United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156 WASHINGTON, WEDNESDAY, JULY 14, 2010 No. 104

Senate

The Senate met at 10 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, by Your providence, You gave us a nation conceived in liberty and dedicated to equal justice for all.

Today, infuse our lawmakers with this spirit of liberty and justice so that their labors will reflect Your purposes and plans. May their knowledge of your providential purposes keep them from detours that lead away from abundant living. May their small successes prompt them to attempt larger undertakings for human betterment. As they seek to do Your will, bless them with the awareness of the constancy of Your presence. Lord, guide them by Your higher wisdom and keep their hearts at peace with You.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 14, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will proceed to a period of morning business until noon. Senators will be allowed to speak for 10 minutes each during that period. The majority will control the first 30 minutes and Republicans will control the next 30 minutes.

We are working hard to come to agreement on amendments dealing with the small business jobs bill. I had a conversation with the Republican leader last night. We are hopeful we can reach agreement to move forward on that legislation today. We have to have consent to move off Wall Street reform, but I think that will not be a problem.

As a reminder, yesterday I filed cloture on the conference report to accompany H.R. 4173. That cloture vote will occur sometime tomorrow morning. I will work with the Republican leader to come up with a time that is convenient to both sides.

MEASURE PLACED ON THE CALENDAR—H.R. 5618

Mr. REID. I understand H.R. 5618 is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (H.R. 5618) to continue Federal unemployment programs.

Mr. REID. I object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

SMALL BUSINESS JOBS BILL

Mr. MCCONNELL. Mr. President, my friend the majority leader mentioned the small business jobs bill. I recently had an opportunity to talk to Senator SNOWE, who is the author of that legislation. I assured her we are anxious to move forward. I appreciate his bringing up the discussion we have been having about reaching a consent agreement that would allow us to expedite the bill. I know my friend from Nevada shares my view that small business is an area that needs attention. We are going to continue to try to come to agreement to move forward with that very important piece of legislation which I support and I believe most Members of my conference do as well.

Mr. REID. Mr. President, as I have said before, this legislation is bipartisan. Most of the bill has been crafted in the past when Senator SNOWE was chairman of the Small Business Committee. I am glad to hear my friend Senator SNOWE has had a conversation with the Republican leader. That is good news. We will see what we can do to move on. I hope everyone realizes that jobs in America are not created in large numbers by big companies; it is small businesses.

In the past few months, we passed a relatively small piece of legislation, but it has been extremely helpful to be with the Wood family and all those who mourn his death and celebrate his life and his accomplishments. We will remember Specialist Wood when recalling the Nation's warriors who gave their lives so we might live in peace. Their names are etched on the conscience of this Nation.

I offer my prayers to all those serving in uniform today and especially those serving in peril overseas. May God bless them and their families and see them through these difficult times.

Mr. President, I yield the floor.

I note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business, and I ask I be given as much time as needed. I promise not to abuse that, but it may go slightly beyond the 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Illinois is recognized.

FINANCIAL REGULATORY REFORM

Mr. DURBIN. Mr. President, probably tomorrow morning, we will consider this conference report, which is historic in its impact on America. It is the conference report of the Banking Committees of the House and Senate, which were charged with the responsibility to reform the financial laws in America, to make certain that our country never faces again what we faced a short time ago under President Bush.

We can remember that at the end of the President's term, when the economy started to go into a tailspin. I remember it very well because there was a special meeting called in October of 2008 of the leaders of the House and Senate—Democratic and Republican—to meet with the Chairman of the Federal Reserve, Ben Bernanke, and the Treasury Secretary, Mr. Paulson, to discuss a matter of great urgency. Those types of meetings are rare around here, and everyone was a little nervous as we entered the room that is a few feet away from the Senate Chamber.

These two leaders of our economy came forward and told us that we were facing the collapse of major businesses in America. Specifically, they pointed to the collapse of AIG. It was an insurance company—the largest in our country. Unfortunately, they had engaged in some practices where it had promised as an insurance policy that it would back up commercial transactions. If they fail, AIG, the insurance company, would come in and make the parties whole.

They overextended themselves. In so doing, as these commercial transactions started to fail, AIG did not have sufficient reserves to meet their promises. There was a fear that if they started this cascading effect of failures and the inability of AIG to keep its promise, it would result in a panic in our economy and a decline, which would have been even more precipitous than what we had imagined.

It was at this meeting that Ben Bernanke of the Federal Reserve said they were going to provide significant resources to AIG to help them weather this crisis. It came as a surprise to many of us in the room, unaware of the fact that the Federal Reserve had both the resources and the legal authority to do that. It is an authority that had not been exercised, to my knowledge, since it was first created almost 80 years ago.

That was the first meeting. It was an indication of a terrible, rocky, rough road ahead for America and ultimately for the world. Subsequent meetings were even more alarming, as we were told by Secretary of the Treasury Hank Paulson that unless we came up with $800 billion in what was known as the TARP fund, which would be used to basically bail out the largest financial institutions in America, America's economy and the global economy could collapse. I have been involved in public life for a number of years. That is the type of conversation you never forget. Many of us were at a loss to argue the other side of the case that the problem was not that large or that the response did not have to be that significant or that the strategy and tactics were not the right ones. This was really uncharted water. We relied on our economic leaders from the Federal Reserve and from the Department of the Treasury to suggest what we needed to do to go forward.

This rescue operation had some real value, I believe, in slowing down the decline in our economy. But just a few weeks after that, the election of the new President, Barack Obama, really gave to him and the new administration economic challenges which no previous administration had ever faced. When the President came to office, in the month he was sworn in, almost 750,000 were losing their jobs. In the span of the next 60 and 90 days, the numbers grew. The President walked into a terrible situation, with the economy still in decline, with the TARP program President Bush had started in process but not completed, with unemployment reaching modern-day record levels, and with no end in sight. He inherited the biggest deficit in the history of the United States from President Bush. What a contrast to what President Bush inherited 8 years before.

Yesterday, when President Obama named Jack Lew as the new head of the Office of Management and Budget, he said Jack, who is an extraordinarily talented public servant, is fit for the Hall of Fame. I am sure Jack Lew, a modest man, would dispute that. The record speaks for itself.

In his former capacity as Budget Director under President Clinton, Jack Lew, in January of 2001, left President George W. Bush a surplus in the Federal Treasury of $236 billion. That is an amazing legacy, to end 8 years of President Clinton's administration with a surplus in the Federal Treasury, the deficit coming down, Social Security getting stronger, and to hand it off to President Bush. At that moment in time, the accumulated debt of the United States of America from the time of George Washington until the end of the Clinton Presidency was approximately $5 trillion. Eight years later when President George W. Bush left office, the accumulated debt of America had grown from $5 trillion to $12 trillion—more than doubled in an 8-year period of time. Instead of leaving to President Obama a surplus, as President Bush had inherited from President Clinton, he left him a $1.3 trillion deficit. President Bush's administration, which was dedicated to balancing the budget and conservative fiscal policy, more than doubled the national debt that had been accumulated by America in its entire history, and instead of leaving a surplus for incoming President Obama, left him a gaping hole in the budget.

In that context, we have many challenges, but one of the challenges is to make sure we never, ever again experience what happened with these terrible decisions being made on Wall Street and the virtual collapse or decline of the American economy, which led us into our deficit situation, to the business losses across America, and record levels of unemployment.

President Obama challenged us to come forward with Wall Street reform, change the way we do business on Wall Street so we never have to go through this again. Let's not have a repeat of this economic disaster. I commend Chairman Chris Dodd and Chairman Barney Frank for the extraordinary effort they put into this conference report.

More than 2 years after Bear Stearns failed, more than 18 months since Wall Street brought America to the brink of another depression, more than a year after President Obama provided his outline for strong financial reform, finally Wall Street reform is coming. After 8 million Americans—actually, more than 8 million Americans—have lost their jobs; after more than 1.2 million Americans have lost their homes; after the American average household has lost 20 percent of its accumulated wealth and savings, finally Wall Street reform will help prevent such a crisis from ever occurring again.

As we began this debate in the Senate several months ago, we were faced with a series of challenges and questions:

Should we give America's consumers the strongest consumer protections in our history or should we allow Wall Street to continue to do business as usual, complete with the fine print, the tricks and the traps, and the shadowy markets we have today in America?

Should we empower consumers to make informed choices for themselves and their own economic future when it comes to mortgages, credit cards, and student loans by forcing banks and credit card companies to offer clear terms in plain English or should we allow Wall Street and the predatory lenders to continue to skirt the law, knowing there is no cop on the beat to enforce it?

Should we force the Wall Street banks to make their big gambling bets on commodities and everything else they can dream up out in the open, on fully transparent exchanges, or should we allow Wall Street to continue running a multitrillion-dollar shadow casino, one nobody can monitor, one that allowed AIG to nearly cripple the entire financial system?

Should we protect the taxpayers so they never again are faced with bailing out the biggest banks in America? And—let me add insult to injury—after we put all our hard-earned tax dollars into bailing out the big banks, they showed their gratitude by giving bonuses, multimillion-dollar bonuses, to one another. Should we change that? That was one of the questions facing us when we debated this legislation.

This conference report has the right answers to those questions. The Dodd-Frank Wall Street Reform and Consumer Protection Act accomplishes two basic goals: It substantially reduces the risk that financial markets will cause the economy to implode again, and it empowers consumers and small businesses to make better financial choices.

To reduce the risk of another financial crisis, this bill strengthens three traditional layers of oversight of financial institutions:

First, the bill improves basic bank governance so institutions are run more carefully and more prudently. Executive pay and banking is going to be tied more closely to long-term gains rather than massive risk-taking, short-term thinking, and mortgages and other loans will have to be underwritten much more carefully.

Second, the bill helps creditors and investors spot problems more easily at banks that continue to be run poorly. That imposes an extra layer of discipline when bank boards fall asleep at the wheel. Credit rating agencies and the SEC will provide much better information to investors in both the debt and equity markets than investors have today. I might add, as chairman of the subcommittee which funds both the Securities and Exchange Commission and the Commodity Futures Trading Commission, we are dramatically increasing the resources for each of those watchdog agencies to make sure they can implement the new powers given them by this law.

Third, the bill strengthens the regulatory structure that oversees the financial industries. That will help us identify and address failures at these institutions that are not properly managed either by bank leadership or by pressure from the debt and equity markets. A new Financial Stability Oversight Council will require regulators to work together more closely to minimize systemic risks. A new resolution authority will give regulators tools they lacked when Lehman Brothers was in meltdown. And risky derivatives will be brought out of the shadows and into transparent clearinghouses and exchanges so that the transactions can be seen rather than hidden from public scrutiny.

That is all very important, but outside Washington and New York, many American families and small businesses are basically going to ask: That is all well and good, Senator. What is in it for us?

The Dodd-Frank conference report will bring basic accountability and fairness to consumers and small businesses across the Nation.

First, a new Bureau of Consumer Financial Protection will protect consumers of financial products from the worst forms of abusive lending.

One of the benefits of this job is we get to meet some of the most impressive people in America. One of those persons is a woman named Elizabeth Warren. She is a law school professor at Harvard. Several years ago, Professor Warren came and spoke to us at one of these weekend getaways we have to try to think beyond the pressing business of today in longer terms. She said what we need in this country is an agency that helps consumers have enough information so they can make the right choices for themselves when they are making financial decisions.

I went up to her after her remarks, and I said: Professor Warren, I want to introduce that bill. Will you help me write it?

And she did. I introduced the earliest legislation on this issue. My version of it has been included in this bill but changed. I think they have improved substantially on the original bill I offered, but credit should be given where it is due. Professor Warren inspired me to write my bill and I know inspired many on the conference committee to follow through and pass this legislation.

Lenders will have to compete for business based on good loans rather than competing to dream up clever tricks in order to drain as many dollars as possible out of borrowers' pockets.

Finally, there is going to be a cop on the beat with this consumer financial protection agency to ensure that mortgage brokers, private student lenders, payday lenders, banks, and credit unions provide consumers with complete information so families can make good financial choices. I cannot tell you how much the banking lobbyists hate this provision. They came to my office and said: This is the worst idea possible, to have an agency that is going to watch the documents we put in front of our borrowers to make sure they do not include deceptive language, tricks, and traps that could literally cost a person, a family, the money they have saved. Fortunately, we overcame that lobby and included this consumer financial protection agency as part of the act. Finally, there is going to be a single voice in Washington, DC, with the mission of helping consumers make the right decisions for themselves.

Second, small businesses and merchants will receive relief from one of their largest expenses over which they currently have no control—debit card interchange fees. For most people, they never heard of it. But ask a restaurant, a business, a grocery store in Iowa, in Illinois, or in New Mexico what is the biggest pain in the neck they are running into, and they will tell you that on the short list is the money they have to pay to Visa and MasterCard and other credit card and debit card companies every time a customer uses a card. You don't think about it, do you, that when you hand over that credit or debit card to pay for your restaurant bill, not only do you have an obligation to pay what you have just charged but the restaurant is going to end up paying a percentage of your bill to the card company.

It turns out that small businesses and merchants across America have literally no strength, no power, no voice in determining these interchange fees. We are becoming more and more a plastic culture. Our young pages here in the Senate—and I think of my own children—many of them don't carry much cash around any more. They have little plastic debit cards and credit cards which they use when they become of age and are eligible for them. More than half the transactions in America now are done in plastic. As more of these transactions take place, the merchants and businesses which honor the cards find that the interchange fees charged by the credit card companies are virtually uncontrollable, until this bill.

For years, Visa and MasterCard, and their big bank backers, have unilaterally fixed prices on the fees small businesses pay every time they accept a debit card from a customer. The two giant card networks control 80 percent of the debit card market—that is Visa and MasterCard. And it is no surprise that debit interchange fees have risen, even as the price of processing the transaction has fallen. They can impose these prices and say to the local businessperson: Take it or leave it. Small businesses in Illinois and throughout the country have pleaded over and over again with these card network giants: Give us some way to reduce these costs so that we can reach profitability, hire more people, and prosper as a business and pass on savings to consumers.

The conference report that we have before us will require the Federal Reserve to ensure that Visa, MasterCard, and their big bank allies can only charge debit interchange fees that are reasonable and proportional to the cost of processing each transaction. It also prevents Visa and MasterCard from engaging in certain specific anticompetitive practices. I might add, the Department of Justice's antitrust section has confirmed publicly, at a meeting before the Senate Judiciary Committee a little over a month ago, that Visa and MasterCard are currently under investigation. Finally, Visa, MasterCard, and the Wall Street banks will face some check against their unbridled market power in the credit and debit industries.

Finally, small businesses and merchants are going to have relief that will lead to real savings, profitability, and reduced cost for consumers. The Dodd-Frank Wall Street Reform and Consumer Protection Act is a landmark bill, including the most sweeping reforms to Wall Street since the New Deal.

Let me tell you the political reality. In the Senate, there are 41 Republican Senators. The bill I have described should be a bill supported by both sides of the aisle. We will be fortunate to have four or five Republicans step up and join us to pass this bill. The overwhelming majority of Republicans will oppose this bill and side with the banking industry.

One of the Republican leaders in the House, JOHN BOEHNER of Ohio, said we were using with this bill a nuclear weapon to kill an ant. I don't think anybody in America believes the recession we are facing today, with 8 million unemployed and 1.2 million losing their homes, is an ant. It is devastating to the millions of Americans who are unemployed and those who are losing their homes. I think this response is a measured, thoughtful, good response to deal with it.

Why don't we have the support of more Republicans? Why won't they step up with us and make this bipartisan? Four or five of them will have the courage to do it, and I tip my hat to them. I am glad they are joining us. This should be a bipartisan effort. But the others need to explain why they do not want us to move forward with financial regulatory reform. They have to explain why they wanted to stand for the status quo, leave the laws as written, and run the risk of another recession in another day, leading to millions of people losing their jobs and businesses failing. They do not have an answer for that. Their vote against this will be good news to the banking industry, the special interest groups, such as credit card companies, but it certainly doesn't face the responsibility we all have to deal with the economic crisis facing this Nation.

On behalf of the taxpayers in Illinois and throughout the country, who never again want to bail out big banks, I wholeheartedly support this bill's passage. On behalf of consumers and small businesses in Illinois and throughout the country, who want the power to make wise financial choices, I wholeheartedly support this bill. I am going to urge my colleagues to vote yes on this conference report so that President Obama can sign this bill into law.

Finally, reform will have to come to Wall Street.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Iowa.

EXTENSION OF UNEMPLOYMENT COMPENSATION

Mr. HARKIN. Mr. President, I want to thank my friend and our majority whip, Senator DURBIN, for laying out, I think in very stark and honest and open terms, what we are facing in this country today. I wish to pick up on that and to carry it a little further in talking about the number of people who are unemployed, what is happening to people across America today who can't find work, while the Congress sits here immobilized, unable to pass an extension of unemployment insurance benefits.

It is unconscionable what is happening to so many people in America, through no fault of their own—people who are at the end of the line. They are looking to us, asking us to do something. Yet the Congress sits here immobilized, unable to act. We are unable to act because a small minority here in the Senate on the Republican side refuses to let us move ahead with an extension of unemployment insurance benefits. If we could ever have a vote—if we could get a vote on it—we would get over 50 votes. A majority would vote for the extension. But once again, under the rules of the Senate, a minority of the Senate gets to decide what we vote on.

I wonder how many students in government classes that are being taught in high school today, even in college, are being taught that the majority does not govern in the Senate. I wonder how many understand that in our democratic form of government, 41 Senators decide what we vote on—41. Not 51 but 41 Senators decide what legislation comes before this body.

You can go back to the Framers of our Constitution and read all they wrote in our Federalist Papers—what Madison said and others—and they all warned against the tyranny of the minority. That is why they set up a system of majority rule. I think it was Madison who referred to the aspect as perhaps a small junta being able to control legislation if we did not have a majority vote. Well, we have turned that on its head. Because today, a minority—41 Senators—decides what we vote on. Please explain that in terms of our democratic principles to kids who are taking government classes throughout America today.

Go to other countries, where we are trying to get them to establish democratic forms of government, and tell them: Oh, it is okay to have a minority decide what you vote on. They have to scratch their heads and say: What are you talking about? We need a majority. Yet here in our own country, a minority rules in the Senate.

I know a lot of polls show that people are angry and they are mad at Congress. I can understand that. If I had been out of work for 99 weeks and I had a family to feed and house payments to make and all of a sudden my unemployment insurance benefits ended, I would be pretty mad at Congress too. I think what the Republicans are counting on is that this fall they will be so mad they will vote against whoever is running Congress, and that is the Democrats, obviously. That is what they are counting on; that people will vote because they are mad, they are angry, and they will vote the Democrats out. Yet it is the Republicans, a minority, who are keeping us from voting on extending unemployment insurance benefits.

I don't care what my friends on the other side of the aisle think. The American people will know. People are not stupid. The voters of this country are pretty smart. Oh, you might fool them for a little bit. As Abraham Lincoln said: You can fool them for a little bit, but not all the time. And pretty soon they will catch on. They will catch on that the Congress is not acting because a small minority of the Senate will not let us act.

A group of business economists recently released their economic outlook and they said that we are on track for recovery. They gave a large share of the credit to the Recovery Act that we passed last year, of course without one single Republican vote. I think the recovery bill prevented a catastrophe. But, quite frankly, the economy is still in the doldrums. Sales of new homes plummeted last month to 33 percent, the lowest level in 40 years.

According to the Federal Reserve, U.S. companies—get this—private U.S. companies are now hoarding an all-time high sum of $1.84 trillion in cash. Companies in America are holding $1.84 trillion in cash. They are unwilling to invest, to hire, or to expand. So again, it is a very fragile recovery that could dip back into even another big recession.

We had the Great Depression in the 1930s. In the 1990s, as a result of the profligate spending and the huge tax cuts for the wealthy under the Bush administration and the Republicans who controlled Congress—as the Senator from Illinois pointed out—President Obama was left with a deficit of $1.3 trillion. When President Clinton left office, there was a budget surplus of about close to $300 billion. Because of all that, we have had the great recession of the 2000s—2007, 2008, 2009, and now 2010.

A lot of figures are thrown around about how many are unemployed. The official unemployment is 9.5 percent

Last year, we were looking at the Medicare trust fund running out of money in about 8 years. That is untenable. With the changes we have made in the health care reform legislation, I think we pretty much doubled that life to maybe closer to 15 or 20 years, but we still have a problem. With all the money that is defrauded from Medicare, we want to recover as much of it as we can and put it back into the program.

But in any event, the pilot program—which started in three States and expanded to five States—this year we are expanding it to all 50 States.

There is also a provision in the recently enacted health care law—it is called the Patient Protection and Affordable Care Act, it is the health care reform legislation adopted earlier this year—but there is a provision that says to the folks who run health care at the Department of Health and Human Services that they have to expand this program, this cost recovery program, to include Medicare Advantage, to include the Medicare prescription drug program, and also to include Medicaid. As money is recovered from fraud and overpayments and missed payments in Medicaid, that money will be split between the States and the Federal Government.

The sooner the full program is up and operating, the sooner we can recover even more money—I think probably billions of dollars—in additional overpayments.

There is an added benefit to an expansion of recovery auditing. The Recovery Audit Contracting pilot program has identified dozens of vulnerabilities in the Medicare payment system that can lead to additional waste and fraud.

According to the Centers for Medicare and Medicaid Services—that is the entity that oversees Medicare and Medicaid—the contractors hired to recoup overpayments identified ongoing vulnerabilities that could lead to future overpayments totaling about a third of a billion dollars more. So not only did the contractors recover about $1 billion in overpayments in the 3-year pilot program, they also identified additional problems in the systems they looked at, which, if we will address them, will reduce and avoid errors in the future.

Tomorrow—what is today, Wednesday?—tomorrow, Thursday—I think tomorrow afternoon—the Subcommittee on Federal Financial Management, which I am privileged to chair, will hold a hearing, and that hearing will examine the history and the opportunities for the Medicare Recovery Audit Contracting.

In conclusion, the Improper Payments Elimination and Recovery Act, which again, hopefully, the House will pass today—the Senate has already passed it; and hopefully the President will put his ''John Henry'' on it later this month—that legislation will allow us to make even greater strides in curbing waste and fraud in the work of Federal agencies during the years ahead. Given the size of the budget deficits we face, we need to do that.

Enactment of this legislation is not the last step, but it is an important step. I look forward to seeing this important legislation signed into law and to working with my colleagues and with the administration on its successful implementation.

A lot of times people say to us: Why don't you do something about waste, fraud, and abuse? They are convinced that a lot of their money ends up being misspent, improperly spent, overpaid in some case. The people, or entities, businesses, should not get any of this money. Somebody ought to do something about it. With the legislation that will be on its way to the President, hopefully tomorrow, we are going to do something about it. We already are doing some pretty good things about it. We are going to do more, and we need to build on that record.

Thank you very much, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

WALL STREET REFORM

Mr. TESTER. Mr. President, I rise today in strong support of the Wall Street reform conference report. The Senate will make history when we pass this legislation that finally holds Wall Street accountable and finally cleans up the schemes and abuses that nearly brought our entire economy to its knees. Most importantly, this bill ends once and for all taxpayer-funded bailouts of Wall Street banks and investment firms. It finally gets rid of any notion that any private company can somehow be ''too big to fail.''

I never bought that argument. In fact, I was the only Democrat in the Senate to vote against both the bailout of Wall Street and the auto industry. I do not believe in bailouts. But I do believe in making sure folks are playing by the same rules.

Our economy went belly up a year and a half ago because there were no referees on the field. With this bill, that is about to change. Big banks will be required to pay for their own liquidation should they fail, and taxpayers will never again be a part of that equation.

The bill also streamlines the regulation of Wall Street, providing the referees the tools they need to get the job done fairly and effectively.

It also ensures that everyone will now be playing by the same rules, and that unregulated entities offering financial products have to live up to the same standards as the community banks and credit unions that serve States such as Montana.

The bill has tough new rules to prevent the spread of risky and dangerous products such as subprime mortgages that torpedoed our Nation's entire financial industry.

My focus over the last several months has been to make sure this bill is right for Montana and right for rural America. After some hard work, I think we did just that. This Wall Street reform bill is good for Montana's community banks, and it benefits small businesses.

Even in this era of bitter partisanship, the Senate unanimously passed an amendment I offered to make sure banks only pay their fair share for Federal deposit insurance. Right now, smaller community banks are paying for 30 percent of this insurance, even though they account for only 20 percent of all bank assets. That does not make sense, and this bill fixes that problem.

This conference report also includes a provision I drafted requiring the Consumer Financial Protection Bureau to consider the impact of all rules on community banks and credit unions and the rural customers they serve before any of those rules are made.

The legislation ensures that community banks will not be punished for the bad behavior of the mortgage brokers who offer risky mortgages. Those banks will be able to maintain the community-based regulators they currently have, and in the case of State chartered banks, the same lending limits they currently have.

Additionally, this bill ensures that community banks will be able to continue to provide the same mortgage products—including those specific to farmers and rural Americans—to their customers.

For small businesses, this legislation makes it easier for investors to help get new small businesses up and running while protecting investors from schemers. It exempts small public companies from costly additional compliance and regulation under Sarbanes-Oxley.

This bill is a win for Main Street. It holds Wall Street accountable and preserves the critical role community banks have in strengthening communities, creating jobs, and building small businesses. That is important because Montana families rely on their community banks to finance and grow their businesses and farms, help pay their bills, and put their kids through school.

This is a strong bill. It ends taxpayer-funded bailouts. It begins a new era of strong commonsense regulation to put the sideboards on our fast-moving financial industry, without taking away the fundamental tools it needs for healthy competition and growth, which strengthens this economy.

Let me be clear. Our work on this legislation does not end today. I will continue to remain vigilant to ensure this legislation is implemented and enforced in the way it was intended. We simply cannot afford to do nothing and let our financial industry go by the wayside ever again.

With that, I thank you, Mr. President.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

KAGAN NOMINATION

Mr. SESSIONS. Mr. President, the week before last, we had the hearing on Elena Kagan for her nomination to the U.S. Supreme Court, which is a tremendously serious and important position. Five members of the Supreme Court—not just nine but only five—can redefine the meaning of words in our Constitution and really alter, in many ways, the very structure of our government. We have seen activist judges that I think have tended in that direction, and it is dangerous and harmful because judges are given lifetime appointments. They are not accountable to the public. They are protected. Even their salaries are not reducible while they serve in office. So we have to know and believe they will be neutral, impartial, unbiased, and will render judgments based on the law and the facts and not on any preconceived commitments they may have had.

Ms. Kagan is now the Solicitor General of the United States. She has taken some sort of leave of absence in recent weeks since this nomination occurred, but she holds that title. The Department of Justice Solicitor General represents the U.S. Government in Federal court, usually before the Supreme Court, and in important cases before the courts of appeals and often is involved in setting legal policy for the United States and helping to advise on that. So it is important that the American people know, before she is confirmed—if she is confirmed—that she has not been involved in matters that would bias her and cause her not to be able to serve impartially under the law and under the Constitution of the United States. That is an important question.

The day before yesterday, I believe, the Wall Street Journal had an editorial entitled ''Kagan and ObamaCare'' in which it raised questions about the objectivity she might bring to the Court and whether she had been involved legally in the discussions or drafting the ideas concerning the development and promotion of the health care reform bill so massively affecting health care in America. It raised the question: Should she recuse herself if that comes up, if she has been involved in that? I think that is a very important question.

The seven Republican members of the Senate Judiciary Committee wrote yesterday and asked Ms. Kagan to give detailed explanations as to what extent she may have been involved in any discussions regarding the promotion or legality of the health care reform bill. I think we are entitled to that. It is an important matter.

I see my friend Dr. BARRASSO on the floor, who has been a great expert in our debates on health care reform. He has repeatedly explained how this legislation will impact health care throughout America. As a physician, he understands that, and he has been able to explain it to us in ways that any of us should be able to understand. In fact, he gave us some very serious warnings about the fact that the promises made for this legislation were not legitimate, weren't real, weren't accurate, and in study after study and report after report that has come out, Senator-Dr. BARRASSO has been proven correct. The warnings he gave us that it is not going to reduce costs and that other difficulties will arise have been proven true—too much, in fact—and it is a matter of real seriousness.

So I guess I wish to say that a judge should recuse himself or herself if their impartiality might reasonably be questioned on any matter that came before them.

I believe Dr. BARRASSO has raised previously his concern about what it really means if the U.S. Government tells an individual American citizen who is minding his own business that he has to have an insurance policy. I will recognize him at this point and ask him to at least share his thoughts on that important issue and why he believes having a fair judge on the Supreme Court is important.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. BARRASSO. Thank you very much, Mr. President.

I come to the floor today with my friend and colleague because I have just gotten back from a week of traveling all across the State of Wyoming, a beautiful State this time of year. People are out and at parades. I had a chance to visit at several senior centers. The question that continued to come up was, Can the government force me to buy health insurance?

A lot of people in Wyoming carry their copy of the Constitution with them. They carry it in their breast pocket. They carry it with them. It is in the pickup truck. It is with them all the time. They continue to look to the 10th amendment, which says:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The people quote that. It just makes sense to the people of Wyoming that Washington should not be able to come into their communities, into our State, into their homes, and say: You must buy this product.

So when I see the number of States—20 now—that have filed suit against the Federal Government because of a new health care law, a law that I think is going to end up, if it is not repealed and replaced, being bad for patients, bad for payers, the taxpayers in the country and the people who pay their own health care bills as well, and bad for providers—it is a bill that I think is bad medicine, to the point that Senator TOM COBURN and I, the other physician—there are only two physicians who practice medicine in the U.S. Senate, and I have been taking care of people and their families in the State of Wyoming since 1983—we have come up with a report called ''Bad Medicine: A Checkup on the New Federal Health Care Law.''

There are people who say: I don't like this. Now we have a nominee to the Supreme Court who is very likely, if this works its way to the Supreme Court, to have an opportunity to make a ruling, a ruling for the people of the United States, on whether this body—this Senate, this House—has a right to tell the American people what product they must buy, whether it is health insurance, whether it is cars, whether it is the kind of cereal they eat for breakfast in the morning. The American people are very concerned.

So I come to the floor also with this editorial from Tuesday, July 13, this editorial entitled ''Kagan and ObamaCare,'' because the fundamental question is, Should this nominee recuse herself if she is, in fact, confirmed by this body? One might say: Well, when would someone recuse themselves from making a decision? Because, after all, she has been serving in this administration, serving this President, serving the President who has promoted such a piece of legislation that forces American citizens, forces the citizens of this country to buy a product.

The editorial says:

> Recusal arises as a matter of judicial ethics if as a government official she expressed an opinion on the merits of the health-care litigation. This is what she would have to render a judgment on were she to be confirmed for the High Court.

It goes on:

> It is also the question on which she is likely to have participated given her role at the Justice Department.

I would have to turn to my colleague who is the ranking member of the Judiciary Committee.

It says as well that:

> The Solicitor General is the third ranking official at Justice, its senior expert on Constitutional issues, so it's hard to believe she wouldn't have been asked at least in passing about a Constitutional challenge brought by so many states. The debate about the suit was well underway in the papers and on TV. The matter surely must have come up at Attorney General Eric Holder's senior staff meetings, which the Solicitor General typically attends.

The editorial goes on to say:

> We doubt Ms. Kagan would have stayed mum about the cases in internal Justice councils on grounds that Mr. Obama might later nominate her to the Court. At the time the Florida suit was filed on March 23, she was only one of several potential nominees whose names were being floated by the White House.

So here we have this, and that is when you get back to that opening anybody confirmed to the Supreme Court will not sit on a case if they can't be impartial, or if their impartiality could even reasonably be questioned.

I thank the Senator for his leadership on the issue, and I am glad we had this colloquy. I hope we are going to get a complete answer from the nominee soon about any involvement she may have had explicitly, and then to perhaps also inquire further about to what extent she will be prepared to not participate if her impartiality can be questioned.

Mr. BARRASSO. If I can ask a final question. The final paragraph of this editorial that the Senator will introduce into the RECORD says:

As someone who hopes to influence the Court and the law for decades—

We are talking about an appointment that could last a lifetime, 30 or 40 years.

Ms. Kagan should not undermine public confidence in her fair-mindedness by sitting in judgment on such a controversial case that began when she was a senior government legal official.

It seems to me—and I ask the Senator at this time—where someone may be embarking on a long career on the Court, wanting to do the right thing and head in the right direction, that the best decision would be to recuse herself from this case as well, if she is confirmed, rather than get involved in it and potentially have an impact on her reputation for decades to come.

Mr. SESSIONS. I think that is correct. I appreciate the way the Wall Street Journal expressed that. I think that is a legitimate position. I hope the nominee will take very seriously those concerns and will respond promptly to the questions we have asked of her.

I ask unanimous consent that the Wall Street Journal editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, July 13, 2010]

KAGAN AND OBAMACARE

Elena Kagan breezed through her recent confirmation hearings, but there's some crucial unfinished business the Senate should insist on before voting on her nomination to the Supreme Court. To wit, she ought to recuse herself from participating as a Justice in the looming legal challenges to ObamaCare.

In response to Senate queries, Ms. Kagan has said she'll recuse herself from participating in 11 cases on which she represented the government in her current job as Solicitor General. The challenge to ObamaCare isn't one of them, though the cases brought by Florida and 20 other states were filed in March, well before President Obama announced her nomination on May 10.

Ms. Kagan was never asked directly at her hearings about her role as SG regarding the healthcare lawsuits. The closest anyone came was this question from Oklahoma Republican Tom Coburn: "Was there at any time—and I'm not asking what you expressed or anything else—was there at any time you were asked in your present position to express an opinion on the merits of the health-care bill?"

Ms. Kagan: "There was not."

Regarding a potential recusal, that's not the right question. Ms. Kagan was unlikely to have been consulted on the merits of health-care policy, and even if she did express an opinion on policy this would not be grounds for recusal. The legal precedents on that are clear.

Recusal arises as a matter of judicial ethics if as a government official she expressed an opinion on the merits of the health-care litigation. This is what she would have to render a judgment on were she to be confirmed for the High Court. It is also the question on which she is likely to have participated given her role at the Justice Department.

The SG is the third ranking official at Justice, and its senior expert on Constitutional issues, so it's hard to believe she wouldn't have been asked at least in passing about a Constitutional challenge brought by so many states. The debate about the suit was well underway in the papers and on TV. The matter surely must have come up at Attorney General Eric Holder's senior staff meetings, which the SG typically attends.

We doubt Ms. Kagan would have stayed mum about the cases in internal Justice councils on grounds that Mr. Obama might later nominate her to the Court. At the time the Florida suit was filed on March 23, she was only one of several potential nominees whose names were being floated by the White House.

Under federal law (28 U.S.C., 455(b)(3)), judges who have served in government must recuse themselves when they have "participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy."

Though their public chance has passed, Senators can still submit written questions to Ms. Kagan for the record. We hope someone asks her directly whether the legal challenges to ObamaCare ever arose in her presence at Justice, whether she was ever asked her views, and what she said or wrote about the cases.

We also think there are grounds for recusal based on her response during her Senate hearings on the substance of the state legal challenge. The Florida case boils down to whether Congress can compel individuals to buy health insurance under the Commerce Clause. Ms. Kagan danced around the history of Commerce Clause jurisprudence, but in one response to Senator Coburn she did betray a bias for a very expansive reading of Congress's power.

The Commerce Clause has "been interpreted to apply to regulation of any instruments or instrumentalities or channels of commerce," she said, "but it's also been applied to anything that would substantially affect interstate commerce." Anything? This is the core question in the Florida case. If she already believes that the Commerce Clause justifies anything that substantially affects interstate commerce, then she has all but prejudged the individual mandate question.

A federal judge is required by law to recuse himself "in any proceeding in which his impartiality might reasonably be questioned." This has been interpreted to mean that the mere public expression of a legal opinion isn't disqualifying. But this is no routine case.

Ms. Kagan would sit as Mr. Obama's nominee on the nation's highest Court on a case of momentous Constitutional importance. If there is any chance that the public will perceive her to have prejudged the case, or rubber-stamped the views of the President who appointed her, she will damage her own credibility as a Justice and that of the entire Court.

As someone who hopes to influence the Court and the law for decades, Ms. Kagan should not undermine public confidence in her fair-mindedness by sitting in judgment on such a controversial case that began when she was a senior government legal official.

The ACTING PRESIDENT pro tempore. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I ask unanimous consent to speak as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FINANCIAL REGULATORY REFORM

Mrs. MURRAY. Mr. President, I have been fighting hard for a Wall Street reform bill that protects my State's families, holds Wall Street accountable, and includes a guarantee that American taxpayers will never again have to pay to bail out Wall Street or to clean up after big banks' messes. I am proud to say that, finally, after months of hard work, we are so close now to passing legislation that does exactly that.

This should not be a partisan issue. It should not be about right versus left or Republican versus Democrat. It should be about doing what is right for our families and small business owners in my State of Washington and across the country. It should be about who it is we choose to stand up for and who we think needs our support right now.

Some people have spent the last few months standing up for Wall Street and big banks, trying to water down this reform, and fighting against any changes that would prevent the big banks from going back to their "bonus as usual" mentality.

I have been proud to stand with so many others to fight against the Wall Street lobbyists and special interest groups and stand up for the families I represent in Washington—families who want us to pass strong reform that cannot be ignored or sidestepped in the future, who want us to end bailouts and make sure Wall Street is held accountable for cleaning up their own messes, and who want us to put into place strong consumer protections to make sure big banks can never again take advantage of our families, our students, or our seniors.

For most Americans, this debate is not complex; it is pretty simple. It is not about derivatives or credit default swaps; it is about fundamental fairness. It is about making sure that we have good commonsense rules that work for our families and our small business owners. It is about the person who walks into a bank to sign up for a mortgage, or applies for a credit card, or starts planning their retirement. We want to make sure the rules are now on their side and not with the big banks on Wall Street.

For far too long the financial rules of the road have not favored the American people. Instead, they have favored big banks, credit card companies, and Wall Street. For too long, those people have abused the rules.

As we now approach this vote, I think it is important for all of us to be clear about who it is we are fighting for. I am fighting for people such as Devin Glaser, a school aide in Seattle, who told me that he had worked and saved his money and bought a condo before the recession began. He told me he put 20 percent down on a traditional mortgage and was making his payments. However, like a lot of people who found themselves underemployed as a result of this recession, Devin has been unable to find work for more than 25 hours a week. He told me he is now unable to pay his mortgage. He will be foreclosed on any day now.

I am also fighting for people such as Rob Hays, a Washington State student whose parents have put their retirement on hold and gone back to work in order to send him to school. A few short years ago, Rob's parents were in the process of selling their home and preparing to retire. But then the foreclosure crisis took hold and they could no longer find a buyer. As a result, they were forced to pay two mortgages with the money they had saved for Rob's school, and retirement was put on hold.

I am fighting for people such as Jude LaRene, a small business owner in Washington State, who told me that when the financial crisis hit, his line of credit was pulled. That forced him to lay off employees, go deep into debt on his personal credit card, and cut back on inventory—despite the fact that his toy stores were more popular than ever.

I am fighting for people such as Devon and Rob and Jude because they are the ones being forced to pay the price now for Wall Street's greed and irresponsibility.

Whether it was gambling with borrowed money from our pension funds, making bets they could not cover, or peddling mortgages to people they knew could never pay, Wall Street made reckless choices that have devastated a lot of working families.

In my home State of Washington, Wall Street's mistakes cost us over 150,000 jobs. They cost average families thousands of dollars in lost income.

They cost small businesses the access to credit they need to expand and hire and, in many cases, caused them to close.

They cost workers their retirement accounts they were counting on to carry them through their golden years and students the college savings that would help launch their college careers.

They cost homeowners the value of their most important financial asset as neighborhoods have been decimated by foreclosures.

They cost our schoolteachers and our police officers and all of our communities. And they cost our workers, such as Devon, our students, such as Rob, and our small business owners, such as Jude.

We owe it to people like them all across the country to reform this system that puts Wall Street before Main Street. We owe it to them to put their families back in control of their own finances. We owe it to them to make sure the rules that protect families sitting around the dinner table at night, balancing their checkbooks and finding ways to save for the future, not those sitting around the board room table finding ways to increase profits at the expense of hard-working Americans. To do that, we have to pass this strong Wall Street reform legislation.

It is important for families to understand what this bill does and what exactly opponents of this legislation are fighting against.

This bill contains explicit language guaranteeing that taxpayers will never again be responsible for bailing out Wall Street. It creates a brandnew Consumer Financial Protection Bureau that will protect our consumers from big bank ripoffs, end unfair fees, curb out-of-control credit card and mortgage rates, and be a new cop on the beat to safeguard consumers and protect their families.

It puts in place new restrictions for small businesses from unfair transaction fees that are imposed by credit card companies. It enforces limitations on excessive compensation for Wall Street executives. And it offers new tools to promote financial literacy and make sure our families have the knowledge to protect themselves and take personal responsibility for their finances.

I have heard so many stories from people across Washington State who have scrimped and saved and made the best with what they had but were devastated, through no fault of their own—people who played by the rules but who are now paying the price for those on Wall Street who did not. These are the people for whom we have to stand up, the people whose Main Street values I and so many others fight for every day.

