has been held off by fierce opposition of insurers and HMOs who simply fear the same competition they must daily face in the large business group health insurance market. The Association Health Plan provisions are an important and positive answer to the problems challenging the private health insurance market. Millions of the uninsured are hoping that AHPs will become law as a part of the Patient Protection Act of 1988.

I would now like to explain in more detail the rules governing association health plans included under Title I, Subtitle D, the Small Business Affordable Health Coverage Act of 1998.

In effect, the proposal implements a current law provision, which the Administration has failed to invoke, allowing legitimate association health plans (AHPs) to be treated under ERISA preemption in a manner similar to single employer health plans. Only ERISA ''group health plans''—sponsored by legitimate associations, franchise networks, church plans, etc. are eligible to voluntarily apply for certification.

Association must be bona-fide. An association sponsor must demonstrate that it is established as a permanent entity with substantial purposes other than sponsoring an AHP, has the active support of its members, and collects dues from its members without conditioning such on the basis of the health status or claims experience of plan participants or on the basis of the member's participation in a group health plan.

AHPs will expand choice of coverage. To be certified, AHPs must allow plan participants to choose at least one option of fully-insured ''health insurance coverage'' offered by a health insurance issuer and may also offer non-fully-insured options—such as those found under the plans of large employers like CBS, Inc, the New York Times, the Washington Post Co., Gannett, Dow Jones Co., etc.—only if the plan meets strict solvency provisions.

AHPs will expand portability. Employees would be more likely to have true portability of coverage, since employees and the self-employed tend to stay in the same occupation or industry.

AHPs improve affordability. AHPs can better reach small businesses and the uninsured with more affordable and accessible health benefit options by removing regulatory barriers—plans are freed from costly state mandated benefits and given flexibility to offer coverage that employees want and employers can afford, including uniform benefits across state lines; plans can achieve administrative economies-of-scale and join with coalitions of other ERISA plans to negotiate more cost-effective and high quality services from providers and insurers; costs of coverage can be allocated to employers in a nondiscriminatory manner based on plan experience (an employer cannot be singled out for higher contributions just because they are in a particular type of business or have higher claims experience); in general, AHPs are nonprofit entities that can deliver more benefits for the contribution dollar by also improving cash flow and earning investment income on reserves.

AHPs are subject to consumer protections. AHPs are subject to strict sponsor eligibility, nondiscrimination, fiduciary, financial, reporting, disclosure, solvency and plan termination standards. Also, AHPs are already subject to the portability, preexisting condition, nondiscrimination, special enrollment, and renewability rules added to ERISA under HIPAA. AHPs offering options that are not fully-insured are subject to actuarial reporting, reserve, mandatory stop-loss insurance and mandatory solvency indemnification standards to ensure participants against loss of promised benefits. The standards are enforced by the states with a federal backup.

AHPs offer guaranteed coverage. AHPs must offer coverage to all employer and self-employed members and cannot condition coverage on the basis of employee health status, claims experience, or the risk of the employer's business. AHP sponsors must be established for at least 3 years for substantial purposes other than offering health insurance.

Subtitle D stops insurance fraud. The Department of Labor Inspector General testified that the enforcement provisions will help stop health insurance fraud perpetrated by ''bogus unions'' and other illegitimate operators by making legitimate association plans accountable and adding new civil and criminal tools to end fraudulent schemes.

Under Subtitle D, bona-fide Association Health Plans offering benefit options that do not consist solely of fully-insured health insurance coverage (i.e. self-insured options are available) will be subject to strict new solvency protections as follows.

An AHP must remain a qualified actuary on behalf of plan participants.

AHPs must maintain cash reserves sufficient for unearned contributions, benefit liabilities incurred but not yet satisfied and for which risk of loss has not been transferred, expected administrative costs, any other obligations and a margin for error recommended by the plan's qualified actuary. The reserves must be invested prudently and be liquid.

In addition to the cash reserves, AHPs must maintain capital surplus in an amount at least equal to $2,000,000 reduced in accordance with a scale, to not less than $500,000, based on the level of aggregate and specific stop loss insurance coverage provided under the plan.

AHPs must secure coverage from an insurer consisting of aggregate stop-loss insurance with an attachment point not greater than 125% of expected gross annual claims and specific stop-loss insurance with an attachment point of up to $200,000 as recommended by the qualified actuary.

AHPs must also obtain non-cancelable and guaranteed renewable indemnification insurance. To prevent insolvency, the indemnification insurance would pay for any claims that a plan is unable to satisfy by reason of a termination of the plan.

To ensure that the indemnification insurance will always be available to pay all unpaid claims upon plan termination, AHPs are required to make annual payments to an AHP Account which would be used only in the unlikely event that a terminating plan is in need of funds to avoid a lapse of the required indemnification insurance. These solvency protections apply to AHPs in every state, whereas the solvency guaranty fund protection for fully-insured options by HMOs and Blue-Cross/Blue-Shield organizations are only available in six states and 25 states respectively.

