Remarks by
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The Consumer Federation of America has been serving consumers with such distinction for so long that it's easy to overlook the importance of your contribution to effective government. Over the past fifteen years, CFA's annual financial services conference has provided an opportunity for regulators like myself not only to share our thinking with the hundreds of organizations and millions of members who operate under the CFA umbrella, but to hear first hand about your concerns.

So I'm particularly grateful for the invitation to be with you today to talk about the place of the consumer in the ongoing financial services revolution. As your program notes, the changes underway in banking and its sister industries hold both opportunities <u>and</u> challenges for Americans. In my remarks this afternoon, I'd like to focus on some of the major issues that face consumers of financial services -- and those who supervise and regulate financial institutions -- here on the threshold of the 21st century.

The biggest story of this year in financial services is undoubtedly the Gramm-Leach-Bliley Act, which President Clinton signed into law on November 12. The new Act caps many years of effort to bring our financial laws into harmony with changes already underway in the marketplace. It dismantles the barriers that restricted the ability of financial providers to offer a full range of products and services, and it reverses the policy of market segmentation that had been in effect for more than six decades. The Act is truly a historic measure.

Obviously, this was a bill that had broad support from the financial services industry. Many who speak for consumer interests, on the other hand, were much less enthusiastic. Some longstanding consumer concerns -- for example, about basic banking services -- were not addressed in the bill at all, and I know that other concerns -- especially in the privacy arena - were not addressed to your complete satisfaction -- or mine.

While we might have drafted some portions of the Act differently if we had our way, I think it's important that we evaluate the bill in its totality. This was an enormously complex piece of legislation, which spurred controversy on almost every page. An exceedingly large number of interest groups and private parties lobbied the bill hard for several years. Enactment of this legislation required compromise and concessions on virtually everyone's part. So we need to ask not whether our specific legislative aims were realized with respect to each and every issue, but rather whether, on balance, the new law advances fundamental public interests at acceptable cost. And I fully appreciate that some -- perhaps many -- of you would answer that question in the negative.

Now that the smoke has cleared somewhat, it's time to step back and look at the Act objectively as a whole and ask what's in it for consumers. How is the law likely to affect average Americans and their relationship with financial institutions? Most importantly, does it advance their fundamental interests? I believe that it does. And I'd like to spend some time with you today explaining why.

We began with the premise that as consumers and taxpayers, all of us have an important stake in a safe, sound, and competitive banking system. The ability of a single financial organization to offer a full range of products and services strengthens banks by diversifying income streams and reducing their dependence on potentially volatile net interest income. Healthy bank balance sheets help to assure that resources will be available in the coming years for individuals and communities to grow and prosper.

But just as important, the elimination of governmentally imposed barriers to competition should increase convenience and choice, and reduce the costs of financial services for consumers and businesses. That's been the effect whenever such market restrictions have been relaxed or removed. For example, when governmentally imposed caps on the interest financial institutions were permitted to pay on deposits were removed twenty years ago, consumers were able to secure market rates of interest on their insured savings. And when fixed commissions were done away with in our securities markets, customers reaped significant benefits from the competitive marketplace that developed.

Based upon prior experience with deregulatory measures, the Treasury Department has estimated that increased competition under the provisions of the Gramm-Leach-Bliley Act could reduce the cost of financial services by as much as five percent. Considering that American families spend over $350 billion a year on fees and commissions for brokerage, insurance, and banking services, the potential savings could be in excess of $18 billion a year. And that's just for households. American businesses pay about the same amount in fees and charges for financial services, and could expect comparable savings.

As financial institutions begin to take advantage of the provisions of the Act, it will be particularly important that they listen more closely to consumers. One of the advantages of a more competitive marketplace should be that the voices of customers are better heard by providers seeking to capture market share. This does not mean that all consumer objections will result in changes in bank policies. But it does mean that the service that banks provide should improve as customers more vigorously exercise their right to choose their suppliers of financial services in a fully competitive environment. The quality of customer service should be every bit as important to a provider as the quality of their product. I have spoken out, as Julie Williams did before me when she was Acting Comptroller, about the importance of customer service -- not just for customers themselves, but for the bank's reputation as a service provider and, ultimately, for its soundness as a financial institution.

In case there was any doubt about the importance of this issue, recent months have seen several major banks penalized by the market for poor customer service. These banks not only fell out of favor with their customers -- many of whom are now someone else's customers -- but they also suffered criticism from the investment community. It's a lesson that's not been lost on the rest of the industry. I know of a number of financial firms that have taken steps to improve customer service in order to avoid similar problems. And I'm confident that others will follow as financial institutions enter the new, even more competitive era.