With all of the new protections and reforms this bill contains for families and small businesses, one has to ask: Who are the opponents fighting for and who are they standing up to protect?

I grew up working at my dad's five-and-dime store on Main Street in Bothell, WA—actually on Main Street. Like a lot of people in the country, Main Street is where I got my values. I was taught by my dad that the product of your work was not just about the dollars in the till at the end of the day. I learned that a good transaction was one that was good for your business and good for your customer. I learned that strong customer service and lasting relationships often made your business much stronger; that personal responsibility meant owning up to your mistakes and making them right. I learned that one business relied on all the others on the same street.

I was taught that customers were not prey and businesses were not predators, and that an honest business was a successful one.

It is time for us to bring those Main Street values back to our financial system, to bring back an approach that puts Main Street and families over Wall Street and profits; that protects consumers, holds big banks accountable for their actions, and makes sure people such as Devon and Rob and Jude are never again forced to bear the burden for big banks' mistakes.

I urge my colleagues today to stand with us against the status quo and for this strong Wall Street reform bill that families and small businesses in Washington State and across the country desperately need.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I rise today to speak about the financial overregulation bill. The so-called financial reform bill before us is being sold to the American people as holding Wall Street accountable for the economic crisis that hurt every American family and business in every community across the Nation. We are told this bill will end ''too big to fail'' and prevent future bailouts.

Unfortunately, just as the stimulus bill was supposed to reduce unemployment and the health care bill was supposed to lower health care costs and reduce the deficit, this bill, too, will do the opposite of what is advertised. It will not prevent future bailouts. It will create another huge Federal bureaucracy; and instead of punishing Wall Street, it will punish Main Street and the families who suffered—not caused—the financial meltdown.

This bill was meant to rein in Wall Street. Yet the biggest supporters are Goldman Sachs and Citigroup, and the biggest opponents are community banks and small businesses in every city and town and community in the Nation. I think that tells us all we need to know about this bill. I urge my colleagues to listen to the folks at home, the people who have to make a living who are going to be burdened by it.

I strongly oppose cloture on this bill. Yes, there have been improvements made, and I worked with my colleague, Senator DODD, to make sure we did not devastate the venture capital area. Unfortunately, that is coming in another bill. But despite some of the progress we have made, the provisions most harmful to taxpayers, families, and small businesses still remain.

As a matter of fact, new provisions have been airdropped into the conference report that are so problematic that neither Chamber could agree to include them in either version. If we are truly committed to enacting real bipartisan reform, then the majority would never allow items that were never debated and voted on to be included in the bill.

I hope my Democratic colleagues will stand up for these principles about which they have talked so loudly and say no to this backroom practice of airdropping totally new concepts into the bill.

I wish to talk now about some of the most egregious provisions in the bill.

First, it is unbelievable and unacceptable that so many of my colleagues want to turn a blind eye to the government-sponsored enterprises, GSEs, that contributed to the financial meltdown by buying high-risk loans that banks made to people who could not afford them.

Everyone here knows what I am talking about. Despite this bill's 2,300 pages, it completely ignores the 900-pound gorilla in the room: the need to reform Fannie Mae and Freddie Mac, or the toxic twins as I not so fondly have to refer to them now.

The irresponsible actions by Fannie and Freddie turned the American dream into the American nightmare for too many families who have either had their homes foreclosed or who are hanging on by a thread.

The irresponsible actions, pushed by previous administrations on Fannie and Freddie, devastated neighborhoods and communities as property values diminished.

To add insult to injury, after Freddie and Fannie went belly up, it was the very Americans who suffered from their irresponsible actions who were left footing the bill.

As if that were not bad enough, unless we act now to reform the toxic twins, over the next 10 years Fannie and Freddie will cost the American taxpayers at least an additional $389 billion.

In the joy of the Christmas holiday last December, the administration took off the $400 billion limit on them. I have to ask: How much money do they think they can lose if $400 billion is not enough for them to lose?

What is in this bill to address this problem? Absolutely nothing. Zip. Zero.

Next, this bill lumps in the good guys with the bad guys and treats them all the same, particularly when it comes to derivatives.

Folks who are trying to manage and control costs are treated the same as folks who are spending and speculating in the market, making shady bets with money they did not have, making insurance bets on property they did not own.

This was described in the book, ''The Big Short,'' by Michael Lewis. These computer game derivatives, or insurance policies, were dreamed up by Wall Street geniuses, some who made billions, others who lost billions. The billions in losses almost destroyed our financial system and poisoned the world's financial system.

I have heard some folks say: Why do these bad practices mean something is going to happen to me? The way this bill is drafted, utility companies may not be able to lock in steady rates for their customers, leaving them instead at the whim of a volatile market. The utility companies will have to pay billions to Wall Street or Chicago to clear their normal long-term contracts and postcollateral with energy suppliers through clearinghouses run by big financial firms. That money will be immediately passed along to every consumer of power from that utility company. That is what utilities do—they pass it on to you and me as electricity or gas or other customers of theirs.

Mr. President, you and I and folks in every community across the country could pay higher costs every time we flip on the light switch or turn on the air conditioner or heat.

That means family farms may not be able to get long-term financing, forcing many to quit farming and prevent many from beginning to farm.

The Wall Street Journal today, in a front-page article headed ''Finance Overhaul Casts Long Shadow on the Plains'' tells how this bill will clobber folks in agricultural communities who have to have forward contracts. They never caused the problem, but it will tie up capital and make them pay tribute to big firms on Wall Street or Chicago. No wonder those big firms are for them. There is a lot of business for them, a lot of expense for the farmer, the commodity hauler trying to make a living.

I am stunned that any Senator in good conscience would vote for a bill that would increase costs for every American, especially at a time when working families are struggling to make ends meet. One thing is certain: This bill will enlarge government.

Today's Wall Street editorial opines that:

> Dodd-Frank, with its 2,300 pages, will unleash the biggest wave of new federal financial rulemaking in three generations. Whatever else this will do, it will not make lending cheaper or credit more readily available.

They go on to state that one law firm has estimated that the new law ''will require no fewer than 243 new formal rule-makings by 11 different agencies.''

What will be the effect? More lawyers, more bureaucracy, more taxpayer money, and more lawsuits.

Certainly, I cannot vote in good conscience for a bill that creates a massive new superbureaucracy with unprecedented authority to impose government mandates and micromanage any entity that extends credit.

We are not talking about the big guys—the Goldman Sachs and the AIGs. In the real world, we are talking about the community banks, small retailers, and even your dentist.

I talked with a lot of small businesses and listened to them. A lot of people were concerned this past week when I was home about what is going on in Washington. I was talking with a group in Maryville in northwest Missouri.

I said: The uncertainty is really a problem for small businesses.

One small businessman corrected me. He said: No, it's the certainty. We know what Washington has already done to the deficit, to the debt, to health care, what it is going to do to financial regulation, and what it is threatening to do to energy costs.

I asked everybody around the table: Should I have said ''certainty'' rather than ''uncertainty''?

They said: You certainly should.

Small businesses are not willing or able or even inclined to create jobs when this massive government rollout of spending, taxation, and regulation is coming down on them.

Let's not be naive. Any of the new costs as a result of new mandates and regulations, regardless of the entity on which they are imposed, will be passed down to the very people this bill claims to protect. Under the new, misnamed Consumer Financial Protection Bureau, or CFPB, the decisions on allocating credit will no longer be based on the safety and soundness requirement for healthy banks. Instead, by empowering this new superbureaucracy with unprecedented power, decisions on credit will be driven by the administration's political will and agenda. Politics will then decide how to allocate credit while operating outside the framework of safety and soundness, thus putting more risk back into the system when we were supposed to be taking risk out of the system.

This giant bill also contains a provision creating a new Office of Financial Research. You will get to know this one. It is given the authority to access personal financial information of any citizen in the United States. Well, I don't know about you, but I would prefer not to have a new bureaucracy rifling through my personal account information in an era of economic and electronic communications where fraud and identity theft run rampant. Ordinary Americans who did not cause the financial meltdown should not be punished and placed at risk because the government wishes to create this new, unnecessary office.

I could continue to list provision after provision, pointing out expansions of government and ill-intended policies that will create more uncertainty while failing to hit the objective of regulatory reform. However, this Chamber doesn't have the hours for my speech alone. I could say: Harsh letter to follow. If anybody wants to know, we will be happy to send them lots of chapters and lots of verses. But, much like the health care bill recently signed into law, I fear small businesses will soon learn of many more unintended consequences which have yet to be seen. Even the bill's sponsors admit that the bill's long reach will not be fully known until it is in place. Remember when the leader on the other side of this building said: If you want to find out what is in the bill, you will have to pass it. Well, in this bill, if you want to find out what it is going to do, unfortunately, you are going to find out if you pass it. I don't want to have my fingerprints on what is going to happen to businesses, to communities, and to jobs in the United States if it passes.

To sum it up, if the goal is to enact real reform that ensures we never, ever have another financial crisis like the one we had 18 months ago, the bill falls woefully short of that goal. It is light on reform, heavy on overreach and unintended consequences. Overall, this bill is too large, too costly for consumers, and would kill job creation at a time when working Americans need to be left to do what they do best, and that is succeed.

There is no doubt we need to protect every American from ever again falling victim to Wall Street gone wild. But what we do not want—and why this debate is so important—is to punish Americans for a crisis they didn't cause. Unless we scrap this failed version and start over, the Democrats' bill will do just that, and the costs will be paid by Main Street.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from today's Wall Street Journal to which I referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal]

THE UNCERTAINTY PRINCIPLE

So Republicans Scott Brown, Olympia Snowe and Susan Collins now say they'll provide the last crucial votes to get the Dodd-Frank financial reform through the Senate. Hmmm. Could this be Minority Leader Mitch McConnell's secret plan to take back the Senate, guaranteeing another year or two of regulatory and lending uncertainty and thus slower economic growth?

Probably not, but that still may be the practical effect. This week White House aides leaked to the press that President Obama may seek a review of regulations that are restraining business confidence and bank lending. Yet Dodd-Frank, with its 2,300 pages, will unleash the biggest wave of new federal financial rule-making in three generations. Whatever else this will do, it will not make lending cheaper or credit more readily available.

In a recent note to clients, the law firm of Davis Polk & Wardwell needed more than 150 pages merely to summarize the bureaucratic ecosystem created by Dodd-Frank. As the nearby table shows, the lawyers estimate that the law will require no fewer than 243 new formal rule-makings by 11 different federal agencies.

The SEC alone, whose regulatory failures did so much to contribute to the panic, will write 95 new rules. The new Bureau of Consumer Financial Protection will write 24, and the new Financial Stability Oversight Council will issue 56. These won't be one-page orders. The new rules will run into the hundreds if not thousands of pages in the Federal Register, laying out in detail what your neighborhood banker, hedge fund manager or derivatives trader can and cannot do.

As the Davis Polk wonks put it, "U.S. financial regulators will enter an intense period of rule-making over the next 6 to 18 months, and market participants will need to make strategic decisions in an environment of regulatory uncertainty." The lawyers needed 26 pages of flow charts merely to illustrate the timeline for implementing the new rules, the last of which will be phased in after a mere 12 years.

Because Congress abdicated its responsibility to set clear rules of the road, the lobbying will only grow more intense after the President signs Dodd-Frank. According to the attorneys, "The legislation is complicated and contains substantial ambiguities, many of which will not be resolved until regulations are adopted, and even then, many questions are likely to persist that will require consultation with the staffs of the various agencies involved."

In other words, the biggest financial players aren't being punished or reined in. The only certain result is that they are being summoned to a closer relationship with Washington in which the best lobbyists win, and smaller, younger firms almost always lose. New layers of regulation will deter lending at least in the near term, and they are sure to raise the cost of credit. Non-blue chip businesses will suffer the most as the financial industry tries to influence the writing of the rules while also figuring out how to make a buck in the new system.

The timing of Dodd-Frank could hardly be worse for the fragile recovery. A new survey by the Vistage consulting group of small and midsize company CEOs finds that "uncertainty" about the economy is by far the most significant business issue they face. Of the more than 1,600 CEOs surveyed, 87% said the federal government doesn't understand the challenges confronting American companies.

Believe it or not, Mr. Frank has already promised a follow-up bill to fix the mistakes Congress is making in this one. In a recent all-night rewrite session, he and Mr. Dodd made a particular mess of the derivatives provisions. They now say they didn't really mean to force billions of dollars in new collateral payments from industrial companies on existing contracts that present no systemic risk. But that's precisely what the regulators could demand under the current language, and the courts will ultimately decide when everyone sues after the new rules are issued.

Taxpayers might naturally ask why legislators don't simply draft a better bill now. But for Democrats the current and only priority is to pass something they can claim whacks the banks and which they can hail as another "achievement" to sell before the elections.

More remarkable is that a handful of Republicans are enabling this regulatory mess. Mr. Brown and Ms. Collins say they now favor Dodd-Frank because Congressional negotiators agreed to drop the bank tax. But lawmakers didn't drop the bank tax. They only altered the timing and manner of its collection. Instead of immediately assessing a tax on large financial companies to pay for future bailouts, the final version simply authorizes the bailouts to occur first. The money to pay for them will then be collected via a tax on the remaining firms.

Because this tax will be collected by the Federal Deposit Insurance Corporation, even opponents of the bill have viewed it as part of an insurance system. It isn't. Insurance is when you pay a premium and the insurance company agrees to replace your house if it burns down. A tax is when you pay the government and then the government decides which houses it wants to replace when there is a fire in the neighborhood.

Under Dodd-Frank, if Firm A pays to cover the cost of the last bailout, there's no guarantee that the FDIC will rescue its creditors if Firm A fails in the future. This is fundamentally different from traditional deposit insurance, which guarantees the same deal for every bank customer. Dodd-Frank allows the FDIC to discriminate among creditors at its discretion.

This transfer of wealth is a tax by any reasonable definition, borne by the customers, shareholders and employees of the companies ordered to pay it. Is this how Mr. Brown plans to reward the tea partiers who carried him to victory last winter in Massachusetts? Is this the key to a small business rebound in Maine?

A good definition of a bad law is one that its authors are rewriting even before they pass it. The only jobs Dodd-Frank will create are in Washington—and in law firms like Davis Polk.

Triumph of the Regulators—Estimate of new rule-makings under the Dodd-Frank financial reform by federal agency

Bureau of Consumer Financial Protection	24
CFTC	61
Financial Stability Oversight Council	56
FDIC	31
Federal Reserve	54
FTC	2
OCC	17
Office of Financial Research	4
SEC	95
Treasury	9
Total*	243

*The total eliminates double counting for joint rule-makings and this estimate only includes explicit rule-makings in the bill, and thus likely represents a significant underestimate.

Source: Davis Polk & Wardwell

Mr. BOND. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from New Mexico.

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent to speak as in morning business.

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

The Senator from New Mexico is recognized.

Mr. UDALL of New Mexico. I thank the Chair.

(The remarks of Mr. UDALL of New Mexico pertaining to the submission of S. Res. 581 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. UDALL of New Mexico. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. LINCOLN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. LINCOLN. Mr. President, I ask unanimous consent to speak as in morning business.

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

Mrs. LINCOLN. Mr. President, I rise to voice my support for the Dodd-Frank Wall Street Reform Act. As the chairman of the Senate Agriculture Committee, I was fortunate to play a role in writing some of the most important reforms of this legislation, and that was the derivatives title. This historic legislation the Senate stands poised to approve will rein in the reckless Wall Street behavior that nearly destroyed our economy, hurting Arkansas small businesses and costing millions of Americans their jobs.

In 2008, our Nation's economy was on the brink of collapse. America was being held captive by a financial system that was so interconnected, so large, and so irresponsible that our economy and our way of life were about to be destroyed. I will never forget the sobering meetings at the Capitol with then-Treasury Secretary Hank Paulson and Federal Reserve Chairman Ben Bernanke, who informed us of the imminent collapse of the U.S. economy. Overnight, the United States of America—the most powerful economic power on the globe—had been brought to the brink of collapse.

Today, American families and small businesses are still managing the consequences of the reckless behavior that occurred on Wall Street and nearly led to our economic collapse. Congress has the duty to the people we represent and to future generations of Americans to ensure that this country's economic security is never again put in that kind of jeopardy. Failure to correct the mistakes of the past is simply unacceptable. That is why I am proud to say that today we stand poised to deliver the historic reform the American people deserve.

This legislation provides 100 percent transparency and accountability to our shattered financial markets and regulatory system. As chairman of the Senate Agriculture Committee, I was proud to help craft the bill's strong derivatives title. This legislation brings a $600 trillion unregulated derivatives market into the light of day, ending the days of Wall Street's backroom deals and putting this money back on Main Street where it belongs. In all of our communities across this Nation, these reforms will get banks back to the business of banking, protecting innocent depositors and ensuring taxpayers will never again have to foot the bill for risky Wall Street gambling.

After spending countless hours on this legislation and digging into the details of the derivatives world, I am here to reassure my colleagues and all Americans that this bill is strong, it is thoughtful, and it is groundbreaking reform that will fundamentally change our financial system for the better. We worked hard to ensure that it would.

It is important to reiterate that this reform is not regulation for regulation sake. It is surgical in its approach. We maintain an end-user exemption, promote restraints on the regulators, where necessary, and provisions that recognize we are competing in a global financial marketplace.

Over the next year, Congress will rely heavily on the regulators for their guidance and expertise as the rules and regulations are written for this legislation. As chairman of the Senate Agriculture Committee—one of the key committees of oversight—I pledge to be vigilant in this process and retain a watchful eye on those regulators. It is imperative that our vision of strong reform is implemented properly; that everyone should be doing their job—in the legislation we write, the regulations that need to be written to match that, and the oversight to ensure that balance continues. While the regulators must hold the financial system accountable for its actions, Congress must hold the regulators accountable, just as the voters hold us responsible for a lack of meaningful reform.

As the Senator from a rural State, I will also ensure that our community banks are able to continue to meet the lending needs of rural America and will not be subject to unintended consequences. Our community banks did not create this problem and should not have to shoulder the burden of paying for the solution.

America's consumers and businesses deserve strong reform that will ensure that the U.S. financial oversight system promotes and fosters the most honest, open, and reliable financial markets in the world. Our financial markets have long been the envy of the world. The time has come for our country to restore confidence to our shattered financial system. The time has come for us, the United States, to lead by example. We stand poised to deliver that reform today, and I look forward to final passage of this bill.

Finally, a bill of this complexity and importance requires perseverance and long hours, and the dedicated staff of the Senate deserves congratulations. I thank my colleagues, of course, Senator DODD and his staff, for their tremendous work. In particular, I would like to thank Ed Silverman, the Banking Committee staff director for his dedication to finishing this legislation. I would like to also thank Senator CHAMBLISS, my ranking member on the Senate Agriculture Committee, and his staff for their friendship and eyes and ears throughout this process; Senator REID and his staff, of course, for their leadership; and the administration and regulators for their extraordinary commitment to this reform bill; and certainly our House colleagues, Chairmen FRANK and PETERSON—particularly Chairman PETERSON of the House Agriculture Committee in particular, and their staffs, for their cooperation and leadership.

I also would like to thank my staff for their unbelievable hard work throughout this process. There were a lot of long nights, a lot of complicated issues, and a lot of dedication on their part to ensuring that what we produced was something that was good and solid for the future of this country, particularly Patrick McCarty, Cory Claussen, Brian Baenig, Julie Anna Potts, Matt Dunn, George Wilder, Courtney Rowe, and Robert Holifield on our Agriculture Committee staff, as well as Anna Taylor on my personal staff.

We have an enormous opportunity to do something that is going to move us forward, understanding that we never get things perfect but, more importantly, that we are willing to step to the plate and to do what we can to make our country strong again, to make our economy strong again, to bring confidence to consumers and investors in this Nation and globally in order to move ourselves forward—not just for ourselves but for future generations. I urge my colleagues to support this conference report, and I look forward to this legislation being signed into law.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CORKER. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. (Mr. FRANKEN.) Without objection, it is so ordered.

Mr. CORKER. I wish to speak for a moment about the Dodd-Frank bill that we are going to vote on apparently tomorrow evening. I wanted to talk a little bit about politics, which is not my specialty, and then a little bit about the substance.

I know the Presiding Officer has been highly involved in this bill and made a positive contribution. I read recently comments made by our leader, the majority leader here, and the President, and actually the chairman of the Banking Committee regarding the fact that the reason the bill is the way it is is partisan politics, and basically insinuating that Republicans did not want to deal with a financial regulatory bill.

Nothing has disappointed me more than the fact that we have a bill that has basically ended up wrapping folks around the axle as they tried to get two or three votes on our side of the aisle to pass this bill. We had a tremendous opportunity to pass a bipartisan bill. We had a tremendous opportunity to pass a bill that would have shown the American people that we in this body have the ability to work together on big issues and solve problems. I think it is a shame we did not do that. I have to say, from my perspective—and I think I put as much time into this bill as anybody here in the Senate—it ended up being about partisan issues. There was an overreach on issues that had almost nothing to do—as a matter of fact, absolutely nothing to do—with this crisis, to advance some political agenda issues, and then, on the other hand, a total denial to deal with some of the core issues that got us in this situation. So I am disappointed.

We talk a lot. We have had groups come in, and they talk us to about how they want to see bipartisanship. Then some of us on both sides of the aisle step out from time to time to do that. When it happens, and a lot of effort is expended, and the end product is not achieved, for a lot of forces that exist around here, the very people that you end up reaching out to criticize the fact that we ended up with a partisan bill.

Yet, at the end of the day, let's face it, one side has the majority, one side has the minority. In this particular bill, I do not think there was, at the end, a valid attempt to do that. So I am disappointed. We have issues in this country as they relate to our financial system that do need to be addressed. No doubt, any bill of this magnitude, 2,300 pages, has some good things in it. There are good provisions in this 2,300-page bill. In many ways we punted most of the work to regulators. They are going to spend the next 10 to 18 months making rules that leave a lot of instability in our financial system at a time when I think people want to have a degree of certainty.

I think the Presiding Officer today tried to actually focus on greater certainty in some areas, and I might have disagreed with some of those. But the fact is, I think part of our job here in legislating is to create a degree of clarity.

One of the shortcomings of this bill is that—I think the count keeps going. I have heard a count of 363 rulemakings. I have heard a group come out and say there are 500 rulemakings. In essence, what we did with this bill in many ways is say to the very regulators who had the power, candidly, to do most of what is in this bill anyway, they had that power within their purview, did not do it, and kind of what we said is: Look, we would like for you to make rules.

So K Street and government relations folks are going to make a lot of money over the next 12 to 18 months as they now lobby regulators to sort of figure out what the rules of the road are going to be. In the process, again, jobs in the country will be more stagnant.

The other piece of this is that this all started with this sort of political agenda: We are going to bash Wall Street. Now Republicans have come out and said, no, this is a Wall Street bailout. So we had Democrats going to bash Wall Street, and Republicans saying, this is a Wall Street bailout. Candidly, I do not know that it is either one. The fact is, I think most folks on Wall Street like this bill.

As a matter of fact, I am looking at hedge fund managers right now, reading the Financial Times, many of the folks who probably are involved in the riskiest businesses are now out forming new hedge funds. Now they are moving to a more unregulated area than they were already in. So it is pretty fascinating how we create bills and we do not address the core issues, and then we have lots of unintended consequences along the way, as we are seeing play out right now.

I am not supporting this bill, which I had hoped to cosponsor. I am not supporting this bill out of partisanship; I am not supporting this bill because it misses the mark. This is not the worst bill that has ever been created. I am not going to say that. It is not. We just did not do our work. I mean, basically what we have done is, as I mentioned, we left it to regulators. We did not deal with some core issues.

I offered an amendment to deal with underwriting. At the end of the day, regardless of everything that people talk about at hieroglyphic levels, we had a lot of loans in this country that were written to people who could not pay them back. We did not have underwriting standards. We still do not have underwriting standards.

At the end of the day, we had two entities. I am not one of those who said, these entities were the core reason for the problem. But the fact is, we had two enablers, Fannie and Freddie, that, let's face it, what they do is they allow people to write bad mortgages, pool them together, and then they insure or purchase those. They were enablers. We have not dealt with that.

I do not support this legislation, not because it is the worst bill in the world. It is not. As a matter of fact, we do not even know what the outcome of this legislation is. It is interesting, I read the papers and they talk about the fact that this is a historical piece of legislation. We have no idea whether this bill is historical. We will not know for a long time until the regulators decide what they are going to do with this bill, because basically the power is left to a huge number of bureaucrats which, by the way, we have created, which is going to be like a malaise over our financial community because we did not give a lot of clear direction. We left it to regulators. We created a bureaucracy.

One other note. I think the issue that in many ways divided us—I know people on the other side of the aisle knew this well, refused to address it, although at one point we got very close and almost had a deal—was this issue of the Consumer Protection Agency.

I am all for consumer protection. I think the concern that I had as an individual is we have created a new entity. It has no board. It is an amazing thing. It has no board. Because of the standards against which the way this organization is judged as it relates to its rulemaking, which is expansive across the entire financial industry, because of the standard against which you have to challenge, there is no veto ability.

This new organization has a budget anywhere from, I think, $600 million to $1 billion a year, and the only way the Presiding Officer or I will know what direction this organization is going to take is who leads it. This is an incredible place for us to be, for us as a Congress to be. I think it is an incredible place for the administration to be, where we are creating an entity, a consumer financial protection organization, that has incredible rule-writing abilities, that has no board, no real veto ability, and yet on its own, one person—I am not talking about a group of people, but one person is going to decide the nature of what this organization is going to engage in. I find that incredible.

For all I know, the fears that I have about it, the fears I have about this organization, may not be borne out—may not be borne out.

I think the Presiding Officer very well may support this concept. He will never know whether his hopes for this organization are borne out until we know who the person is and what their bent and flavor is.

I think that, again, as a body we had a responsibility to put a balance in place so that we knew what the direction of this organization was going to be over time. I find that to be incredibly irresponsible.

As we look at this bill, I think one of the gauges of what it does is, we have the folks on Wall Street who rhetorically my friends on the other side of the aisle wanted to bash, and, candidly, all of America in many ways is upset with Wall Street is loving this bill. They have got teams of compliance officers who have the ability to deal with regulations a consumer protection agency might put out, all these rulemakings. As a matter of fact, typically when we regulate like this, it is the big guys who benefit, and they get bigger.

But the community banks, the smaller banks in my State, and I think across this country, are the ones that are concerned. I know we are all concerned about the employment activity in our country. All of us want to see the economy improve.

At the end of the day, most Americans have to deal with these smaller institutions. Most Americans want to deal with these smaller institutions. They are people they go to church with, they go to Rotary Club, they see at the grocery store. These are the people they have relationships with. What we are doing in this legislation is we are increasing the cost of capital that is available to most Americans, and we are limiting the amount of that increased cost—that capital is going to cost more—we are decreasing the availability.

So we are decreasing the availability of capital in communities across our country, and we are increasing the cost of that. So I find that it is an amazing place where we are. We all care about employment, and yet we put in place policies that are counter to that employment. So, again, I am disappointed in the outcome of this bill.

I have appreciated working with many Members on both sides of the aisle to come up with a balanced piece of legislation that will stand the test of time, a piece of legislation, by the way, that will actually deal with the core issues that created this financial crisis. This bill does not do that in every area. It does in some. I want to say that some of the derivatives—clearing houses, I think that is a good contribution. Again, I think we have got end users out across our country now who are panic stricken, farmers and others, who use derivatives in their daily lives. And now maybe—we do not know because regulators will decide down the road. We punted that. We said, we will let the regulators decide. So for a period of time, they are going to be concerned about whether they are able to put up their tractors and barns and other things as collateral against derivatives or be in a more risky position.

We have missed the mark. I realize that, ironically, after a year of work, 2,300 pages, hundreds and hundreds of rules that are getting ready to be generated by regulators. It is my understanding there is now already another bill coming to correct this bill. That is pretty amazing to me.

I wish to say that politics ends up overcoming substance, I have seen as bills come to the floor. We had an opportunity which we missed to try to get this bill right in a bipartisan way. In spite of the fact that I am disappointed I cannot support this legislation strictly on policy grounds, I do want to say that our staff and our office is going to continue to be engaged with others. I know there is going to be a lot of other activity as a result of this bill, some of the unintended consequences, some of the mistakes that have been made and some of the glaring omissions we did not deal with, things such as—it is hard for me to believe that we would not take the time to upgrade our Bankruptcy Code so that a large entity that fails goes through some of the same things the same entity in Minnesota might go through. It is amazing to me that we did not do that work. But we still have an opportunity.

I know the Presiding Officers have now changed. I know the Presiding Officer sitting here today is on the Judiciary Committee. I also know that over the course of the next year or two we will have the opportunity to work on that and try to develop something so that when a large, highly complex financial entity fails, there is actually a sort of standard they go through when they fail that people understand, and they understand the bankruptcy stats, they understand what their rights are going to be.

There is a lot of work left to be done. I am disappointed in where we are and what we are going to be voting on tomorrow night.

I cannot support it, but I do look forward to working with my colleagues on changes that will have to be made, on the unintended consequences this bill will create and, obviously, the many technical changes that will result because of the fact that we rushed our work.

This process began mostly about substance. A lot of people put a lot of time into trying to understand substance. I know the Presiding Officer focused on one particular issue and tried to offer some substance in that regard. At the end of the day, politics took over.

November is approaching. It would be nice in the eyes of some people to have a 60-, 61-vote bill. Some are said to like obstruction. I can tell my colleagues, nothing could be further from the truth, especially on this piece of legislation.

What I regret most is, I know this bill is going to have the unintended consequence of hurting Tennesseans, hurting people from Oregon and Minnesota and around the country. There is no question that with all that we have laid out in these 2,300 pages, there will be less credit available and the credit that is available will cost more money. What we really have done with this bill is hurt the average American.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MERKLEY. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MERKLEY. I ask unanimous consent to speak as in morning business.

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

Mr. MERKLEY. Mr. President, I rise to address the Dodd-Frank financial reform bill and to share the reasons it makes a great deal of sense to restore the lane markers and traffic signals to our financial system—lane markers and traffic signals that were ripped away carelessly, thoughtlessly over the course of a decade and led to the economic house of cards that melted down last year, doing enormous damage to America's working families. There may be many in the financial world who feel pretty good about the most recent billion-dollar quarterly profits or million-dollar bonuses, but families in America's working world are not feeling so good. They are looking at their retirement savings being decimated. They look at the value of their house and realize it is worth less than it was 6 years ago. For many families, the amount they owe on the house is more than it is now worth. Families are looking at lost jobs and lost health care that went with those jobs. They are looking at an economy that struggling to recover, that is providing them few opportunities to get back on their feet.

The meltdown triggered by the economic house of cards built up over the last decade is enormous. It is not only the damage done to families, it is the damage done to the economy as a whole. We cannot talk to any room with owners of small businesses and not hear stories about frozen lending, about credit lines cut in half, about opportunities to expand a business, but, despite a regular banking relationship extended over a decade, that bank cannot now extend the loans that would enable them to seize that opportunity to create jobs. We still have massive disruption in our securities market that provides the credit that fuels not only home mortgages but many other parts of the economy.

This economic meltdown has been a huge factor in contributing to the national debt. In every possible way, the absence of responsible lane markers and traffic signals has wreaked havoc on the American family and the American economy. We are here now to set that straight, to restore those lane markers and traffic signals.

What really happened? It can be summed up in two words: irresponsible deregulation. Let's get into the details a bit further. Let's start with irresponsible deregulation that led to new predatory mortgage practices. One of those practices was liar loans, loans in which the loan officer was making up the numbers and putting them in because they knew they could turn around and sell that loan to Wall Street and have no responsibility for whether that family succeeded in making the payments.

Another predatory practice was steering payments—mortgage originators getting paid huge bonuses to sign people up for mortgages that had in the fine print hidden exploding interest rates, so the family could easily make the payments at 5 percent, but when that hidden language triggered 9 percent, there was no way the family was going to be able to make those loan payments. Since most of those were on a 2-year delay, we can think of it as a 2-year fuse, a ticking timebomb, a ticking mortgage timebomb that was going to go off and destroy that family's finances. Then the prepayment penalty that locked people into those loans. These retail mortgage practices resulted in irresponsible deregulation.

Then we had the securities that were made from those bad mortgages by financial firms, packaging those bad mortgages, putting a shiny wrapper on them, and then selling them with AAA ratings to financial institutions, to pension funds, to investment houses, tossing those mortgage securities hither and yon without full disclosure. When those mortgages that were in those packages went bad, those securities were going to go bad. That is what happened in 2008 and 2009. It melted down this economy.

Another piece was the irresponsible deregulation lifting leverage requirements on the largest investment houses. Bear Sterns in a single year went from 20-to-1 leverage to 40-to-1 leverage. That means they were going to make a lot more money when everything is going up, but it means the moment things turn down, they can't cover their bets and they are going to go out of business.

Then we had credit default swaps. That is a fancy term for insurance on the success of a bond. That new insurance was issued by AIG without any collateral being set aside to cover the insurance—complete failure to deregulate this new product. Those insurance policies, those credit default policies created an interwoven web in which if one firm failed and couldn't pay off its responsibilities under the credit default swaps or insurance policies, then the firm that it owed was going to fail. It set up a web of potential collapse.

Those are the types of dramatic issues created through irresponsible deregulation that we must address in this body and that are addressed in the Dodd-Frank financial reform bill.

First, the bill ends those three predatory mortgage practices I spoke of. It ends liar loans. It creates underwriting standards. My colleague from Tennessee mentioned he would like to see underwriting standards in this bill. They actually are in the bill. That is a very important part of this legislation. This bill ends the steering payments, the bonuses paid to mortgage originators to basically guide people into tricky mortgages with hidden exploding interest rate clauses. This bill stops prepayment penalties that were used to lock families in. If you are in a mortgage and you have to pay several pounds of flesh to get out of that mortgage—and by that, I mean perhaps 10 percent of the value of your house—where is that 10 percent coming from? You can't do it, so you are locked in. You are chained to the steering wheel of a car going over a cliff. We have gotten rid of that practice.

The second main thing we have done is establish real-time consumer protection to end scams and tricks and traps in financial documents. There was a woman from Salem, OR, who wrote to me. She wanted to share her story, just one of the little pieces of malfeasance that had occurred. She had paid her credit card bill on a timely basis month after month, year after year. She was very surprised when she received a letter saying she had a late payment and owed a fee. So she called up the credit card company and said: How can this be? I always pay on time.

The person on the other end said: Yes, we received your payment, as you indicated. But your contract says we don't have to post your payment for 10 days, and so we didn't post your payment right away. We posted it at the end of that 10-day period. At the end of the 10-day period, your payment was late. So you owe us this fee. It is all in your contract.

She said: How can that be fair?

That is why we need a consumer protection agency for citizens across the country. Members know what I am talking about because virtually every one of us has opened up a statement and gone: Wait, how can that be fair? We did have the delegation of consumer protection responsibilities to the Fed, but the Fed had its monetary mission in the penthouse of their office building. They had safety and soundness on the upper floors, but they put consumer protection down in the basement. They ignored it. They didn't act on the responsibilities they had. So we put those responsibilities in an organization, a Consumer Financial Protection Bureau that has a single mission—not a third mission or a fourth mission, not a forgotten mission, not a mission we put in the basement, but a first mission—so that Americans can choose from responsible financial products, not ones that compete to see who can have the biggest scam, the biggest deception, the biggest trick or the biggest trap but instead can compete on the cost of the product and on the quality of the service.

The third thing this bill does is redirects banks to the mission of providing loans to families and small businesses. This is the core function of the banking world. What happened over the last few years is some of our banks said: It is a lot more fun to bet on high-risk investments than it is to make loans to families and businesses. But that is not the mission of the banks that have access to the Fed window for discounted funds from the Federal Reserve. That is not the mission of the banks that we insure their deposits. The function of those banks is to make sure there is liquidity in the hands of our businesses so they can thrive and so families can thrive. This bill redirects them to that mission.

Let me put it this way: High-risk investing is a little bit like high-speed car racing.

You know as you watch cars going around the race track they are going to push the boundaries, the limits of speed and traction, and they are going to do quite well. They are going to try to nudge ahead of the rest of the cars. But then, eventually, one is going to hit some rubber on the track or some oil or some gravel or get bumped by another car and the race car is going to crash.

When you go to the track, you pretty well know in advance you are going to see a car crash. That is the way it is with investment houses. They are competing with each other to find the best opportunities for the highest return, so we know they are going to crash—that some of them will—and we accept that. This is an important role in the formation, aggregation, allocation of capital. But we want them to crash on the race track, not to crash out on the streets of the city or the streets of the countryside. That is why this bill moves high-risk investing out of the banks that should be dedicated to the mission of providing loans to small businesses and families.

Another key thing this bill does is restore integrity in the formation of securities. Let me put it to you this way. Imagine that an electrician comes to your house because you are asking that electrician to wire up your basement. The electrician leaves, and you find out he or she took out a fire policy on your house. I think you might be a little worried about the quality of the wiring that was done in your basement.

Or consider this possibility: You buy a car and you find out the person who sold you the car took out a life insurance policy on you. Well, you do not like the idea, I do not like the idea, of the possibility that someone would sell a car that is defective so they can take out a life insurance policy and maybe cash in.

Yet that was what was happening with securities: companies taking bad loans, putting them in a shiny wrapper, selling them, and then taking out an insurance policy—a credit default swap—so when that security went bad they could cash in.

Well, we need to have a level of integrity in the formation of our securities or our bonds. This bill takes us in that direction. This bill puts the sale of swaps on organized markets. What are swaps? Again, they are insurance policies, based on interest rates; insurance policies, based on exchange rates; insurance policies, based on the success of securities.

You cannot sell insurance to the general public without setting aside reserves, but these swaps were sold without reserves. So this bill before us today says reserves are necessary so the bet can be covered if the event you are insuring should happen.

It also creates a market for them so the customer—that is normally a business that wants to hedge its interest rate risk or its exchange risk or its investments in securities, that wants to hedge and protect itself against the possibility that those will go down or change—they can get that at a much better price when they can do so through the power of a transparent, organized market.

So being able to hedge risk at a much cheaper price is a huge contribution to the formation and allocation of capital in our country.

Finally, this bill allows a systematic way to dismantle failing firms in the financial world so it minimizes systemic risk and so the industry itself picks up the cost of their failure, so we the taxpayers are not in a position of having to pick up that cost.

I know some of my colleagues on the other side have simply asserted the opposite to try to confuse the issue. Well, I think that is irresponsible because so much was done in this bill to make sure American taxpayers are never again on the hook for the failure of financial firms in our Nation. This is the type of responsible lane markers and traffic signals we need in our system.

Certainly every one of us here believes there are further strides that could be made. There are standards in this bill that I would like to have crisper. There are terms for which I know we will need fierce, vigilant regulation to make sure those terms are not expanded into loopholes.

This bill does not do as much as I would like to address the issue of perverse incentives in the system of rating securities, something the Presiding Officer was a huge advocate for, and put forward a terrific policy to address. We are going to have to keep working on that piece.

But in each of these areas I have described, this is a quantum improvement. I think colleagues on both sides of the aisle know that. So beware of efforts to confuse the debate trying to say what is north is south and what is east is west.

So these are the reasons—these core improvements to our financial system that enhance the ability to aggregate and allocate capital efficiently—why I am supporting this bill. I applaud the chairman of the Banking Committee, who steered this bill through enormous sets of obstacles. It is reported that Wall Street hired 1,000 extra lobbyists to try to torpedo the bill that is before us. That is a lot of obstacles to get through.

These are complex issues that required thoughtful analysis and had to be worked and reworked. So I applaud the chairman's work in taking us to this point where we are prepared to send this bill on to the President's desk.

I would like to particularly thank my colleague, Carl Levin, who teamed up to work with me on a proposal to take high-risk investing out of the bank holding companies and to improve the integrity of bonds. That was work that came straight out of the committee work he did in such a capable and timely fashion.

So with that, I conclude by saying we need a financial system that is not about quarterly profit margins on Wall Street, that is not about the size of bonuses on Wall Street but is about providing a foundation for business to thrive, for employment to be increased, for families to find work, and to build financial foundations for the success of those families over the next several decades. That is the type of financial foundation we need, and this bill certainly is a huge stride in accomplishing that.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I will not take long at this moment. I just want to compliment our colleague from Oregon—as well as other members of the committee—for his work on this historic piece of legislation. This was a long time in putting together a comprehensive, complicated piece of legislation dealing with financial reform. There are many people who deserve credit for the product of this legislation, not the least of which is Senator MERKLEY of Oregon, a new Member to this body but a very active and vibrant member of the Banking Committee who added substantially to the product that is now before us.

So I appreciate having the opportunity to hear his observations about the bill and look forward to further comments today and tomorrow by others on this product. At a later point today, we will go into greater length about the bill. But I would urge my colleagues to support this legislation. I am very grateful to all who have been involved—both Democrats and Republicans—in trying to make this as strong and as good a bill as we possibly could.

I have listened with some interest today to the comments of others about this legislation, with some amusement, I might add, in terms of observations about how we got to where we did. But, nonetheless, that is the nature of this institution, I suppose.