To ensure that the solvency standards are uniform, negotiated rulemaking is used to receive the advice of the National Association of Insurance Commissioners, the American Academy of Actuaries, and other interested parties.

States would enforce the AHP solvency and other standards with a federal backup if the state of domicile of an AHP does not choose to enforce such standards. States will have more authority to put an end of health insurance fraud. If an entity cannot show that it is either licensed by the state or is certified as an APH, then the state can shut down the entity. To the extent the entity flees a state's border, the Department of Labor is directed to assist the state to shut the entity down through new ''cease and desist'' authority. Illegal entities become subject to criminal penalties if they try to hide their operations.

IN TRIBUTE

SPEECH OF

HON. CHARLES H. TAYLOR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 28, 1998

Mr. TAYLOR of North Carolina. Mr. Speaker, it's said that tragedy can bring us together and result in stronger bonds than existed before. The tragic deaths of Officers Chestnut and Gibson have brought a most heartfelt expression of the appreciate we all have for the heroic efforts of not just Officers Chestnut and Gibson, but all of our law enforcement officers throughout the nation.

Sue Stover Gaither, a volunteer chaplain with the Asheville, North Carolina Police Department was asked to sing at the Department's Annual Awards Banquet. Sue asked her brother, Jim to write a song meaningful 'just for them.' Sue made a special effort through my office to share a recording of ''Heroes in Blue,'' with the Chestnut and Gibson families; noting in her letter to the families, that while the title of the song is ''Heroes in Blue,'' it was written and is performed in appreciation of all law enforcement officers, no matter what color their uniform or department in which they serve.

Mr. Speaker, I am proud to share the lyrics of ''Heroes in Blue,'' by Jim Stover.

HEROES IN BLUE

To the footsoldier faithfully pounding the beat
The one in the blue and one cruising the street
Laying your life on the line, protecting mine
There's always somebody who's breaking the rules
Thugs in the alley and drugs in the schools
In a war that never ends, you hold the line

Chorus: To every hero dressed in blue
Thank you all for everything you do
Each and everyday you risk your lives
And that makes you a hero in my eyes

And when we fail to acknowledge the good deeds you do
It may be that many are known to only a few
You keep the faith, you fight the fight
You teach the kids that right is right
Into the dark, you bring some light
Footsoldiers pounding, blue and whites cruising
Good guys are winning, bad guys are losing
Almighty God is on your side!

Chorus: To every hero dressed in blue
Thank you all for everything you do
Each and everyday you risk your lives
And that makes you a hero . . .

Each and everyday you risk your lives
And that makes you a hero
And that makes you a hero
And that makes you a hero in my eyes!

REGULATION OF DERIVATIVE PRODUCTS

HON. JAMES A. LEACH
OF IOWA
IN THE HOUSE OF REPRESENTATIVES

Friday, July 31, 1998

Mr. LEACH. Mr. Speaker, in the past fortnight, the Banking Committee has held two hearings on the regulation of over-the-counter markets in derivative and hybrid instruments. Bankers and businessmen, farmers and fund managers use these esoteric financial products, whose value derives from an underlying asset like a government bond or the income stream from a loan, to mitigate risk from changes in commodity prices or interest rates. Few Americans have ever come into contact with one of these instruments, but every American with a pension fund or money in a bank has been affected by them.

I scheduled the hearings in response to an unusual circumstance: three of the four government agencies which have responsibility for overseeing the derivatives market place—the Federal Reserve Board, the Treasury Department, the Securities and Exchange Commission—have come to the conclusion that the other principal regulator, the Commodity Future Trading Commission, has embarked on a regulatory path at odds with the U.S. national interest.

The Fed's, Treasury's and the SEC's concerns about a rogue regulator were touched off by a long and detailed request for public comment on OTC derivatives trading practices issued in May by the Commodity Futures Trading Commission. OTC derivatives have some characteristics of futures—like futures, they are used to manage risk—but the Congress has never defined them as such and, in 1992, directed the CFTC to exempt them from the Commodity Exchange Act, which the CFTC administers. Although the CFTC stated in its release that its questionnaire was merely a fact-finding exercise, to everyone else it had the potential of radically changing the existing laws and regulations with the unsettling prospect that existing contracts could be invalidated. To the market place, the CFTC inquiry had all the tell-tale signs of precipitating a regulatory regime that would cause a market currently dominated by American firms and under American law to go off shore.

The current laws and regulations that govern the trading on our futures exchanges and over-the-counter markets are a tissue of ambiguities and exceptions—a veritable elysian field for lawyers. It is not an exaggeration to say a unilateral CFTC change in the definition of a swap, which was clearly contemplated in its public comment request, could invalidate thousands of similar contracts held by banks and other financial institutions and businesses here and abroad, worth billions of dollars. Such a stroke would jolt the world's financial system and force our financial institutions to take this innovative and profitable business to a foreign location, whether it be London, Tokyo or the Caribbean.