Let me now turn to the question of customer privacy. I think it's instructive to remember that it was scarcely eighteen months ago that Acting Comptroller Julie Williams broke what was then new ground, delivering what may have been the first speech ever by a bank regulator on the subject. This spring, I spoke about some questionable practices that were being engaged in by banks linked with telemarketers, and those remarks reverberated on the floor of the House of Representatives a few days later, as the privacy amendment to the financial modernization bill was being considered. Just as Julie predicted, privacy has been transformed from an afterthought into a major concern for financial institutions and regulators, as well as for consumers. I'm proud of the leadership that the OCC has provided on this important issue.

I come to the privacy issue with almost four decades of experience in dealing with banks and bank regulation. In my view, vindicating customers' expectations that their banks will hold in confidence the information that customers entrust to them is a critically important foundation stone of our banking system. Bank customers not only provide information about their wealth and resources, and their sources of income and spending patterns, but about such other matters as their insurance coverage, family relationships, retirement plans, and even their health. They expect this information to be held in confidence. They expect their transactions to be processed neutrally and nonjudgmentally by their banks. They do not expect their banks to serve as the eyes and ears of government surveillance, nor do they expect their banks to use their confidential information for the banks' own profit-making purposes -- at least not without their consent. If these expectations are not met, the consequences for the relationships between banks and their customers -- and therefore for the health of the banking system -- could be grave.

To be sure, for the new Act's objectives to be fully realized -- that is, for competition to work effectively in reducing costs -- financial institutions must be free to market the full range of their products to their existing customers, and to take advantage of the new synergies and efficiencies. By the same token, a great many consumers will appreciate the benefits of one-stop shopping. No longer will they have to go to multiple sources for the variety of investment and financial products they desire -- each source perhaps having a vested interest in pushing the product or service it is limited to offering.

On the other hand, I wonder whether customers will feel comfortable getting unsolicited calls from brokers affiliated with banks saying, "I see you've got some large balances in your bank accounts. Let me tell you about some hot stocks I can put you into." Or from a bank-related insurance agent saying, "I see from your recent loan application that you don't have much life insurance. I'd like to come talk to you about an insurance program."

Maybe some customers <u>will</u> appreciate this attention to their needs. Others, however, might find it a very troubling invasion of their privacy that their banks are feeding sensitive information to sellers of nonbanking products.

Gramm-Leach-Bliley sparked a vigorous debate over the extent to which customers should be given control over the use of their confidential financial information. And while the final legislation enacted groundbreaking protections, it did not, in my opinion, go far enough. In particular, the Act adopted different rules with respect to information sharing arrangements among affiliates, on the one hand, and non-affiliates, on the other. Customers were given new rights to veto the use of their information with non-affiliates, but not with affiliates. This distinction was drawn in the face of strong opposition by the financial industry to allowing an “opt out” for affiliate sharing. The industry’s argument was that to allow customers to prevent banks from sharing confidential customer information with their affiliates would destroy the synergies and efficiencies that would be made possible by the new law.

I don’t accept this argument, and I think it is shortsighted of the industry. Respecting a customer’s desire for privacy and realizing the benefits of the new law are <u>not</u> mutually exclusive. Moreover, I don’t believe that customers who want their information protected will draw any distinction between affiliates and non-affiliates. Dinner hour calls from telemarketers are just as annoying coming from either, and if customers want to opt out of non-affiliate sharing, they are likely to want the same rights with respect to affiliate sharing.

Furthermore, it should not be assumed that customers will automatically opt out. If banks and other financial firms really have something to offer customers, they should be able to convince them not to opt out -- that information sharing is really in their interest, if that is in fact the case. There’s a certain patronizing quality in the argument that we shouldn’t allow customers to opt out because we really know what’s best for them. Indeed, I think banks should be explicitly competing with one another as to the quality of the privacy protections they offer.

Finally, sharing confidential customer information with affiliates is not by any means essential for financial services organizations to cross-market their products. It is simply an exaggeration to suggest that the purposes of the Act will be frustrated if banks can’t override customer objections to the use of such information for cross-marketing.

Encouragingly, there’s growing evidence that the privacy provisions of the bill will not be the final word on the subject. The President has already expressed his belief that Congress should revisit the subject next year. Judging by their early pronouncements, financial companies seem increasingly aware of the need to meet and exceed the Act’s privacy standards if stiffer legislation is to be avoided. The realization that privacy has become a key competitive factor-- that consumers will choose to do business where they feel their confidentiality is best protected -- does seem to be sinking in.