With that, I again thank Senator MERKLEY for his fine work.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

INVESTING IN AMERICA

Mr. VOINOVICH. Mr. President, I rise today to discuss the state of unemployment in our country and what we need to do to finally create sustainable jobs and grow our economy.

The unemployment rate currently stands at 9.5 percent nationally and in my State 10.7 percent. Clearly, something has to be done about this. It appears that the new Senator we are expecting from the State of West Virginia may be the deciding factor when we vote later this month to begin addressing this problem.

First, I think we need to understand that we need to instill certainty into the economy by providing relief to the segment of our fellow citizens who cannot find work. Because of the downturn in the economy, I have already voted multiple times to extend unemployment insurance from the standard 26 weeks to 99 weeks, amounting to tens of billions of dollars. But this emergency extension has now expired, leaving many without the benefits they need to stay afloat. So let's extend unemployment insurance once again. Resuming this emergency program through November 30 will cost about $33 billion, and I believe we should pay for at least half of it from the stimulus funds.

Just before the recess, I supported an unemployment insurance extension that was fully paid for, but my Democratic colleagues blocked that amendment offered by Senator JOHN THUNE, preferring instead to continually borrow money on the credit card of our children and grandchildren. Last year, we borrowed $1.4 trillion. That means we borrowed 41 cents of every dollar we spent last year. Over half of this debt is held by foreign investors. By the end of this year, our national debt will be a staggering $13.8 trillion. That is an almost $2 trillion increase in 1 year. As the book of Proverbs tells us in chapter 7, verse 22, ''The rich rule over the poor and the borrower is the servant of the lender.''

America must address its debt and stop borrowing money from countries such as China and others that don't have our best interests at heart. We just can't keep kicking the can down the road. Our national debt is one of the most important problems we face, and our failure to begin to address the fiscal crisis will damage our economy, our national security, and the kind of future we leave to our children and grandchildren.

Still, I know Ohioans are hurting, so I approached the majority leader and told him I would provide the vote he needed to extend unemployment insurance if the Democrats were willing to use some of the estimated $40 billion unspent stimulus money to help offset at least half of the stand-alone unemployment insurance extension. He rejected my offer but remained at the table on what I considered to be a fair and simple bill: Extend the unemployment benefits and pay for half of it.

So I say to my friends on the other side of the aisle, let's get it done. Let's extend UI benefits in a bipartisan manner and pay for at least half with stimulus funds. I am confident we could get 60 votes for that tomorrow.

Second, I know most people in America would rather have a job than collect unemployment insurance. They would rather have a job than collect unemployment insurance. But my concern is that not enough is being done by this administration—or by Congress, for that matter—to put people back to work or create an environment where businesses have enough confidence in the future to unleash a corporate, private sector stimulus.

I wish to quote from a current Newsweek article by Fareed Zakaria entitled ''Obama's CEO Problem. He needs business on his side now.''

I ask unanimous consent to have this article printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. VOINOVICH. He says the following:

> Actually, there is a second stimulus, one that could have a dramatic effect on the economy—even more so than government spending. And it won't add to the deficit.

He goes on:

> The Federal Reserve recently reported that America's 500 largest nonfinancial companies have accumulated an astonishing $1.8 trillion in cash on their balance sheets . . . and yet, most corporations are not spending this money on new plants, equipment, or workers. Were they to loosen their purse strings, hundreds of billions of dollars would start pouring into the economy. And these investments would likely have greater effect and staying power than any government stimulus.

about—we are still waiting to hear from the White House on their priorities. I recently met with Secretary Ray LaHood, and he indicated that we will be hearing from the administration soon.

But the fact is the person we need to hear from is President Barack Obama. That is who we need to hear from. He is out on the stump talking about creating jobs. Here is an unbelievable opportunity—a way to create real jobs and not borrow the money from our kids and grandkids to pay for it. On occasion, the President has said he is opposed to any tax, including a gas tax, on the ''middle class.'' I point out that the Kerry-Lieberman bill, which he supports, includes an increase in the gas tax of between 20 and 60 cents higher per gallon. That doesn't make sense. He supports that but not 10 cents for highways? It should be noted that all the groups who want the reauthorization bill and are willing to pay for it with a gas tax, by the way, are up in arms about the Kerry-Lieberman bill, because they think it diverts funds from the highway trust fund.

They sent a letter to the President, saying this gas tax is to be used for transportation and transit in this country. We don't warrant its use in the Kerry-Lieberman bill to raise money for things that don't have anything to do with the concerns that we have.

Passing a surface transportation bill would put a large segment of the economy to bed. Think about it. For 5 years, that part of our economy will feel good about things. It will help States meet their infrastructure needs. It will reduce greenhouse gases and provide certainty and stability to keep it on the road to recovery.

Show me another bill that has bipartisan support from labor, manufacturing, business, truckers, and State and local groups. I doubt any other piece of legislation will get this kind of support before the election. Do you know what we need? We need a sorbet to bring people together. Let the American people know that we hear them. And do you know something? We can get something done on a bipartisan basis, believe it or not. This legislation will create real jobs for Americans. It will be paid for and will put a major part of the economy to rest without adding to an already staggering deficit. It will eliminate the uncertainty about the future that is plaguing our country so we can move forward to provide brighter prospects for our children and grandchildren.

I guess the most important guarantee is that the bill will give peace of mind to millions of workers in transportation and allied industries. They no longer will have to worry about unemployment compensation. They will have a job. They can pay their mortgage, buy a car, pay for their kids' education; and they can have the peace of mind that comes from having a job.

EXHIBIT 1

[From Newsweek, July 6, 2010]

OBAMA'S CEO PROBLEM

(By Fareed Zakaria)

The American economy is sputtering, and we are running out of options. Interest rates can't go any lower. Another burst of government spending—whether a good or bad idea—looks politically impossible. Is there anything that could protect us from the dangers of stagnation or a double dip? Actually, there is a second stimulus, one that could have a dramatic effect on the economy—even more so than government spending. And it won't add to the deficit.

The Federal Reserve recently reported that America's 500 largest nonfinancial companies have accumulated an astonishing $1.8 trillion of cash on their balance sheets. By any calculation (for example, as a percentage of assets), this is higher than it has been in almost half a century. And yet, most corporations are not spending this money on new plants, equipment, or workers. Were they to begin loosening their purse strings, hundreds of billions of dollars would start pouring through the economy. And these investments would likely have greater effect and staying power than a government stimulus.

Now, let me be clear. I think there is a strong case for a temporary and targeted government stimulus. Both people and companies are being very cautious about spending. Right now, government spending is what's keeping the economy afloat. Without a second stimulus, state and local governments will have to slash spending and raise taxes, which will produce a downward spiral of higher unemployment, slower growth, lower tax revenue, and a larger deficit. Joel Klein, the New York City schools chancellor, told me that when the stimulus money runs out at the end of this year, he will be forced to lay off 5,000 teachers. Multiply that example a thousand times to get a sense of what 2011 could look like.

But government spending can only be a bridge to private-sector investment. The key to a sustainable recovery and robust economic growth is to get companies to start investing in America. So why are they reluctant, despite having mounds of cash lying around? I put this question to a series of business leaders over the past few days. They were all expansive on the topic, and all wanted to stay off the record, for fear of offending people in Washington.

Economic uncertainty was the primary cause of their caution. ''We've just been through a tsunami, and that produces caution,'' one said to me. But in addition to economics, they kept talking about politics, about the uncertainty surrounding regulations and taxes. Some have even begun to speak out publicly. Jeffrey Immelt, the CEO of General Electric, complained last Friday that government was not in sync with entrepreneurs. The Business Roundtable, which had supported the Obama administration, has begun to complain about the myriad new laws and regulations being cooked up in Washington.

One CEO said to me, ''Almost every agency we deal with has announced some expansion of its authority, which naturally makes me concerned about what's in store for us for the future.'' Another pointed out that between the new health-care bill, financial reform, and possibly cap-and-trade, his company had lawyers working day and night trying to figure out the implications of all these new regulations. Lobbyists in Washington have been delighted by all this new activity. ''[Obama] exaggerates our power, but he increases demand for our services,'' the super-lobbyist Tony Podesta told The New York Times.

Most of the business leaders I spoke to had voted for Barack Obama. They still admired him. Those who had met him thought he was unusually smart. But they all thought he was, at his core, anti business. When I would ask them for specifics, they pointed to the fact that Obama had no businessmen or women in his cabinet, that he rarely consulted with CEOs (except for photo ops), that he had almost no private-sector experience, that he'd made clear that he thought government and nonprofit work was superior to work in the private sector. It all added up to a profound sense of distrust.

Some of this is a product of chance. The economic crisis forced the government into expansions of its authority in dozens of areas, from finance to automobiles. But precisely because of these circumstances, Obama now needs to outline a growth and competitiveness agenda that will seem compelling to the American business community. This might sound like psychology more than economics, and the populist left will surely scream that the last thing we need to do is pander to business. But in fact the first thing we need is for these people to start spending their money—soon. As a leading New York businessman, who had publicly supported Obama during the campaign, said to me, ''Their perception is our reality.''

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Georgia is recognized.

FINANCIAL REGULATORY REFORM

Mr. ISAKSON. Mr. President, I will be brief. I come to the floor this afternoon in anticipation of the vote tomorrow on the financial regulatory bill and to express the concerns I expressed before its passage on the floor originally, and my continuing concern today about its final form—and I understand it will pass with 60 votes.

Nobody has been more concerned about the economy and the financial markets and financial institutions of our country than I. In part, because of my lifetime in the residential real estate business, I have seen firsthand the sufferings in our mortgage industry, the foreclosures that have taken place, and what the subprime lending industry did in the U.S. economy.

Before we rush to a reregulation of financial institutions, I think we have to stop and reflect on some of the things we have already noted as Members of the Senate.

Senator CONRAD, a Democrat from North Dakota, and myself introduced legislation over a year ago called the Financial Markets Crisis Commission. We introduced it because we believed everything that had happened in late 2008 through March of 2009 that collapsed our markets on Wall Street, collapsed our securities, collapsed our mortgage-backed securities lending, and hurt our banks both community and national need to be investigated. We need to get to the root problem. We need to try to correct it.

This Senate passed the Conrad-Isakson amendment unanimously. The House passed it virtually unanimously. The Senate and the House funded it to the tune of $8 million. That commission is appointed and working today. It has subpoena powers that it can issue, and it is issuing subpoenas. It is directed by statute to report back to us by December 31 of this year.

Here we find ourselves in the position of getting ready to pass a financial reregulation bill on the floor of the Senate tomorrow, in the middle of the year in July, knowing that we are not going to have until December of this year the forensic audit of our financial system done by the Financial Markets Crisis Commission which we unanimously funded and demanded. It is like a doctor doing surgery before he does a diagnosis. It does not make a lot of sense.

In particular, there is one part of the bill I want to focus on for a second that I think is rife for continuing problems without any regulatory oversight, and that is Freddie Mac and Fannie Mae.

I think everyone realizes that the purchase of mortgage-backed subprime securities by Freddie and Fannie created the depository whereby Wall Street went to raise the money to make subprime loans, knowing they could sell them to Freddie and Fannie. Once you create liquidity for those securities, you create a market, and those securities are going to be created to be funded or purchased by those entities.

That is exactly what happened over the 5 or 6 years preceding the beginning of the collapse in late 2007. Freddie and Fannie went from zero holdings in subprime loans to as much as 13 percent of their portfolio. This was not just because they decided to buy them, but it was in part because of a congressional directive for Freddie and Fannie to have a portion of their portfolio in what is known as affordable loans.

These affordable loans became subprime loans. They were securitized on Wall Street. The securities sold around the world, with the legitimacy of those securities based in part on the fact that U.S. Government-sponsored entities, Freddie Mac and Fannie Mae, were buying them, but also because Moody's and Standard & Poor's rated them AAA. Then all of a sudden we had a tremendous collapse of subprime securities that had devastating consequences not just for the United States but for the world.

Briefly, I want to tell a story to make that point. In August of 2008, I was in Kazakhstan with Leader REID and other Members of the Senate on a trip that later took us to Afghanistan and finally to Germany. When we arrived in Kazakhstan and landed at the airport, we went into the city in an ambassador's vehicle. As we went by, I saw this beautiful city in Asia, beautiful countryside, large buildings being built, beautiful flowers, obviously a country of great wealth. They do have most of the oil in the old Soviet Union, now the Russian Federation.

As we came into town, I kept noticing vacant, half-finished 20- and 30-story buildings with a chain-link fences around them and razor wire on the fences and a padlock on the doors.

We went to the Embassy and went to a briefing. When it was over, we were asked if there were any questions. I said: I have one. Is today a holiday?

The Ambassador's officer said: No, it is not a holiday. Why do you ask?

I said: We passed 15, 20 buildings half finished, cranes up, 20 to 30 stories, padlocks on the gates, razor wire on the fences, nobody working. What happened?

He said: U.S. mortgage-backed subprime securities.

I said: I beg your pardon.

He said: U.S. mortgage-backed subprime securities. He said: Just 3 weeks ago, Merrill Lynch in America wrote down their portfolio by 78 cents on the dollar. Therefore, the Bank of Kazakhstan, which had bought a number of these securities, wrote down their portfolio as well. They stopped funding construction loans. They stopped making mortgages.

Kazakhstan is 11½ time zones away from Washington, DC. The reverberations of the subprime security collapse affected not just the United States but the world. Today what is happening in Europe and other areas is, in part in our recession, was a consequence of what began by a mandate by Congress for Freddie Mac and Fannie Mae to purchase affordable mortgage-backed securities which became the subprime securities that collapsed the marketplace.

I tell that story and I make that statement to make my single important point on why this rush to judgment on the financial regulatory bill is wrong. It is wrong because it excludes Freddie Mac and Fannie Mae from any scrutiny or increased regulation. Let me repeat that. The two entities that created the market that bought the securities that fueled the funds for Wall Street to put them together and sell them—the two entities, Freddie Mac and Fannie Mae—are exempt from this financial reregulation bill in terms of scrutiny.

That just, to me, does not make any sense. I think when the Financial Markets Crisis Commission reports back to us at the end of this year, it will make it clear that it is a mistake to rush to judgment.

It is critical that we have all the players under scrutiny and all the players under regulation, not just trying to create a feel-good system where we reregulate those who are already regulated, saying we are doing something about the conditions in the market when, in fact, we are raising the cost of doing business, lowering the ability for banks and lending institutions to extend capital and, in fact, in some ways contributing to a contraction of the recession we experience today in America.

When I cast my ''no'' vote tomorrow on financial reregulation, it will not be because I don't think we need to do some things in the marketplace, but it will be because I think it is time we listen to the people we have charged to come back to us with a forensic audit and tell us what we should have done rather than take a rush to judgment in a precarious and difficult time in the current recession in the United States.

I am grateful for the time given to me. My vote tomorrow on the financial reregulation bill will be no. It is my hope that when the Financial Markets Crisis Commission comes back in December, we will find the right answers from that forensic audit to then make the right decisions for the financial markets of the United States of America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

TRIBUTE TO LIEUTENANT GENERAL FRANKLIN L. HAGENBECK

Mr. REED. Mr. President, next Monday, LTG Franklin Hagenbeck will retire from the U.S. Army after 39 years of service. He is a friend and a classmate from West Point, the class of 1971.

Buster Hagenbeck has distinguished himself as a soldier, as a scholar, as an individual of peerless leadership ability. He entered West Point with the class of 1971. He graduated and was commissioned an infantry officer. He served in a succession of assignments, culminating as the commander of the 10th Mountain Division in Afghanistan. There he fought the fight in Operation Enduring Freedom. He served with great distinction, great judgment, and great discernment of the situation. He certainly not only exemplified the courage and character of our troops, but he felt very deeply for their concern and welfare. That is the type of individual, that is the type of soldier he is.

After serving as the G–1 of the U.S. Army, he was designated the 57th Superintendent of the United States Military Academy. In the last several years, he has distinguished himself as a leader on not only issues of academic excellence but also, much more important, fulfilling the fundamental mission of the Military Academy to produce men and women committed to the motto of the academy: ''Duty, honor, country.'' Selfless service to the Nation. Buster Hagenbeck personifies that spirit.

Under his leadership, West Point has been recognized by Forbes magazine as the best liberal arts college in the country. Every year it has successful candidates for Rhodes Scholarships and Marshall Scholarships. It is ranked at the very top in terms of engineering schools in the United States. But the real hallmark of West Point, as it always has been and always must be, is the men and women they produce, the young lieutenants who are today serving in Iraq and serving in Afghanistan, serving with courage and distinction.

I think it is not only comforting for them to know but inspiring that their Superintendent led forces in Afghanistan before them, that he knows what

Remember, all we have seen so far is just the birds that live down there in the heat. Think of when all the birds go down there. This is what they are going to find. They are going to find that beaches that used to have beach balls are now filled with tar balls. So many of them go to the marshes and the wetlands, and the oil is starting to creep into those marshes. We cannot really put up a sign for those birds that says: Hey, go to Mexico instead. There are naturally other places they could go, but, guess what. They can't read. Nor are we going to be able to put some big net up to stop them from flying to those places. I talked to people, experts on this, from Ducks Unlimited and other places. These birds do not have the instinct to avoid those oily areas. They are going to just plow back in where they went last winter. That is why a bipartisan group of Senators joined me in sending a letter to Secretary Salazar to ensure that proper attention and coordination is also made with U.S. Fish and Wildlife and conservation organizations that are working to protect the habitat of migratory birds.

I am pleased that just this week, the National Incident Command announced the launch of a new Web site, restorethegulf.gov, dedicated to providing the American people with clear and accessible information and resources related to the BP oilspill response and recovery.

It is also important that as we focus on stopping this terrible leak, we also prepare for the serious and imminent threats to the birds and wildlife that play a critical role in the regional gulf economies and to the more distant regional economies in places such as Minnesota and Wisconsin.

In just a few weeks, we must be ready for the mass influx of ducks and birds in the gulf region. If we fail to prepare, countless unsuspecting birds, wildlife, will not return to Minnesota and our ecosystems and economies will feel the impact, not just in Minnesota but throughout the country; not just in Louisiana, not just in Florida. It will spread. We will continue to push, with the recovery efforts, to make sure there is adequate focus on this important issue.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BEGICH.) Without objection, it is so ordered.

FINANCIAL REGULATORY REFORM

Mr. DODD. Mr. President, I want to spend a couple of minutes, a few minutes this evening, if I can, talking about the Wall Street reform, the financial reform bill. I want to begin by thanking the Presiding Officer who, while not a member of the committee, played a very active role during the consideration of the legislation on the floor of this body a number of weeks ago.

There will be a debate again, I know, tomorrow before we actually vote on final passage of the bill. A lot of this I will talk about this evening I have discussed in the past over many weeks and months that have brought us to this particular moment, where within the next 24 hours we will make a final decision as to whether this body is prepared to endorse the efforts to reform our financial system in this country so that we never ever again subject the American people to what they were subjected to in the fall of 2008 where the Congress of the United States, along with President Bush, asked the American taxpayer to write a check for $700 billion to bail out financial institutions which, through their own misfeasance and malfeasance, as well as those of regulators who failed to act, put this country and in fact the globe at financial risk.

I shall never forget as long as I live the meeting in mid-September in the offices of Speaker NANCY PELOSI, along with Democrats and Republicans, and their respective committees in Congress, where the Chairman of the Federal Reserve Board and the Secretary of the Treasury under President Bush announced to all of us that if we did not act within a matter of days, and I am literally quoting the Federal Reserve Chairman and the Secretary of the Treasury, that if we did not act within several days, the entire financial system of this country and maybe a good part of the world would melt down, were their words.

So we acted over the next several weeks. There are a number of Members here who were deeply involved in that effort. The country reacted with great outrage over how we had ever gotten to that position and what steps we were going to take to see to it that we would never ever again subject our Nation not only to the cost of bailing out these firms but also the cost that has ensued as a result of the financial collapse to jobs and homes, retirement accounts, ability of families to educate their children, all of the effects that have been visited upon the American people and many others as a result of events that began to transpire years ago, culminating in the difficulties we saw in the fall of 2008.

Before I begin any remarks about the bill itself and what we have tried to achieve, I want to begin by thanking my colleague from Arkansas, Senator BLANCHE LINCOLN, who chairs the Agriculture Committee. She shared a responsibility with me in this bill, and while the bulk of the titles came out of the Banking Committee bill, a very critical piece of this legislation involved the participation of the Agriculture Committee. She and SAXBY CHAMBLISS, my colleague from Georgia, along with their colleagues on the committee, worked very hard and I thank them and their staffs for the work they have produced in order to make this a stronger and a better bill.

I want to thank my House counterpart, BARNEY FRANK of Massachusetts, who chairs the Financial Services Committee of the other body. He, along with Chairman PETERSON of the Agriculture Committee, did a very good job in pulling together the House version of this bill. They actually completed their work back in December of last year. The House moved more quickly for all of the reasons that Members are aware of, the rules of the institution and others that facilitate the rights of the majority to basically move along through the underbrush without the nuances that the Senate provides for in terms of the consideration of legislation.

I sat, along with my Senate colleagues from the Banking Committee and the Ag Committee, for 2 long weeks, almost 70 hours in a conference committee. For those who wonder what a conference committee is, very simply it is when the Senate acts on a bill and the House acts on a bill, and you need to resolve the differences between the two, we meet in what is called a conference committee.

The leadership of both Chambers appoints conferees to represent the interests of the respective Chambers, as you then sit down and try and iron out those differences. Chairman BARNEY FRANK chaired that conference committee. There were 42 of us, Members of the House and the Senate, who got together for that lengthy period of time, including one all-night session, to produce what is in front of us today, and that is this. This is the conference report that reflects the work of both bodies over many months in trying to craft a series of ideas and proposals that would minimize, if not altogether prohibit, the tragedy we have been through over these last several years.

I would also be remiss at this juncture if I did not thank the members of the Senate Banking Committee who spent a lot of time together over the last number of years. I became chairman of this committee about 30 months ago, in January of 2007. My great friend and colleague with whom I served for so many years from Maryland, Paul Sarbanes, retired from the Senate. The ranking member, Senator SHELBY, was chairman of the Banking Committee for about 4 years prior to January of 2007. So on the seniority system, I reached the elevated status to become chairman of this committee at a critical moment when obviously the bottom began to fall out of our economy. Since January of 2007, our committee has had around 80 hearings on this subject matter alone that has produced the ultimate product before us here this evening and tomorrow.

I want to begin by thanking my Democratic colleagues on the committee and the members of their staffs. TIM JOHNSON of South Dakota, who has done a wonderful job, has been deeply involved in a number of critical issues before the committee.

JACK REED of Rhode Island is a very valued member of the committee, spent a lot of time working with Senator GREGG on the derivative section in this bill.

Senator CHUCK SCHUMER of New York, extremely knowledgeable about financial matters, has been invaluable in understanding the nuances and the difficulties, as well as understanding this institution very well, and I want to thank him for his service.

Senator BAYH of Indiana, who, along with myself, will be retiring at the end of the year, has been a strong member of the committee, brought a good perspective on the needs of American business and industry as we worked our way through the legislation; BOB MENENDEZ of New Jersey, tremendously helpful as well.

HERB KOHL of Wisconsin, again a knowledgable businessman in his previous life, comes to the Senate with a lot of strong ideas and contributed to this bill.

DAN AKAKA of Hawaii also added considerable financial literacy. This has been a subject matter he has long been interested in, and seeing to it to how we might elevate the knowledge and understanding of consumer responsibility when it comes to financial matters.

SHERROD BROWN of Ohio. We serve together on two committees involved in both the Health, Education and Labor Committee, which the Presiding Officer also serves on. He is a member of the Banking Committee, and again was tremendously helpful and interested in the subject matter.

JON TESTER of Montana did a very good job as well and was invaluable on rural America, the interests of small banks, the financial needs of more rural aspects, more rural areas of our Nation.

JEFF MERKLEY who played a critical role, along with CARL LEVIN, on a major part of this bill dealing with proprietary trading, the so-called Merkley-Levin rule, which was debated at length over many weeks and is part of this bill.

MARK WARNER of Virginia is a new member of this body, a former Governor of Virginia, and a person who has spent a good part of his life working in the area of financial services. I cannot begin to say enough about MARK WARNER's involvement with this bill. He was invaluable in terms of helping to understand and bring together various people from disparate points of view on resolution mechanisms, as well as winding down of financial institutions and how they ought to work. And while a junior member of the committee, his involvement, his participation, was that of any senior member—in fact, more so. So I thank him.

Then, of course, MICHAEL BENNET of Colorado, as well who comes from a varied background, including financial services, understands it well.

So I thank my Democratic colleagues on the committee for their work.

Senator SHELBY, the Republican ranking member, and I have been great friends for many years, served in the other body and this body together for a number of years. And while we have differing points of view on this bill, and he is not a supporter of it, the Shelby-Dodd amendment, which was offered at the outset of the debate on the floor of this Chamber, put aside I think for most Members once and for all the issue of a bailout, too big to fail. I thank him for that and his involvement in the process as we moved forward.

BOB BENNETT of Utah, tremendously knowledgeable, played a very important role on the Banking Committee over many years.

JIM BUNNING, the nemesis of the Federal Reserve, was never shy at expressing his concerns about the conduct of the Federal Reserve Board. I thank him for that.

MIKE CRAPO of Idaho is very knowledgeable, worked with CHUCK SCHUMER on corporate governance issues. He contributed to this bill. A number of amendments we adopted were Crapo amendments that strengthened the legislation.

BOB CORKER, worked with MARK WARNER. I thank BOB CORKER. I listened to his remarks earlier today. We have a different point of view on the evolution of this bill, but, nonetheless, I thank him for his work on titles I and II of the legislation. Along with Senator WARNER, I think they made a significant contribution—and his staff as well.

MIKE JOHANNS of Nebraska again has strong interest in the legislation; Senator VITTER of Louisiana; Senator DEMINT of South Carolina; also Senator HUTCHISON. A number of amendments were adopted. KAY BAILEY HUTCHISON of Texas was deeply interested in regional banks, the Reserve banks, and played an important role.

JUDD GREGG of New Hampshire, again a retiring Member at the end of this Congress, while we have had some differences on this bill, which you will no doubt hear more of over the next 2 days, JUDD GREGG played such a pivotal role in the fall of 2008 in trying to put together a proposal that would restore some stability to the financial institutions in our country. While we have our disagreements, I have great respect for him. He is a knowledgeable Member, one who brings a great deal of passion to his beliefs and views. There are a lot of matters in which I could point to JUDD GREGG's involvement. I thank him as well.

Those are the members of the Banking Committee. So before beginning any substantive discussion of the bill itself, I wanted to thank the leadership of the House, the Financial Services Committee, and my colleagues on the Banking Committee, as well as, of course, BLANCHE LINCOLN of the Agriculture Committee for their work.

At a later point in these remarks, I will go through and mention staff, people who played such a critical role as well. But I thought at the outset we need a recognition of these Members. Yesterday I spoke briefly about the role of the majority leader, HARRY REID. And again, while not involved on a daily basis in the production of this legislation, the majority leader played such an important role in making sure the institution provided the time and the space and the procedures for the consideration of a matter such as this. As I mentioned earlier, he could have very easily decided to truncate the debate. We ended up taking 4 weeks of the time of this body, considering, as I mentioned earlier, some 60 amendments on the floor, open-ended debate. There were only one or two examples where a supermajority was required. There was only one tabling motion, I believe, of any of those amendments.

A significant number of amendments were adopted that were offered by the minority to this bill, as well as amendments that were offered on a bipartisan basis. In fact, of the 60 amendments that were adopted in the consideration of this bill, 30 of them, one-half, came from the minority as well as a bipartisan combination of amendments that were offered by both a Democrat and Republican together.

So one-half of the product that was adopted on the floor of this Chamber is a reflection of the work of Members from both sides of that political spectrum. And while Members may not want to crow about that, I do, because I think it is a reflection of the determination to make sure that this bill would be available for amendment and consideration.

No one is guaranteed success with their ideas, but you ought to be guaranteed an opportunity to be heard, and what we did in the consideration of this bill is provide that guarantee, and far beyond the guarantee. As I said, one-half of all the amendments adopted over 4 weeks were successfully offered by the minority or on a bipartisan basis, Democrats and Republicans. So the process has been an open one, one in which regardless of whether you like or support the bill, I would hope it would become an example of how the Senate can conduct its business on a major legislative proposal.

Today and tomorrow, the Senate of the United States will have the opportunity to bring some closure to one of the most challenging times in our recent history with the passage of comprehensive financial reform. This bill was not written to reshape our economy, the most powerful economy the world has ever known. Nor was it written to hinder innovation in our financial sector, the spirit of creativity and entrepreneurship that has made our economy the envy of the developed world, still is strong and vibrant, and I think enhanced by what we have done with this legislation.

As tempting as it would be to let the cries of protest from the worst offenders of the large financial institutions serve as an argument for passage, this bill was not written to punish Wall Street, despite the desires of many.

Our reform legislation does not have an agenda of its own. I would like to point out what we are trying to achieve with this legislation. Here you can see on the graph behind me—I will have several graphs to point to people—our job was—and you can look at various orders of matters on the graph—to end bailouts and too big to fail. Maybe more so than any other issue, this one is an issue which Members of the body were joined together in a common cause that never again did we want to see a bailout of a financial institution at the expense of the American taxpayer. So our first goal, in my view, was to end too big to fail and to end these bailouts.

Another is to grow jobs and create wealth. Obviously, you cannot without a vibrant financial services sector where credit becomes available, whether it is a small bank in Alaska or Connecticut, where credit can flow, capital can move, so businesses can grow and jobs can be created. And while this is not a jobs bill per se, in the absence of doing what we are doing, the idea of talking about long-term growth in our country without reforming the financial institutions would be a pipedream, in my view. So this legislation has as its goal to help create job growth in our Nation.

We want to empower consumers and investors. I will get into this in more detail, but the idea that there is someplace in our Nation where a group of people get up in the morning, not as a second or third afterthought, worrying about what happens to the consumer of financial institutions, whether it be a credit card, a student loan, a home mortgage, a car loan, whatever, an insurance policy—when you get up that morning, your primary obligation is to make sure that average consumer in this country who needs and depends every day on financial services will have someone watching out for them, to see to it that they are not going to be abused, defrauded, and taken advantage of. For the very first time in our Nation's history, we will have such a place because of this legislation. It is not perfect. It is not exactly what everyone was looking for. But I think allowing an agency like this, a bureau, to exist that will be able to focus its attention on that concern is a major contribution to this legislation.

Fourth, we have here the issue of putting tools in place to avoid these problems from growing as large as they did. One thing I think is very important to say about this bill. There is nothing in this legislation that will stop another economic crisis. It would be ludicrous to suggest we have. There will be other economic crises. The question we ought to be asking ourselves is, If there is one, can we minimize the effect of it or do we have a situation where a relatively small crisis can metastasize, much as a cancer might, across the economic spectrum in such a way that we find ourselves with job losses, foreclosures, and the like, that we have gone through?

We provided in the bill the tools to see to it that our regulatory agencies and others will have the capacity and the ability to identify, to spot early on problems that emerge both here at home and around the world. And I emphasize ''around the world'' because we have all painfully learned in the last number of weeks and months that a financial problem in a relatively small country some 10,000 or 12,000 miles from here can pose problems right in our own backyard. I speak, obviously, of the difficulties occurring in Greece and Europe as well. So it is very important that we have the capacity and the tools to address financial crises when they happen, as certainly they will.

Then lastly, of course, in this bill we rein in what we call the Wall Street enlarged bonuses that have so angered the American public, where people, even last year, in the midst of all this crisis and hardship—$20 billion was handed out in bonuses in the major financial institutions in our country. Again, I believe people who do good work and work hard ought to be rewarded. But how do you explain to the person who lost their job, their home, their retirement, their ability to educate their children, that an institution that brought this country to near collapse is rewarding its members with bonuses of $20 billion? So our legislation gives shareholders and others the opportunity in corporations to decide what those remunerations ought to be, as they should as the owners of these businesses. It is not a radical idea. In fact, it is radical not to allow people who ultimately are the owners of these businesses, as well as those whose hard-earned money gets invested, to have some say in all of this.

So our proposal before you is a comprehensive solution. It is not encompassing. There are obviously areas we did not deal with for reasons I will address momentarily. But it is a comprehensive solution to a very complicated set of problems.

This bill is a response to the failure of our financial regulatory system to protect ordinary families from the consequences of others' bad decisions. This legislation is the change I think the American people deserve after all they have lost and been through.

The effects of the crisis on our financial system are being felt all around us, and they will continue to be felt for some time, even with the adoption of this legislation. I have repeated these statistics, I know, over and over, and I will try to do this briefly, but it is important once again that we understand the impact of what has occurred. Sometimes, just by saying the numbers we dilute the influence or importance of it.

Mr. President, 8.5 million of our fellow citizens have lost their jobs in this economic crisis. Our unemployment rate is dangerously close to double digits. The fact is, it hovers near 20 and 30 percent with lower income people. If you are making $30,000 to $40,000 a year, the unemployment rate is triple that number of 9.5 percent or 10 percent. If you are making more than $75,000 or $80,000 a year—and many do—the unemployment rate is about 4.5 percent or 5 percent. So when you talk about a 9.5 percent or 10 percent number, that is overall, but within income groups, the number is much higher among lower income workers and working families than it is for the national average. So the job loss has been significant.

I wish there were some way to convey the sense of loss this is for all of us, not just for those who lose their jobs, but what it means to our confidence and our trust and our optimism as a people is far beyond the cost of some financial impact. Again, these numbers hardly reflect the damage done to our country.

Mr. President, 7 million people in our country have lost their homes or entered foreclosure, and millions more are teetering on the brink of foreclosure. Again, I say in this area, for those of us who serve here, obviously, the idea of foreclosure is about as remote as anything we could think of. We are well compensated as Members of the Senate to be in this Chamber. But that notion of having to go home to your family because of a job loss, because of a bad mortgage—one you got into that you could not afford—all of a sudden having to let your family know that the home we live in, we dreamed about, that we got so excited about acquiring, no longer is ours; we have to move; we have to leave—again, I do not know if you could begin to explain or describe what that means to an individual, to a family, to be through that.

So the 8.5 million jobs, the 14.5 million unemployed citizens in our Nation—a 55-percent increase, by the way, since the crisis began—again, the number I have mentioned to you of 9.5 percent of unemployment—I mentioned the 7 million homes that have been in foreclosure since the housing crisis began. In the first quarter of 2010, half of the States saw an increase in the rate of homes entering foreclosure as opposed to a year ago.

So while we are on the brink, I hope, of passing this bill, let there be no doubt or illusions—that problems persist and this bill does not bring your home back. It does not bring a job back for you in the morning. It does not restore your retirement account. But hopefully it will see to it that we never have to see our country go through these kinds of difficulties again.

We have lost dozens of community banks over the last several years.

Thousands of small businesses have had to close their doors. Trillions of dollars in retirement savings and household wealth have evaporated as well.

Let me again just go through some of those numbers for you. The impact of the crisis on community banks: 90 banks in 2010 with assets totalling $75 billion through July 9 of this year have closed their doors, and 89 of the 90, by the way, held assets of less than $10 billion. These are small community banks that have had to close their doors as a result of the crisis. In 2009, there were 140 banks in our country with assets of $170 billion that also closed their doors, and 135 of the 140 that closed their doors had assets of less than $10 billion. So again, we have seen over the last 2 years the number here approaching 250 banks, the overwhelming majority being small banks.

The FDIC, the Federal Deposit Insurance Corporation, has on its watch list of institutions 700 banks that are shaky. Again, saying they are shaky does not mean they are about to close their doors. But there is a watch list that the FDIC pursues. Again, I would love to tell you that the passage of this bill is going to stop all of that from happening immediately. It does not. But it certainly minimizes the possibility of ever watching that happen again as a result of the circumstances we have been through.

Our work continued as Democrats and Republicans in the committee worked to put together a framework as far back as November. In fact, it goes back and predates earlier. But last November, my colleague from Alabama, the former chairman of the committee, Senator SHELBY, announced—and I believe he was correct—that we had gotten about 80 percent of the way to a bipartisan consensus on this legislation. That is about where it ended, I guess, but nonetheless this bill does reflect at least strong measures in here that were crafted on a bipartisan basis.

On the Senate floor, we debated the bill for 4 weeks, carefully considering the ideas and concerns of our colleagues. Some 32 amendments were offered either by the minority or together with a Democratic and Republican author, of the 60 amendments. Half of the additions that were made to the bill over 4 weeks came from the minority, either alone or working with a majority member.

Then, for the first time in recent memory, we broadcast every minute of the almost 70 hours of the conference committee between the other body, the House of Representatives, and the U.S. Senate. This conference committee was on C–SPAN. There were no backroom deals because there was not a back room. Everything was done—all—every minute of that conference was reported to the American public—in fact, beyond. C–SPAN, picked up by satellite, was available literally around the world to monitor the events in the conference committee. We approved an additional 14 amendments by my Republican colleagues during the conference. We worked out our differences with colleagues in the House and produced a finished conference report that we have before us today.

So, again, this chart behind me reflects those efforts.

As I mentioned, in the conference committee we held eight public meetings over 2 weeks, for almost 70 hours, where the 42 of us gathered to resolve the differences between these two bills. We approved some 32 amendments in the conference committee. There were 79 votes held. Of the 32 amendments that were approved by the conference committee, 14 came from our Republican colleagues and 18 came from our Democratic colleagues. Almost an equal number were adopted offered by both the minority and majority in conference.

Again, almost an equal number were adopted here on the floor of the Senate. Of the 60 amendments we debated here, 32 were, again, either minority amendments or done in conjunction with a Democratic colleague. We held some 39 rollcall votes on the floor of this body to consider the bill over the 4 weeks we debated the legislation.

I do not want to dwell on all of that, but I think it is important because, as I pointed out earlier, we went through a health care debate. I was very involved in that because of the tragedy, the loss of my great pal and friend from Massachusetts, Senator Kennedy, who chaired the HELP Committee. With his illness, I was asked to take over the acting chairmanship of that committee. We all know what a painful process it was to come to a conclusion on the health care debate. Again, I regret, I am sorry it went through that process—not exactly a textbook version of how a bill ought to become law—but nonetheless an important contribution to our country.

This bill, by contrast, is a model in many ways of how a bill ought to become law. We did it under an open process. We had a conference that was open, amendments were offered, and Members could be heard. I am not suggesting that is a reason solely for someone to support this bill or oppose it, but I do think it is important in how this body conducts its business as a model of what can be done to restore some civility to a process that is sorely lacking in it on too many occasions as we try to resolve the matters that our constituents have sent us here to work out.

So I talk about the number of votes cast, the time spent, the openness of the process because it ought to be rewarded to some degree. If, in fact, there is no different conclusion, the same roadblocks are offered, and whether or not we have a closed process much as the health care debate was, or as open a process as the financial services bill was, and at the end of the day you are still faced with the same obstruction in trying to pass a bill, why would you bother going through all of this? It seems to me there ought to be a reward for a process that is as involved and as inclusive as this one has been.

So throughout this debate we have heard the same arguments, of course, coming from the opposers of this legislation: Slow down. Don't overreach. Let's let the market work things out. Let's wait for another day and start over. I keep hearing that argument over and over, and as infuriating as that can be to hear from some of the very same people who caused this mess to begin with, we have taken great pains to listen to all sides and included their ideas and proposals in this conference report that is before us. What we haven't heard is an alternative plan to fix the gaping loopholes in our system. Indeed, the alternative is to maintain the status quo. That is all I can conclude because there is no other option, nor has there been placed on the table, that which allowed this process to happen. A status quo that was dangerous 2 years ago, it is even more so tonight.

If we let this opportunity to reform our financial system go by, we will find ourselves, tragically, someday far too soon, in an even deeper hole financially, facing even more of a mess, and needing to write an even bigger bill to clean it up. I would predict that another generation or two would pass before such another historic effort as we have crafted here would come before this body if we fail to accomplish what is before us tomorrow. We cannot afford to let that happen. We must not let that happen. This is truly a strong and historic piece of legislation. It puts a permanent end to too big to fail, to taxpayer bailouts—gone.

Allow me to remind my colleagues of what is in this historic bill, along with the too-big-to-fail concept and ending the bailouts that have too often persisted in the past. Wall Street firms understand if they gamble with their own risks, it is one thing. Gambling with others is a flaw that we will not tolerate. The American people deserve this assurance, and we provide it in this bill. They were put on the hook, of course, for an unprecedented emergency action that we had to take to save our economy from completely collapsing. They were and still are angry that they had to pay for the greed and recklessness of others, and they were and are still today even angrier that their generosity didn't seem to motivate Wall Street to change its culture, as banks continue to lavish large bonuses on executives while Main Street Americans lost their homes, their jobs, their retirement, and their wealth.

As I mentioned earlier, this bill creates a consumer protection agency with authority and independence. It ends too big to fail; it establishes an advanced warning system for financial threats; and it provides new transparency and accountability for derivatives and other exotic financial instruments. It makes public companies and executives more accountable to their shareholders, and it gives regulators powerful authorities to protect investors and depositors. This legislation, I say to Wall Street, with its outright ban on any future too-big-to-fail bailouts, is the other shoe dropping.

