to compliance. They also indicated that they were not impressed with disclosure efforts made by public companies. However, several witnesses conceded that many analysts as well as fund managers had just started to include Y2K risk in their evaluation of stocks. Additionally, they emphasized that their position required an equal evaluation of all risk. Chairman Bennett countered that the Committee had no intention of asking analysts to change their evaluation of other risks. Instead, the Chairman warned that the failure to inform stockholders of Y2K risks would result in significant long-term risks. The Committee wanted to preserve confidence in the market by ensuring that analysts recognized Y2K as an important risk.

Legislation

In the 105th Congress, Chairman Bennett introduced the following three pieces of legislation to further the goals of Year 2000 readiness in the financial services industry. Detailed summaries of the bills are found in the Legislation section of this report.

S. 1518, the Year 2000 Computer Remediation and Shareholder (CRASH) Protection Act of 1997, was introduced on November 10, 1997.

S. 1671, the Examination Parity and Year 2000 Readiness for Financial Institutions Act, was introduced on February 24, 1998.

S. 2000, was introduced on April 29, 1998.

Regulatory Briefings

At the second Subcommittee hearing on July 30, 1997, Chairman Bennett asked the six federal financial institution regulatory agencies to report back to the Subcommittee on a regular basis on the progress of Year 2000 remediation in their own operations and in the industry sectors they supervise. Since that time, the Subcommittee has worked with the House Banking Committee to establish a regular schedule of quarterly briefings. Each quarter, the regulatory agencies file written reports with the Subcommittee on their progress and meet with Congressional staff to respond to questions raised by the reports.

General Accounting Office Studies

In August 1997, Chairman Bennett asked GAO to conduct an independent review of the Year 2000 remediation efforts at each of the six financial institution regulatory agencies. GAO has concluded several of those reviews and has reported back to the Chairman. The results of those reviews are incorporated, as appropriate, in the "Assessment" section of this report, as well as in the hearings where the GAO reported its findings.

Correspondence and Industry Outreach

Chairman Bennett maintains regular contact with government officials and industry representatives involved in the Year 2000 remediation and risk management processes. These contacts include both formal speeches and informal meetings. He has written op-ed pieces for the New York Times, involved himself heavily in the Annual Conference on Financial Services and Technology in Utah, spoken with CEOs of top technology firms at the Comdex convention, and addressed the National Press Club, among other activities.

Subcommittee and Special Committee staffs meet regularly with industry representatives to continually assess progress in the sector.

ASSESSMENTS

Financial Institutions and Their Regulatory Agencies

Based on GAO reports and constant contact with industry representatives, the Committee feels comfortable with progress that regulators have made in remediating and testing their internal systems. However, regulators must continue to push themselves to meet the OMB's March 1999 implementation date for their mission-critical systems.

OF THE INSTITUTIONS EVALUATED UNDER THAT SYSTEM, APPROXIMATELY 95% RECEIVED SATISFACTORY RATINGS. FEWER THAN 1% OF INSTITUTIONS RECEIVED AN UNSATISFACTORY RATING

Very few institutions should fail due to lack of Y2K planning. On-site examinations performed by four of the regulators (FRB, FDIC, Office of the Comptroller of the Currency and OTS) resulted in approximately 95% of institutions surveyed receiving satisfactory ratings. Less than 1% of institutions surveyed received an unsatisfactory rating.

Smaller institutions are more likely to lag in their preparations. NCUA, which regulates a disproportionate amount of smaller institutions, reports a slightly larger percentage of unsatisfactory institutions.

The Committee is pleased that the regulators are considering the needs of consumers in their Y2K preparations. Besides an FFIEC release on Year 2000 customer awareness programs, the FRB has planned to increase the amount of currency either in circulation or in Federal Reserve vaults by approximately 14% over current levels by the end of 1999. This inflow of currency will permit financial institutions to provide the extra cash customers may demand during the century rollover.

Financial institutions have started to evaluate the Year 2000 preparedness of their material customers and include Year 2000 preparedness in their underwriting and loan review standards. This process is just beginning, however, and there are no reports of customers being rejected for loans or of loans being downgraded as a result of Year 2000 questions. The Committee will encourage the industry to pursue this analysis in the coming year.