For better or worse, the word ''paradigm'' has in recent years become one of Washington's most fashionable expressions. At the risk of contributing to its overuse, it would appear that the interagency dispute that has been revealed is reflective of two separate but overlapping paradigms, one stemming from perspectives grounded in a career in law, the other from careers rooted in finance and economics.

Chairman Born's paradigm, which involves a legalistic reading of the Commodity Exchange Act, has certain merit in the abstract. But in the real world of trading, a world shaped by history and legislative intent, world not frozen in footnotes, the economic paradigm should be considered the dominant one. Indeed, the extraordinarily original analysis Chairman Greenspan provided the Banking Committee last week amounts to an essay that should be required reading for every college economics student.

The Greenspan paradigm will not be found in any legal tome because it captures a dynamic and fast-evolving situation, whereas the legalistic Born paradigm, by its very nature, must look backward for precedent.

In brief, Chairman Greenspan argued that, as currently implemented, the Commodity Exchange Act was not an appropriate framework for professional trading of financial futures. The CEA, he noted, was enacted in 1936 primarily to curb price manipulation in grain markets and its objectives haven't changed since then. As a consequence, we are applying today crop-futures regulation to instruments for which it is wholly inappropriate. The Greenspan view is that the financial derivatives markets are encumbered with a regulatory structure devised for a wholly different economic process, a structure that impedes the efficiency of the market system and slows down improvement in living standards.

This is rich food for thought for Congress. The interagency regulatory Donnybrook is unseemly, generating market tension and uncertainty. It shows that our system may need a fix. If a single regulator can roil markets with an institutionally self-serving and whimsical reading of the law, it is time to have a good look not only at the statutes but at who enforces them.

The ''who'' and the ''what'' of regulation in this area must be revisited, with an understanding that it is more important for regulation to be adapted to markets than for markets to be hamstrung by regulation. A balance involving legal certitude, especially of contracts, must be established. This balance must be flexible enough to accommodate innovation, but also legally firm when it comes to issues like fraud.

Chairman Born's July 24 letter to Chairman Smith in which she states ''the Commodity Futures Trading Commission . . . will not propose or issue'' OTC derivative regulations until the Congress convenes in January 1999 momentarily muted the crisis. But, in effect, her offer isn't much of a concession. It is far short of the agreement Chairman Smith believed he had reached—and so said in a press release: ''the CFTC will not pursue regulation of over-the-counter (OTC) derivatives until Congress has the opportunity to act during CFTC reauthorization in 1999.''

It is my view that it would be preferable to resolve this dispute without legislation and, accordingly, I chaired two informal meetings with the regulators to attempt to reach an non-legislated solution. But given the impasse, I introduced H.R. 4062, which provides a standstill on new regulation until the CFTC reauthorization is done. Work on this bill has been temporarily suspended to give everyone time for another effort at compromise. But if the Agricultural Committees don't address the issue, the bill remains on the table for consideration yet this year.

Meanwhile, I am asking the Secretary of the Treasury, in his capacity of chairman of the President's Working Group on Financial Markets, to undertake a study of our regulations and regulators. The industry, academic experts, and other interested parties, including users of derivative products, should be given a prominent voice in the study. The Treasury Secretary should provide the Group's findings and suggestions to the appropriate committees in the House and Senate by February 1, 1999, so that the Congress can get an early start on rebuilding our market supervision system. Nothing less than the primacy of the U.S. financial industry in the world is at stake—along with the safety and soundness of our banks and protection of their customers.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999

SPEECH OF

HON. EDWARD J. MARKEY
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 29, 1998

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4194) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes:

Mr. MARKEY. Mr. Speaker, I rise in strong support of the motion to recommit offered by the gentleman from Wisconsin [Mr. OBEY].

Under the version of the bill reported out of the Appropriations Committee, a legislative rider was attached which would prevent the CPSC from adopting a rule regarding flammability standards for upholstered furniture until an outside panel was convened to examine the toxicity of fire retardants that would be used to treat such furniture. Currently the CPSC is considering a flammability standard for upholstered furniture. They are doing so pursuant to a petition from the National Association of State Fire Marshals, who asked the CPSC more than four years ago to develop a mandatory safety standard for upholstered furniture to address the risk of fires started from open flames—such as lighters, matches, and candles. The Fire Marshals called for such a rule because the U.S. has one of the highest fire death rates in the world. Nearly 4,000 people died in 1995 because of fires that started in their homes, of which nearly 1,000 were children under the age of 15.

Over the last four years the CPSC has been going through the process of taking public comments, conducting laboratory tests, and evaluating all the technical and economic issues relating to adoption of a safety standard in this area, including requirements relating to use of flame resistant chemicals to treat