Our bill also establishes, as I mentioned, a consumer financial protection bureau, the very first-of-its-kind watchdog. It will have one job and one job only; that is, to protect and empower American consumers and their financial decisions. American families shouldn't have to have an advanced business degree to plan for their financial future, and they shouldn't have the fear that they will get ripped off by a shady lender or a scam artist as too often has been the case.

For too long they have been on their own because the seven different agencies that were supposed to be looking out for them were distracted by their other sometimes conflicting missions.

Americans need to know this new consumer protection bureau would not make decisions for them. The new bureau will make sure consumers have the information they need to make good decisions about their home mortgages, their student loans, their home equity loans, their credit cards, and other financial matters. It will protect them from being trapped by unfair or deceptive or abusive lending practices, and if they do encounter a problem, there is a single toll-free number to call and get help.

By the way, let me just add to this last point about consumer protection: I have heard some Members suggest we don't deal with underwriting standards for home mortgages. I am looking to staff here, but I think there are some 40, 50, 60 pages of this bill, pages and pages alone dedicated to underwriting standards when it comes to residential mortgages. We spent a great deal of time in seeing to it that no longer would we have these no-doc loans, no requirements, no information, nothing at all that too often led to the financial difficulties we are in.

I urge my colleagues and others to read the bill or read the sections. There is a whole area of this bill, a significant part of it, dealing with underwriting standards for residential mortgages.

This bill will provide an early warning system to sound the alarm should large institutions or new financial products or practices threaten the stability of our financial system. Most Americans were completely unfamiliar with innovative financial instruments such as credit default swaps and mortgage-backed securities until those very instruments sparked a crisis that put millions of people out of work. I noted with some interest just yesterday, I believe it was, that the former Secretary of the Treasury, Hank Paulson—I don't want to exaggerate his comments, but I think I concluded that he thought this bill was a good bill. He identified specifically this early warning system in our legislation as one of the important provisions that had not existed earlier on, not just last year but going back to 2004, 2005, as he rightly points out, when the problems began to emerge, that this problem that we have gone through never would have happened to the extent it has.

So one of the highlights of this bill is that we have far more than just one set of eyes now looking over the landscape both at home and abroad, including State regulators who I think can bring a valuable contribution to the oversight responsibilities when it comes to determining whether institutions themselves or product lines or practices are so risky that they endanger our financial system. Then they have the power to respond to that as well, to see to it that those practices can be brought to a stop before they cause the problems that the last crisis did in so many other areas of our economy.

Our legislation contains strong provisions that bring the $600 trillion derivative market out of the shadows and into the sunlight. Let me repeat that number. This is an area where we went from $60 billion, I think it was—a $60 billion to $90 billion industry of the derivatives market to $600 trillion—that is with a ''t''—globally, just a massive market, operating in the shadows. Again, our legislation shines the bright light of sunshine on these transactions so we have far more transparency in this area.

Let me quickly point out that there is absolutely nothing inherently wrong with derivatives. In fact, quite the contrary. Derivatives are vitally important if utilized properly in terms of wealth creation and growing an economy. But what was once a way for companies to hedge against sudden price shocks has become a profit center in and of itself, and it can be a dangerous one as well, when dealers and other large market participants don't hold enough capital to back up their risky bets and regulators don't have information about where the risks lie. AIG was the classic example, of course, where that happened.

Derivatives should help companies manage their risks. That is why they are valued, so they can continue to grow their businesses, hire workers, and improve the quality of our economy. But during this crisis, panic and confusion in the derivatives market led to job losses. Derivatives traders lost sight of the impact their actions were having on the real economy in our Nation.

With this bill, companies can continue, obviously, to use derivatives to hedge their commercial risks, but they must do so in a much safer and transparent way that would not put our whole financial system at risk.

Meanwhile, of course, this bill includes reforms to executive compensation and corporate governance that will make corporate executives more accountable to the owners of their businesses—the shareholders in these companies—and new protections for investors.

Despite the wild protestations of some on Wall Street who, given their actions in the lead-up to this crisis, have little standing to lecture us about keeping our financial system healthy, this bill is good for the financial sector as well. Our bill rewards creativity and innovation without the pressure to take outrageous risks or to deal unfairly with consumers. Honest firms can focus on competing for business by serving their customers better, and for community banks reform means stronger core funding, fair deposit insurance premiums, a stronger insurance fund, and a far more level playing field. These banks will get to keep their Federal regulator, and they would not be charged assessments by the new consumer protection bureau.

For retailers, this reform bill means freedom from inflated interchange fees and for consumers. I wish to thank RICHARD DURBIN, our colleague from Illinois, the majority whip, whose insistence on this language in the bill provoked significant debate and discussion. I didn't mention him earlier, but I wish to thank Senator DURBIN for his involvement, and I thank retailers and others across the country who strongly supported this provision in this bill. Fifteen million retailers today will be able to earn more and charge their customers less because of these provisions in the bill.

For seniors and veterans and minorities, reform means protections against some of the most hideous scams targeted at these populations in our country. Again, I point out—I don't know if we have this up, but here was the headline in the Wall Street Journal the other day: ''Big Win for Small Banks in Overhaul.'' That certainly is the case. There are 8,000 of them in this country. The Independent Community Bankers Association, while not endorsing the whole bill, sent a memorandum to every Member of this body, I think this morning or yesterday afternoon, outlining why the major provisions in this bill are very good for our small banks in this country. I have enumerated just a couple of measures.

Mr. President, I ask unanimous consent to have printed in the RECORD at this juncture the memorandum from the ICBA, if I may.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ICBA Commentary

THE GOOD IS OFT INTERRED WITH THEIR BONES

(By Jim MacPhee, Mike Menzies and Sal Marranca)

A tsunami of paper, e-mails and every other form of communication predicting everything from the destruction of community banking to financial Armageddon is washing over bankers nationwide as a result of the House passage of the conference report on Wall Street Reform. Some of this stuff is so extreme it practically implies the end of life as we know it. It has Chicken Little in a full sprint.

Ok, enough already. There is some really bad stuff in the bill. Some of the information soaking bankers about the bad stuff is actually very true and accurate, some of it is exaggerated and a bit of a stretch, and some of it is just downright lies designed to scare the daylights out of community bankers. That is so community bankers will pull Wall Street's chestnuts out of the fire for them. Why do you think it is called the ''Wall Street Reform Act''?

Everyone has been made painfully aware of all the evil in the bill. What seems to be lacking is a fair and balanced look at what actually may be some good elements in the bill—if you are a community bank that is. Not much good in there for Wall Street—we freely admit that.

From our personal observations, we know that a fair number of community bankers watch the FOX News Channel. And according to FOX News, it does its best to be ''fair and balanced.'' So, in the interest of ''fair and balanced,'' and because just about everything evil, bad and terrible has been said about the Wall Street Reform Act that can be said, let's at least look into the bill and see if there is anything remotely redeeming for community banks.

Keep in mind that we are not fair and balanced when it comes to the financial services industry. As longtime community bank executives, we freely admit that we are fiercely devoted and passionate about the community banking industry and don't represent nonbank financial firms or Wall Street. So with that disclaimer, let's look at the other side of the coin.

A U.S. Senate Banking Committee summary of provisions in the bill that will benefit community banks might be a good place to start. As already mentioned, while the Wall Street Reform Bill contains some burdensome measures for community banks, particularly those that impose government price controls on debit interchange fees, the legislation also includes many important provisions and exemptions for community banks that ICBA fought for and won. Some of those provisions will directly benefit community banks' bottom lines. Others are designed to buffer community banks from the actions lawmakers were intent on taking to rein in the megabanks and nonbank financial firms.

Among many other measures beneficial to community banks in the bill, four in particular are worth highlighting . . .

Fairer Deposit Insurance System. The bill will require the FDIC to assess insurance premiums based on total liabilities, not on domestic deposits. This provision alone will save community banks a total of $4.5 billion over three years.

Deposit Insurance Coverage. The bill will permanently raise the FDIC deposit insurance limit to $250,000. It will also extend unlimited deposit insurance coverage for non-interest-bearing transaction accounts under the Transaction Account Guarantee program for two years.

Too-Big-To-Fail Regulations. To reduce too-big-to-fail funding advantages and systemic risks, the bill will require the largest banks to hold more capital and liquidity reserves. In addition to creating a new systemic-risk council, the bill will put in place new resolution authority to wind down the largest institutions that fail.

Consumer Financial Protection Bureau Exemptions. ICBA vigorously and continually opposed the creation of the Consumer Financial Protection Bureau, but the bill offers several important measures to exempt community banks from direct bureau oversight. Most nonbank financial firms, for the first time, will be subject to the same lending rules and standards that community banks must follow. Banks with up to $10 billion in assets will continue to be examined for compliance by their current regulator. A measure to give the bureau ''backup enforcement'' authority over community banks was eliminated.

Significantly, the CFPB will not have authority to impose assessments on community banks to pay for its operations. Also, the bureau will be required to consult with the banking regulators before proposing any rule and during the comment process (ICBA fought hard for these exemptions). In all of its rule making, the bureau also will have to specifically consider the benefits and costs a new consumer-protection rule would have on banks with less than $10 billion in assets, and to rural bank customers. Before proposing any rule that would significantly affect community banks, the bureau must convene a panel to gather input directly from community banks.

Now if this bill is defeated all the bad stuff will just come back like a bad habit, but all the good stuff listed above goes away—likely for good. As Mark Antony said at Caesar's funeral, ''the evil that men do lives after them; the good is oft interred with their bones.'' In the context of Wall Street Reform, Mark Antony is saying that if the bill goes down the bad stuff in the bill will live on in many, many different forms, but the good stuff for community banks in this Act will be buried with it. Through the ages Shakespeare's wisdom has been proven time and again.

At the end of the day, each community banker will have his or her own view of this bill. And that view will be shaped by his or her own circumstances, and that is as it should be. As your elected ICBA executive committee members, we will always ensure that ICBA stays true to its mission to represent the best interests of community banks at all times and flier. We hope this commentary gives you at least a glimpse of the other side of this issue.

Mr. DODD. Mr. President, the ICBA memorandum highlights all of the things done in this bill that warrant the headline in the Wall Street Journal about how the overwhelming majority of the 8,000 small banks in this country do well under this bill. I thank the ICBA for stepping up and making that case for us. The American Bankers Association had been vehemently opposed to this legislation and tried to convince people they represented all banks in the country. The ICBA took great offense at this suggestion and hence the memo sent around to all Members.

I wish to thank other colleagues as well—I didn't mention this earlier—regarding the small business provisions. Particular thanks go to our colleague from Maine, Senator SNOWE, who chairs, along with Senator LANDRIEU, the Small Business Committee. They paid particular attention to how small businesses would be affected by this bill and made a number of suggestions which we adopted as part of the bill on the Senate floor and again preserves them in the conference committee. These are not minor suggestions. They were significant ones and added great value to this bill.

We all talk about small business, but if we are not careful, too often they get lost in the debates around here. Senator SNOWE and other colleagues—I see my colleague from North Carolina, Senator HAGAN, as well—expressed interest as to what would happen to small banks and small businesses and our desire to reform a system to make sure they were not going to be overly burdened with regulations and other things that would make it difficult for them to operate.

So there are other provisions in here, particularly with regard to consumer protection, where the needs and concerns of small businesses must be addressed before rules are promulgated. That would not have happened except for the contribution of my colleague from Maine.

I would be remiss, as well, if I didn't mention—I didn't discuss it here—the capital requirements in this bill. There was a lot of discussion about that. It was the amendment of SUSAN COLLINS, our colleague from Maine as well, who, along with working with the FDIC and Sheila Bair, came up with a very strong provision in this bill that is a very workable and flexible provision but helps us avoid one of the major problems that contributed to this crisis, which is the capital standards that raised the risks and caused so many of our institutions to get into the trouble they were in. Senator COLLINS made other suggestions to the bill that were important as well. But I think those particularly dealing with capital standards contributed very much to this, and I am grateful to her, as well as her colleague from Maine, Senator SNOWE, for her contributions.

I mentioned earlier we talked about trying to get this right on the question of proprietary trading, the so-called Volcker rule that was raised by the former chairman of the Federal Reserve Board.

Again, I thank Paul Volcker for his contribution, his tireless effort. He has long since left public life, and he could have sat back and offered general commentary on everything, but he decided, at his young age, to get back involved and engaged in this bill. He made a strong contribution to the concept of proprietary trading, where depositors' money should not be put at risk when banks are making choices that involve risk. It is one thing to risk your own money, but to risk your depositors' money is another matter. But it is more complicated than the two sentences I have just uttered.

I thank SCOTT BROWN of Massachusetts, because this was not merely a parochial interest out of the Commonwealth of Massachusetts. There is the whole issue of the de minimis participation, where banks literally have to hedge to protect depositors' money against interest rates. There are a number of legitimate areas where that is required and necessary. As a result of Senator BROWN's involvement and work, we took note of that, and it reflects his ideas and thoughts in this bill as well. It is a stronger bill as a result of his involvement.

These areas of small business, capital standards, and de minimis participation were all significant contributions to our legislation. I thank them all for their work. There are many other aspects. I thank Senator LUGAR and BEN CARDIN of Maryland for their proposal dealing with extraction of natural resources, and requiring that companies that are public that do so have to say in their public filings with the SEC how much they are paying the mostly developing countries for the right to extract these natural resources. I am told by those who follow these issues that that provision alone could have a huge impact when it comes to the ability of developing countries to understand what has happened to their natural resources and some of the corruption that exists in their country.

I note the presence of my friend from Minnesota. I mentioned earlier, when he was presiding, his contribution on rating agencies. This was a subject matter we debated and discussed endlessly, trying to figure out how to get greater accountability out of the rating agencies, greater due diligence, so that when the institution or person making the decision to purchase a securitized product that had been rated as AAA, or AA, or B, or whatever that label is on there—for years people have relied on that. You saw that AAA and you didn't have to know much more. It didn't get any better than that.

We learned painfully that those ratings were not based on due diligence by the rating agencies but on the information of those purchasing the ratings from the departments who were relying exclusively on the very entity being rated. In a sense, it was fundamentally false to suggest that the rating agency had drawn the conclusion that a particular product, whether a securitized mortgage or others, was actually of the value that the rating would indicate.

Our colleague from Minnesota, of course, played an important role in suggesting an alternative idea that has been incorporated in the bill. I am deeply grateful to him for his involvement. I mentioned earlier some of the provisions.

JEFF MERKLEY is a member of our committee.

One of my dearest friends during my service here in the Senate is my colleague CARL LEVIN. We don't serve on committees together. He is chairman of the Armed Services Committee and also chairman of the Government Operations Committee—the names change; I still believe that is the name of the committee—which has broad jurisdiction, but he held a critical hearing days before we brought this bill to the floor of the Senate, highlighting many of the problems that have persisted in the financial services sector. Working with our colleague from Oregon, Senator MERKLEY, Senator LEVIN and he crafted a proposal to deal with proprietary trading—the Volcker rule, which I mentioned a moment ago. It was due to their involvement that those ideas were incorporated into the bill.

When you have a 2,500-page product—I see my colleague from Michigan; I didn't know he was here. I thank him for what he did in this bill. I have spent a lot of time here, but I suspect that over the next 24 hours or so there will be more discussion about it.

Again, I have been asked: Do you disagree with anything in the bill? Of course I do. This is a bill crafted by a committee, working with our colleagues in this Chamber, and with the 435 others in the other Chamber, working with the White House, the regulators, and the stakeholders in trying to fashion a bill that would reform our financial system. I wrote a bill back in November that I would have preferred. But you don't get to write your own bill. You can do that, but that may be where it begins and ends. We serve in a legislative body, so it takes compromise and working together to try to achieve the best results we can, recognizing that, in the end, you have to produce the votes. A good idea that doesn't have the votes is just that—an idea. But we bear responsibility of more than just coming up with ideas. The American public expects nothing less of us than to fashion proposals that will minimize great risks to them. None of us lost a job or a home in the last 2 years. None of us has watched our retirement account evaporate overnight. None of us will worry whether our children can get a higher education. That all happened to the people we represent across the country. They are asking that we do our best. They don't ask for perfection. They know we have not solved every problem, and that we are not going to bring back their homes and their jobs; but they expect us to respond to the situation that brought us to the brink of financial disaster. This is our best effort to do so. It is not perfect, I know that. It is not exactly what I would write on my own, nor is it what anybody else would have written. But it is our best judgment on what we can do.

We won't know the full results of what we have done until the very institutions we have created, the regulations we have suggested and provided for are actually tested. We can't legislate wisdom or passion. We cannot legislate competency. All we can do is create the structures and hope that good people will be appointed who will attract other good people—people who will make careers and listen and see to it that never again do we go through what we have been through. That is not our job. Ultimately, that is dependent upon what happens after this bill becomes law—if it does. We need to see to it that the human leadership that makes up these bodies who will be responsible for regulating the activities in these financial areas does its job. None of us has the power to guarantee that. All we can do is provide them with the tools and the structure and the architecture that will allow them to do that job well. We have done our best to provide those very tools, and that structure, and that architecture, in a complicated time—in the midst of understandable anger and frustration. I cannot legislate anger and frustration. That is not our job here. As angry as we are, as mad as we may be at institutions and individuals, that cannot be our motivation in crafting the legislation that the American people expect.

Many have endorsed this bill, but not because they love every aspect of it. I am grateful to Sheila Bair at FDIC. She has been stalwart in her effort to seeing to it that consumers, small banks, and others would survive and do better. I am grateful to her and the staff of the FDIC.

I am grateful to Tim Geithner and the Treasury folks, who have done a great job working our way through technical matters and the like, so we can understand the implications of various ideas to get the job done.

I am grateful to the National Credit Union Administration's chairman, Mr. Matz, who was helpful in putting this bill together.

I mentioned the ICBA, the independent community banks, and their importance as well.

Again, I thank the former Federal Reserve Chairman, Paul Volcker. Also the 20 pension fund managers, including the Connecticut State Treasurer, as well as the CEO of the California State Teachers Retirement System, the Massachusetts Laborers' Benefit Fund, Service Employees International Union, the National Treasury Employees Union, U.S. Public Interest Research Group, National Consumer Law Center, Americans for Financial Reform, Consumer Federation of America, American Association of Retired Persons, the Leadership Conference on Civil and Human Rights, North American Securities Administration, the Institute for College Access and Success—on and on.

I ask unanimous consent that the list of the myriad organizations across this country that endorsed this bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Federal Deposit Insurance Corporation Chairman Sheila Bair; National Credit Union Administration Chairman Matz; Former Federal Reserve Chairman Paul Volcker; 20 prominent Pension plan managers including the CT State Treasurer and the CEO of the CA State Teachers' Retirement System; Massachusetts Laborers' Benefit Funds; Service Employees International Union (SEIU); National Treasury Employees Union; U.S. Public Interest Research Group (U.S. PIRG); National Consumer Law Center; Americans for Financial Reform; Consumer Federation of America; American Association for Retired Persons (AARP); The Leadership Conference on Civil and Human Rights; North American Securities Administrators Association; The Institute for College Access & Success; National Association of College Stores; National Association of Convenience Stores; National Restaurant Association; National Grocers Association; The Food Marketing Institute; The Merchants Payments Coalition; The Petroleum Marketers Association of American and New England Fuel Institute; and 7-Eleven and its Franchisees.

Mr. DODD. Mr. President, lastly, I think it is worth noting that in all the analysis that we did to root out the cause of the crisis, it was not the American people who were at fault. Their prosperity was built on hard work, entrepreneurship, and creativity. Those qualities are as strong now in the American people as they have ever been. We have seen a pattern of exploitation on the part of some executives and others in the financial sector, and a lack of wisdom on the part of too many Washington regulators. What we have seen is a lack of integrity on the part of some greedy individuals, who sought to get rich by ripping off the American families. What we have seen is a lack of compassion and competence on the part of those who were supposed to be watching out for the interests of consumers and investments.

As a result, there has been a deficit of trust in our markets, foresight in our regulatory system, and confidence in our economy.

The challenge we have faced all along is how do you restore those things? How do we restore trust? I can't put a number on that for you. I can't tell you the financial implications of the absence of trust or a diminution of it. How do we bring back confidence and optimism, which has been the hallmark of our Nation, even through the most difficult of times? You can't legislate trust or confidence or optimism. As I said, you cannot legislate wisdom or integrity, and we have not sought to do so in this bill.

There is nothing I or any other legislator or Senator can do to stop a banker from making a bad decision or a trader for putting profit over principle. Our system will always depend, in part, on human beings. So it will always include human error.

But our system also depends on institutions and those we can do something about. That is what this effort is all about. We can strengthen them to make our financial system more resilient to the shocks that occur and make our economy as a whole less vulnerable to the effects of those shocks.

If you ever played a board game called Jenga with your kids, it involves stacking a series of oddly shaped blocks, one on top of the other. But because the foundation on which the first block is laid never grows any broader, there is only one way to build, and that is up. As you build, the stack becomes more and more unstable, until someone places one fateful block in the wrong spot and the entire structure comes crashing down.

By allowing banks to shop for the most lenient regulators, in a similar fashion, by failing to put a strong cop on the consumer protection beat, by leaving the door open to taxpayer bailouts, we were building our wealth on a narrow and unstable Jenga foundation.

Yet by putting in place strong, clear rules, by giving regulators both the authority and the responsibility to enforce those rules, we can make our structures safer to invest in, safer to start a business in, and safer to participate in the economy of our Nation.

In short, this legislative proposal insists that we rebuild the foundation of our prosperity and, thus, restore the trust that allows us to prosper as a great nation.

This is one of my last acts as a Member of this body, in the legislative context. I am very proud of my colleagues and of this bill. I am proud of the work we have done over the past several years to make it as strong as we possibly could.

I thank my staff as well: Amy Friend sits next to me, our legislative counsel. I also thank Ed Silverman, the staff director. I also thank Jonathan Miller, Dean Shahinian, Julie Chon, Charles Yi, Marc Jarsulic, Lynsey Graham Rea, Catherine Galicia, Matthew Green, Deborah Katz, Mark Jickling, Donna Nordenberg, Levon Bagramian, Brian Filipowich, Drew Colbert, Misha Mintz-Roth, Lisa Frumin, William Fields, Devin Hartley, Beth Cooper, Colin McGinnis, Neal Orringer, Kirstin Brost, Peter Bondi, Sean Oblack, Erika Lee, Abigail Dosoretz, Robert Courtney, Caroline Cook, Joslyn Hemler, Dawn Ratliff, and all of their families.

I thank our legislative counsels: Laura Ayoud, Rob Grant, Allison Wright, and Kim Albrecht Taylor.

I want to thank the Democratic floor staff: Lula Davis, Tim Mitchell, Tricia Engle, and Meredith Mellody.

These are remarkable people whose names will never enjoy the spotlight or get notoriety, but day in and day out and over weekends and around the clock, they made all the difference in seeing to it that we arrived at this moment. There are Democrats and Republicans and people who work off the Hill who contributed as well. There are too many names to mention.

I thank Chairman FRANK and DICK SHELBY, my Republican colleague, as well as BLANCHE LINCOLN, who did such a great job along the way. It is a moment of some pride as well as success that we have come this far.

I ask unanimous consent that a list of staff on both sides of the Capitol be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HOUSE FINANCIAL SERVICES COMMITTEE

Jeanne Roslanowick, Michael Beresik, David Smith, Adrianne Threatt, Andrew Miller, Daniel Meade, Katheryn Rosen, Kate Marks, Kellie Larkin, Tom Glassic, Rick Maurano, Tom Duncan, Gail Laster, Scott Olson, Lawranne Stewart, Jeff Riley, Steve Hall, Erika Jeffers, Bill Zavarello, Steve Adamske, Elizabeth Esfahani, Daniel McGlinchey, Dennis Shaul, Jim Segal, Brendan Woodbury, Patty Lord, Lois Richerson, Jean Carroll, Kirk Schwarzbach, Marcos Manosalvas, Marcus Goodman, Garett Rose, Todd Harper, Kathleen Mellody, Jason Pitcock, Charla Ouertatani, Amanda Fischer, Keo Chea, Sanders Adu, Hilary West, Flavio Cumpiano, Karl Haddeland, Glen Sears, Stephane LeBouder.

OFFICE OF REPRESENTATIVE CAROLYN MALONEY

Kristin Richardson.

OFFICE OF REPRESENTATIVE GREGORY MEEKS

Milan Dalal.

OFFICE OF REPRESENTATIVE MARY JO KILROY

Noah Cuttler.

OFFICE OF REPRESENTATIVE GARY PETERS

Jonathan Smith.

HOUSE AGRICULTURE COMMITTEE

Clark Ogilvie.

HOUSE BUDGET COMMITTEE

Greg Waring.

HOUSE ENERGY AND COMMERCE COMMITTEE

Phil Barnett, Michelle Ash, Anna Laitin.

HOUSE JUDICIARY COMMITTEE

George Slover.

HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

Mark Stephenson, Adam Miles.

HOUSE LEGISLATIVE COUNSEL

Jim Wert, Marshall Barksdale, Brady Young, Jim Grossman.

SENATE BANKING COMMITTEE

Ed Silverman, Amy Friend, Jonathan Miller, Dean Shahinian, Julie Chon, Charles Yi, Marc Jarsulic, Lynsey Graham Rea, Catherine Galicia, Matthew Green, Deborah Katz, Mark Jickling, Donna Nordenberg, Levon Bagramian, Brian Filipowich, Drew Colbert, Misha Mintz-Roth, Lisa Frumin, William Fields, Beth Cooper, Colin McGinnis, Neal Orringer, Kirstin Brost, Peter Bondi, Sean Oblack, Steve Gerenscer, Dawn Ratliff, Erika Lee, Joslyn Hemler, Caroline Cook, Robert Courtney, Abigail Dosoretz.

SENATE AGRICULTURE COMMITTEE

Robert Holifield, Brian Baenig, Julie Anna Potts, Pat McCarty, George Wilder, Matt Dunn, Elizabeth Ritter, Stephanie Mercier, Anna Taylor, Cory Claussen.

SENATE LEGISLATIVE COUNSEL

Rob Grant, Alison Wright, Kim Albrecht-Taylor, Colin Campbell, Laura McNulty Ayoud.

CONGRESSIONAL RESEARCH SERVICE

Baird Webel.

Mr. DODD. The final result depends on the votes of my colleagues and whether they decide it is better for us to move forward with these reforms as we have crafted them or to do nothing, in effect, and say that after all this time and effort, we have nothing to say about what brought us to this situation.

I have taken a long time. I apologize to my colleagues who want to be heard on this matter. I will be here all day tomorrow to listen to the debates and thoughts as we go forward. This is a moment in which we can take great pride as an institution, both in terms of what we produced and how we produced it. For that, I am deeply grateful to the membership of this institution.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. HAGAN. Mr. President, before I begin, I congratulate Senator DODD for all of the extremely hard work he has done on Wall Street reform. We are certainly pleased that we are at this point in time.

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mrs. HAGAN. Mr. President, I come to the Senate floor this afternoon to

Working families are also on the hook for the corporate welfare that is compounding the national debt. Our tax system is riddled with loopholes so corporations can escape liability by shifting operations overseas. In fact, corporations are often actually rewarded for sending jobs overseas by our tax system. That has to stop.

There is something even more offensive. If BP is taken to court because of their negligence in this oilspill and a judge finds they owe punitive damages, those punitive damages can be deducted as a business expense. Why do we allow these oil giants that earned hundreds of billions of dollars in profits in the past decade to deduct punitive damages from the taxes they should pay? And that is if they pay taxes at all. ExxonMobil did not pay any taxes last year. Despite its $45 billion profit, it paid no income tax.

I do not bring this up to inspire anger at corporations. I bring it up because these loopholes and allowances create revenue shortfalls. Revenue shortfalls equal deficits, unless they are shifted onto the backs of middle-class families.

But we would be remiss to go after these big oil companies without also tackling our own spending problems. Secretary Gates has led the way in explaining how we can, and must, achieve savings in the defense budget. While nothing is more important than the defense of our Nation, national security is not well-served by unnecessary, incredibly expensive weapons programs. Nor are we well-served by programs that come in late, and way over budget.

Secretary of Defense Gates recently quoted his predecessor, Secretary Rumsfeld, who said it best: ''A person employed in a redundant task is one who could be countering terrorism or nuclear proliferation. Every dollar squandered on waste is one denied to the warfighter.'' That was Secretary Rumsfeld on September 10, 2001.

Our national security priorities must be matched to our real defense priorities in the 21 century, not dictated by expensive weapons systems that are only benefiting the bottom line of big defense contractors.

These are all things that we can do to bring down long-term deficits.

We urgently need bipartisan solutions. One idea that I have supported, a deficit reduction commission, was proposed by Senators CONRAD and GREGG. This commission would make recommendations that would then come up for an up-or-down vote by Congress. That proposal failed, despite its broad bipartisan support. The commission was ultimately supported by more on this side of the aisle than by those across it, including those who cosponsored the original bill and then voted against it when it came up as an amendment. I am curious what changes could be made to such a proposal for it to attract more support. I welcome working with my colleagues across the aisle to find such an approach.

We are all agreed that the current path forward is unsustainable. But we differ on what changes need to be made. It is economically unsound, and potentially dangerous, to require that all spending be offset while we are still recovering from a recession, reeling from nearly 10 percent unemployment rates, and looking for ways to temper the jobs deficit of 12 million workers.

We are putting our economy back at risk just when it is finally turning a corner. Nobel Prize-winning economist Joseph Stiglitz has warned that the upcoming phase-out of Recovery Act spending and State and local spending cutbacks are likely to exert further downward pressure on the economy.

Our working and middle classes are still struggling, and they continue to need our help. We can help them by extending unemployment insurance and COBRA subsidies for those who lost a job through no fault of their own. We can retain vital nutrition assistance programs in the Recovery Act to make sure kids do not go hungry. And we can make investments in renewing our Nation's infrastructure.

These are not government hand-outs, these are the most effective ways to get our economy going again and contributing to our economic recovery. Without these measures, we risk slipping back into a recession. And as I have noted, recessions directly contribute to long-term deficits.

I encourage my colleagues to join with me in standing up to the rhetoric that all spending is created equal. I encourage my colleagues to show compassion toward those still out of work. I encourage my colleagues to support spending programs that will help us emerge from this downturn. And I encourage my colleagues to join forces in coming up with new ways to tackle our long-term deficits because they matter.

We face enormous economic problems: the short-term economic crisis and the long-term deficit. But we also face a seemingly intractable political problem. As long as this body refuses to face up to the simple facts about where our deficits came from and what we need to do to solve them, as long as we turn a blind eye to the simple facts about what will get us out of this major downturn we will be unable to reach the solutions demanded by these problems and deserved by the American people.

Simply put, if we do not face facts, we can not do our jobs. And that would leave this country in serious trouble.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

FINANCIAL REGULATORY REFORM

Mr. LEVIN. Mr. President, roughly 2 years ago, our Nation suffered a catastrophe. It was not a hurricane or an earthquake. It was no act of God. It was a man-made disaster, manufactured in the boiler rooms of unscrupulous mortgage lenders and the offices of pay-for-hire credit rating agencies, in the headquarters of sluggish regulators, and then vastly expanded in its negative impact in the boardrooms of Wall Street financial firms.

The financial crisis they all helped create has cost millions of Americans their jobs, their homes, and their financial security. It has endangered businesses large and small. It continues to weigh down our economy today. It required trillions of dollars of government aid just to keep the crisis from sliding into a depression.

Addressing the causes of this crisis, in an effort to ensure that it is not repeated, is our very serious obligation. We now have before us, months in the making, something that constitutes our best efforts to carry out that obligation. The legislation before us contains many important provisions.

But it is, in sum, an attempt to build a firewall between the worst high-risk excesses of Wall Street on the one hand and the jobs and homes and futures of ordinary Americans on the other. I strongly support the Dodd-Frank bill and encourage our colleagues to do the same.

Senator DODD spoke at some length a few minutes ago about this bill. He said that he cannot legislate integrity, wisdom, passion, or competency. That is surely true. But without Senator DODD's integrity, wisdom, passion, and competency, we would not be where we are today, on the threshold of making a generationally important reform of the financial community.

Senator DODD made reference to the Permanent Subcommittee on Investigations, and the investigations which we held into the financial crisis. I have seen up close and personal and in detail the worst of those excesses. Our colleagues on the subcommittee, including my ranking member, Senator COBURN, my very active member on that subcommittee, Senator KAUFMAN, and others, we saw these excesses in four different hearings.

For over almost a year and a half, our subcommittee devoted our resources to examining some of the causes and consequences of the financial crisis. We issued dozens of subpoenas. We examined millions of pages of documents. We conducted over 100 interviews. We took more than 30 hours of testimony during those four public hearings.

Those hearings focused on the practices of risky mortgage lenders, using Washington Mutual, WaMu, as a case history. We focused in the second hearing on the failures of the regulators to rein in WaMu's risky practices, in a third hearing on the inaccurate risk assessments of credit rating agencies, and then in the fourth hearing on the egregious practices of some Wall Street investment banks using, as a case history, Goldman Sachs.

In each of those hearings, we learned important facts about how the financial industry and those tasked with overseeing it failed in their obligations, plunging the Nation into crisis and a deep recession. I want to set out how the legislation before us addresses many of the lessons we learned in the subcommittee's investigation.

Our hearings began with a case study of Washington Mutual Bank, a $300 billion Seattle-based thrift, that, thanks to its reckless lending, became the largest bank failure in America's history. In the pursuit of higher and higher profits, WaMu's management turned its focus from traditional mortgage lending to high-risk subprime and adjustable-rate mortgage loans.

In doing so, it engaged in practices that endangered the bank, its borrowers, and the economy at large. It sold loans to borrowers that it knew or should have known would be unable to repay. It paid its salespeople more if they sold higher risk loans, with higher interest rates or other terms that made them more difficult to repay.

Internal audits repeatedly found high levels of fraud and abuse in the bank's loans. But business continued as usual. WaMu then dumped these risky loans into the financial system, selling them or packaging them into mortgage-backed securities that Wall Street eagerly scooped up, flooding the stream of commerce with toxic assets like a polluter dumping poison into a river.

WaMu collapsed in 2008, leaving behind a trail of shattered homeowners and investors. Its case history was emblematic of a whole host of irresponsible mortgage lenders that loaded up our mortgage markets with toxic securities.

The legislation before us does much to address these problems. A consumer financial protection bureau will bring new scrutiny to the practices of financial companies, providing important oversight that can end the kind of abusive and even fraudulent practices used by WaMu and other mortgage lenders.

Other provisions will require those who create mortgage-backed securities, such as WaMu, and the investment banks it used, to retain a portion of the risk of securities that are backed by those high-risk loans, such as subprime mortgages or option ARMs so that securitizers will not be able to offload all that risk onto the market and walk away from the losses that occur down the road.

Still another set of provisions in this bill ban so-called liar loans, which allowed WaMu and others to sell loans without any documentation of a borrower's income or ability to repay.

The bill also prohibits the practice of paying salespeople more for gouging homeowners with higher rates or other terms that make loans harder to repay. Each of those reforms addresses critical problems exposed in our subcommittee's hearings, which helped to build the legislative history supporting the need for this bill.

Most of the reforms also require implementing regulations. I hope that those writing the regulations will pay heed to the problems uncovered in our hearings and take the steps needed to protect our mortgage markets from future abuses.

WaMu might not have been able to engage in its worst practices for as long as it did had it been confronted by Federal regulators. Instead, our investigation found that the Office of Thrift Supervision, WaMu's primary regulators, was more a lapdog than a watchdog. Repeatedly its examiners identified enormous problems with the bank's lending and securitization operation. Yet higher-ups in the Office of Thrift Supervision failed to take appropriate action. When the Federal Deposit Insurance Corporation sought to address the obvious problems in WaMu, the Office of Thrift Supervision, OTS, erected roadblocks that prevented action.

Documents show that the head of OTS referred to Washington Mutual as their agency's constituent, perhaps reflecting an awareness that the country's largest thrift was also the OTS's largest single source of funding.

I am also afraid that comment calling Washington Mutual a constituent of its regulatory agency also ignored the obligation that should result from an agency being a fiduciary whose constituents are not the people they regulate but are the people of the United States of America.

Clearly, OTS has outlived its usefulness, and the legislation before us dissolves the OTS. In addition, a new Financial Stability Oversight Council will have broad authority to monitor individual financial institutions as well as the system at large to catch problem institutions such as WaMu and problematic practices such as high risk lending before they endanger the financial system as a whole.

Credit-rating agencies also failed their essential role in this crisis. Our investigation found these agencies, which supposedly supply expert and objective analysis of credit risk, used faulty risk models and assigned supersafe AAA ratings to products later revealed to be little better than junk. Paid by the Wall Street firms whose products they were supposed to objectively assess, they sought market share by working with these firms to ensure the high ratings needed to sell risky products to risk-averse investors such as pension funds and university endowments. They failed to account for overwhelming evidence that fraud was a major factor in a growing number of mortgage loans.

The Dodd-Frank bill sets up a new office in the Securities and Exchange Commission to oversee and examine the work of the credit-rating agencies. I pay tribute, by the way, to Senator FRANKEN for the work he did in this area in the amendment he offered to the Senate. The Dodd-Frank bill requires the agencies to disclose their methodology and their track records. It allows investors to file private causes of action against such agencies that fail to thoroughly investigate products they rate.

The bill also tasks the SEC with examining the clear conflict of interest involved in Wall Street firms shopping for the highest rating among the various rating agencies. I am hopeful, at the end of the study, the SEC will adopt the approach taken in the Franken amendment that won bipartisan support in the Senate, and establish an intermediary that will separate the credit-rating firms from the investment banks that press them for high ratings in return for lucrative compensation. As part of their work, I hope the SEC will take an in-depth look at the documents and testimony in our subcommittee hearings that laid bear the conflicts of interest that undermine the accuracy of credit ratings.

Wall Street investment banks also played the major role in the crisis. Seeking ever higher profits, they aggressively marketed the mortgage-backed securities and exotic derivatives tied to the mortgage market that were at the heart of the crisis. Increasingly, those banks drew their profits not from helping client investors prosper but by trading for their own accounts, often in direct conflict with their clients' interests. Internal e-mails that the subcommittee disclosed showed Goldman Sachs repeatedly marketed mortgage-related financial instruments that it created and knew to be faulty, junk, and worse. After it did so, it then made the large bets against those very same instruments. Our investigation also showed Goldman Sachs made a large bet that the mortgage market as a whole was headed down, a bet it denies to this very day that it made, despite a mountain of evidence contained in the firm's own documents that it did so.

With Senator MERKLEY, I worked to address the outrageous conflicts of interest revealed in our hearings on investment banks. The Dodd-Frank bill makes important progress on this front. It sharply limits the risky proprietary trading that Goldman Sachs and other Wall Street firms used to rack up enormous profits while endangering the stability of the financial system.

While I wish the bill was more forceful in limiting these risky trades, especially in terms of limiting financial firm investments in hedge funds and private equity funds, the language in this bill will add substantial strength to the stability of the financial system.

In addition, the bill includes language to end the conflicts of interest revealed in our investigation of Goldman Sachs. No longer will financial firms be able to package and sell asset-backed products to investors and then bet against those same products. Those conflicts of interest will end, unless the regulators water down our strong language with weak enforcement.

The Dodd-Frank bill contains other much needed measures as well. It will bring new transparency and accountability to the shadowy market in derivatives. It will protect taxpayers from the need to engage in the kind of multibillion-dollar bailouts required in the current crisis by allowing for an orderly resolution of failing financial firms. It empowers regulators to establish tough new capital requirements that make it harder for firms to become so big they endanger the stability of the system. It requires hedge funds to register with the SEC and provide information about their once-hidden operations. It also strengthens the process for shareholders to select corporate directors and to limit excessive executive pay.

We have seen all too clearly the consequences of lax regulation and tepid oversight, the consequences of assuming that Wall Street can police itself. That attitude has put millions of Americans in unemployment lines, has plastered foreclosure signs on millions of American homes, and has pumped billions of dollars of taxpayer money into Wall Street firms that happily profited from their risky bets and then leaned on the rest of us to bail them out when the bill came due.

I say to those colleagues who are considering voting against this bill: Knowing what our investigation and others have discovered, how can you oppose this effort to erect a wall between Wall Street's never-ending appetite for reckless risk and the rest of the American economy?

It is time to put the cop back on the beat on Wall Street. It is time to end Wall Street's ''heads we win, tails you lose'' game. It is time to prevent as best we can the next manmade disaster threatening our jobs, our homes, and our businesses. It is time to pass this major financial reform legislation, and I hope we will see a strong vote for it in the day ahead.

PAKISTAN AND AFGHANISTAN TRIP

Mr. LEVIN. Mr. President, I rise to speak about a trip Senator JACK REED and I recently took to Pakistan and Afghanistan. In Pakistan, we met with the Prime Minister, the Governor of the critical northern province that includes the Swat Valley, the Pakistani general who is commander of their Army's 11th Corps. In Afghanistan, we met in Kabul with General Petraeus, with Ambassador Eikenberry, with President Karzai, with many of his ministers.