Whether or not industry self-regulation will prove effective in this regard is an open question. Frankly, history does not make me terribly optimistic. But let me assure you that we will be watching carefully to assure that consumers are afforded all of the protections the law provides.

You should know that the Act enhanced our authority in that regard. It enables us to craft regulations to enforce the new provisions that prohibit financial institutions from disclosing “nonpublic personal information” to nonaffiliated third parties without notice to consumers and without allowing them to opt out. It also gave us the authority to assure that customers are given full and fair notice before such information can be shared with affiliates. And it eliminated restrictions on our ability to examine national banks for compliance with the provisions of the Fair Credit Reporting Act. We intend to use that authority wherever appropriate.

In essence, the debate over privacy centers on the value of information in the marketplace. The fact is that consumers of financial services -- no less than the providers of those services -- depend on the free and full exchange of information to make the most rational economic choices.

Consumers must have information to make wise choices in today's complex financial world. That's why we warmly support counseling and financial literacy efforts. These efforts are of enormous importance for our country's least affluent consumers, for they are the consumers who are the most likely to fall victim to abusive lending practices.

On the subject of what is sometimes called "predatory" lending, let me state that while our existing laws may not reach all of the practices that many would consider abusive, the OCC will enforce existing law rigorously. National banks should not generate their earnings by preying on the disadvantaged, and we will heighten our supervisory scrutiny whenever we suspect such activity is taking place.

But I think it's important to recognize that this is a problem that defies a simple solution. For one thing, some of the lending practices that CFA and other consumer groups have raised objections to -- such as "payday" lending -- are activities that the law authorizes banks and other lenders to conduct. While we can require that the very limited number of national banks that engage in payday lending do so in strict accordance with applicable disclosure and other consumer protection laws, existing laws give them authority to make such loans.

There's another dimension to this issue as well. While some see such loans as a snare that hopelessly entangles marginal borrowers, others see them as providing a source of credit where no others exist. This difference of views raises an issue of social policy that is particularly appropriate for legislative consideration -- and particularly difficult for bank regulators to resolve.

You would not want me to leave here today -- and might not let me out the door -- if I didn't close with a few words about an issue that has been much in the headlines lately. That's the question raised by local bans on ATM surcharges. The movement to ban these fees has obvious appeal, but I believe it is a case of good intentions gone awry. I believe that if these ordinances spread, they will ultimately hurt the very same consumers they were intended to help.

Bank fees of all kinds have been a source of rising consumer irritation in recent years. Fees and charges constitute the third most common kind of complaint filed with the OCC's customer assistance group so far this year. And I'm sure that what our customer assistance representatives see and hear is just the tip of the iceberg. Most consumers simply grit their teeth and pay up. And they join the ranks of Americans who view bankers as adversaries.

That's why it's important for the banking industry to better explain why such fees are necessary and proper -- to justify them in the court of public opinion. The fact is that, since the surcharge ban was lifted three years ago, the banking industry has invested more than four billion dollars in new ATMs, and the deployment of ATMs has skyrocketed. Banks will understandably place ATMs first at locations at which they can expect high volumes of customer usage. But competitive pressures -- and the profit motive -- should lead them constantly to seek out new locations in less heavily trafficked areas. The prospect of being able to charge fees to those noncustomers whose convenience would be served by the deployment of ATMs in more marginal areas is an obvious incentive for banks to reach out to less well served markets.

I know that some of you have strong differences of view on this question. Perhaps the best we can do is to agree to disagree. Quite apart from the merits of the economic argument, however, the issue of Federal preemption of such local laws is an important one for us. Whatever one might think about the merits of such measures, we continue to believe that such laws cannot constitutionally be applied to prevent national banks from charging a fee for a service that they are clearly authorized by Federal law to provide.

We should move beyond the impassioned rhetoric of the moment on the ATM controversy and focus instead on educating our citizens to become more knowledgeable financial consumers. Indeed, when ATM surcharges started to become more common, consumers learned very fast how to seek out terminals at which no charges were imposed. Consumer education is an area where CFA and related organizations have always excelled -- and where we're counting on you to continue making important contributions in the months ahead.

CFA recently announced a national campaign to build savings and wealth, particularly among low income households. We see wealth building as the key to successful community revitalization -- and to the continued growth of our national economy. I'm proud to say that the OCC will be a partner in your campaign.

Banks have traditionally played an important role in encouraging thrift and mobilizing financial assets. We will encourage national banks to reaffirm that tradition through participation in CFA's wealth building campaign. Promoting savings and economic security are interests all Americans share. I personally look forward to working with CFA and its member organizations to achieve these and other common goals in the years ahead.