The regulators need to develop plans for when and how they will deal with those institutions likely to experience significant failures after the millennium date change. On encouragement from the Chairman, formal enforcement actions have been taken where appropriate. In the case of the Putnam-Greene Financial Corporation, the FDIC and FRB issued coordinated cease-and-desist orders citing inadequate Y2K preparations. Continued monitoring is imperative.

The Securities Industry

The securities industry has led the financial services sector in its Year 2000 remediation efforts.

The securities industry scheduled industry-wide testing in 1999, but in July 1998, the Securities Industry Association (SIA) conducted a rehearsal or so-called "beta test." In testimony before the Special Committee on September 17, 1998, Don Kittell of the SIA reported that 28 securities firms participated in the test, along with 13 exchanges and selected utilities. The results of the testing were generally positive and the firms were able to process a complete cycle of trades over a simulated millennium date change. The Committee remains positive about these tests, although expanded testing is necessary to ensure that more firms are Y2K ready.

The SEC has made a commendable effort to promote Year 2000 preparedness within the securities industry and keep investors informed. SEC initiatives include:

- A frequently asked question sheet on the SEC's web site containing a list of frequently asked Y2K questions for investors.

- Numerous statements to publicly traded companies, broker-dealers, and investment advisers to promote disclosure of Year 2000 information. (Available at *www.sec.gov.)*

As a result of an early and vigorous start, the securities industry is well positioned for the Year 2000.

Failures

The reality of information technology is that glitches can occur without user discovery until well after the fact. A case in point is the recent failure of a data collection company for the financial services industry. Portions of the firm's database were processed using the old MS-DOS operating system. This was not Y2K compliant. When January 1999 rolled around the system assumed "9" meant end of file, a common programmer protocol for older systems. Fund managers receiving this data encountered an array of N/As sprinkled throughout the data tables that list financial metrics such as cumulative return rates, 12-month yields and price-to-book ratios. In fact these were indications that January 1999 data were not included. The benchmark S&P 500 index was incorrect. Some customers were not notified about the problem until three weeks later. If financial decisions were made based on imprecise data, then potential negative consequences could have resulted. This example is an indication of the kind of problems that can befall the financial industry where seemingly trivial mistakes can have undesirable consequences.

Retirement and Mutual Funds

Retirement and mutual funds, though regulated by separate entities (the Pension and Welfare Benefits Administration (PWBA) and the SEC, respectively), face similar Y2K problems. Testimony before the Special Committee revealed that both groups have focused more on preparing their own internal systems than evaluating their external exposure.

> ***IN THIRD QUARTER RESULTS TABULATED BY THE SEC, 10% OF 15,000 COMPANIES FAILED TO DISCLOSE THEIR YEAR 2000 COSTS.***

Some pension and mutual fund plans have undertaken comprehensive Y2K-specific surveys of the companies in which they invest. However, many others have been slow to incorporate Y2K exposure into their evaluation of investments.

The Committee recognizes that regulators have not been silent on the Y2K issue for pension and mutual fund providers. Initiatives include the following:

- PWBA published a pamphlet entitled, "Fiduciary Questions and Answers about the Year 2000." (Available at 1-800-998-7542 or *www.dol.gov/dol/pwba*.)

- The SEC has worked with the Investment Company Institute (ICI) to monitor progress. An ICI survey revealed that 80% of responding mutual fund companies expected to finish internal remediation by year end 1998.

However, considerably more effort is necessary to convince investment advisers from both groups that portfolios should be examined for Y2K risk, and that Y2K risk should be disclosed to underlying investors.

An investment in a company that may not be Year 2000 compliant could be detrimental to plan participants and consequently expose the plan fiduciary to liability. Therefore, the Special Committee has urged all pension plans to evaluate their investments.

Publicly Traded Corporations

The Committee is disappointed to report that despite substantial improvement in the number of public companies now mentioning Y2K in their SEC disclosures, very few companies have provided the type of meaningful disclosure necessary to assess the potential impact of Y2K on their business.