Then, in Afghanistan, we traveled to Kandahar Province, where we met with General Carter, who is the commander of the ISAF forces, the Kandahar Governor and the city mayor of Kandahar. Then we met with the commander of the Afghan Army's 205th Corps, Major General Zazai.

One of the key things we saw, and something which is critically important to the success of this mission in Afghanistan, is that the Afghan Army be strengthened, take responsibility, primarily, for the security of the country, and lead operations which are joint operations between the Afghan Army and the coalition forces, including American forces.

That will be dramatized, that movement towards the shift of responsibility to the Afghans, where it belongs. A dramatic moment is going to take place later in July or early in August when, in a major operation in the area around Kandahar city, right in the heart of Taliban country, there is going to be a large number of forces that are Afghan forces, a large number of American forces, and from other countries, and it will be the Afghans who will be in the lead in that operation.

This is the Taliban's worst nightmare: facing an Afghan-led force that is going to clear them from control of the area. The Afghan people detest the Taliban, and they respect their own army. And our major goal and mission should be to build up that army, strengthen it sizewise and with equipment and training so it can take major security responsibility for that country. This is the path to success in Afghanistan.

Again, because of this planned operation, which is now announced, and because of a number of other steps which have been taken—a very significant number of positive steps in the last 6 months—I have some confidence we are on the way to a successful outcome in Afghanistan.

Afghanistan has made progress in a number of ways since my visit there in January.

The progress I refer to is toward the key goal of preventing Afghanistan from being dominated by a Taliban organization that would once again provide a haven for the international terrorist movement, al-Qaida.

To achieve that goal, Afghanistan must be able to take principal responsibility for its own security. We and other outsiders cannot secure Afghanistan, but we can help the Afghan security forces do so.

The building blocks to achieve that goal are present. The Afghan National Army, ANA, is respected by the people and the Taliban is despised and feared because of the terror they spread and threaten.

A capable, strong, large Afghan Army is the Taliban's worst nightmare because it means that the Taliban's propaganda that foreigners seek to dominate Afghanistan rings hollow. This is particularly true when Afghan troops are in the lead in joint operations with the troops of ISAF.

That is why I believed we should have focused on training and equipping the ANA, why we should have sent in trainers and mentors instead of sending in more combat troops. That is why when President Obama decided to send in 30,000 more U.S. troops, I strongly supported the decision to begin to reduce those troops in July of 2011. That date is the action-driving mechanism to demonstrate to the Afghans the urgency of acting to get their army up to the size and capability where they can succeed in the mission so vital to them and to us—securing their country against the Taliban.

A number of steps have been taken in the last 6 months toward achieving that goal.

First, recruitment for the ANA is up, partly because, according to General Caldwell, who leads the ISAF training mission, the announcement of the July 2011 date last December incentivized the Afghan leaders to act to stimulate recruitment.

Second, the Afghan army has grown very quickly, exceeding the goals. Last December the army had 100,000 men; by May the number was 125,000; and Minister of Defense Wardak said he expects to announce that the end of September 2010 goal of 134,000 will be met by the time of the Kabul conference in late July.

Third, the ratio of ISAF forces to Afghan forces is improving in terms of Afghans becoming numerically dominant. When I was with our marines in Helmand Province in January, there were two or three marines for each Afghan soldier. In Kandahar Province, where Senator REED and I visited last week, the ratio is about one to one and by September it will be predominantly Afghan.

Fourth, the partnering in the field between the ANA and ISAF is real. Every Afghan unit from battalion down to company level is now planning and operating together with ISAF units. This has the twin benefits of training Afghan troops and having the Afghan people see that it is their respected army that they want to provide the security which is doing that, rather than foreign troops which have less understanding of their culture and will someday leave.

Fifth, and central to the success of the mission of Afghans being principal providers of security, is the fact that Afghan troops are more and more in the lead in joint operations. A highly significant event will take place at the end of July and early August. A major joint ANA-ISAF operation will move into the Taliban heartland of the Arghandab Valley, just west of Kandahar city. Approximately 10,000 troops—the Afghan 205th Corps with 5,160 soldiers and ISAF with 4,430 soldiers—will clear the area of insurgents.

The planning is complete and the orders signed. It is a major, incredibly important effort and, of great significance, the Afghans will be in the lead.

The significance of this will not be lost on the Afghan people, nor on the Taliban.

Kandahar Province is where the Taliban movement was born. Months of effort have been extended to ''shape'' the upcoming effort. The city of Kandahar and its environs are being secured at the cost of many lives—both Afghan and coalition forces—so as to proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

REMEMBERING SENATOR ROBERT C. BYRD

Ms. LANDRIEU. Mr. President, I rise today to honor the memory of one of the Senate's giants, Robert C. Byrd. My family and I were saddened to learn of his passing on Monday morning at the age of 92. I will remember Senator Byrd as a fierce defender of the Constitution, master of Senate procedure and a proud fighter for West Virginia and its rural heritage. Senator Byrd was more than just a colleague, he was a mentor. He taught me—and everyone who had the honor of serving with him—never to apologize for standing up for your State.

During more than a half century of service in Congress, Senator Byrd gave a voice to those who would not have been heard otherwise. There are times when it is easy to get caught up in the petty bickering and partisan squabbles that seem to be increasingly plaguing this chamber. But, we would all do well to follow the example Senator Byrd set for all of us during his legendary Senate career and never lose sight of the fact that we are sent here to fight for those in our home States and across the country who cannot fight for themselves.

Senator Byrd's work on behalf of his constituents is well known. West Virginians knew they could count on their senior Senator to come here to Washington and deliver for them. They were not alone. I will never forget how helpful Senator Byrd was to my State. Louisiana lost a true friend. Through storms and floods, Senator Byrd made sure that promises made to the gulf coast, particularly to Louisiana, were not broken. He kept an eye on the fair and just distribution of funds to Gulf Coast States, and I and everyone I represent will always be grateful for his dedication to our recovery.

One critical example is his effort to provide funding for Louisiana's Road Home program. Road Home, which is the largest single housing recovery program in U.S. history, was designed to provide compensation to Louisiana homeowners whose houses were destroyed by Hurricane Katrina or Rita. In late 2007, as Louisiana faced a daunting program shortfall, it was Senator Byrd who stepped up to help me secure $3 billion to keep this rebuilding program going.

A year later, Senator Byrd once again stood up for the people of Louisiana, when he worked with me to include $8.7 billion for gulf coast hurricane recovery and protection in the emergency supplemental spending bill for Iraq and Afghanistan. The funding provided for levees, criminal justice needs, health care and housing for low-income hurricane survivors.

Senator Byrd once said, ''The people of Louisiana have the strength and the spirit to rebuild their homes and their communities. We owe them the support to get the job done.'' He did not just pay lipservice to the gulf coast. He delivered for us time and again, because he understood the importance of standing up for those who were hit so hard by the tragic storms that battered the Louisiana coast.

Senator Byrd was not just a colleague who put his weight behind fighting for the gulf coast region. He was also a walking encyclopedia of Senate history, and he was always willing to impart his vast knowledge to anyone who wanted to learn about the legends that walked these halls for more than two centuries before us.

When I was first sworn in as a U.S. Senator, back in 1997, my entire family came to Washington for the event. After it was over, I asked Senator Byrd if he would give my family—both adults and children—a history lesson on the Senate. He graciously obliged, and for 2 full hours spoke eloquently and expertly on the history of this great body. His lecture left a lasting impression on every single member of the Landrieu family, and it is a memory we will always cherish.

Senator Byrd spoke with such passion about John C. Calhoun, Henry Clay, Daniel Webster, Rebecca Felton, Everett Dirksen and the many other historical figures who shaped the Senate. It is only appropriate that he will forever be mentioned in the same breath with these men and women he so truly admired. And, it makes me proud to have had the opportunity to serve with a man who left such an indelible mark on this Chamber.

As we reflect on Senator Byrd's remarkable life and career, our prayers are with the Byrd family. But we all take comfort in knowing that while he leaves behind one of his great loves—the Senate—he is finally going home to be with his greatest love—Erma.

Mr. ALEXANDER. Mr. President, Senator Pete Domenici from New Mexico served in this body for 36 years. During that time, he was the first Republican chairman of the Budget Committee and later chaired the Energy Committee where, more than almost anyone, he helped spur the revival of interest in nuclear energy. He was truly one of the most consequential senators of the last half century. As we mourn the loss of another very consequential Member of this Chamber, Senator Robert Byrd of West Virginia, I thought it was appropriate to share Senator Domenici's thoughts on the passing of Senator Byrd.

I ask unanimous consent that Senator Domenici's statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR PETE DOMENICI ON THE PASSING OF SENATOR ROBERT C. BYRD

I'm sorry I can't be at Senator Robert Byrd's memorial service in person because I'm celebrating the first family reunion with my eight children—and their children—from across the country. My wife will join me at this event, and I will be prevented from attending the ceremony for my great friend, Robert Byrd.

I worked with Senator Byrd for my entire 36 years in the Senate. Above all else, I found him a man that one could trust implicitly. He and I both served on the Senate Appropriations Committee for many years, where he was a strong advocate for his home state. He and I both supported local projects for our states and believed that 'earmarks' were not only legitimate, but part of the Senator's duty to his state.

When history is finally written of the United States Senate there is little doubt in my mind that he will go down as one of the greatest of all. He knew the rules and he played by them. He knew the issues and he fought for them. He understood America's greatness and he heralded it. But most of all, he seemed to always remember the working men and women of his state and this country. He will be missed. I must say thank you, Robert, for your friendship and all you did for me and all of us.

FINANCIAL REGULATORY REFORM

Mr. VOINOVICH. Mr. President, I rise today to explain my opposition to the Restoring American Financial Stability Act. When the Senate first passed the bill in May, I opposed it and explained my reasons for doing so. At that time I hoped the House and Senate would make some changes to the bill during the conference committee to address the root causes of the financial crisis as well as scale back the overreaching powers granted to the new consumer protection bureau. Unfortunately, neither of these changes occurred, and I still believe the bill largely ignores the glaring, fundamental problems that led to our current fiscal catastrophe while increasing regulatory burdens on business when the economy is still struggling to recover. In addition, as Fareed Zakaria recently noted, the uncertainty created by this and other expansive legislation, such as health care reform and potentially cap and trade, is causing many businesses to refrain from new investments until they can understand the full implications of these measures.

As for this legislation, it is now clear that over the past decade or so, specific factors played a critical role in leading our Nation into the financial crisis that first arrested the credit markets in 2007, leading to the collapse of some of our largest financial services firms and a stock market crash in late 2008. The resulting events produced a widespread foreclosure crisis and a devastating recession with massive job loss and sustained record unemployment, all of which continue to be felt by families throughout Ohio and the Nation. In response, Congress has taken up legislation that purports to correct what went wrong and restore safety, soundness, and stability to our financial markets to foster recovery and fortify the foundation for a strong economy.

Why, then, do I oppose the passage of this legislation? Simply put, because it does not get the job done. This legislation fails to address the causes of the financial crisis, while overreaching in its expanded regulation of businesses, large and small, throughout the economy. I voted to bring the bill to the Senate floor because I believed the American people wanted us to debate the issues that caused the financial collapse and bring forth legislation that would work to minimize the possibility of a future collapse, but this bill fails in too many respects.

First, the bill fails to address two primary causes of the financial meltdown, Fannie Mae and Freddie Mac, whose push to acquire subprime mortgages—spurred by Congress—helped produce a real estate bubble that burst and sent shockwaves across global financial markets, forcing the U.S. economy and other global economies into a tailspin. These now-government-owned institutions, which failed in the midst of the financial crisis, continue to drain taxpayers for billions of dollars. In May, Fannie and Freddie requested an additional $19 billion of taxpayer moneys to fund operations, bringing the total government assistance to roughly $145 billion, or an average of $7.6 billion per month. Moreover, the nonpartisan Congressional Budget Office recently estimated that over the next decade, Fannie and Freddie could cost taxpayers almost $400 billion. Yet these two giant, systemically risky institutions—whose bailouts far outsize any of those given to other financial institutions—are ignored in this legislation.

Second, at the heart of this financial crisis were residential home loans written to borrowers who did not have the ability to pay their mortgages. When these borrowers defaulted on a massive scale, widespread investment securities based on their mortgages lost significant value, sending investors panicking and retreating while portfolios collapsed and credit froze. These loans were made in large part because of poor underwriting standards and a failure by many lenders and brokers to ensure that buyers had the means to repay their loans. During the Senate debate on this legislation, my colleague, Senator BOB CORKER, offered a commonsense amendment to establish sound underwriting standards, including a minimum down payment, full documentation, and proof of income and ability of the borrower to pay the mortgage. Amazingly, my colleagues rejected this amendment, and thus virtually nothing in this legislation addresses this problem.

Third, the new consumer protection bureau created by this bill is too wide in its regulatory scope, and I believe it will saddle businesses with new, often unnecessary burdens. The bureau is granted authority to reach its tentacles like an octopus into various sectors of the economy, and pull businesses that were not part of the problem—including retailers, medical providers such as dentists, lawyers, advertising agencies, and even nonprofits—under new government regulation. Attempts by some of my colleagues to curtail the largely unchecked reach of this new regulator were mostly rejected.

Finally, new regulations related to over-the-counter derivatives fail to adequately protect businesses across Ohio and other States that use these risk management tools. I have heard from many businesses concerned that they could be forced to divert capital away from job-creating investments as a result of new clearing procedures in the legislation. They also complain that they may now be forced to use less customized derivative products, which would result in more—rather than less—risk. As businesses sideline more capital, they become less liquid; as they face more risk, they become less creditworthy, and in turn have less access to credit. I am fearful that these new regulatory burdens will serve primarily to slow any eventual economic recovery rather than address the underlying causes of the financial collapse. For example, uncertainty over these potential effects has created widespread concern among farmers in particular, who had nothing to do with the financial meltdown but could face consequences under the legislation.

In sum, the Restoring American Financial Stability Act fails to address the root causes of the problem and overreaches in its regulation. I am disappointed these concerns were not resolved during the conference committee, and thus I will not support the bill.

ADDITIONAL STATEMENTS

TRIBUTE TO COLONEL MICHAEL P. CRALL

• Mr. CASEY. Mr. President, today I honor Colonel Michael P. Crall for the exceptional service he has provided as commander of the Pittsburgh district, U.S. Army Corps of Engineers during the period from July 13, 2007, to July 16, 2010. My colleague from Pennsylvania, Senator SPECTER, has joined me to honor Colonel Crall.

On Friday, July 16, 2010 in Pittsburgh, Pennsylvania the U.S. Army Corps of Engineers Pittsburgh District military Change of Command ceremony will honor the services of the outgoing commander, Colonel Michael P. Crall, and welcome the incoming commander, Colonel William H. Graham.

Colonel Crall will leave a legacy of excellence. His leadership focused the district's capabilities on demonstrating the value of the Army Corps to the Pittsburgh region. His superb leadership and strong personal engagement strengthened relationships within local, State and Federal partnerships.

During his tenure as district commander, Colonel Crall superbly managed an annual operating budget in excess of $200 million which funded the planning, engineering, construction, operation, and maintenance of the Pittsburgh district's 23 locks and dams, and 16 reservoirs covering 26,000 square miles in a five-State area.

Colonel Crall's implementation of funding provided to the district through the American Recovery and Reinvestment Act shows that he is an effective steward of taxpayer dollars. The act provided over $140 million for the Pittsburgh district, almost doubling the district's annual budget. Under Colonel Crall's leadership, the district awarded contracts for projects to help reinvigorate the region's economy. These contracts have also assisted in improving the reliability of the some of the oldest facilities in the Corps.

Early in his tenure, he was faced with the challenge of a severe flash flooding event where he quickly directed available Corps authorities to provide emergency relief and offer immediate assistance. Colonel Crall's actions strengthened the Corps' partnership with local communities and reiterated the Corps value in the region. This event set the foundation for a tenure that focused on ensuring the safety of citizens of the region and a commitment to protecting their property. In addition, Colonel Crall's true compassion for the constituents impacted by this unfortunate event set the tone for his continued engagement in local flood reduction needs throughout the Pittsburgh district.

Throughout his time at the helm of the Pittsburgh district, Colonel Crall continued to stress the Army Corp's concern for maintaining and improving water quality. For instance, Colonel Crall recognized the effect of natural gas drilling on the Monongahela River and immediately took action to reduce any negative impact on public health and safety associated with this activity.

As a decorated military officer, Colonel Crall exemplified his devotion to our soldiers and country through his active role with the flight 93 Memorial. With a singular focus on overcoming unnecessary delays, he directed his team to work with the National Park Service to ensure that the Corps involvement in the memorial was timely and done with great care. Colonel Crall's efforts are helping to move the project in a positive direction. Simply stated, his personal involvement will help ensure that the sacrifices of the patriots aboard flight 93 will be appropriately memorialized.

Colonel Crall's excellent communication skills and collaborative approach greatly improved the district's image and reputation among the general public, stakeholders, and the workforce. Throughout his entire tour of duty, Colonel Crall's superb leadership and strong personal engagement was instrumental in demonstrating the value of the Pittsburgh district throughout

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156 WASHINGTON, THURSDAY, JULY 15, 2010 *No. 105*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

The PRESIDING OFFICER. Today's opening prayer will be offered by the Reverend Donna R. Kafer, Chaplain of the Arizona State Legislature.

The guest Chaplain offered the following prayer:

Let us pray.

Dear Holy and Righteous Father, we come before You this day with humble hearts, thoughtful minds, and a profound understanding of Your majesty.

As the Senate body convenes today, I ask, Lord, that You give each and every one of our Senators a unique sense of their role in shaping this great Nation. We understand this mantle of leadership holds a great measure of responsibility, so we petition You, Father, to impart Your wisdom, peace, and comfort to each one of them. Provide them, Lord, with clarity of mind, vision for the future, and a renewed sense of purpose. Fill their hearts with compassion, discernment, focus, and the strength to meet the complex tasks at hand. Father, give them complete health: mentally, physically, emotionally, and spiritually. Embrace them with Your love that they may know Your boundless affection for them and Your indepth concern for their well-being. We thank You, Lord, for hearing our petitions this day.

It is in Your precious Name we pray. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 15, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

WELCOMING THE GUEST CHAPLAIN

Mr. KYL. Madam President, it is my honor to help host our guest Chaplain from Arizona, Rev. Donna Kafer. On behalf of Senator MCCAIN and myself, I thank the Senate Chaplain and all others who have been so courteous to Reverend Kafer on her visit to Washington. She, I understand from the Chaplain, is the first legislative chaplain to provide the opening prayer in the Senate and only the second woman to have done so. There are milestones achieved today, and we appreciate her being with us.

She has been the chaplain at the Arizona State Legislature for over 10 years through her nonprofit organization called Leadership Challenge of Arizona. She also serves as the Arizona area coordinator of the Daughters of Destiny Network, which is a women's prison ministry based out of Colorado Springs. She travels throughout the United States sharing her testimony with incarcerated women, encouraging them and sharing the freedom that is offered through the saving grace of Jesus Christ.

Donna is an Arizona native. She and her husband Ross, a firefighter paramedic for almost 20 years, live in the Phoenix metropolitan area and have a daughter, Andrea Elizabeth.

It is our proud opportunity to help to host her today and thank her for opening the Senate with that beautiful prayer.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Madam President, every Thursday Senator ENSIGN and I greet people from Nevada. We had a lot of them today. I was late getting here. I am sorry to have missed the prayer. But I will read the prayer and recognize what Senator KYL said about the guest Chaplain. She is welcome to the Senate.

SCHEDULE

Mr. REID. Madam President, following leader remarks, the Senate will resume consideration of the conference report to accompany H.R. 4173, which is the Wall Street reform legislation. At about 11 a.m. this morning, the Senate will proceed to a rollcall vote on the motion to invoke cloture on that conference report. If cloture is invoked, we would like to yield back some of the

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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postcloture debate time so we may complete action on the Wall Street reform legislation today. There could be additional rollcall votes this afternoon.

For the benefit of Senators, I have spoken to the two Republican leaders. We still have some hope of being able to set up votes on the small business jobs bill. I hope we can do that; otherwise, we will have to proceed to a cloture vote on that sometime next week.

MEASURE PLACED ON THE CALENDAR—S. 3588

Mr. REID. Madam President, S. 3588 is at the desk and due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill for the second time.

The assistant legislative clerk read as follows:

A bill (S. 3588) to limit the moratorium on certain permitting and drilling activities issued by the Secretary of the Interior, and for other purposes.

Mr. REID. I object to any further proceedings with respect to this bill.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

WALL STREET REFORM AND CONSUMER PROTECTION ACT—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to company H.R. 4173, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 4173, to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11 a.m. shall be equally divided and controlled by the Senator from Connecticut, Mr. DODD, and the Senator from Alabama, Mr. SHELBY, or their designees, with the final 20 minutes divided equally between the two managers and the two leaders.

The Senator from Hawaii.

Mr. AKAKA. Madam President, I strongly support the Dodd-Frank conference report. I commend the chairman for all of his work to address so many issues vitally important to working families. I thank my friend from Connecticut for working closely with me to ensure this legislation will educate, protect, and empower consumers and investors.

An Office of Financial Education within the Consumer Financial Protection Bureau is created by the legislation. The office is tasked with developing and implementing initiatives to educate and empower consumers. A strategy to improve financial literacy among consumers, that includes measurable goals and benchmarks, must be developed. The administrator of the bureau will serve as vice-chairman of the Financial Literacy and Education Commission to ensure meaningful participation in Federal efforts intended to help educate, protect, and empower working families.

The conference report also addresses investor literacy. A financial literacy study must be conducted by the Securities and Exchange Commission, SEC. The SEC will be required to develop an investor financial literacy strategy intended to bring about positive behavioral change among investors.

Essential consumer and investor protections for working families are included in the conference report. A regulatory structure that will have a greater emphasis on investor and consumer protections is established. Regulators failed to protect consumers and that contributed significantly to the financial crisis. Prospective homebuyers were steered into mortgage products that had risks and costs that they could not understand or afford. The Consumer Financial Protection Bureau will be empowered to restrict predatory financial products and unfair business practices in order to prevent unscrupulous financial services providers from taking advantage of consumers.

I take great pride in my contributions to the investor protection portion of the legislation. Section 915 will strengthen the ability of the Securities and Exchange Commission to better represent the interests of retail investors by creating an investor advocate within the SEC. The investor advocate is tasked with assisting retail investors to resolve significant problems with the SEC or the self-regulatory organization, SROs. The investor advocate's mission includes identifying areas where investors would benefit from changes in Commission or SRO policies and problems that investors have with financial service providers and investment products. The investor advocate will recommend policy changes to the Commission and Congress on behalf of investors.

The investor advocate is precisely the kind of external check, with independent reporting lines and independently determined compensation, that cannot be provided within the current structure of the SEC. It is not that the SEC does not advocate on behalf of investors, it is that it does not have a structure by which any meaningful self-evaluation can be conducted. This would be an entirely new function. The investor advocate would help to ensure that the interests of retail investors are built into rulemaking proposals from the outset and that agency priorities reflect the issues confronting investors. The investor advocate will act as the chief ombudsman for retail investors and increase transparency and accountability at the SEC. The investor advocate will be best equipped to act in response to feedback from investors and potentially avoid situations such as the mishandling of information that could have exposed ponzi schemes much earlier. We also worked with our colleagues in the other Chamber to include an ombudsman that will be appointed by and report to the investor advocate.

I also worked to include in the legislation clarified authority for the SEC to effectively require disclosures prior to the sale of financial products and services. Working families rely on their mutual fund investments and other financial products to pay for their children's education, prepare for retirement, and be better able to attain other financial goals. This provision will ensure that working families have the relevant and useful information they need when they are making decisions that determine their financial future.

Unfortunately, too many investors do not know the difference between a broker and an investment advisor. Even fewer are likely to know that their broker has no obligation to act in their best interest. Investment advisors currently have fiduciary obligations. However, brokers must only meet a suitability standard that fails to sufficiently protect investors.

In a complicated financial marketplace, for investors in which revenue sharing agreements and commissions can vary significantly for similar products, we must ensure that all investment professionals that offer personalized investment advice have a fiduciary duty imposed on them.

In 2005, I first introduced legislation that would have imposed a fiduciary duty on brokers. I knew then that action was necessary. I am proud that a vital investor protection was also included in the conference report that will ensure that a fiduciary duty is imposed on brokers when giving personalized investment advice. This change is necessary because it will ensure that all financial professionals, whether they are an investment advisor or a broker, have the same duty to act in the best interests of their clients. Investors must be able to trust that their broker is acting in their best interest and we must not allow brokers to push higher commission products that may be inappropriate for a particular client. I appreciate all of the efforts of Chairman FRANK, Senator MENENDEZ, and Senator JOHNSON for all of their efforts on this important new investor protection.

This legislation also includes landmark consumer protections for remittance transactions. Working families often send substantial portions of their earnings to family members living abroad. In Hawaii, many of my constituents remit money to their family members living in the Philippines. Consumers can have serious problems with their remittance transactions, such as being overcharged or not having their money reach the intended recipient. Remittances are not currently regulated under Federal law, and State laws provide inadequate consumer protections.

The conference report modifies the Electronic Fund Transfer Act to establish consumer protections for remittances. It will require simple disclosures about the cost of sending remittances to be provided to the consumer prior to and after the transaction. A complaint and error resolution process for remittance transactions would be established. I appreciate all of the efforts of the chairman, Representative GUTIERREZ, and the Department of the Treasury for working with me on this important piece of the bill for immigrant communities.

This legislation also includes essential economic empowerment opportunities for working families. Title XII, Improving Access to Mainstream Financial Institutions, is the most important economic empowerment provision in the bill. I appreciate the assistance provided by my friend from Wisconsin, Senator KOHL in helping me put this title together. I appreciate the support and contributions made to this title provided Senators SCHUMER, BROWN, MERKLEY, and MENENDEZ.

I grew up in a family that did not have a bank account. My parents kept their money in a box divided into different sections so that money could be separated for various purposes. Church donations were kept in one part. Money for clothes was kept in another and there was a portion of the box reserved for food expenses. When there was no longer any money in the food section, we did not eat. Obviously, money in the box was not earning interest. It was not secure.

I know personally the challenges that are presented to families unable to save or borrow when they need small loans to pay for unexpected expenses. Unexpected medical expenses or a car repair bill may require small loans to help working families overcome these obstacles.

Mainstream financial institutions are a vital component to economic empowerment. Unbanked or underbanked families need access to credit unions and banks and they need to be able to borrow on affordable terms. Banks and credit unions provide alternatives to high-cost and often predatory fringe financial service providers such as check cashers and payday lenders. Unfortunately, approximately one in four families are unbanked or underbanked.

Many of the unbanked and underbanked are low and moderate-income families that cannot afford to have their earnings diminished by reliance on these high-cost and often predatory financial services. Unbanked families are unable to save securely for education expenses, a down payment on a first home, or other future financial needs. Underbanked consumers rely on nontraditional forms of credit that often have extraordinarily high interest rates. Regular checking accounts may be too expensive for some consumers unable to maintain minimum balances or afford monthly fees. Poor credit histories may also limit their ability to open accounts. Cultural differences or language barriers also present challenges that can hinder the ability of consumers to access financial services. I also want to clarify that in section 1204, small dollar-value loans and financial education and counseling relating to conducting transactions in and managing accounts are only examples of, and not limitations on, eligible activities.

More must be done to promote product development, outreach, and financial education opportunities intended to empower consumers. Title XII authorizes programs intended to assist low and moderate-income individuals establish bank or credit union accounts and encourage greater use of mainstream financial services. It will also encourage the development of small, affordable loans as an alternative to more costly payday loans.

There is a great need for working families to have access to affordable small loans. This legislation would encourage banks and credit unions to develop consumer friendly payday loan alternatives. Consumers who apply for these loans would be provided with financial literacy and educational opportunities.

The National Credit Union Administration has provided assistance to develop these small consumer-friendly loans. Windward Community Credit Union in Hawaii implemented a very successful program for the U.S. Marines and other community members in need of affordable short term credit. More working families need access to affordable small loans. This program will encourage mainstream financial service providers to develop affordable small loan products.

I thank the Banking Committee staff for all of their extraordinary work, including Levon Bagramian, Julie Chon, Brian Filipowich, Amy Friend, Catherine Galicia, Lynsey Graham Rea, Matthew Green, Marc Jarsulic, Mark Jickling, Deborah Katz, Jonathan Miller, Misha Mintz-Roth, Dean Shahinian, Ed Silverman, and Charles Yi.

I also express my appreciation for all of the work done by the legislative assistants of members of the Committee, including Laura Swanson, Kara Stein, Jonah Crane, Ellen Chube, Michael Passante, Lee Drutman, Graham Steele, Alison O'Donnell, Hilary Swab, Harry Stein, Karolina Arias, Nathan Steinwald, Andy Green, Brian Appel, and Matt Pippin.

In conclusion, this bill will improve the lives of working families in our country because it will educate, protect, and empower consumers and investors.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. CARDIN. Madam President, I take this time to urge my colleagues to vote for cloture on the Dodd-Frank Wall Street Reform and Consumer Protection Act and to vote for final passage.

First, I congratulate Senator DODD for the leadership he has shown in marshaling this legislation through some very difficult challenges in the Congress, getting it through the Senate floor, working out the differences between the House and Senate, so we now are on the verge of passing the most significant reform of Wall Street in many years.

This bill corrects a regulatory structure that today allows reckless gambling on Wall Street; that creates too big to fail, where government bailouts are necessary to keep companies afloat because there are no other options available to our regulators. It ends reckless gambling on Wall Street. It ends the need for government bailouts of institutions that are too big to fail. It provides for strong consumer protection—protection for many forms of lending but, most importantly, the residential mortgage market.

We saw in this financial crisis that even responsible consumers suffered at the hands of aggressive lenders with dubious intentions. This legislation will create a consumer bureau that will end those types of practices, that will be on the side of the consumer, that is independent, so the consumer is represented in the financial structure.

I want to highlight some provisions that were included in this legislation I worked on with our colleagues to get included in the bill. I am very grateful to Senator DODD, the leadership of the Banking Committee, and our representatives in conference who were able to include provisions that I think add to the importance of this bill.

The first provision I want to talk about is a provision I worked on with Senator ENZI and Senator BROWNBACK that will make permanent the federally insured deposit limits from $100,000 to $250,000. We did that recently in order to encourage more deposits, to help our economy, to provide capital for businesses. This limit included in this bill is now made permanent at $250,000.

Insured deposits have been the stabilizing force for our Nation's banking system for the past 75 years. They promote public confidence in our banking system and prevent bank runs. They are particularly important to community banks. I know many of us talk about what we can do to help our small businesses, how can we free up more credit to get small businesses the loans they need in order to create the jobs that are needed for our economy. We all know community banks are the most stable source of funds for investments in our communities and small businesses.

Community banks rely more on insured deposits than large banks. Madam President, 85 percent to 90 percent of the funds community banks have are included in insured deposits. So this amendment that will make permanent the $250,000 limit will help provide a more steady source of funds for our community banks which will allow them to be able to invest in our communities.

Another provision that is included in this conference report is one I worked on with my colleague from Maryland, Senator MIKULSKI, dealing with the enhanced supervision for nonbank financial companies. What we are talking about are mutual funds and their advisers, to make sure they are not inadvertently subjected to unworkable standards. Here we are talking about promoting funds necessary for venture capital and equity investments in our communities, to make sure there is a difference between the type of activities of mutual fund operators who rely primarily on risk investment and those that are primarily involved in insured deposits. I appreciate the conference committee clarifying that provision in the conference report, which Senator MIKULSKI and I encouraged them to do.

Another provision I want to talk about very briefly is one I worked on with Senator GRASSLEY dealing with whistleblower protections at nationally recognized statistical rating organizations, NRSROs as they are known. But I think most people in our country know them as credit rating agencies. These are companies such as Moody's and Standard & Poor's. There are about 10 in our country that are supposed to do independent credit ratings for securities.

As I am sure many people are now aware, they played a significant role in the unrealistic confidence in securities during our recent economic downturn.

We want to make sure our credit rating agencies, in fact, carry out the responsibilities they are supposed to carry out as independent evaluators. But competition, pressure, and inherent conflicts have made that uncertain. The whistleblower protections that are extended in this legislation will allow employees to come forward with information without fear of retribution by their employer. It is a very important provision, and I am glad it was included in the final legislation.

Lastly, let me talk about the extractive industries transparency initiative, an amendment Senator LUGAR and I worked very hard on, that is included in the final conference report. I have spoken on the Senate floor previously about this provision, and I particularly thank Senator LEAHY for his leadership in the conference on this issue and Senator DODD for his help in getting it included in the final conference report.

Oil, gas, and mining companies registered with the U.S. Securities and Exchange Commission will be required under this legislation to disclose their payments to governments for access to oil, gas, or minerals. Many of these oil companies or gas companies or mineral companies operate in countries that are autocratic, unstable, or both, and they have to make payments to those countries in order to be able to get access to those mineral rights. This legislation—the amendment that is included in this bill—will require public disclosure of those payments.

Why is that so important? And why was it included in the final conference report? First, transparency encourages and provides for more stable governments. We rely on these energy sources or mineral supplies in countries that are of questionable stability.

If this disclosure will help make those countries more stable, it provides security for the United States in their supply source, whether it is an energy or mineral supply source. So this amendment that is included in the conference report will help with U.S. energy security.

Secondly, investors have a right to know. If you are going to invest in an oil company, you have a right to know where they are doing business, where they are making payments. I would think this is information that may affect your decision as to whether you want to take this risk in investing in that company. So this amendment provides greater disclosure for investors to be able to make intelligent decisions as to whether to invest in an oil or gas or mineral company.

Third, as we know, with the lack of transparency, the payments become a source of corruption for government officials in many of these resource-wealthy countries. It is interesting; it is known as the ''resource curse,'' not the ''resource blessing'' in many countries around the world. It is interesting that some of our most wealthy mineral countries are the poorest countries as far as their people in the world. The citizens of these countries are entitled to have their mineral wealth be used to elevate their personal status. By giving the citizens the information about how payments are made to their country, they have a much better chance to hold their government officials accountable.

So we not only are protecting investors and helping in energy security, we are helping to alleviate poverty internationally by allowing the people of the countries that have mineral wealth to hold their officials accountable, to use those payments to help the people of that nation.

This proposal has been endorsed by the G8, the International Monetary Fund, and the World Bank. With the passage of the conference report, the United States will be the leader internationally on extractive industries transparency, and I think that is a proud moment not only for the Senate but for our Nation.

This is a good bill for many reasons. It is a well-organized, commonsense regulatory structure to protect our Nation from another financial crisis, with strong investor and consumer protection, placing limits on institutions deemed too big to fail, protecting not only investors and consumers but also taxpayers.

Over the past 30 years, our regulatory framework did not keep pace with financial innovation. It was particularly impotent with regard to oversight of the so-called shadow banking system, which evolved in large part simply to avoid regulation.

Decreased regulation led to irresponsible behavior by financiers, investors, lenders, and consumers. Collectively, we failed to mitigate risk and we ignored established principles of finance—prudence, solvency, and accountability. We can shift risk, but we cannot make it magically disappear. Bubbles do burst eventually.

Everyone played a part in the crisis. Together, we suffer the consequences. No man is an island; we are all connected.

Risky mortgage lending—practices including no-doc or stated income loans—no down payments, and subprime lending led to unprecedented foreclosures.

Consumers securing mortgages beyond their means and horrible predatory lending practices permeated our culture.

Even responsible consumers suffered at the hands of aggressive lenders with dubious intentions.

The mortgage lending system was seriously flawed. America got hit by a tidal wave of foreclosures. Declining home values affect everyone in the community.

And problems in mortgage lending became exacerbated when these bad mortgages were packaged into securities and sliced and diced and sold to investors with AAA credit ratings.

Careful underwriting went out the window because the loan originators sold the notes as fast as they could write them.

The bill the Senate is considering goes a long way to restore the order we need in the financial markets, improve oversight of the mortgage industry, and address the numerous other issues that led to the worst financial crisis since the Great Depression. This bill holds Wall Street more accountable and provides the strongest consumer protections ever for American families and small businesses.

I know there are partisan disagreements on some parts of this legislation and it was a challenge to get to this point, but the chairman and ranking member of the Banking Committee did an outstanding job on this bill and are to be commended for their effort. This is a landmark bill, like Sarbanes-Oxley and the original Securities and Exchange Commission Act. The lesson we had to learn, again, is that business—especially big business—cannot regulate itself adequately. I think H.R. 4173 strikes the right balance in reining in the financial services industry without being unduly burdensome.

I would like to review some of the provisions I worked on that have been included in the bill.

As I have said, Senators ENZI and BROWNBACK joined me in proposing changes to the deposit insurance program. The Independent Community Bankers of America, ICBA, the American Bankers Association, ABA, and the National Credit Union Association, NCUA, all supported our amendment—now found in section 335 of the bill—to make the temporary increase in the federally insured deposit limit from $100,000 to $250,000—a permanent increase. An increase in the Federal Deposit Insurance Corporation, FDIC, and National Credit Union Share Insurance Fund, NCUSIF, limit is significant because deposit insurance has been the stabilizing force of our Nation's banking system for 75 years.

By raising the limit permanently, we provide safe and secure depositories for small businesses and individuals alike. FDIC insurance prevents bank runs and has been proven to increase public confidence in the system. FDIC insurance limits are especially significant to community banks, which rely on deposits much more heavily than larger banks. On average, smaller banks derive 85 percent to 90 percent of their funding from deposits. Ensuring a stable funding source for community banks helps these institutions to continue providing crucially important capital to the small businesses whose growth is at the heart of our economic recovery.

And as I mentioned earlier, during Senate consideration of the bill, I offered an amendment with Senator MIKULSKI to ensure that mutual funds and their advisers are not inadvertently subjected to unworkable standards in the unlikely event the Financial Stability Oversight Council designates them as systemically risky. In section 115 of the bill, the new council is given the flexibility to consider capital structure, riskiness, complexity, financial activities, size, and other factors when determining heightened regulatory standards. This is important for addressing the unique characteristics of companies that are structured differently from banks and bank holding companies.

Further, I am gratified the House and Senate conferees saw fit to retain an amendment, amendment No. 3840, Senator GRASSLEY and I offered to the bill to extend whistleblower protections to employees of nationally recognized statistical rating organizations, NRSROs. The provision is section 922(b) of the bill.

NRSROs are the companies, such as Moody's and Standard & Poor's, which issue credit ratings that the U.S. Securities and Exchange Commission, SEC, permits other financial firms to use for certain regulatory purposes. There are 10 NRSROs at present, including some privately held firms.

The NRSROs played a large role—by overestimating the safety of residential mortgage-backed securities, RMBS, and collateralized debt obligations, CDOs—in creating the housing bubble and making it bigger. Then, by making tardy but massive simultaneous downgrades of these securities, they contributed to the collapse of the subprime secondary market and the "fire sale" of assets, exacerbating the financial crisis.

A Permanent Subcommittee on Investigations, PSI, hearing made it quite clear that competitive pressures and inherent conflicts of interest affected the objectivity of the ratings issued by the NRSROs.

Since NRSRO ratings are used for various regulatory purposes, such as determining net capital requirements and the soundness of insurance company reserves, it makes sense to extend whistleblower protections to employees who might come across malfeasance at a credit rating agency.

There are many reasons for the massive failure of the NRSROs. The Wall Street reform bill contains several provisions to improve SEC and congressional oversight of the NRSROs and how they function. Extending whistleblower status to the employees of these firms enhances the provisions already in the underlying bill.

As I have also said, my distinguished colleague, Senator LUGAR, and I worked particularly hard on the energy security through transparency provision in this bill, which is section 1504—Disclosure of Payments by Resource Extraction Issuers. I am especially grateful to Senator LEAHY, who championed this provision in the conference committee.

The geography and nature of the oil, gas, and mining industry is such that companies often have to operate in countries that are autocratic, unstable, or both. Investors need to know the full extent of a company's exposure when it operates in countries where it is subject to expropriation, political and social turmoil, and reputational risks.

In Nigeria, for example, American companies have had to take oil fields offline because of rebel activity and instability in the Niger Delta. Last year, Nigeria was producing almost a million barrels of oil less than it was able to produce because of conflict and instability. With so much production offline, American oil companies such as Chevron and Exxon have laid off workers and paid higher production costs because of added security.

This bipartisan amendment goes a long way to achieving transparency in this critical sector by requiring all foreign and domestic companies registered with the U.S. Securities and Exchange Commission, SEC, to include in their annual report to the SEC how much they pay each government for access to its oil, gas, and minerals. This amendment is a critical part of the increased transparency and good governance that we are striving to achieve in the financial industry.

Our amendment is vitally important. Transparency helps create more stable governments, which in turn allows U.S. companies to operate more freely—and on a level playing field—in markets that are otherwise too risky or unstable.

Let me point out three key results we expect from this provision:

No. 1, enhancing U.S. energy security. The reliability of oil and gas supplies is undermined by the instability caused when local populations do not receive the benefit of their resource exports. Enhancing openness in revenue flows allows for greater public scrutiny of how revenues are used. Increased transparency can help create more stable, democratic governments, as well as more reliable energy suppliers.

No. 2, strengthening energy markets. The extractive industries are capital-intensive and dependent on long-term stability to generate favorable returns. Leading energy companies recognize that more transparent investment climates are better for their bottom lines.

No. 3, helping to alleviate poverty. Too many resource-rich countries that should be well off are home to many of the world's poor instead. This is a phenomenon known as the "resource curse." Oil, gas reserves, and minerals don't automatically confer wealth on the people who live in countries where those resources are located. Many resource-rich countries rank at the bottom of most measures of human development, making them a breeding ground for poverty and instability. Revenue transparency will help the citizens of resource-rich countries hold their governments more accountable and ensure that their country's natural resource wealth is used wisely for the benefit of the entire nation and for future generations.

The wave of the future is transparency, and these principles of transparency have been endorsed by the G8, the International Monetary Fund, the World Bank, and a number of regional development banks. It is clear to the financial leaders of the world that transparency in natural resource development is vital to holding the rulers in these countries accountable for the needs of their citizens and preventing them from simply building up their personal offshore bank accounts. I am proud to stand here today and say that the United States is now the leader in creating a new standard for revenue transparency in the extractive industries.

These are some of the provisions I worked on, but they are a small part of the overall bill, which is very strong.

Forty years ago, conservative economist Milton Friedman wrote a New York Times Magazine article entitled "The Social Responsibility of Business is to Increase its Profits." In this article, quoting from his earlier book "Capitalism and Freedom," from 1962, he concluded:

> There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.

Even this minimalist position suggests that markets need rules. And yet we embarked on a 30-year path to deregulate financial services, to ease the rules, and remove the watchdogs. We have learned a bitter lesson that markets are not self-correcting—at least not without catastrophic consequences. Millions of Americans have lost their jobs, their savings, their homes, and their retirement security. Businesses have been wiped out. We have gone from easy credit to no credit.

Now that the financial hurricane has wreaked its devastation, it is time to rebuild.

H.R. 4173 is part of that process. The bill creates well-organized, commonsense regulatory structures to protect our Nation from another financial crisis. Chairman DODD and Chairman FRANK have produced a bill that addresses the feasibility of our reliance on credit rating agencies, our appetite for systemic risk, and the need to limit the regulatory burden on our small institutions. They have produced a bill that provides strong investor and consumer protections, encourages whistleblowers, reduces interchange fees for small businesses, and places limits on institutions deemed too big to fail. I know that Maryland banks and investment companies appreciate the attention paid in this bill to their concerns regarding bank and thrift oversight, systemic risk regulation, and the effects of the mortgage crisis.

While Members of Congress may not agree on every aspect of this bill, it is worthy of our support. Indeed, given the stakes, it is imperative that we pass H.R. 4173.

I urge my colleagues to vote for cloture and support passage.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I rise today in strong opposition to H.R. 4173. I think it is interesting to note we have had a number of speakers who are proponents of this legislation come forward—just as my good friend from Maryland just did—and say we are going to be the leader, the United States is going to be the leader in the financial world market with these changes.

Well, the fact is, other countries that have strong financial markets have said publicly just the opposite. What I am afraid we are setting ourselves up for, and what I talked about a lot during the course of the debate on the Senate floor relative to this bill, is that what we are going to wind up doing is we are going to be driving jobs and business overseas with this massive piece of legislation that truly does not address the problem.

There is nothing in these 2,300 pages that deals with the primary catalyst of the market instability in our economy—the bailout behemoths, Fannie Mae and Freddie Mac. The bill simply ignores the devastating impact these two entities continue to have not only on our capital markets but also on our Nation's deficit, already demanding over $145 billion in taxpayer assistance, and with no end in sight as to what it is ultimately going to cost the taxpayers of this country.

The newly created consumer protection bureau is an affirmation that the proponents of the legislation have acknowledged government failures were a significant cause of our economic turmoil. But they still believe bigger government is the solution going forward, and despite failure after failure among various regulatory agencies, a new agency is the answer to these shortcomings, and this time it is going to be different.

Instead of addressing the problems of the consumer protections in place under our current regulatory structure, this new oversight agency is an added layer of bureaucracy with the authority to examine and enforce new regulations for not only all mortgage-related businesses, but also small mom-and-pop businesses on Main Street such as payday lenders, check cashers, and other nonfinancial firms. These types of entities were clearly not the cause of the economic crisis, yet they will now be subject to the same regulations as the large financial institutions on Wall Street. This is simply another example of the majority party's preference for a one-size-fits-all regulatory structure, stifling economic growth.

Having participated in the conference committee, I unfortunately witnessed firsthand the complete disregard for addressing the real issues at hand. As ranking member of the Agriculture Committee, I have spent a great deal of time understanding the over-the-counter derivatives market—its complexities, and its legitimate utility. I have found that both Republicans and Democrats generally agree on the major issues relating to derivatives regulation. We all generally agree there needs to be greater transparency, registration, more clearing, and compliance with a whole host of business conduct and efficient market operation regulations. This is important, because it is a 180-degree shift away from current law where over-the-counter swaps are essentially unregulated today.

Within this general agreement that swaps need to go from unregulated to fully regulated, we have had disagreements about who should be required to clear their transactions and how best to require swaps to be transacted and reported. These disagreements are significant because they involve real burdens and duties which will result in real costs to businesses and consumers. I wish to make sure our new regulations are targeted to serve a useful purpose. Unfortunately, this legislation will enable regulators to impose restrictions on businesses that had absolutely nothing to do with creating the financial crisis. Every industry in the country uses derivatives to manage their business risks and many of them will now be forced to clear their derivative transactions. This seems simple enough, until you realize that clearing does not make risk within the financial system disappear. Risk is simply transferred from the individual counterparties to the clearinghouses, a service provided at considerable expense in the form of margin posted to the clearinghouse. So this bill will not eliminate risk, but it simply transfers risk from one place to another and imposes costs on market participants who had nothing to do with creating the financial crisis. I truly fear that consumers will ultimately pay the price.

For example, this legislation would force the farm credit system institutions to run their interest rate swaps through a clearinghouse which will result in additional costs in the form of higher interest rates to their customers without doing anything to lessen the systemic risk. Let me be clear as to who this will ultimately affect. It is very clear that our farmers and ranchers, our electric cooperatives, and our ethanol facilities which seek financing from these institutions will bear this burden.

Institutions such as Cobank will be forced to clear their swaps and execute them on a trading facility which will impose significant new costs and result in higher rates for their customer, or, worse, discourage them from managing their risk which will again result in higher costs for their borrowers. And why? Because this legislation broadly applies regulation, treating all financial institutions the same. Cobank and Goldman Sachs are not the same and should not be regulated in the same manner. Cobank should have the option to clear their swaps, not be mandated to do so.

While the conference report provides an exemption for some businesses from this derivative clearing mandate, it also imposes new margin requirements on derivative dealers for these same uncleared transactions. Who will likely pay for these new margin requirements in the form of higher fees? Again, it is pretty clear the public and private companies across the Nation that had nothing to do with the financial crisis and that are simply seeking to minimize risk will bear this burden. The entire point of exempting some of them from the clearing mandate was to ensure that they do not bear the burden of increased margin costs, but this language would indirectly subject these businesses to the expense of margins imposed on their dealer counterparties—counterparties that will be forced to recoup this cost in the form of fees, and businesses will be forced to pass their costs on to consumers.

I encourage all Members of this body to look at yesterday's Wall Street Journal. There is a front-page story on derivatives. When we come to the floor and start debating derivatives, most people's eyes glaze over because it is complex and an issue that is very difficult to understand. But in that article it explains the simplicity that the derivatives world imparts itself in. The article goes through a process of a farmer in Nebraska and his use of derivatives; then his ultimate purchaser of his product—the rancher—and how that rancher uses derivatives to eliminate risk and hopefully guarantee a profit in his business. Then it describes how the slaughterhouse takes the product from the livestock operator, the market operator, and uses derivatives in their business; and then ultimately the guy who owns the trucking company and how he uses derivatives. It is very clear in this article that these guys' lives are going to change from a business perspective. They are not going to be able to use derivatives in the way they used them before. They had nothing to do with the financial crisis that developed in this country.

Also related to derivatives were considerable improvements made to the so-called ''swap desk push out'' provision. I commend the chairman for his work on that. Banks would be able to continue to engage in interest rate and foreign currency swaps which is essential to the business of banks. However, I remain concerned that forcing swap dealer banks to spin off their commodity trading will hurt those utilities and airlines wishing to hedge their energy risks in the immediate future. They will be forced to establish new credit ratings and standings with these affiliates rather than take advantage of their longstanding relationship with their current bank. I fail to understand why forcing these entities to spin off any aspect of their swap business is necessary.

I wholeheartedly support efforts to make the swaps market more transparent. It needs to be. I believe this will be accomplished once regulators have access to the data which has to date been completely unavailable to them. The public will benefit from knowing who is participating in these markets, and we will finally have the data we need to make informed policy decisions related to derivatives.

Our economy needs more opportunities for all businesses to grow and prosper. Time and again, it is the small- and medium-sized businesses that create the lion's share of jobs after a major economic recession. We need to foster and incubate these small- and medium-sized businesses right now and not hamper them. We need to ensure they are able to access capital and manage their risk through the use of derivatives. Right now, there are a lot of these small- and medium-sized companies that are ready to expand but cannot get adequate access to capital because lenders are saying it is too risky and regulators won't allow these lenders to help.

So I believe there is a need to respond to what went wrong in our financial system and I support doing so in a responsible way that will continue to allow Main Street businesses to manage their risk appropriately, hold those responsible for this mess accountable, and not create huge new government bureaucracies. Unfortunately, this legislation falls short of these goals.

I am pleased the chairman of the Banking Committee is here, because I do want to say publicly—and I have told him this privately and I will continue to say it—that he had a very difficult job, and while we disagreed on a lot of major issues, he was always open for discussion. He allowed participation on the floor as well as discussions off the floor, and for that I thank him. He knows that I obviously cannot vote for this bill, but he has proven himself to be a very valued Member of the Senate by the way he has conducted himself throughout this whole process, and for that I thank him.

I yield the floor.

Mr. DODD. Madam President, before my colleague leaves the floor, let me thank him as well. Of course, hope always springs eternal. The vote hasn't occurred yet, so we never know. We might get his vote yet.

I don't serve on the Agriculture Committee with him. Senator CHAMBLISS was a very valued member of this conference. Obviously, a lot of work took place in the Agriculture Committee dealing with areas of the bill that he has spent several minutes talking about. He raises very good points. I would be the last person to suggest as a coauthor of the bill that we have crafted the perfect piece of legislation. As he points out, these are highly complicated areas. One of the reasons we tried not to write a series of regulations far beyond the competency of those of us in this Chamber is because it is complicated. Obviously, we have delegated the ultimate responsibility that we now have, which is to watch, the oversight, to the regulatory community, to make sure they do this right.

I pointed out yesterday, and he has pointed out again today, when we get into a situation such as this crisis, certain words become pejorative, and ''derivatives'' unfortunately has become that, and it shouldn't. These are very critical components for capital formation, job growth, and wealth in our country. Hedging against risk is absolutely essential. So they are vitally important elements in our economy. I hope people, when they hear the word ''derivative'' being spoken won't assume this is somehow a bad idea. One almost gets the sense that people feel that way. I don't at all.

I look forward in the coming weeks and months, as regulators begin to work with this bill if, in fact, it passes, that we will do that. A lot of the record has been established in this area, and through no small measure due to the Senator from Georgia, and I thank him for his work as well.

Madam President, I yield the floor.

Madam President, I note the absence of a quorum, and I ask that the time be equally divided on both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SHELBY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SHELBY. Madam President, I rise today to offer some remarks on the Dodd-Frank regulation conference report, which is now before the Senate.

Nearly 2 years ago, the financial crisis exposed massive deficiencies in the structure and culture of our financial regulatory system. Years of technological advances, product development, and the advent of global capital markets rendered the system ill-suited to achieve its mission in the modern economy. Decades of insulation from accountability distracted regulators from focusing on that mission. Instead of acting to preserve safe and sound markets, the regulators primarily became focused on expanding the scope of their bureaucratic reach.

After the crisis, which cost trillions of dollars and millions of jobs, it was clear that significant reform was necessary. Despite broad agreement on the need for reform, the majority decided it would rather move forward with a partisan bill. The result is the 2,300-page legislative monster before us that expands the scope and the power of ineffective bureaucracies. It creates vast new bureaucracies with little accountability and seriously undermines the competitiveness of the American economy.

Unfortunately, the bill does very little to make our financial system safer. Therefore, I will oppose the Dodd-Frank bill and urge my colleagues to do the same.

This was not a preordained outcome; it is the direct result of decisions made by the Obama administration. Had they sincerely wanted to produce a bipartisan bill, I have no doubt we could have crafted a strong bill that would garner 80 or more votes in the Senate. If the American people haven't noticed by now, that is not how things work under the Democratic rule.

Unfortunately, the partisan manner in which this bill was constructed is not its greatest shortcoming. One would have assumed that the scope of the crisis—trillions of dollars lost and millions of jobs eliminated—would have compelled the Banking Committee to spend the time necessary to thoroughly examine the crisis and develop the best possible legislation in response. Unfortunately, such an assumption would be entirely unfounded. The Banking Committee never produced a single report on or conducted an investigation into any aspect of the financial crisis.

In contrast, during the Great Depression, the Banking Committee set up an entire subcommittee to examine what regulatory reforms were needed. The Pecora Commission, as it came to be known, interviewed, under oath, the big actors on Wall Street and produced a multivolume report.

Unfortunately, this time around, the Democratic-run committee gave Wall Street executives a pass, I believe. There were no investigations, no depositions, and no subpoenas. In fact, Chairman DODD, my friend and colleague, never called on the likes of

Robert Rubin and Lloyd Blankfein to testify before the Banking Committee. Not a single individual from AIG's financial products division was questioned by the committee or its staff. Although Congress did establish the Financial Crisis Inquiry Commission to do the work that the majority party, I believe, refused to do, the Commission's work will not be completed until the end of this year.

Most amazingly, the Banking Committee didn't even hold a single hearing on the final bill before its markup. The committee never took the time to receive public testimony or survey experts about the likely outcomes the legislation would produce. We know the majority heard from Wall Street lobbyists, government regulators, and liberal activists, but they clearly decided they did not want the American people to have a chance to understand and comment on the bill before us today before it was enacted. The question is, Why? The majority knows that this bill is a job killer and will saddle Americans with billions of dollars in hidden taxes and fees. Allowing the public to weigh in on this bill would have spelled the end of the Democratic version of reform. I believe we owed more to those who lost their jobs, their homes, and their life savings. I believe this truly was a missed opportunity.

The difference between what we needed to do, what we could have done, and what the majority has chosen to do is considerable. I will speak on this.

Congress could have focused this legislation on financial stability. It could have utilized the findings of the Financial Crisis Inquiry Commission. Instead, the Democratic majority chose to adopt legislative language penned by Federal regulators in search of expanded turf. They chose to legislate for the political favor of community organizing groups and liberal activists seeking expansive new bureaucracies that they could leverage for their own political advantage. The result is an activist bill that has little to do with the recent or any crisis and a lot to do with expanding the government to satisfy special interests.

Congress could have written a bill to address the problem of too big to fail once and for all. In fact, the Shelby-Dodd amendment began to address this problem right here on the floor. Unfortunately, the Democrats once again overreached at the eleventh hour and undermined the seriousness of our effort by emphasizing social activism over financial stability. Democrats insisted that the overall financial stability mission of the Financial Stability Oversight Council was less important than the political needs of certain preferred constituencies. This dangerous mixing of social activism and financial stability follows the exact same model that led us to the crisis in the first place; that is, private enterprise co-opted through political mandates to achieve social goals. Fannie and Freddie proved this combination can be highly destructive.

Congress could have written legislation to address key issues known to have played a key role in the recent crisis. On the government-sponsored enterprises, Fannie and Freddie, the bill is silent, aside from a mere study. On the triparty repo market, the bill is silent. On runs in money markets, the bill is silent. On the reliance of market participants on short-term commercial paper funding, the bill is silent. On maturity transformations that allowed the shadow banking system to effectively create money out of AAA-rated securities, thereby making the system much more vulnerable, the bill is silent. On the financial system's overall vulnerability to liquidity crises, the bill again is silent. We know with certainty that all of these factors—none of which is addressed in the bill—were integral to the recent financial crisis. While we don't want to write legislation that only deals with the last crisis, we do want to enact a law that addresses what we know were systemic problems. This bill fails to do so.

Congress could have written a bill to streamline regulation and eliminate the gaps that firms exploit in a race to the regulatory bottom. This bill does the opposite by making our financial regulatory system even more complex. We will still have the Fed, FDIC, SEC, CFTC, OCC, and the remainder of the regulatory alphabet soup. In fact, most of the existing regulators that so recently failed us have been given expanded power and scope. This bill will also add new letters to the already-confused soup, such as the CFPB and the OFR. In addition to increased regulatory complexity, there will be new special activist offices within each regulator for almost every imaginable special interest.

Congress could have set up reasonable new research capabilities in its new Stability Oversight Council to complement financial research performed by the Federal Reserve and others. Instead, the Democrats decided to establish the Office of Financial Research with an unconstrained director and a focus on broad information collecting and processing.

I believe this office will not only fail to detect systemic threats in the asset price bubbles in the future, it will threaten civil liberties and the privacy of Americans, waste billions of dollars of taxpayer resources, and lull markets into the false belief that this new government power will protect the financial system from risky trades.

Congress could have been transparent in identifying the bill's fiscal effects and costs. Instead, the majority wrote a bill that hijacks taxpayer resources but hides that fact from public view. Just as the administration refuses to acknowledge trillions of dollars of contingent taxpayer liabilities residing with Fannie and Freddie, this bill refuses to provide Americans with a transparent view of the costs of the new multibillion-dollar consumer protection bureaucracy.

According to the report on the bill offered by the majority, the consumer bureaucracy's budget is ''paid for by the Federal Reserve System.'' Make no mistake, ''paid for by the Fed'' means paid for ultimately by the taxpayers.

Taxpayers will be on the hook for billions of dollars of unchecked, unencumbered, and unappropriated spending financed by the inflationary money printing authority of the Federal Reserve which will be hidden from the American people in the arcane Federal budget.

Congress could have also used this legislative opportunity to begin the process of reforming the failed mortgage giants Fannie and Freddie, whose ever growing bailouts have no upper limit. When it became clear that this was not the intention of the Democrats, Republicans sought to address the current and worsening conditions of the GSEs.

We suggested establishing taxpayer protections, such as portfolio caps, on the mortgage giants. We recommended making the cost of Freddie and Fannie bailouts transparent to the public; that is, to the taxpayer. We offered initial steps toward the inevitable unwinding of these failed institutions. Yet at every turn, the Democratic majority blocked Republican efforts to establish at least a foundation for reform.

The Democratic-preferred approach in this bill to reforming the mortgage giants is a study. Let me repeat that notion. In order to address a bailout that has already cost American taxpayers roughly $150 billion to date, with unlimited future taxpayer exposure, the Democrats propose a study. It does not take a study to determine that $150 billion in unlimited loss exposure needs to be addressed immediately—now.

Congress could have focused on securities market practices that were known to have contributed to systemic risks in our financial system. Instead, Democrats overreached once again.

For example, the bill gives the Securities and Exchange Commission, which has failed to carry out its existing mandates, a new systemic risk mandate to oversee advisers to hedge funds and private equity funds. Yet no one contends private funds were a cause of the recent crisis or that the demise of any private fund during the crisis resulted in a systemwide shock.

Congress could have acted to curtail Wall Street's speculative excesses and enhance Main Street's access to credit. But instead, in this bill large financial firms on Wall Street seem to have benefited, judging by the behavior of the stock prices, while the legislation almost surely will increase uncertainties and costs for Main Street and America's job creators.

The actual provisions in the bill will benefit big Wall Street institutions because they substantially increase the amount and cost of financial regulation. Only large financial institutions will have the resources to navigate all of the new laws and regulations that this legislation will generate. As a result, this bill, disproportionately will hurt small and medium-sized banks which had nothing to do with the crisis.

While the largest financial institutions will get special regulation under this bill, the unintended result will be lower funding costs for these firms. That will benefit the big banks and hurt the small banks. Therefore, this bill will result in higher fees, less choice, and fewer opportunities to responsibly obtain credit for blameless consumers.

Moreover, this bill raises taxes which, as we all know, are ultimately borne by consumers. Make no mistake, when Wall Street writes a check to pay its higher taxes, the ones who end up paying those taxes are American consumers and workers.

Congress could have written legislation for consumer protection that respects both American consumers and the need for safety and soundness in our financial system.

Instead, the Dodd-Frank bill was basically constructed by architects in the Treasury Department who have a certain condescension for American consumers and their choices.

The ultimate goal is to substitute the judgment of a benevolent bureaucrat for that of the American consumer, thereby controlling consumer behavior without regard for the safety and soundness of our banking system.

The American people are being told not to worry, however, because it is all being done for their own good.

While a consumer protection agency might sound like a good idea, the way it is constructed in this bill will slow economic growth and kill jobs by imposing massive new regulatory burdens on businesses, large and small. It will stifle innovation in consumer financial products, and it will reduce small business activity. It will lead to reduced consumer credit and higher costs for available credit.

Less credit at higher price will dampen the very small business engines of job creation that our economy desperately needs right now. That is a price I am not willing to pay.

Congress could have implemented reforms to improve derivatives market activities. Instead, the bill's derivatives title seems to be inspired by a desire to be punitive or to provide short-term political support during an election, or both. Instead of imposing a rational and effective regulatory framework on the OTC derivatives market, the bill runs roughshod over the Main Street businesses that use derivatives to protect themselves every day.

The Dodd-Frank bill will increase companies' costs and limit their access to risk-mitigating derivatives without making our financial system safer in the process. As a result, there will be fewer opportunities for businesses to grow, fewer jobs for the unemployed, and higher prices for consumers.

Congress could have written a bill to put an end to overreliance on credit agencies and underreliance on their own due diligence. Instead, the Dodd-Frank bill sets up new regulations and liability provisions to give the impression that ratings are accurate. It then takes a contradictory direction and instructs regulators to replace references to ratings with other standards of creditworthiness.

To make matters even more confusing, the bill also provides for the establishment of a government-sponsored body that will select a credit rating agency to perform an initial rating of a security issue.

I anticipate the net effect of these conflicting provisions will be a reduction of competition among credit rating agencies. Potential competitors either will be deterred by all of the new regulatory requirements or be destroyed by the liability provisions set up in the bill. The lack of competition led to poor quality ratings in the runup to the crisis. This bill perpetuates and, in fact, worsens that problem.

Congress could have eased regulatory burdens on small and medium-sized businesses not integral to the recent crisis or any crisis. Instead, Main Street corporations will be subject to a panoply of new corporate governance and executive compensation requirements.

These new requirements will be costly and potentially harmful to shareholders because they empower special interests and encourage short-term thinking by managers. These features were included solely for the purpose of appeasing unions and other special interest lobbyists, and there is no demonstrated link between these changes and the enhanced stability of our financial system or improved investor protection.

We are getting toward the end. Congress could have held hearings or analyzed a number of changes this bill makes to the securities laws. Instead, dramatic changes in those laws were written with little discussion and no analysis.

Throughout this process, there has been a lot of talk about the influence of Wall Street over this bill. To be sure, in the early stages of the negotiations, Wall Street and the big banks were very engaged.

I think the American people know, however, that in the end, the real influence peddlers on this bill were not Wall Street lobbyists but rather liberal activists and Washington bureaucrats. Wall Street and the big banks just happen to be the incidental beneficiaries of their success.

When Chairman DODD and I began this process, we agreed that the bureaucratic status quo was unacceptable and that radical change was necessary. With that in mind, we agreed to consolidate all the financial regulators and constrain the Fed to its monetary policy role.

This was not a result the big banks wanted. The last thing a large regulated financial institution wants is a new regulator. After all, they spent years and millions of dollars developing a relationship with our current regulators.

A major regulatory reorganization would seriously upset the status quo and cost them a great deal of money. Neither Chairman DODD nor I were persuaded, however. Change was necessary and change was going to come.

Unfortunately, that vision of reform began to die as the bureaucrats and the liberal left began to exercise their influence over the bill. When it became apparent that I was not willing to embrace the left's expansive consumer bureaucracy, it also became apparent that actual regulatory reform was not what the majority was seeking.

All other serious reform was scuttled by the Democrats in defense of the new consumer bureaucracy. That was the point at which Chairman DODD and I began to seek a new negotiating partner, ultimately to no avail.

As the Fed and the other regulators began to regain their foothold with the Democrats and the administration and the activist left consolidated its support around an expansive new bureaucracy, all the Democrats will succeed in doing, with the help of a few Republicans, is give the failed bureaucracies more power, more money, and a pat on the back with the hope they will do a better job next time.

That is not real reform. That is just more of the same.

We had an opportunity to lead the world by creating a modern, efficient, and competitive regulatory structure that will serve our economy for years to come. Instead, I believe we squandered that opportunity by barely expanding our obsolete, inefficient, and uncompetitive system. To make it even worse, they have added to the bureaucratic morass several more unrestrained and unaccountable agencies.

It became apparent early on to me that the administration and the Democratic majority were not interested in regulatory reform. All they were trying to do is exploit the crisis in order to expand government further and reward special interests.

The Dodd-Frank bill will not enhance systemic stability. It will not prevent future bailouts of politically favored institutions and groups by the government.

The bill serves only to expand the Federal bureaucracy and the government control of the private sector. It will impose large costs on the taxpayers and businesses.

For these reasons, I urge my colleagues to reject this bill.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my colleague from Alabama. Once again—I say this with the respect—I feel as if I am listening to the first speech back in November when I offered the original proposal of this bill and wonder if we have been in the same

Chamber and same city over the last several years.

I am not going to use the time between now and 11 a.m. when we are going to vote on the cloture motion. I will not go through the long list, page after page of amendments that were adopted as part of this bill offered by my good friends on the minority side.

We had 80 hearings held over 2 years, with countless efforts to reach out and bring in people. One can make a lot of accusations about the bill, but this was a very inclusive process. Half the amendments adopted on the floor in this Chamber during consideration of this legislation over 4 weeks were ones offered by the minority and were accepted and bipartisan amendments. There was never an alternative offered. There was never a substitute offered. It was a question of whether people wanted to amend this legislation.

It is not a perfect bill, I will be the first to admit. We do not know ultimately how well the ideas we incorporated will achieve the results we all desire. It will take the next economic crisis—as certainly it will come—to determine whether the provisions of this bill will provide this generation or the next generation of regulators with the tools necessary to minimize the effects of that crisis when it happens. But we believe we have done the best we could under the circumstances to see to it we never have another bailout of another major financial institution at taxpayer expense.

In fact, it was the Shelby-Dodd amendment adopted in this Chamber—it was the second amendment we considered—that actually completed the process of seeing to it there would be bankruptcy or resolution of financial institutions that got themselves into so much trouble that they put the entire system at risk. We set up an oversight council to make sure we could observe what was occurring not only here at home but around the globe—matters such as Greece or Spain that could put our economy at risk. So it isn't just one set of eyes but having those responsible for seeing to it that our economy remains safe and sound have the opportunity to provide the early warning that never occurred.

We didn't need a Pecora Commission to find out what was going wrong. We had mortgages being sold in this country to people who couldn't afford them, marketing them in a way that guaranteed failure, securitizing them so they could be paid and then skipping town in a sense. I didn't need to have hours of hearings to find out what was the cause of it. The question was, How do we try to put a system in place to minimize the future kind of risks our Nation would face. It wasn't just to deal with those who created the problem but, rather, to look ahead—not in a punitive way—and to set up an architecture and structure to allow us to get to that point where we could be confident we were addressing these issues.

Thirdly, of course, we tried to deal with exotic instruments that had caused so much of the difficulty. The derivatives market was a $90 billion market, and it mushroomed in less than a decade to $600 trillion, putting our Nation at risk because of a lack of transparency and accountability to determine what was occurring in those markets. To consider it a radical idea that we might want to have accountability and transparency I find remarkable considering what our country has been through.

Also, we provided a consumer protection bureau. What a radical idea that is—the idea that people who buy mortgages or have a student loan, a credit card, a car loan, might have someplace in this city that watches out for them so their jobs, their homes, their retirement accounts are not lost. So while this bureau is in place in this bill, the idea was at least to see to it that people, when they have the problems they have been through or are going through, someone is watching out for them.

We have a Consumer Product Safety Commission to address the purchase of a faulty product, but what happens when someone abuses or takes advantage, as happens in so many cases in financial areas? People should have a chance to have a redress of their grievance or to at least from the outset have an opportunity to address that before it becomes a broader problem.

So, Madam President, again, we have debated this now for 2 years and countless opportunities. We spent 4 weeks on the floor of this Chamber, amendments were offered, and never once—I guess on one occasion we had a supermajority vote. There was only one tabling motion I know of. I did everything I could to make this as inclusive a process as possible.

I understand some people don't like the bill. It saddens me, in a way, that it has once again become sort of a mindless partisan argument rather than talking about what we need to be doing. This is not the end of all of it, obviously. Oversight will be required, consultation in the coming weeks and months and years, to make this work well. But, Madam President, I can't imagine another process that has been as inclusive.

My colleagues will recall that almost 10 months, going on almost a year ago, I invited both Democrats and Republicans on the Banking Committee to assume responsibility for major sections of this bill, which they did do, by the way, and made a significant contribution to the product. So while I respect those who want to vote against the bill, and that is their right to do so, find some arguments based on the merits rather than arguing about whether there was a process that was inclusive or that allowed people the opportunity to be heard.

Again, we have the right to be heard, but we don't have the right necessarily to have our ideas become the law of the land. That is what a body like this is for.

So this is a major undertaking, one that is historic in its proportions, and it is an attempt to set in place a structure that will allow us to minimize problems in the future. I can't legislate integrity. I can't legislate wisdom. I can't legislate passion or competency. What we can do is to create the tools and the architecture that allow good people to do a good job on behalf of the American public. That is what a bill like this is designed to do.

I regret I can't give jobs back, restore foreclosed homes, or put retirement monies back into accounts. What I can do is to see to it that we never, ever again have to go through what this Nation has been through. That is what this effort has been about over the last several years, to try to create that structure, that architecture. It will be incumbent now on the present administration and those who follow to nominate good people to head up these operations, to attract good public servants who will fill the jobs of these various regulatory bodies to see to it that they do the work we all want them to do.

Again, I can't legislate that. I can merely create the opportunity for that kind of protection to occur—to modernize a financial system, to lead the world, if we can, in harmonizing rules so we don't have the kind of sovereign shopping that was going on with regulatory bodies, where major financial institutions would shop around the world as to the nation of least resistance or the regulator of least resistance.

We need to see to it that we have the unanimity or at least the harmonization of rules that will allow us to have a more orderly system in our globe because, as we have all painfully learned, matters that occur thousands of miles away can affect the economy in our own country.

So for all those reasons, Madam President, I thank my colleagues for their efforts over the last 2 years. I thank the leadership for providing the opportunity and time for us to do this in this Chamber. I thank my colleague in the House, BARNEY FRANK, and his colleagues for the work in which they engaged in order to produce a bill there. We spent 2 weeks, some 70 hours of debating the conference report, where more amendments were adopted—again, offered by my colleagues, Republicans and Democrats—to make this as good a bill as we could in all of this.

So with that, Madam President, I will reserve some comments for later, but as we approach this vote in the next few minutes, I urge my colleagues to invoke cloture, to allow us to then have an up-or-down vote on this bill, and to do what we can to restore some trust and confidence and optimism for the American people. In the midst of the worst economic crisis in the lives of most Americans, this institution—the Senate—rose to the occasion and crafted a bill to address the financial service structure of our Nation to once again give us the hope that we can see wealth created, jobs produced, and an economy that will offer opportunities for the next generation of Americans.

I urge my colleagues to support the cloture motion, and I urge them to support the bill when the vote occurs later today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. Madam President, later today, we will have a decisive vote on the financial regulatory bill that does nothing to reform the government-sponsored enterprises that many people believe to have been at the root of the financial crisis this bill grew out of—a bill that was meant to rein in Wall Street but which is now supported by some of Wall Street's biggest banks and opposed by small community banks in my State; a bill that is meant to help the economy but which is widely expected to stifle growth and kill more jobs in the middle of a deep recession; and a bill that, according to the papers, the vast majority of Americans simply don't think will work.

As it turns out, the American people don't seem to like this government-driven solution to the financial crisis any more than they liked the Democrats government-driven solution to the Nation's health care crisis. They do not think this bill will solve the problems in the financial sector any more than they think the health care bill will lead to lower costs or better care. One survey this week indicates that 7 in 10 Democrats have little confidence the proposals in this bill will avert or lessen the impact of another financial catastrophe, and nearly 70 percent of them doubt it will make their savings more secure.

It is easy to see why. The Wall Street Journal calls this bill's 2,300 pages ''the biggest wave of new Federal financial rulemaking in three generations.'' The chairman of the Banking Committee has famously said last month we would not know how this bill works until it is in place. But here are some initial indicators about its scope according to a study by the U.S. Chamber of Commerce on the new bureaucratic landscape under this bill: 70 new Federal regulations through the new Bureau of Consumer Financial Protection, 54 new Federal regulations through the U.S. Commodity Futures Trading Commission, 11 new Federal regulations through the Federal Deposit Insurance Corporation, 30 new Federal regulations through the Federal Reserve, and 205 new regulations through the Securities and Exchange Commission.

Those are just some of them. All told, this bill would impose 533 new regulations on individuals and small businesses, regulations that will inevitably lead to the kind of confusion and uncertainty that will make it even harder for struggling businesses to dig themselves out of the recession. It is just this kind of uncertainty that will deter lending and freeze up credit as lenders wait to see how they will be affected by the new regulations. It is just this kind of uncertainty that businesses cite time and time again as one of the greatest challenges to our economic recovery.

So here is a bill that fails to address the root causes of the kind of crisis it is meant to prevent, that creates a vast new unaccountable bureaucracy, that—if past experience is any guide—will lead to countless burdensome, unintended consequences for individuals and small businesses; a bill that constricts credit and stifles growth in the middle of the worst economic period in memory; and perhaps most distressing of all, a bill that punishes farmers, florists, doctors, retailers, and countless others across the country and far away from Wall Street who had absolutely nothing to do with the panic of 2008.

In other words, once again, the administration and its Democratic allies in Congress have taken a crisis and used it rather than solving it. How else can you explain the fact a bill that was meant to address the excesses on Wall Street is expected to hit individuals and industries that had nothing to do with the crisis it was meant to prevent?

Did anybody think when this bill was first proposed that it would end up hurting storefront check cashers, city governments, small manufacturers, home buyers, credit bureaus, and farmers in places such as Kansas and Kentucky?

This is precisely the kind of thing Americans are tired of—a government simply out of control. Only in Washington would you create a commission aimed at looking into the causes of a crisis, then put together and pass a 2,300-page bill in response to that crisis before the commission even has a chance to report its findings and issue recommendations. The White House will call this a victory. But as credit tightens, regulations multiply, and job creation slows even further as a result of this bill, they will have a hard time convincing the American people this is a victory for them.

Obviously, I will be opposing this bill, and I would encourage my colleagues to oppose it as well.

Madam President, I yield the floor.

Mr. DODD. Madam President, I suggest the absence of a quorum, and I ask unanimous consent the time during the quorum be equally charged to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Madam President, the Wall Street earthquake that sent shock waves around the world has not hit anywhere as hard as it hit Nevada. You can draw a straight line from unchecked greed on Wall Street to the collapse of the housing market on Main Streets throughout my State and around the country. As soon as the big banks went down, foreclosure signs went up.

How did this happen? Let's put it this way: When you go to any of the great casinos across Nevada and put your chips on the table, you are gambling with your own money. If you win, you win, and if you lose, you lose. But Wall Street rigged the game. They put our money on the table. When they won, they won big. The jackpots they took home were in the billions. And when they lost—and, boy, did they lose—they came crying to the taxpayers for help. The winnings were theirs to enjoy but the losses were all of ours, to share and to shoulder.

That is the way the market worked. It worked for a few fortunate ones in the big firms and worked against everyone else. So when I say that is how the market worked, what I mean is that it didn't work at all. It was badly broken and it nearly bankrupted us. It cost 8 million workers their jobs, millions of retirees their savings, and millions of families their homes. It shattered our faith in our financial system.

But there is another problem. We have been talking about this rigged system, this raw deal, in the past tense, but it is not a thing of the past. It is very much in the present. The rules that allowed Nevada's economy to collapse are still the same rules of the road today. That means every new day we do not act we run the risk of it happening all over again. That is a gamble I am not willing to take.

The bill before us makes sure we do not have to take that gamble. The first question was, How did this happen? The next question is, What are we going to do about it?

No. 1, we are saying to those who gamed the system that the game is over. We are cracking down on those who gambled away what so many have worked so hard to put away.

No. 2, we are saying to the families and taxpayers, never again will you be asked to bail out a big bank when the bank loses its risky bets.

Let me say that again because it is one of the most important parts of this bill: No more bailouts because no bank is too big to fail. We are going to give consumers and investors the strongest protections they have ever had against abusive banks, mortgage companies, credit card companies, and credit rating agencies. We are going to bring derivative markets that operate in the darkness out into the light. We are going to hold Wall Street accountable because we know we are accountable to the American people. This is about our ability to trust our financial system, it is about giving families the peace of mind they deserve, the peace of mind that comes with the knowledge they will be able to keep their homes and their savings will be safe.

We need a free market to thrive and grow and succeed. We acknowledge that. But there also have to be some rules, not to stifle but to safeguard us; rules so that when these firms fail they don't bring us down with them.

When this earthquake hit there was not nearly enough oversight, transparency, or accountability to shield us from the fallout. This law will change that. It will strengthen all three.

We are at the finish line this morning but getting here has not been easy. Wall Street doesn't like this bill. Of course it doesn't. Why would they want us to change the system they rigged, the system that made them all rich? Their cronies in Washington don't like it either. The top Republican in the House very publicly said the plight of millions was as small and insignificant as an ant, an insect; foreclosures, homes underwater, jobs lost—like an ant. The head of the Republican party asked us to simply trust Wall Street to look after itself.

We all know this crisis is enormous and we all know Wall Street is not going to reform itself. Rather than standing up for the taxpayers, those who are about to vote no are standing with the same bankers who gambled away our jobs and homes and our economic security in the first place. Just like their Wall Street friends, it seems our opponents care more about making short-term gains than they do about what is right for the economy in the long run. I think that is a mistake and I think it is a shame.

This is not about dollars and cents only, it is about fairness. It is about justice. It is about making sure there is not a next time. It is about jobs. It is about rescuing our economy.

I know Wall Street reform is complicated. There are not many people who know all the ins and outs of derivative trading and credit default swaps or mortgage-backed securities. But the principle before us is quite simple. It is not complicated at all. You either believe that we need to strengthen the oversight of Wall Street or you don't. You either believe we need to strengthen protections for consumers or you don't.

Our choice today is between learning from the mistakes of the past or dangerously letting them happen all over again.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report to accompany H.R. 4173, the Wall Street Reform and Consumer Protection Act.

Harry Reid, Christopher J. Dodd, Charles E. Schumer, Sheldon Whitehouse, Amy Klobuchar, Thomas R. Carper, Benjamin L. Cardin, Jeff Merkley, Kay R. Hagan, John F. Kerry, Tom Harkin, Jack Reed, Frank R. Lautenberg, Mark Begich, Barbara Boxer, Mark R. Warner, Joseph I. Lieberman.

The ACTING PRESIDENT pro tempore. By unanimous consent the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 4173, Restoring Financial Security Act of 2010, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Idaho (Mr. CRAPO).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 60, nays 38, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet (CO)	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

NAYS—38

Alexander	Ensign	Lugar
Barrasso	Enzi	McCain
Bennett (UT)	Feingold	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker
DeMint	LeMieux	

NOT VOTING—1

Crapo

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 60 and the nays are 38. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. DODD. Madam President, I am about to propose a unanimous-consent request that has been agreed to by the respective leaders.

I ask unanimous consent that the postcloture time be considered expired at 2 p.m., with the time until then equally divided and controlled between Senators DODD and SHELBY or their designees; that during this period, if and when a budget point of order is raised against the conference report, then an applicable waiver of the point of order be considered made; that at 2 p.m., the Senate proceed to vote on the motion to waive the applicable budget point of order; that if the waiver is successful, without further intervening action or debate, the Senate vote on adoption of the conference report.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DODD. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. Madam President, I rise to make a point of order that the Senator from Connecticut alluded to. We have rules around here we have set up to discipline ourselves on spending. Unfortunately, we consistently ignore and waive them. That is one of the reasons we have a $13 trillion debt. That is one of the reasons we will have a $1.4 trillion deficit this year alone. This bill violates those rules. This bill violates one of the sections of those rules which says that in any 10-year period, we shall not have more than a $5 billion effect on the deficit in a negative way; that we need to otherwise pay for what we are doing. Therefore, this bill does violate the Budget Act.