Having studied the problem, the Committee agrees with economist Edward Yardeni, who testified that the Year 2000 problem would have a material impact on companies that do not make adequate Y2K preparations.

While data suggests that many U.S. companies, especially large corporations, are working diligently to address their Y2K issues, companies appear to be avoiding Y2K disclosure by taking the position that either 1) Y2K will not have a material impact on them, 2) it is too early to assess the possible impact of Y2K failures, 3) such disclosure would reveal proprietary information and/or place them at a disadvantage against competitors, or 4) their counsel had advised them to share as little information as possible while still complying with the letter of the law.

Whether the situation will improve in the remaining reporting periods remains unclear. Failing to address Y2K exposure could have a disastrous effect on a company, and further pressure may be needed to ensure that public companies disclose that risk to investors.

CONCERNS

International

Financial services firms in the United States are linked closely to their counterparts in other parts of the world through electronic transactions. U.S. firms operating around the world also must rely on telecommunications and power services in foreign countries in order to transact business. As a result, even if U.S. financial services firms have converted their own systems successfully, they still face enormous international risk. Experts testifying before the Subcommittee and Special Committee consistently have stressed that while there is much uncertainty about Year 2000 readiness around the world, one fact is clear — most foreign countries lag behind the U.S. in their conversion activities.

Senator Bennett has urged financial services firms and their regulators to assess the Year 2000 situation of the countries in which they operate and to develop contingency plans to mitigate the effects of failure in those jurisdictions. The Special Committee also has asked the GAO to assess the Year 2000 situation abroad. That study is ongoing at this time.

Contingency Planning

With their remediation efforts on track, financial services companies must now address the more complex issue of contingency planning. Firms have been slow to address this issue as a result of competing priorities and the lack of meaningful information about the Year 2000 readiness of outside companies and other sectors. Nevertheless, financial services firms and their regulators must plan for how they will maintain their operations if unexpected failures occur. Financial services firms are particularly vulnerable to power or telecommunications failures as well as to the risk that a material customer or business partner will fail, as a result of the computer problems, to meet its obligations. The Special Committee plans to question financial services firms about their contingency planning efforts in 1999.

Disclosure

Promoting meaningful disclosure of companies' Year 2000 readiness has been the cornerstone of Senator Bennett's efforts. Without meaningful disclosure, it is impossible for firms to properly assess their own risks and develop necessary contingency plans. Disclosure is also important in the context of congressional oversight. The Special Committee will continue to promote this important goal in 1999.

Cost

According to disclosure reports filed by financial services firms in recent months, the costs of Year 2000 compliance are rising. Most companies have found that while the cost of remediation has flattened out, the costs of contingency planning exceed their estimates. Based on these results, it is possible that the cost of remediation could have a negative impact on earnings in the financial services sector. Depressed earnings in the financial services sector could adversely impact the U.S. economy.

Third Party Relationships

While financial services companies lead many other industries in the conversion and testing of their own systems, they are just beginning to assess and manage the risks attributable to third party relationships. Financial institutions must assess the Year 2000 readiness of their material customers in order to avoid suffering major loan losses. Mutual funds and pension funds must consider the readiness of their portfolio companies in order to guard against unnecessary and foreseeable losses and shield themselves from the liability associated with those losses. The process of examining the Year 2000 preparedness of third parties has been hindered somewhat by the lack of substantive disclosure. The SEC's Interpretive Ruling and the passage of the Information Readiness and Disclosure Act should make the information necessary for such an analysis more available.

Security

Financial service providers have shipped massive quantities of code to overseas correcting facilities. In the process, core legacy systems have been mapped and documented. This brings some real benefit to institutions that may have otherwise been ignorant of the inner workings of their own systems. Unfortunately, it also provides the opportunity for unscrupulous individuals to learn about the inner workings of corporations' security systems.

Additionally, the Committee is concerned about the potential for code tampering during the remediation process. A British computer society claims that some code returned from overseas processing already has been found to contain "trap doors," or secret electronic entry points into a computer system. Trap doors could be implanted by programmers during Y2K remediation and then accessed at a later date, once the unsuspecting company is running on its new, "cleaned" data.