If we are going to have any fiscal discipline around here—and we hear a lot of people talking about that—we should be living by the rules we have to assert fiscal discipline. Therefore, I make a point of order that the pending bill violates section 311(b) of S. Con. Res. 70 of the 110th Congress.

Mr. DODD. Madam President, pursuant to section 904 of the Congressional Budget Act of 1974 and the waiver provisions of applicable budget resolutions, I move to waive all applicable sections of that act and those budget resolutions for purposes of the pending conference report and ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. GREGG. I understand the vote will occur somewhere around 2 o'clock.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. Madam President, I see my colleague from Texas is seeking recognition. I wish to publicly thank her. She made a substantial contribution to this bill on several amendments that were adopted during debate on the floor. I thank her for them. They added to the value of the legislation. I am not sure what her comments will be right now, but I thank her for her contributions.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

Mrs. HUTCHISON. Madam President, I appreciate the comments of the chairman. He accommodated many of the amendments I had, particularly as it concerns community banks. That was a huge concern in the original draft of the bill. I thank the chairman for accommodating those concerns. It did make it a better bill.

I wish to return to the aftermath of the financial crisis, when Congress was tasked with the responsibility of modernizing our financial regulatory structure so that we would have proper oversight of today's banking system and financial markets. We were called to fill in gaps in regulations which allowed American home buyers to simply sign on the dotted line to purchase a house that was in many instances beyond their means, to let companies hide trillions of dollars in assets from regulators, and ultimately led our government to lose hundreds of billions of taxpayer dollars to bail out financial institutions—Fannie Mae, Freddie Mac, GM, Chrysler, and AIG. Thus, were financial regulatory reform to succeed, we needed to enhance mortgage underwriting standards, bring greater transparency to the derivatives markets, and once and for all end too big to fail. The conference report before us takes steps toward these goals.

The legislation puts in place measures to address too big to fail; however, it falls short in fully addressing the risk of future government bailouts by failing to make changes to the Bankruptcy Code. In this legislation, we have also made strides to strengthen mortgage underwriting standards.

I am concerned that a newly formed Consumer Financial Protection Bureau will take the lead rather than our banking regulators, and this is one of the biggest concerns I have with the bill.

I am pleased that the conference report includes numerous measures for which I fought. I thank Chairman DODD for his willingness to work with me and his constructive approach to making changes to the bill, including a more level playing field for community banks across the country to compete through my amendment to bring parity to FDIC insurance assessments; my amendment, along with Senator KLOBUCHAR, to allow State-chartered banks and small and medium-size bank holding companies to retain Federal Reserve supervision so that our monetary policy truly reflects economic conditions throughout the country, not just on Wall Street; relief for small and medium-size public companies from the burden of rule 404(b) of Sarbanes-Oxley; and assurance that the Volcker rule's proprietary trading restrictions will not extend to the insurance affiliates of insurance companies with depository institutions. These are positive changes for which I give the chairman great credit. However, these positive changes are greatly outweighed by misplaced priorities to create new layers of bureaucracy while failing to address the root causes of the financial crisis—Fannie Mae and Freddie Mac.

Additionally, there are a series of provisions that are troubling to me. No. 1 is this consumer protection bureau. It is using the faults of Wall Street banks and executives to create a cumbersome new bureaucracy which will impose job-killing regulation at the expense of Main Street small businesses and families. The Consumer Financial Protection Bureau, with endless authority over all facets of our economy, is not the answer.

I am particularly concerned about the effect this bureau will have on well-regulated, safe, sound community banks. These banks largely avoided the subprime market, and they didn't engage in the risky speculative trades that contributed to the financial meltdown. However, these community banks are going to have 27 new or expanded types of regulation after this bill is passed. The consumer bureau could ultimately determine what products community banks can offer, on what terms they can offer these products, and under what settings and circumstances. Overall, the consumer bureau will result in fewer products and services for American families and small businesses.

The Texas Bankers Association tells me consumer bureau rules could result in the end of free checking accounts, higher fees on all consumer services, and less opportunity to negotiate on loans. It is not the big banks on Wall Street voicing concerns and opposition to this bill. The opposition is coming from community bankers in Texas who are worried they will be unduly penalized for faults they did not commit.

Small businesses are also against this new consumer bureau. The U.S. Chamber of Commerce and the National Federation of Independent Business are very concerned about this bureau.

We need community banks to continue extending credit to worthy families looking for a home and to small businesses to invest in and create jobs. I cosponsored an amendment during Senate consideration to ensure that safety and soundness regulators would have a say in the rules and regulations imposed on their institutions. That amendment was rejected, leaving community banks subject to this new bureau's unlimited and unchecked rulemaking authority.

I am also concerned with the treatment of derivatives in this legislation. I am concerned that the lack of transparency that needed reform has been exchanged for a regulation I do not think is going to properly regulate derivatives.

However, we must also protect end users such as airlines, utilities, manufacturers, and oil and gas companies. These companies use derivatives as a cost effective strategy to control price and risk. Many structure derivatives contracts are unique to their business, making it difficult to clear and trade on a market. I share concerns from derivatives end users that this mandate to post margins with cash, rather than collateral, will remove capital from investment and job creation.

While Senator DODD and Senator LINCOLN say that this legislation will not impose margin requirements, I worry that there is not a statutory exemption for end users. End users may even choose market volatility instead of risk-controlling derivatives altogether, exposing Americans to higher prices, slower economic growth, and more job losses.

We should seek transparency through greater reporting requirements, but businesses should not be forced to arbitrarily move money to margin accounts.

I am concerned that this legislation will cost more jobs at a particularly harmful time with national unemployment hovering around 10 percent. The Chamber of Commerce reports that the margin requirement on OTC derivatives could cost 100,000 to 120,000 jobs in S&P 500 companies alone.

This legislation does nothing to rein in Fannie Mae and Freddie Mac. Since the government takeover of these two GSEs, taxpayers have paid $145 billion to keep them afloat. The CBO reports that the government's cost to bail out Fannie and Freddie will eventually reach $381 billion.

These costs contributed to a Federal deficit which has topped $1 trillion for the first 9 months of fiscal year 2010. They have helped push our national debt to $13 trillion. A couple of weeks ago, the CBO reported that United States debt will reach 62 percent of GDP by the end of this year, the highest since just after World War II. We cannot continue to this dangerous path and mirror the crisis that currently ravages Europe.

We cannot sustain these debts and deficits. We offered solutions to rein in Fannie Mae and Freddie Mac. During Senate consideration of this legislation, I cosponsored amendments—No. 3839 and No. 4020—which would have reimposed the cap of Federal assistance to the GSEs at $200 billion each. These amendments would have brought Fannie Mae and Freddie Mac onto our budget so that Americans could see their true cost. And they would have brought an end to Fannie and Freddie's government conservatorship in 2 years. Unfortunately, these amendments were rejected. Furthermore, the conference committee would not even permit amendments to be offered on the GSEs. Instead, this legislation calls for a report, punting the plan for Fannie and Freddie that we need to the future. We need reform of Fannie Mae and Freddie Mac now, but this legislation does not even allow for debate of the GSEs.

The American people are frustrated with our government, and this legislation is an example of why. Under the guise of financial regulatory reform, this legislation continues the unprecedented growth in government.

The American people want sensible financial reform. However, this purported financial regulatory reform legislation does not even address the root causes of the crisis: Fannie Mae and Freddie Mac. Instead, it uses the crisis to add layers of Federal bureaucracy, and threatens to slow down our economic recovery, risking job loss and restricting access to credit.

For these reasons, this legislation is not the reform we need, which is why I must oppose the conference report for H.R. 4173.

We need to fully look at some of the concerns in this bill with the hope that when it passes—I cannot support it, but it will pass—these cautions will be looked at going forward to perhaps, when the problems come to light later, make some changes to the law that will better accommodate the needs of consumers and small businesses and community banks in the country.

There are good parts of this bill. I think the chairman deserves a lot of credit for pushing this financial reform, knowing that we needed to do it. I don't think it fully meets the test of doing what we should be doing, but I do think it is a first step, and the chairman is to be commended for his leadership.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, my friend and colleague from Texas serves on the Banking Committee. I thank her and Senator KLOBUCHAR. There was a series of amendments in which Senator HUTCHISON was involved. They added value to this bill, and I thank her for it.

I mentioned yesterday, as a relatively junior member of the Banking Committee, there was no Member of this Chamber who added as much to the bill as the Senator from Virginia. There are not words nor time for me to adequately express my gratitude for his involvement. Literally almost on an hourly basis, he was involved, along with Senator CORKER of Tennessee. They spent hours on their own talking with other people about how to fashion two of the most critical titles of this bill. Let me express my gratitude once again to Senator MARK WARNER of Virginia and thank him immensely for his contribution. He did a great job.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Madam President, I thank the chairman for those kind remarks. It is a good feeling for all of us who have labored on this legislation—Members and staff—that we are finally coming to a successful conclusion on the Dodd-Frank Wall Street Reform and Consumer Protection Act and it is going to be enacted into law.

As those equally controversial pieces of legislation in the 1930s stood the test of time for decades, I think this bill will stand the test of time for decades as well in terms of creating a new set of rules of the road for not just America's financial sector but, in a sense, the world's financial sector for decades to come.

While not perfect—no piece of legislation is—one of the things that gives me some confidence that the right balance has been struck is that this bill has been criticized by both the left and the right. Some on the left, some on the Democratic side, have said the bill has not gone far enough in putting more requirements and restrictions on our financial institutions. Some of my colleagues on the Republican side, on the right, have said this bill goes too far.

The fact that it is getting perhaps that left-and-right criticism puts us maybe in that right-in-the-middle section, which is the appropriate balance we tried to strike since the chairman started this effort well over 2 years ago.

I think it is important at times we remember why we are here. Two years ago, the markets were in chaos. President Bush and Secretary Paulson had created TARP with a $700 billion unprecedented bailout to shore up our financial system. President Obama was in crisis mode with our economy still in free-fall from day one. The Dow was at 6,500, and there was a lot of talk of nationalizing banks.

Well, close to a year and a half to 2 years later, we have seen stimuluses and stress tests. We have seen a DOW that now has touched 11,000. While the economy is not creating jobs at the rate any of us would like to see, the talk of financial Armageddon or complete collapse has disappeared.

I think we went into this process with three goals: First, the taxpayers must never again hear that a company is too big to fail. Second, we had to fix our regulatory system to make sure the huge gaps that existed that allowed systemic regulatory arbitrage could no longer take place. And, finally, consumers and investors had to have confidence that our markets were fair, transparent, and that there would be an officer on the beat to make sure some of the excesses that took place in 2005, 2006, and 2007—where folks were being put into homes they could never afford to pay for or having financial instruments that were being created under the guise of lowering the cost of risk that were more about simply creating fee income—would never again prey on unweary investors or on homeowners who got themselves into trouble.

I think one of the most interesting critiques that some still make of the bill is that we have not addressed too big to fail. Well, candidly, with the United States moving first on this legislation, and the rest of the world waiting for the United States to move, we hear from our European colleagues that the framework we have set up, actually, they hope to emulate. We have created a new regulatory structure so the regulators can get out of their silos—depository institutions on one side, security institutions on another, derivatives trading on a third—and make sure we have a full systemic risk council so we can measure risk wherever it exists, regardless of the charter of the organization.

While some said we ought to go ahead and limit the asset size of some of our institutions, just on size alone, I think the chairman wisely decided as we went through a year and a half of hearings, what often precipitated the greatest risks to our system was not size alone—America has only 4 of the 50 largest banks in the world—but it was the interconnectedness, their leverage, their failure to have appropriate risk management plans in place.

This new systemic risk council is specifically charged with making sure our large, more complex institutions have more stringent capital requirements, leverage ratios, liquidity requirements, and risk management tools. We even created two whole new categories, that while not fully tested—both of these categories actually came from colleagues on the other side of the aisle—they could be important new steps to prevent these large institutions from failing.

One is contingent debt that large institutions would have to have that if they get themselves even close to trouble, that debt would convert into equity, consequently diluting existing shareholders and management and keeping pressure on the board to make sure management would not take that risk.

Finally, a tool that, again, if implemented correctly, will be tremendously powerful; that is, to ensure that all these large, complex institutions provide a plan about how they will be able to unwind in an orderly fashion through traditional bankruptcy provisions. Our goal is to always have bankruptcy be the appropriate response. If that liquidation plan or if that debt plan is not blessed by the council of regulators, the council of regulators can dismember, break up, or put other restrictions on these large institutions.

I think Senator DODD made the decision to task my good friend, Senator CORKER of Tennessee, and I with this issue: If those processes still do not work, how do we make sure we have an orderly liquidation process? Our goal was twofold: One, taxpayers should never have to bear the risk; and, two, if an entity goes into liquidation, it will not come out. Liquidation or resolution is not an attempt to stand up an institution. But we wanted to make clear to shareholders, to management, if you go into resolution, you are toast, as my colleague, Senator CORKER, often said.

We think we have reached that goal, and I am particularly proud of titles I and II of this bill. Actually, when Chairman DODD and Senator SHELBY put some amendments to it, it was endorsed by 95 of our colleagues. It is the broadest bipartisan section of this legislation. This bill addresses a number of other vital areas as well. It allows a single depository place to get the appropriate day-to-day information on our financial institutions—that still did not exist until we created the Financial Services Oversight Council—and having the ability to get on a daily basis the level of interconnectiveness of a future AIG.

It puts in place a consumer protection bureau to make sure, for example, mortgages are regulated in a way that consumers can understand, regardless of the charter of the organization. We often found banks had a fairly good ability to regulate some of their mortgages; whereas, mortgage lenders and others, who were unregulated, had no such restrictions. Now we have an even playing field.

It finally puts in place—there is some debate on this issue—an appropriate process to regulate derivatives and to bring these critical but potentially dangerous instruments out of the shadows, and the vast majority of these instruments will now be traded in a more transparent way on exchanges.

There is more to be done. Domestic and international implementation is vitally important. As I mentioned at the outset, the United States—and this is one of the things that is kind of remarkable, when I hear from some of my colleagues we have moved too quickly or this bill does too much—candidly, the whole rest of the world has been waiting on America to act to set the template for broad-based financial reform. Now that we have acted, I think particularly Europe and Asia will follow our stead. But making sure we do this with appropriate international implementation is terribly important—the Basel circumstances—but also making sure we have the regulatory approach across the world correct so there is not an international ability to arbitrage with these large financial institutions.

I know some of my colleagues on the other side of the aisle have also raised the question that this bill does not fully address the GSEs. They are right. But I think it was the right and conscious decision of the chairman and others that to disrupt an already still fragile housing market at this moment in time in a piece of legislation that has already been accused by some as being too broad and covering too many items was not the appropriate choice.

We will have to come back and deal with GSEs. We have to make sure, as we deal with GSEs, international implementation, we stay vigilant. We have given the regulators the tools. How they use these tools will be up to us in Congress to make sure they are implemented correctly with appropriate oversight.

I am, in certain ways, disappointed this bill is not being passed with broader bipartisan legislation. But we have only gotten here because there is bipartisan support.

I want to close acknowledging again—the chairman was very kind in his remarks—I cannot think, in my short tenure in the Senate, of any other Senator who has worked harder on a piece of legislation, who has been more relentless, who has had more twists and turns, who has had more ‘‘we are there; but, oh, my gosh, we may not be there,’’ who has had probably more 10 o'clock, 2 o'clock in the morning, 4 o'clock in the morning, I believe at one point, telephone calls and meetings with other Members.

As the Senator from Texas mentioned earlier, even though the Senator from Texas could not support the overall bill, our chairman has worked with all Members regardless of party to try to accommodate their interests. I commend the Senator from Texas for pointing out, for example, the community-based and independent banks come out of this legislation as one of the real winners in terms of their ability to have more fair competition with the larger institutions.

So I commend the chairman, and I commend all of my colleagues on both sides of the aisle, even those who perhaps will not vote for the final product but were a part of building the product, where their ideas were implemented.

When we think about the Glass-Steagalls, and when we think about the bills that created the SEC, when we think about the legislation in the 1930s, in the moment of crisis, that created the financial framework for 20th-century American capitalism, what this bill has done—there will be work done to improve and fully implement it, but what this bill has done has set a framework for 21st-century American capitalism and, in a certain way, a framework for 21st-century capitalism across the world in a way that America can remain the center for financial markets but at the same time making sure both consumers and the investing public are protected in this new and very challenging world.

With that, I yield the floor. I again extend my compliments to the chairman and all who have been involved in this legislation.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Madam President, I, too, would like to speak to the conference report on financial regulatory reform, which we will presumably vote on in a couple of hours. I think we all agree that the purpose of financial regulatory reform should have been to tackle the problems that led to the financial crisis in the first place. That means serious reform must, at the very least, end too-big-to-fail financial institutions and rein in two government-sponsored enterprises, the GSEs, Fannie Mae and Freddie Mac.

But despite its size and the hype behind it, the bill before us fails in those two key respects. Moreover, even though Main Street did not cause the problem, the bill is so pervasive in its regulatory reach that it creates new burdens for Main Street businesses. I am not sure that is what the bill's supporters want or its authors intend, but that will be the result.

For example, a July 4 Wall Street Journal news article entitled ‘‘Finance Overall Casts Long Shadow on the Plains'' explains how new derivatives rules will harm America's livestock farmers.

There are other problems with the bill. The biggest new problem it causes is the harm to the availability of credit, something our colleague, Senator GREGG from New Hampshire, has talked a lot about. It implements one-size-fits-all capital standards and uses flawed funding mechanisms. It also perpetuates bailouts, and burdens small businesses with new regulations, which I will speak about in a moment.

Let me address a few of these problems in more detail: First, the cost and offsets of the bill; second, the failure to address the GSEs, Fannie Mae and Freddie Mac; and, third, the job-killing Consumer Financial Protection Bureau that will reduce available credit for American businesses and thus reduce job creation.

First, the cost and offsets. The Congressional Budget Office has put the 10-year cost of the conference report bill at approximately $19 billion. That is the cost of this alleged new reform. Democrats initially tried to fund this obligation with a new tax imposed on large financial institutions. When that could not be sustained, they decided on a new funding mechanism that, as National Review recently editorialized, ‘‘were a corporation to try it, would get its accountants sent to prison for fraud.''

Here is how it works. The bill would now ‘‘cancel'' the Troubled Asset Relief Program, or TARP, a few months early, thus ‘‘saving,'' theoretically, the government around $11 billion, even though it is highly unlikely that money would ever have been used to make additional TARP loans. That $11 billion would then be used to partially offset the cost of the bill.

Remember, that is money that has to be borrowed. So instead of simply borrowing 11 billion fewer dollars, we are going to pretend as though we already have that money and that we can save it by not spending it on TARP, so we will spend it on this legislation. It is a double counting that National Review is right about: It would have put a private business CEO or CFO in jail if he had tried to do an accounting trick such as that.

The TARP law moreover states that any money rescinded from TARP shall not be counted for the purpose of budget enforcement. But to avoid violating the so-called pay-go rule in the House, the conference report nevertheless uses this alleged savings to pay for the financial reform provisions, thereby violating both the letter and the spirit of the TARP law. And, as I said, taking these funds to pay for something else rather than rescinding them simply pushes our Nation deeper into debt.

So with regard to the cost of the bill—$19 billion—and the offset, much of which is not a true offset but simple double accounting with money we don't own or have anyway, but have to borrow, is a bad way to do business, to say the least, especially on something that is called a financial reform bill.

Now, I guess, fortunately, we have changed the name to reflect the authors of the bill. It is no longer the financial reform bill; it is now the Dodd-

Frank bill. I appreciate the naming of the bill for my good friend, the Senator from Connecticut, but it is supposed to be about financial reform, and it isn't financial reform when you take money you don't have, spend it for something you are not legally able to spend it for, and call that an offset for the cost of the bill.

Nevertheless, problem No. 2: Fannie and Freddie. It is just unconscionable that this bill doesn't attempt to reform in any way the two biggest causes of the problem: Fannie Mae and Freddie Mac. It was their reckless behavior that was a major cause of the financial crisis. It is not for lack of trying on Republicans' part. Our Democratic friends say: Well, we will do that later, maybe next year. I suggest doing that is highly improbable. The way things work around here is, when you do a comprehensive bill such as this, there are a lot of tradeoffs, a lot of different interests involved. If you can't include all of the elements in one bill, it is very difficult to find the political will to tackle the biggest problem of all—Fannie and Freddie—next year without the leverage of the other provisions of the bill to deal with.

The behavior of these two institutions—these GSEs that have come to epitomize too big to fail—has surged through the entire commercial banking sector and our economy as a whole and has turned out to be one of the most expensive aftereffects of the financial crisis. For years, Fannie and Freddie made mortgages available to too many people who could not afford them. Smaller companies were crushed while the two GSEs and their shareholders reaped enormous profits, recklessly taking advantage of the government's implicit guarantee to purchase trillions of dollars worth of bad mortgages, including those made to risky, so-called subprime borrowers. It was a textbook example of moral hazard on a massive scale.

I was reminded of what I am speaking of this morning driving in and hearing an ad on the radio which said that through Fannie Mae, you could get a mortgage for 105 percent of the value of your home. Now that means that immediately you are so-called underwater; that is to say, you owe more than your home is worth.

Why are we immediately making the same mistake with Fannie Mae that got us into the problem in the first place, where the mortgages exceeded the value of the homes? I don't understand it.

The easy credit that was provided before is what helped to fuel the rising home prices that created the inflated housing bubble, especially in the subprime mortgage market. As prices rose, so too did the demand for even larger mortgages, so Fannie and Freddie looked for ways to make even more credit available to borrowers. But, of course, when the market collapsed, the two GSEs were left with billions of dollars of bad debt.

By 2008 they held nearly $5 trillion in mortgages and mortgage-backed securities. They were overleveraged but, unfortunately, deemed too big to fail.

So what do we have today? Fannie and Freddie hold a combined $8.1 trillion of outstanding debt. Think of that: $8.1 trillion. In total, taxpayers have lost already $145 billion bailing them out. When Secretary of the Treasury Geithner lifted the bailout cap last December, it put the taxpayers on the hook for the remainder of these losses, for unlimited losses at these two institutions.

So let's be clear. Every day that Fannie and Freddie remain in their current form is a day that U.S. taxpayers are subsidizing the failed policies of the past. I think it is very doubtful we are going to get meaningful reform of Fannie and Freddie when it couldn't be done in the bill that is supposed to deal with all of the underlying problems that created the recession we are in now.

The third problem: Harming small business through ''consumer protection.'' It harms far more than small business; it harms everyone who is attempting to get credit. As our friend and colleague, Senator GREGG, has said many times on this floor, perhaps the biggest problem with this legislation is the fact that it is going to make credit much more expensive for everyone. But let's start with small businesses.

In my home State of Arizona and across the country, these are the entities that hire. They are supposed to be the first ones that hire coming out of a recession. The way they do that is to have access to credit. Well, they are obviously very wary of the intrusive new bureaucracy that masquerades as consumer protection in this bill, but which would compound the problem of credit availability.

All of us here support the concept of consumer protection, so let's don't get off on a tangent of being for or against consumer protection. We all support that. The question is, How do you do it? Safeguards can be strengthened without creating a new regulatory bureaucracy with the powers that exist in this bill and all of the untoward ramifications that result. Unfortunately, the conference report maintains, with very little change, the flawed Consumer Financial Protection Bureau from the bill that was passed in the Senate, the so-called CFPB. It is housed in and funded by the Federal Reserve but theoretically would operate as an independent agency with an enormous budget and with rule-writing ability and enforcement authority that I think will, in fact, create independence from the Fed.

The CFPB could significantly reduce credit access for small businesses and thereby jeopardize America's economic recovery. Without available credit, companies cannot grow and consequently will not hire additional American workers. Obviously, that is not what the bill's authors intended, but it is the inevitable result.

The new bureau will have a say in almost every aspect of American business. In an attempt to ensure—and I am quoting now—''ensure the fair, equitable and nondiscriminatory access to credit for individuals and communities''—the wording in the law—the new bureau will have latitude to impose its will, with few checks and balances, on American credit providers, all of which will result in more expense, more regulation, higher costs for consumers, and less availability of credit.

The CFPB also exposes companies to very costly compliance and extensive enforcement proceedings, including potentially frivolous lawsuits, by eliminating national preemption and other means.

In my view, the potentially serious costs of this bureau do not justify its purported benefits. Consumer protection could have been accomplished in much less intrusive and fairer ways. We all want to shield consumers from abuses and exploitation, but this is obviously not the right way to do it.

So we should ask ourselves one question: Why is it that the CEOs of some of the largest companies on Wall Street, some of the largest financial institutions, actually favor this bill? Well, it is no skin off their backs. They have the money, and they have the resources and the personnel to deal with its complexity and to put the money up front and then charge the consumers on down the line. It would entrench their privileged status, as they have the resources to maneuver around its provisions, as I said, and would certainly institutionalize the idea that certain big financial firms deserve preferential treatment by Federal regulators.

So for all of the reasons I have discussed, as well as others, and despite my strong desire to enact prudent financial reforms, I think this legislation is misguided. I can't support it, and I urge my colleagues to vote against it.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Connecticut.

Mr. DODD. Madam President, I recognize my friend and colleague from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Madam President, I rise today to speak on the Dodd-Frank bill. I must start by expressing my awe—that old expression from Iraq, ''shock and awe''—at what Chairman DODD has been able to do during this session of the Congress. I have been around this place since 1973, and I genuinely cannot think of an example where an individual Senator ever participated in passing three bills in one Congress of the magnitude of the health care bill, the credit card reform bill, and now the Dodd-Frank bill. If there is a legislative hall of fame, there is a spot for CHRIS DODD in that hall of fame.

I am going to speak today about areas where I don't agree with this bill. Anyone who has followed my speeches on the floor would recognize that I have a difference of opinion on a number of issues. However, I wish to make it clear from the beginning—and I will raise it again in my speech—to the extent this bill doesn't reach where I want it to reach, the responsibility lies on my friends—and I truly mean my friends—and colleagues on the other side of the aisle.

Time and again, vote after vote, they voted as a block to block meaningful reform on many issues. We can talk about the Brown-Kaufman amendment to break up the banks or we can talk about the maneuvers that were done on the Brownback bill so we never got a vote, and on Levin-Merkley. So as I give this speech today, the reason we didn't get the things I wanted in this bill is because 41 Republicans, time and time and time again—when there was a vote up they could have changed the way we do things; they could have instituted the kinds of reforms I wanted in this bill—voted against it.

So Chairman DODD was left with the problem of, How do we get the votes together to pass the bill? It is essential that we pass a bill, and a good bill, and we did, and I am voting for it. But it could have been, in my opinion, a better bill if several votes had gone the other way.

After months of careful consideration, landmark financial reform legislation moves toward final passage. While this bill is a vast improvement over the existing regulatory structure, I believe it should go further with respect to erecting statutory rules that address the fundamental problem of too big to fail.

Anyone who has heard my speeches on the Senate floor starting 4 or 5 months ago will understand my position on that. I made it abundantly clear. I will support the conference report, but I do so with reservations about a missed opportunity to enact meaningful reforms that would prevent another financial crisis. But as I said before, ultimately, given the makeup of the Senate and the requirement for 60 votes and the intransigence on the other side of the aisle, this was the best bill that could pass.

For those who wish the bill were stronger, let there be no confusion about where the blame lies. It is because almost every Senator on the other side of the aisle did everything they could to stall, delay, and oppose Wall Street reform.

To be sure, the bill that has come out of conference includes some extremely important reforms. It establishes an independent Consumer Financial Protection Bureau with strong and autonomous rulemaking authority and the ability to enforce those rules for large banks and nonbank entities such as payday lenders and mortgage finance companies. In addition, it requires electronic trading and centralized clearing of standardized over-the-counter derivatives contracts, as well as more robust collateral margin requirements. The bill's inclusion of the Kanjorski provision will give regulators the explicit authority to break up megabanks that pose a ''grave threat'' to financial stability.

I was pleased that the bill includes a provision I helped develop to give regulators enhanced tools and powers to pursue financial fraud. Through the Collins provision, the bill also establishes minimum leverage and risk-based capital requirements for bank holding companies and systemically risky nonbank institutions that are at least as stringent as those that apply to insured depository institutions, an important reform in this bill.

In light of the failures of past international capital accords, this requirement will set a much-needed floor on how low capital can drop in the upcoming Basel III negotiations on capital requirements. It will also ensure that the capital base of megabanks is not adulterated with debt that masquerades as equity capital.

That being said, unfortunately, I believe the bill suffers from two major problems. First, the bill delegates too much authority to the regulators. I have been around the Senate for 37 years. As I said on the Senate floor on February 4 of this year and in several speeches since then, I know that many times laws are not written with hard and clear lines. Laws are a product of legislative compromise, which often means they are vague and ambiguous. We often justify our vagueness by saying the regulators to whom we grant statutory authority are in a better position than we are to write the rules—and then to apply those regulatory rules on a case-by-case basis. But, as I have said, this was not one of those times. This was a time for Congress to draw hard lines that get directly at the structural problems that afflict Wall Street and our largest banks.

Despite repeated urging from me and others to pass laws that would help regulators to succeed, Congress largely has decided instead to punt decisions to the regulators, saddling them with a mountain of rulemakings and studies. The law firm Davis Polk has estimated that the SEC alone must undertake close to 100 rulemakings and more than a dozen studies. Indeed, Congress has so choked the agencies with rulemakings and studies, the totality of the burden threatens to undermine the very ability of the agencies to accomplish their ongoing everyday mission. I for one urge the agencies carefully to triage these required rulemakings and studies, establish a hierarchy of priorities, and ensure that the agencies do not shift all resources to new rules meant to address old problems to such a degree that they fail to stay on top of current and growing problems. I will have more to say on this subject in a future speech.

Second, the legislation does not go far enough in addressing the fundamental problem of ''too big to fail.'' Instead of erecting enduring statutory walls as we did in the 1930s, the bill invests the same regulators who failed to prevent the financial crisis with additional discretion and relies upon a resolution regime to successfully unwind complex and interconnected megabanks engaged across the globe. I am also disappointed that key reform provisions like the Volcker Rule and the Lincoln swaps dealers spin-off provision were scaled back in conference.

The bill mainly places its faith and trust in regulatory discretion and on international agreements on bank capital requirements and supervision. After decades of deregulation and industry self-regulation, it is incumbent upon the regulators now to reassert themselves and establish rulemaking and supervisory frameworks that not only correct their glaring mistakes of the past, but also anticipate future problems, particularly risks to financial stability. Unfortunately, the early indications we are seeing out of the G–20 and so-called Basel III discussions are not encouraging, as critical reforms are already being watered down and pushed back in part because some foreign regulators carelessly refuse to heed the risks posed by their megabanks.

The legislation also puts in place a resolution authority to deal with these institutions when they inevitably get into trouble. While such authority is absolutely necessary, it is not sufficient. That is because no matter how well Congress crafts a resolution mechanism, there can never be an orderly wind-down of a $2-trillion financial institution that has hundreds of billions of dollars of off-balance-sheet assets, relies heavily on wholesale funding, and has more than a toehold in over 100 countries. Of course, since financial crises are macro events that will undoubtedly affect multiple megabanks simultaneously, resolution of these institutions will be enormously expensive. And until there is international agreement on resolution authority, it is probably unworkable.

Given the history of financial regulatory failures and the enormous burden of rulemakings and studies with which the regulators are being tasked, Congress has a critical oversight responsibility. Congress first must ensure that the regulators have enough staff and resources at their disposal to follow through on their serious obligations. Just as important, Congress must monitor the regulatory phase of this bill's implementation closely to ensure that the regulators don't return to ''business as usual'' when the experience of the most recent financial crisis fades into memory.

How quickly we forget. Time and again, I have heard people speak as if there was no big financial crisis, saying: I have a bank in my hometown that is going to have a problem with this legislation. So we should let all the banks be free to do whatever they want to do. We had a crisis here that practically destroyed the country, the world, and these people are bringing up anecdotal evidence to give these banks more responsibility and not go after the root cause.

For example, in addition to granting great discretion to regulators on how they interpret the ban on proprietary trading at banks, the scaled-back Volcker Rule contains a large loophole that allows megabanks to continue to own, control and manage hedge funds and private equity funds under certain conditions. Most notably, it includes a de minimis exception that permits banks to invest up to three percent of Tier 1 capital in hedge funds and private equity funds so long as their investments don't constitute more than three percent ownership in the individual funds.

The impact of a supposedly small three percent de minimis exception for investments in hedge funds and private equity firms has the potential to be massive. For example, a $2 trillion bank that has $100 billion in Tier 1 capital would be able to invest $3 billion into hedge funds. Since that $3 billion could only constitute three percent ownership, it would need to be invested alongside at least $97 billion of funds from outside investors. The bank would therefore be able to manage $100 billion in hedge fund assets, a massive amount equal to the current size of the largest hedge funds in the world combined. What's more, that $100 billion in assets can be leveraged several times over through the use of borrowed funds and derivatives into overall exposures that could exceed a trillion dollars. And given the ambiguity of the legislative language, unless clarified by a rulemaking, some commentators have indicated that megabanks could potentially provide prime brokerage loans to hedge funds they partially own and run.

Fortunately, the final bill does place costs on banks' de minimis investments in hedge funds and private equity funds. Specifically, the legislation requires a 100 percent capital charge on these proprietary investments, making them expensive for banks to hold. While this may be a helpful deterrent, I am concerned that it will not be enough of one, particularly when considering how lucrative and risky an activity it is for banks to run hedge funds and private equity funds.

The overarching problem is that banks will continue to be able to offer and run—never mind, partially own—risky investment funds. Even though the scaled-back Volcker Rule includes a ''no bailout'' provision, I have concerns about the credibility of that edict. Under any circumstance, the failure of a massive hedge fund run by a megabank would pose serious reputational and financial risks to that institution.

Just look at what happened when the structured investment vehicles, or SIVs, of Citigroup and other megabanks began to falter. Because of the reputational consequences of liquidating these funds and allowing them to default on their funding obligations, they were bailed out by the megabanks that spawned them even though the SIVs themselves were generally separate, off-balance-sheet entities with no official backing from the banks.

Finally, the strength of the core part of the Volcker Rule—the ban on proprietary trading—will depend greatly on the interpretation of the regulators. They will ultimately be the arbiter of whether broad statutory exceptions for ''market making'' or ''risk-mitigating hedging'' or ''purchases'' or ''sales'' of securities on ''behalf of customers'' are allowed to swallow the putative prohibition. I therefore urge the regulators to construe narrowly those activities that constitute exceptions to proprietary trading to ensure that the Volcker Rule has some teeth in it.

Senator LINCOLN's original swap dealer spin-off provision would have prohibited banks with swap dealers from receiving emergency assistance from the Federal Reserve or FDIC. By essentially forcing megabanks to spin off their swap dealers into an affiliate or separate company, this section would have helped restore the wall between the government-guaranteed part of the financial system and those financial entities that remain free to take on greater risk. It would also have forced derivatives dealers to be adequately capitalized.

While the final bill includes the Lincoln provision, it limits its application to derivatives that reference assets that are permissible for banks to hold and invest in under the National Bank Act. Since that exception covers interest rates, foreign exchange and other swaps, it ultimately exempts close to 90 percent of the over-the-counter derivatives market. Regulators must therefore reduce counterparty exposures by requiring the vast majority of derivatives contracts to be cleared and calibrate carefully the amount of capital that bank derivatives dealers must maintain. Only then can we be sure we never again face a meltdown caused by excessively leveraged derivatives exposure that no regulator helps to keep in check.

The financial reform bill places enormous responsibilities and discretion into the hands of the regulators. Its ultimate success or failure will depend on the actions and follow-through of these regulators for many years to come.

One of my main concerns is, if we elected another President who believed we should not have regulators and regulation, they would again have the ability to do what they did to cause a meltdown.

It is estimated that various Federal agencies will be charged with writing over 200 rulemakings and dozens of studies. Many of the same regulators who failed in the run-up to the last crisis will once again be given the solemn task of safeguarding our financial stability. Like many others, I am concerned whether they have the capacity and wherewithal to succeed in this endeavor.

I repeat again, Congress has an important role to play in overseeing the enormous regulatory process that will ensue following the bill's enactment. The American people, for that matter, must stay focused on these issues, if just to help ensure that Congress indeed will fulfill its oversight duty and its duty to intervene if the regulators fail. Likewise, although I will be leaving the Senate in November, I will be watching closely to see how the regulators follow through on the enormous responsibilities they are being handed.

Let us not forget why reform is so necessary and important. After years of Wall Street malfeasance and the systematic dismantling of our regulatory structure, our financial system went into cardiac arrest and our economy nearly fell into the abyss. Wall Street, which had grown out of control on leverage and financial gimmickry, blew up. More than 8 million jobs were wiped out; millions more have lost their homes. We spent trillions of dollars in monetary easing and emergency measures to avert the wholesale failure of many of our megabanks. Not surprisingly, we continue to feel the aftershocks of the worst financial crisis since the Great Depression.

Every single thing you look at, almost without exception, when you read our newspapers, is related to our present economic situation, which was caused by lack of regulatory action on Wall Street.

The banks are not lending. Fed Chairman Bernanke just days ago urged them to do more for small businesses. Companies and consumers alike remain shaken in their confidence. And despite dramatic stimulus measures, the economic recovery has been slow and tentative. Many of the opponents of Wall Street reform would like to make the dubious claim that the recovery is being held back by uncertainty about future regulations and taxes. Can you believe that? In reality, it is being held back by the financial shock and the fact that we are still in a period of financial instability and undergoing an excruciating process of deleveraging. Even now it is unclear whether a European banking crisis based on their holdings of sovereign debt will continue to impede that recovery.

It is also being caused by the fact that Americans are losing faith in the credibility of our markets. Who wouldn't, after what has happened?

I think it has been an important factor in our present hiccup—hopefully, it was a hiccup and not a double dip.

It is, therefore, imperative that we build a financial system on a firmer foundation. The American economy cannot succeed—cannot succeed—unless we restore and maintain financial stability—not only restore and maintain financial stability but maintain the credibility of our financial system. We simply cannot afford another financial crisis or continued financial instability if the American economy is to succeed in the coming decades. Getting financial regulation right and maintaining it for years to come should be one of this Nation's highest priorities because the price of failure is far too high.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my colleague from Delaware. He highlighted the difficulty in passing legislation. There are those who think it goes too far and those who think it does not go far enough. We do not write a bill on our own. There are 100 of us in this Chamber and 435 in the other. There are stakeholders, the administration—all sorts of people we deal with on these matters. What we try to do is fashion the best proposal we can that moves us forward and addresses the underlying causes, as we tried to with this bill.

I appreciate the Senator's points that were raised during the debate and discussion. We tried to accommodate them where we could in fashioning legislation. It is always a difficult process. You do not get to write your own bill. You can write your own bill and introduce it, but ultimately, for it to become law requires cooperation. We had that cooperation. I appreciate his involvement very much.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Madam President, I just laid it out. I taught a course on Congress in law school for 20 years. I say this in all sincerity: Houdini could not have gotten through this process. Really and truly, when one looks at it, Houdini could not have gotten through this process with a bill.

I try very hard to be bipartisan in everything I do, and I try to speak well of my colleagues because I really do like every one of my colleagues on the other side. That is not hyperbole. But when we start out with 41 Senators bound and determined to slow down, delay, stop, and block, it makes the job the Senator from Connecticut has done even more incredible. And then we have to get 60 votes on anything of substance. Then we have to go over to the House side. And God bless our friends on the House side. When I talk with them, they just look over here and cannot believe we ever get anything done.

Getting this bill done, getting it through the Senate, dealing with all the stakeholders, dealing with the administration, dealing with the folks on the House side, and, with all due respect, doing it three times in one Congress, is definitely a Hall of Fame performance.

I thank the Senator again.

Mr. DODD. Madam President, my colleague talked about 41. There are a number of Republicans who played a very critical and supportive role on this bill. I do not want the record to persist in suggesting that was not the case. Even people on the other side who ended up not voting for the bill—at least have not so far—added substantially to the value of this bill. In some cases, they might not want to acknowledge that, but they did.

In the case of our two colleagues from Maine and our colleague from Massachusetts, they have taken an awful lot of abuse in the last number of weeks because they worked with us on the bill and made significant contributions. While they do not agree with every dotted ''i'' and crossed ''t,'' as I do not with this bill, they decided our country would be better off with the passage of this legislation than not.

I do not want the record to be uncorrected when it comes to the number of people, including those three in particular, who will, I presume, continue to take some abuse from others because they did not toe the party line, nor have they on repeated occasions. They have acted as U.S. Senators, which is our first responsibility. I know what that feels like. I have been there on numerous occasions in my 30 years. Several times, I was the only Democrat to vote with Republicans on substantive matters. It is a lonely moment. I can tell my colleague what happens. It is painful, and you get those long looks from your colleagues. It is uncomfortable, to put it mildly. I will also tell my colleague that some of the proudest moments a colleague will have when they serve here is when they make those decisions and do so for the right reasons.

While I am deeply grateful to my Democratic colleagues, many of whom had concerns about the bill, as my friend from Delaware did, and have been supportive all the way through, I guess there is a bit of the prodigal son—prodigal daughter in the case of our colleagues from Maine and prodigal son in the case of our colleague from Massachusetts—when they decided to stand up and help us get a bill done despite the criticism they have received. Everyone who has been supportive and helpful deserves credit, but I think those who were willing to take an awful lot of abuse in the process of doing so deserve commendation.

I did not want to let that number stand—41—because it implies somehow there were people on the other side who were not helpful, and they were, including people who did not vote for the bill who were helpful as well.

Mr. KAUFMAN. Madam President, I totally agree with the Senator. It is oversimple. I know the Senator from Connecticut received a lot of support from the Republican side. I know how difficult it is to be the person standing in your caucus when everyone in your caucus wants to vote another way. I appreciate that.

What is amazing to me is what passed was what the three of them would sign on to or others would sign on to. The idea that the Senator came with a bill—every one of my concerns I raised today, if we had gotten some help from the other side might have gone another way. But they were not going to go another way with the group we had.

I could not agree with Senator DODD more. I think it is easy to stand up in our caucus and be for this bill. I think what they did was truly courageous. But I also think that on every major issue, to have to figure out how we get 60 votes is a special, difficult problem. It is not like a swan dive. It is not, like they do in the Olympics, a double summersault. Putting all those things together is a triple summersault in the pike position. That is the point I want to make—the difficulty of getting a bill when we need to get 60 votes on every issue and there is a constant pressure on the other side for all to vote together one way.

Mr. DODD. Madam President, I see our colleague from New Hampshire is here. I will save this for a later debate, but I know there is talk about changing the rules of the Senate because of the frustration Senators feel. I will make, in my waning hours here, as strong a plea as I can to not succumb to the temptation to change the institution because of the current frustrations people feel. There is a reason this institution exists and has the rules it does. All of us one day are in the minority or majority. The fact that some may abuse the rules, as has happened here without any question, ought not to be a justification for fundamentally changing them. There are ways to deal with the problem without losing the essence of the Senate. He is no longer with us, but my seatmate, Robert C. Byrd, would speak for hours on end about the importance of not letting the vagaries of the moment dictate the long-term interests of the institution.

I will leave that for another day, but I appreciate it.

My colleague from New Hampshire is here.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, I am pleased to join my colleague from Connecticut, Senator CHRIS DODD, and be here on the floor this afternoon to talk about the financial regulatory reform bill that is pending.

Before I begin my remarks, I wish to recognize Senator DODD for his leadership and hard work in getting this conference report to the floor so that we can hopefully adopt it this afternoon. It is important because of what has happened in this country and what has happened in my State of New Hampshire.

Over the past 2 years, people in New Hampshire and across the country have suffered the consequences of Wall Street's gambles. While we are seeing our economy in New Hampshire begin to rebound, which is thanks in no small part to the job creation that was spurred by the Recovery Act, it is critical that we act to prevent Wall

Street's risky, reckless behavior from ever again bringing our economy to its knees.

We need to put in place reforms to stop Wall Street firms from growing so big and so interconnected that they can threaten our entire economy. We need to protect consumers from abusive practices and empower them to make sound financial decisions for their families. We need more transparency and regulation in the now shadowy markets where Wall Street executives and investment banks have made gambles. In those shadowy markets, the Wall Street firms got all the upside and American families got all the downside. We need to do everything we can to ensure that a financial crisis, such as the one we experienced in late 2008, never happens again. We need to ensure that taxpayers will not be asked to bail out Wall Street. In short, we need to pass the strong Wall Street reform bill that is before us today.

It is also important to note that while this bill requires Wall Street banks to be held more accountable, it does not unfairly burden community banks. Community banks did not cause the financial crisis, and they should not have to pay for Wall Street's reckless behavior. That is particularly important to us in New Hampshire, where community banks make a huge difference for our cities and towns. That is why I joined with Senator SNOWE on her amendment to eliminate the unnecessary, burdensome requirement that community banks and credit unions collect and report on various data about their depositors.

I also sponsored another bipartisan amendment, one to make large, riskier banks pay their fair share of FDIC premiums and lower assessments for community banks. Community bank lending is really the lifeblood of New Hampshire's economy. Every dollar community banks have to pay for Wall Street's mistakes is a dollar that could be going to extend credit to small businesses and to home and consumer loans to families.

I also joined Senator COLLINS on her amendment to require Wall Street banks to follow the same capital and risk standards small depository banks must follow. This amendment will make the risky banks that led us into this financial crisis—banks such as Bear Stearns and Lehman Brothers—follow the same standards that already apply to small depository banks.

This bill requires the big Wall Street banks to have adequate capital to prevent taxpayers from having to bail them out again.

I am very pleased that those bipartisan amendments, which have strengthened the bill by protecting community banks, have been adopted. It speaks to the conversation Senator DODD was having with Senator KAUFMAN earlier that this is a bill that has gotten broad support in this body and a lot of input that has made it better.

I am glad we have been able to work in this bipartisan manner to craft a strong bill that reins in the reckless Wall Street conduct that brought us to the edge of financial disaster. It keeps community banks strong, and it protects consumers and taxpayers.

I look forward to voting ''aye'' this afternoon when we get to the vote on the conference report.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, briefly, I thank my colleague from New Hampshire. I see my other colleague from New Hampshire as well. It is a New Hampshire moment. I thank Senator SHAHEEN and our colleague from Maine, Senator SNOWE, for working as they did on the community bank issues.

I was pleased, as I noted yesterday, that the Independent Community Bankers Association, while not endorsing the entire bill but specifically on their issues involving community banks expressed strong support for this bill and how much stronger these banks are today as a result of our efforts than would be the case if we were to defeat the legislation. Their ability to compete with these larger banks has been enhanced tremendously by what we have done in this bill. If these provisions were not adopted, they would be back in a situation where there would be significant disadvantages for them under the current law.

I am very grateful to Senator SHAHEEN and Senator SNOWE and others who supported their efforts to strengthen the role of our community banks that play such a critical role. As the Senator from New Hampshire pointed out, they were never a source of the problems in the residential mortgage market at all. That deserves to be repeated over and over.

I thank the Senator for her comments.

Mr. JOHNSON. Madam President, Congress is now on the brink of passing a landmark deal on legislation to reform Wall Street and prevent another financial crisis like the one we faced nearly 2 years ago. This legislation is an important and long overdue measure that will help to safeguard the long-term stability of our economy.

In the closing months of the Bush administration, our Nation faced an economic situation so dire that many feared our financial system was on the verge of collapse. Though we were able to avert such a collapse, the impact of the crisis spread across America, leaving few untouched.

Virtually all of us have been impacted by the economic meltdown in some way: businesses shed jobs, workers' hours were cut, some folks had great difficulty making their mortgage payments when their pay was cut, small businesses lost customers and revenue in the downturn. South Dakota homeowners, regardless of whether they had a mortgage or owned their home outright, saw their equity drop, and most folks with investments for retirement or other long-term goals suffered losses either through the stock market plunge, bond market turbulence, or passbook savings interest rates that hovered near zero percent. Lending at our Nation's banks contracted, spending fell, and overall consumer confidence plummeted.

Americans were rightly angry that while they were losing their homes, jobs, and long-term savings, they were also expected to foot the bill for the irresponsible actions of Wall Street CEOs. Their outrage only grew when these same CEOs continued collecting unprecedented bonuses—presumably for their work in recklessly taking our Nation to the brink of collapse. Frankly, I share that anger.

It is clear that our economy has not yet fully recovered, but in the last year and a half, Congress has dedicated itself to turning our economy around. We are now on the verge of passing historic legislation that creates better accountability and transparency for Wall Street and the financial sector.

As a senior member of the Banking Committee, and a member of the conference committee, I have worked hard to identify the causes of the crisis and find the right solutions to address these causes. I have talked at length with South Dakotans of all backgrounds and political stripes to gain their perspective, and there are some things that get mentioned time and again: there were many causes for the meltdown, but gaps in regulation contributed to the problem; rules that applied to some financial companies but not all opened loopholes that bad actors could exploit; the lack of a system to monitor risks across the banking sector left taxpayers vulnerable; regulators were not very focused on looking out for consumers; and large Wall Street firms operated with little or no accountability to either their shareholders or their customers. In addition, it became clear we needed a system to unwind big financial firms like AIG, Lehman Brothers, and Bear Stearns in an orderly fashion and without taxpayer bailouts. Doing nothing is not an option, and I do not think anyone can say with a straight face that our current system of financial regulation works for America.

While not perfect, the Wall Street reform measure does a great deal to address many of these problems. It creates a mechanism to monitor systemic risk in the financial sector, as well as regulating risky derivatives, credit default swaps and other complicated financial products that were not transparent and had previously gone unregulated. It affords consumers better rules governing the products they use and better information about those products by creating a consumer watchdog agency. Importantly, it also creates a way to unwind large financial firms without having to bail them out.

Specifically, I want to mention two provisions. First, I am pleased that the conference committee accepted the

Carper-Bayh-Warner-Johnson amendment, which I strongly supported, regarding the preemption standard for State consumer financial laws. This amendment received strong bipartisan support on the Senate floor and passed by a vote of 80 to 18. One change made by the conference committee was to restate the preemption standard in a slightly different way, but it is clear that this legislation is codifying the preemption standard expressed by the U.S. Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, 517 U.S. 25 (1996) case. This will provide certainty to consumers and those that offer consumers financial products.

Also, section 913 of the conference report reflects a compromise between the House and Senate provisions on the standard of care for brokers, dealers, and investment advisers. It includes the original study provisions passed by the Senate, together with additional areas of study requested by the House—a total of 13 separate considerations and a number of subparts, where we expect the SEC to thoroughly, objectively and without bias evaluate legal and regulatory standards, gaps, shortcomings and overlaps. We expect the SEC to conduct the study without prejudging its findings, conclusions, and recommendations and to solicit and consider public comment, as the statute requires. As Chairman FRANK described the compromise when he presented it to the committee, section 913 does not immediately impose any new duties on brokers, dealers and investment advisers nor does it mandate any particular duty or outcome, but it gives the SEC, subsequent to the conclusion of the study, the authority to conduct a rulemaking on the standard of care, including the authority to impose a fiduciary duty. I think this is a strong compromise between the House and Senate positions.

This bill gives financial institutions, regulators and consumers the right tools to make good decisions, and it also provides the right tools to prevent another crisis like the one we recently experienced. Many of the bill's provisions, including those mentioned previously, have bipartisan support; in fact, many of the core ideas incorporated into the bill originated from my Republican colleagues.

Critics of this legislation have said that it tackles the wrong problems, hurts small banks and businesses, and burdens struggling financial institutions. I appreciate those points of view, but feel very confident in saying we have taken specific steps to ensure that small banks and businesses are not negatively affected, to make it more difficult for firms to take dangerous risks, and to strike the right balance between regulation and flexibility. But the bottom line is this: the kind of free-wheeling, self-regulating, anything goes environment that we had before the crisis is simply not an option.

There are certainly provisions in this bill that I would have written differently as any of my colleagues would if we wrote this legislation ourselves. But that is not how the Senate and our legislative system works, and overall I think this conference report is very strong legislation. I look forward to its passage.

There is no doubt that after the President signs this bill into law, there will be an important focus on implementing this legislation correctly, as well as continued oversight by Congress of the agencies and covered financial institutions, and efforts at international coordination with our counterparts in other countries. It is also likely that there may need to be corrections and adjustments to the bill in the future. That said, passage of this bill is important to our nation's economic recovery, and we must get it to the President's desk.

Mrs. HAGAN. Madam President, I rise today to discuss the conference agreement on financial services regulatory reform and specifically an issue in section 619 of title VI, known as the Volcker rule. The section's limitations on financial organizations that own a depository institution from investing or sponsoring in hedge funds or investments in private equity to 3 percent of an organization's assets, in the aggregate, references ''tier 1 capital.''

The term ''tier 1 capital'' is a concept currently applied strictly to banks and bank holding companies and consists of core capital, which includes equity capital and disclosed reserves. However, there are financial organizations subject to the Volcker rule's investment constraints that do not have a principal regulator that utilizes tier 1 capital measurements to determine an entity's financial strength. In order to ensure a level playing field with traditional banks, I would hope the appropriate regulators would determine a suitable equivalent of tier 1 capital to determine the investment limit, while still satisfying the intent of the Volcker rule.

I ask the regulators to make certain that these types of financial organizations will be subject to the Volcker rule in a manner that takes into account their unique structure.

In addition, I am pleased that as part of the conference report that the Volcker language was modified to permit a banking entity to engage in a certain level of traditional asset management business, including the ability to sponsor and offer hedge and private equity funds. With that in mind, I wanted to clarify certain details around this authority.

First, I was pleased to see that the Volcker Rule, as modified, will permit banking entities several years to bring their full range of activities into conformance with the new rule. In particular, section 619(c)(2) ensures that the new investment restrictions under section 619(d)(1)(G)(iii) and section 619(d)(4)—including the numerical limitations under section 619(d)(4)(B)(ii)—will only apply to a banking entity at the end of the period that is 2 years after the section's effective date. This date for the regulators to begin applying the new rules can also be extended into the future for up to three 1-year periods under section 619(c)(2) and can also separately be extended for illiquid funds with contractual commitments as of May 1, 2010, under section 619(c)(3), on a one-time basis for up to 5 years. Only after all of these time periods and extensions have run will any of the limitations under section 619(d)(1)(G) and section 619(d)(4) be applied by regulators.

Second, as an added protection, section 619(f) applies sections 23A and 23B of the Federal Reserve Act to transactions between all of a banking entity's affiliates and hedge or private equity funds where the banking entity organizes, offers, serves as an investment manager, investment adviser, or sponsor of such funds under section 619(d). These restrictions are also applied to transactions between a banking entity's affiliates and other funds that are ''controlled'' by a hedge or private equity fund permitted for the banking entity under 619(d). Importantly, these 23A and 23B restrictions do not apply to funds not ''controlled'' by funds permitted for the banking entity under section 619(d), and it should also be clear that under section 619 there are no new restrictions or limitations of any type placed on the portfolio investments of any hedge or private equity fund permitted for a banking entity under section 619.

Third, as a condition of sponsorship, section 619(d)(1)(G)(v) requires that a banking entity does not, directly or indirectly, guarantee or assume or otherwise insure the obligations or performance of any sponsored hedge or private equity fund or of any other hedge or private equity fund in which the sponsored fund invests. While this restricts guarantees by the banking entity as well as the insuring of obligation or performance, it does not limit other normal banking relations with funds merely due to a noncontrol investment by a fund sponsored by the banking entity. As described above, section 619(f) limits transactions under 23A and 23B of the Federal Reserve Act with a fund ''controlled'' by the banking entity or a fund sponsored by the banking entity. However, 619(f) does not limit in any manner transactions and normal banking relationships with a fund not ''controlled'' by the banking entity or a fund sponsored by the banking entity.

Finally, section 619(d)(4)(I) permits certain banking entities to operate hedge and private equity funds outside of the United States provided that no ownership interest in any hedge or private equity fund is offered for sale or sold to a U.S. resident. For consistency's sake, I would expect that, apart from the U.S. marketing restrictions, these provisions will be applied by the regulators in conformity with and incorporating the Federal Reserve's current precedents, rulings, positions, and practices under sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act so as to provide greater certainty and utilize the established legal framework for funds operated by bank holding companies outside of the United States.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Madam President, let me begin by thanking the Senator from Connecticut and congratulating him. He has been pretty effective in his last year in the Senate. He got a lot of stuff moving and a lot of stuff through. And I have not agreed with all of it, by the way. Most importantly, he has done it in a fair and balanced way, always with a sense of humor and an openness and willingness to listen to those with whom he may not agree entirely and allow us to participate at the table in discussions about the problems at the very beginning of the process in a very substantial way. So I thank him for his courtesy and for the way he runs the committee and the way he ran the HELP Committee when he succeeded to that leadership on the unfortunate passing of Senator Kennedy. It has been a pleasure to serve with him on this bill and on some very significant issues as we tried to work through them.

I have reservations about this bill—they are more than reservations. I, obviously, believe the bill doesn't get us to where we need to go. When we started on this effort, our purpose was, in the beginning, twofold: First, we wanted to make sure we could do everything we could to build into the system of regulatory atmosphere and the marketplace the brakes and the ability to avoid another systemic meltdown of the type we had in late 2008, which was a traumatic event.

Nobody should underestimate how significant the events of late 2008 were. If action had not been taken under the TARP proposal, and under the leadership of President Bush, Secretary Paulson, and then President Obama and Secretary Geithner, this country would have gone into a much more severe economic situation—probably a depression. Secretary Paulson once estimated the unemployment rate would have gone to 25 percent. The simple fact is the entire banking system would have probably imploded—most likely imploded—and certainly Main Street America would have been put in dire straits.

But action was taken. It was difficult action. We are still hearing about the ramifications of it, but it was the right action, and it has led to a stabilization of the financial industry. But we never want to have to see that happen again. We never want to have to go through that type of trauma again as a nation, where our entire financial community is teetering. So the purpose of this bill should be to put in place a series of initiatives which will hopefully mute that type of potential for another event of a systemic meltdown.

The second purpose of this bill—and it is an equally important purpose—is that we not do something that harms one of the unique strengths and characteristics of our Nation, where if you are an entrepreneur and have an idea and are willing to take a risk and try to create jobs, you can get credit and capital reasonably easily compared to the rest of the world. That has been the engine of the economic prosperity of our Nation—the availability of credit and capital, reasonably priced and reasonably available to entrepreneurs in our Nation.

Those should have been our two goals. If we match this bill to those goals, does it meet the test of meeting those goals? Unfortunately, I don't think it does. There are some very positive things in the bill. The resolution authority is a good product in this bill, and it will, in my opinion—though I know there is a lot of discussion about this—pretty much bring an end to the concept of too big to fail.

If an institution gets overleveraged to a point where it is no longer sustainable, and it is a systemic risk institution, it is going to be collapsed. The stockholders will be wiped out, the unsecured bond holders will be wiped out, and the institution will be resolved under this bill.

That is positive because we do not want to send to the markets a signal that the American taxpayer is going to stand behind institutions which are simply large. That perverts capital in the markets, and it perverts flow of economic activity in the markets when people think there is that sort of guarantee standing behind certain institutions in this country. And I think progress is made in this bill on the issue of resolution.

But, unfortunately, in a number of other areas, the opportunity to do something constructive was not accomplished. In fact, in my opinion, there will be results from this bill which will cause us to see a negative effect from this bill. The most negative effects I think will occur from this bill lie in two areas. First, in the area of the formation of credit.

It is very obvious that under this bill there is going to be a very significant contraction of credit in this country as we head into the next year, 2 years, maybe even 3 years. We are in a tough fiscal time right now. It is still very difficult on Main Street America to get credit. The economy is slow. We should not be passing a bill which is going to significantly dampen down credit, but it will. This bill will. It will for three reasons:

First, the derivatives language in this bill is not well thought out. It just isn't. Most people don't understand what derivatives are, but let's describe them as the grease that gets credit going in this country and everywhere. It is basically insurance products that allow people to do business and make sure they can insure over the risks that they have in a business. This bill creates a new regime for how we handle derivatives in this country.

Our goal should have been to make derivatives more transparent and sounder. That could have been done easily by making sure most derivatives were on over-the-counter exchanges—went through clearinghouses I mean, and had adequate margins behind them, adequate liquidity behind them, and were reported immediately to the credit reporting agencies as to what they were doing. It didn't involve a lot of complications, just changing the rules of the road. Instead of doing that, we have changed the entire process. In changing the entire process, we are basically going to contract significantly the availability of these products to basically fund and to be the engine or the grease or the lubricant for the ability of a lot of American businesses to do business.

End users in this country who use derivatives are going to find it very hard to have an exemption. They are basically going to have to put up capital, put up margin—something they do not do today on commercial derivative products—and that is going to cause them to contract their business. They will have to contract their business or they are going to have to go overseas. Believe me, there is a vibrant market in derivatives overseas. They will go to London, and this business will end up offshore.

Then we have this push to put everything on an exchange. Well, there are a lot of derivatives that obviously should go through clearinghouses but are too customized to go on exchanges, and we are going to end up inevitably with a contraction in the derivatives market as a result.

Then we have the swap desk initiative, which was simply a punitive exercise, in my opinion. It is going to accomplish virtually nothing in the area of making the system sounder or more stable. But what it will do is move a large section of derivative activity—especially the CDS markets—offshore. They will go offshore because they will not be done here any longer. Banks and financial houses which historically have written these instruments are not going to put up the capital to write them because they don't get a return that makes it worth it to them.

I guarantee we are going to see a massive contraction in a number of derivatives markets as a result of this swap desk initiative, which was more a political initiative than a substantive initiative, and which is counterproductive. It is a ''cut off your nose to spite your face'' initiative, and it will move overseas a lot of the products we do here and make it harder for Americans to be competitive—especially for financial services industries to be competitive—in the United States. So that will cause a contraction and a fairly big one.

The estimates are that the contraction may be as high as $¾ trillion. That is a lot of credit taken out of the system. On top of that, there is the issue of the new capital rules in this bill.

It isn't constructive for the Congress to set arbitrary capital rules. That should be left to the regulators. But this bill pretty much does that. As a result, a lot of the regional banks, the middle-sized banks—the larger banks would not be affected too much—will find they are under tremendous pressure as their tier I capital has to be restructured relative to trust preferred stock.

This is not a good idea because, as a practical matter, we will again cause a contraction in the market of capital—of credit. As banks grow their capital, they will have to contract credit. When a bank has to get money back in order to build its capital position up, it doesn't go to its bad loans because the bad loans aren't performing. It goes to its good loans, and it doesn't lend to them. Or it says: We are going to draw down your line of credit, because that is where they can get capital. That is what will happen, and we will see capital contract there.

On top of that, we have the Volcker rule. The concept is a very good idea. We should never have banks using insured deposits to do their proprietary activity. But straightening out what this Volcker rule means will take a while. It may be a year or two before anybody can sort out what it means and before the regulations come down that define it. So there will be a period of uncertainty, and that uncertainty means less credit available.

Of course, this is another situation where the international banks are the winners and the domestic banks are the losers because the international banks will be able to go and do the same business—the proprietary trade—in London, if they are based in London or in Singapore, if they are based in Singapore or Tokyo, if they are based in Tokyo. But the American banks they compete with aren't going to be able to do it. So that makes no sense at all.

But as a practical matter, that is what this bill does. So we will end up again with a tentativeness in the markets as to what they are supposed to be doing and what they can do in the area relative to the Volcker rule, and this will end up creating further credit contractions.

So my guess is, when we add it all together, this bill will lead to a credit contraction of probably $1 trillion or more in our economy. What does that translate into? It translates into fewer jobs and less economic activity. It didn't have to happen this way. This could have been done in a way that would have been clearer, where the clarity would have been greater, and where we would not have had to take arbitrary action which was more political than substantive to address what problems in the industry did exist and should have been addressed.

Another area of concern, of course, is this consumer agency. Consumer protection is critical. We all agree to that. What we proposed on our side of the aisle was that we link consumer protection and safety and soundness at the same level of responsibility and the same level of authority within the entire bank regulatory system so that the prudential regulator—whether it is the Fed or the Office of the Comptroller—when they go out to regulate a bank and check on it for safety and soundness—or the FDIC—they, at the same time, have the same standard of importance placed on making sure that the consumer is being protected in the way that bank deals with the consumers. That is the way it should be done. The two should be linked because the regulator that regulates the bank for safety and soundness is the logical regulator to regulate the bank to make sure it is complying with consumers' needs.

But this bill sets up this brandnew agency, which it calls consumer protection, but it will not be at all, in my opinion. It will be the agency for political correctness or correcting political justice or issues of political justice that somebody is concerned about. It is totally independent of everybody else. It doesn't answer to anyone except on a very limited and narrow way to the systemic risk council. It is a single person with an $850 million unoversighted revenue stream with no appropriations. Basically, the person just gets the money and can go off and do whatever they want. There is no relationship between this person and the prudential regulator. So what we will have is an individual who may get on a cause of social justice and say that XYZ group isn't getting enough loans, and they go out to the banks and say: You have to send XYZ group more loans.

We might have the bank regulator over here saying to the local banks, the regional banks: You can't lend to XYZ group because we know they are not going to pay you back or they will not pay you back at a rate that is reasonable. So we are going to have this inherent conflict.

Now, what will be the result of that? The banks will probably have to lend to the XYZ group, which means the people borrowing from that bank who pay their loans back will have to pay more because the bank will have to make up for the loss of revenues. As a result, the cost of credit will go up, especially for individuals who are responsible and paying down their debts and paying for their credit—paying back their loans. We are going to end up with layers and layers of conflicting regulation which will cost the banking community money—a significant amount of unnecessary money.

Who pays for that? Well, the consumer pays for it. Clearly, that gets passed through. This is one of those Rube Goldberg ideas that can only come out of a government entity. They used to say: You know, the government produces a camel when it is supposed to be producing a horse.

There is just a disconnect between the reality of what we are supposed to be doing in the area of producing effective regulation relative to protecting consumers and what this bill ends up finally doing.

I would not be here to oversee it or participate in it. In fact, nobody gets to oversee it, by the way. This consumer protection agency is not responsible to the Banking Committee of the Senate or the Banking Committee of the House. It is not responsible to the Fed. This person is a true czar.

The term ''czar'' is thrown around here a lot, but this person is a true czar in the area of consumer activity. I suspect we will see that this agency becomes a very controversial agency, with a very political social justice type agenda, not an agenda which is aimed at primarily protecting consumers.

So that is a big problem with this bill, and there are a lot of other issues with this bill. At the margin, the issue of how we restructure the regulatory regimes is of some concern, the whole question of how stockholders' rights in this bill—and probably not relevant to the banking issue so much—could have been improved on. The bill overall could have been a much better product. But the primary concern I have goes back to this issue of what was the original purpose—to protect systemic risk in the outyears and make sure we continue to have a strong and vibrant credit market for Americans who want to take risks and create jobs.

Two major issues were totally ignored in the bill which would address that question: What drove the event of this meltdown? What caused this financial downturn? It was the real estate market and the way it was being lent into. Two things were the basic engines of that problem, that were government controlled. There were a lot of things which caused it, but the two things which the government controlled were, No. 1, underwriting standards. Basically we divorced underwriting standards from the issue of whether a person got a loan, so loans were being made on assets which could not cover the cost of the loan. It was presumed the asset was going to appreciate, a home was always going to appreciate in these communities and therefore they could loan at 100 percent of the value of the home or 105 percent of the value and still have a safe loan. That was a foolish assumption, to say the least.

Second, we didn't look at whether the person could pay the loans back when these loans were made at zero interest for a year or 2 years. But then they reset, these loans reset at a fairly reasonable or sometimes very unreasonable interest rate and nobody looked at whether the person could pay them back.

These loans were being made not for the purposes of actually recovering the loans. That was not the reason these loans were being made. These subprime loans were being made because there were fees on the loans and the people making the loans were getting the fees. There was a whole cottage industry of people down in Miami who had just gotten out of prison who figured this out while they were in prison and they developed an entire cottage industry of former prisoners who had been released, legally, and actually went back into the loan business and were making these loans and getting the fees.

Then what aggravated it—first what aggravated it was the underwriting standards, but then it was that these loans got securitized. They got picked up by Freddie Mac and Fannie Mae, with the understanding—it was implicit but it was obvious, as we found out—that Fannie Mae and Freddie Mac would essentially insure these loans. So if you bought one of these securitized loans, Fannie Mae and Freddie Mac would be standing behind it even though the loans were not viable.

This bill ignores both those issues. It has very marginal language on the issue of underwriting. It doesn't get us back to standards which would basically protect us from overly aggressive underwriting.

People say Canada did not have a problem, Australia didn't have a problem. Why didn't they have a problem? They didn't have a problem because they required people who were borrowing to put money down and they required that people who were borrowing actually be able to pay the money back. It seems like a perfectly reasonable thing to require, but this bill ignores it.

Second, this bill does nothing about Fannie or Freddie—nothing. Talk about ignoring the elephant in the room, this is the whole herd of elephants in the room. The American taxpayer today is on the hook for something like $500 billion to $1 trillion. The estimates vary. Some people say it is even higher than that—the American taxpayer, for bad loans, securitized by Fannie and Freddie. This bill says nothing. It is as if this problem doesn't exist. It is as if this problem doesn't exist. Not only was it one of the primary drivers of the financial meltdown but it is one of the biggest problems we have going forward. The administration says we will do it next year. Well, if you do a financial reform bill without Fannie and Freddie, you essentially are not doing a financial reform bill at all. I apply the same to the issue of underwriting.

In my opinion, this bill has some pluses. I know this was worked very hard and I admire the efforts of the Senator from Connecticut and actually the chairman in the House, Congressman FRANK from Massachusetts. But the negatives of this bill unfortunately are too significant to ignore, especially in the area of the short-term credit contraction that is going to occur, the poorly structured derivatives language, the Consumer Protection Agency—which I think is going to end up being counterproductive to consumers—and the failure to take up the Freddie and Fannie issue, and the failure to do stronger underwriting standards.

For that reason, I remain opposed to this bill. I understand it is going to pass. I hope some of my concerns do not come to fruition because, if they do, unfortunately this economy is going to be slowed and our Nation will be less viable economically. But I am afraid they will come to fruition.

I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Connecticut is recognized

Mr. DODD. I see my other colleagues here, including Senator SPECTER who wants to be heard, but I want to address my colleague from New Hampshire because we are both going to be walking out of this Chamber in about 5 months. I thank him for his work going back to 20-some-odd months ago when we were involved in the critical weeks and days in September and October. JUDD GREGG was invaluable putting together a moment here while, not terribly popular, I think saved the economy and the country. I will not address all his concerns here. We have a different point of view on the issues he raised. They are not illegitimate issues. We think we addressed them properly. He has a different view, and I respect that. I appreciate his work and that of his staff on this bill. He made a significant contribution to this effort and I thank him for it.

I see my colleague from Pennsylvania here and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, at the outset I wish to ascertain with precision that I have 20 minutes, as had been arranged with the floor monitors. I had looked for 30 but I ask consent I may speak for up to 20 minutes now.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object, I want to be clear so my colleague will understand this. I had a sheet of paper in front of me—I do not have it in front of me now—with the order of those who sought time. I want to be careful, as my colleague from Pennsylvania will understand. We are going to vote at 2 o'clock. I want to be sure I can accommodate my colleagues.

The PRESIDING OFFICER. Twenty-three minutes remains to the majority.

Mr. DODD. I know Senator CONRAD, chairman of the Budget Committee, has to be heard and it is critical to me he be heard on the budget point of order.

Could you make it a little less than 20?

Mr. SPECTER. I really cannot. I had started at 30 and 20 is tough. How early might I return for my 30 minutes?

Mr. DODD. After 2 o'clock? Any point after——

Mr. SPECTER. I ask unanimous consent I may have 30 minutes when the two votes which are scheduled for 2 o'clock conclude.

Mr. DODD. Certainly I would have no objection to that whatsoever. Take some time at this juncture too, if you wish.

Mr. SPECTER. I will do it all at once. I don't want to truncate it.

I ask unanimous consent that I may have the floor for 30 minutes at the conclusion of the two votes scheduled for 2 o'clock.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Again, let me reserve the right to object. I see the minority wants to check on such a request. I have no objection myself but obviously that is a matter—in fairness to the minority, we want to let them know of such a request. Here we are eating up time right now. I see my friend from North Dakota here as well. I am deeply grateful to the chairman of the Budget Committee.

Go ahead with that request. I am told it is OK.

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

Mr. SPECTER. I thank the Chair and my colleague and the unknown persons in the cloakroom.

Mr. DODD. I thank my colleague from Pennsylvania and the unknown persons in the cloakroom. Let the record show they acknowledged the Senator's request.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I come to the floor to discuss the budget point of order that has been raised against the financial reform conference report. I will be voting to waive this point of order. As Budget Committee chairman, I do not take this step lightly. In fact, the point of order that has been offered is a point of order that I created in the 2008 budget, so it is something I feel strongly about as a general matter. But its applicability here is false in the face of the importance of the legislation we need to consider.

The legislation before us is critical to our economic strength. I think we all understand that financial reform is long overdue. It has been almost 2 years since the financial sector collapse brought our economy to the brink of global financial collapse. I was in the room and Senator DODD was in the room when we were informed by the Chairman of the Federal Reserve and the Secretary of the Treasury in the previous administration that if we failed to act at that dire moment, we could face a global financial collapse. That is how serious it was.

Now that the economy has stabilized, it is easy to forget the crisis that swept through the financial markets and threw us into the worst downturn since the Great Depression—in fact, which risked a second great depression. But we cannot afford to forget. We need to remember that the problems on Wall

Street and in our financial sector have a direct impact on Main Street and the lives of every American. We need to ensure that taxpayers are never again asked to bail out Wall Street.

This financial reform legislation will prevent another financial sector collapse, or at least will help prevent it. I do not think any of us can say this will prevent any future collapse, but it is critically important to helping us prevent another collapse. It will allow the government to shut down firms that threaten to crater our economy and ensure that the financial industry, not taxpayers, is on the hook for any costs. It will rein in risky derivatives and other risky trading practices that undermined some of our largest financial institutions. It will help level the playing field for smaller banks and credit unions by cracking down on the risky practices of Wall Street and nonbank financial institutions that caused the financial crisis.

I am grateful to Senator DODD, the Banking Committee, and members of the conference for working with me to make certain that the final bill recognizes the special circumstances of community banks and credit unions in rural States such as mine. In particular, I appreciate the committee's modification to the lending limit standards. This is very important to farming communities across the country.

The final bill also provides added flexibility for rural lenders in the new mortgage standards as well as provisions to improve interchange reform for smaller financial institutions. Finally, I am pleased the committee included a risk-focused deposit insurance fund assessment formula and modified risk retention requirements for high quality loans.

Especially I thank Senator DODD for his extraordinary leadership. What a final year in the Senate. What a remarkable legacy he is leaving. I think the annals of the Senate will show very few Senators have had a record of accomplishment that matches what Senator DODD will have done in this year.

With respect to the budget point of order that has been raised against the conference report, let me make a couple of general points. First, this budget violation is not significant enough to merit derailing this important legislation. Second, we must bear in mind the risks of failing to act. If we fail to protect against a future collapse and create an orderly process for dealing with giant insolvent financial institutions, it is inevitable that taxpayers will again at some future point be asked to bail out the financial sector and prevent a catastrophic financial collapse. If one measures on any scale the differences between the technical violation in this budget point of order against what would happen if this legislation fails, they cannot even be compared. I mean, it is a gnat against an elephant. So let's keep things in mind here.

Second, we must bear in mind the risk of failing to act because that would burden taxpayers in a way far beyond anything we see with this budget point of order. None of us wants that. This bill is an insurance policy against an expensive future taxpayer bailout.

The point of order that has been raised is the long-term deficit point of order, a point of order I established in the budget resolution of 2008. This point of order prohibits legislation that worsens the deficit by more than $5 billion in any of the four 10-year periods following 2019.

CBO has determined that at least in one of those four 10-year periods, the conference report would exceed this threshold. But this is really just a timing issue caused by the new bipartisan resolution authority created by the bill. This is the new authority given to the government to wind down failing financial firms. Under the resolution authority, if a financial firm is about to collapse, the government will use the firm's assets to wind it down and put it out of business. If the firm's assets are insufficient, the government will temporarily borrow funds from the Treasury. The financial industry will then reimburse the government and the taxpayers for 100 percent of the cost. Again, 100 percent of the money will be paid back by the banks. So the net impact on the deficit is zero.

Overall, the bill saves $3.2 billion over the first 10 years, according to the Congressional Budget Office. So while technically this budget point of order lies, if you pierce the veil and look at what really happens, this bill reduces the deficit, according to the Congressional Budget Office, which is the nonpartisan scorekeeper here in the Senate. Because there is a lag time for the government to collect this money from the financial industry, CBO scores the bill as increasing the deficit in some of the later decades. But all of that money will be paid back in ensuing years, and that is what matters most in this case.

So although this bill does technically violate the long-term deficit point of order, it is insignificant. The fact is, this bill reduces the deficit, according to the Congressional Budget Office. So I urge my colleagues to waive the point of order, to support passage of this financial reform legislation, which is clearly a significant step in the right direction in preventing the kind of risk to our Nation's economy that is so apparent with the current structure.

Again, I thank the chairman for his extraordinary work not only on this bill but throughout the year and, I think all of us know, throughout his career.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut

Mr. DODD. Mr. President, before my friend, the chairman of the Budget Committee, leaves, let me thank him immensely for his analysis of this issue. He has it, as we saw as well, exactly right. In fact, it is not only repaying 100 percent but with interest. There is an interest requirement, that if we borrow from the taxpayers in order to wind down substantially risky firms, then not only do you get paid back, but the interest on the cost of that money is also part of the deal. So it is 100 percent-plus coming back to the Treasury.

But his analysis and that of his committee—and there is no one who has been more disciplined or guarded about the budgetary process over the years we have served together, and so I appreciate the Senator's analysis of this particular point on the long-term deficit.

I commend the Senator for including the provisions he has and trying to build some discipline into the process of how we expend taxpayer moneys, collect taxes in the first place to pay for the needed expenditures of our government. So I thank the Senator for that.

I thank him for his comments as well about the bill and his support and also the substantive contributions the Senator from North Dakota has made, because one of the things we tried to be very careful about—JON TESTER of Montana, who sits on the committee with me, has been very careful and been tremendously active in seeing to it that rural America is going to be well served by this legislation. And there are differences. It is not all Wall Street, New York, and major financial centers. The importance of the availability of credit in rural communities is critical, as my colleague from North Dakota has informed me over the years we have served together. That ability of a local farmer to borrow that money in the spring, to be able to pay back in the fall, at harvest time, has been essential, and knowing how difficult it has been throughout the country to have access to credit is essential.

So his contributions to the legislation make sure that what we do here is going to enhance the capability of rural America to not only come out of this crisis we are in but to prosper in the years ahead with this legislation. So beyond the budgetary considerations and the points of order before us, I thank him for his contributions to the substance of the bill, which has made it a far better bill to begin with.

I see my colleague from Oregon is here. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. MERKLEY. Mr. President, I thank Chairman DODD for yielding to me and for his leadership on financial reform.

I yield to Senator LEVIN.

Mr. LEVIN. Mr. President, Senator MERKLEY and I, as the principal authors of sections 619, 620, and 621 of the Dodd-Frank Act, thought it might be helpful to explain in some detail those sections, which are based on our bill, S. 3098, called the Protect Our Recovery

Through Oversight of Proprietary, PROP, Trading Act of 2010, and the subsequently filed Merkley-Levin Amendment, No. 4101, to the Dodd-Lincoln substitute, which was the basis of the provision adopted by the Conference Committee.

I yield the floor to my colleague, Senator MERKLEY.

Mr. MERKLEY. I thank Senator LEVIN and will be setting forth here our joint explanation of the Merkley-Levin provisions of the Dodd-Frank Act. Sections 619, 620 and 621 do three things: prohibit high-risk proprietary trading at banks, limit the systemic risk of such activities at systemically significant nonbank financial companies, and prohibit material conflicts of interest in asset-backed securitizations.

Sections 619 and 620 amend the Bank Holding Company Act of 1956 to broadly prohibit proprietary trading, while nevertheless permitting certain activities that may technically fall within the definition of proprietary trading but which are, in fact, safer, client-oriented financial services. To account for the additional risk of proprietary trading among systemically critical financial firms that are not banks, bank holding companies, or the like, the sections require nonbank financial companies supervised by the Federal Reserve Board, the ''Board'', to keep additional capital for their proprietary trading activities and subject them to quantitative limits on those activities. In addition, given the unique control that firms who package and sell asset-backed securities (including synthetic asset-backed securities) have over transactions involving those securities, section 621 protects purchasers by prohibiting those firms from engaging in transactions that involve or result in material conflicts of interest.

First, it is important to remind our colleagues how the financial crisis of the past several years came to pass. Beginning in the 1980's, new financial products and significant amounts of deregulation undermined the Glass-Steagall Act's separation of commercial banking from securities brokerage or ''investment banking'' that had kept our banking system relatively safe since 1933.

Over time, commercial and investment banks increasingly relied on precarious short term funding sources, while at the same time significantly increasing their leverage. It was as if our banks and securities firms, in competing against one another, were race car drivers taking the curves ever more tightly and at ever faster speeds. Meanwhile, to match their short-term funding sources, commercial and investment banks drove into increasingly risky, short-term, and sometimes theoretically hedged, proprietary trading. When markets took unexpected turns, such as when Russia defaulted on its debt and when the U.S. mortgage-backed securities market collapsed, liquidity evaporated, and financial firms became insolvent very rapidly. No amount of capital could provide a sufficient buffer in such situations.

In the face of the worst financial crisis in 60 years, the January 2009 report by the Group of 30, an international group of financial experts, placed blame squarely on proprietary trading. This report, largely authored by former Federal Reserve System Chairman Paul Volcker, recommended prohibiting systemically critical banking institutions from trading in securities and other products for their own accounts. In January 2010, President Barack Obama gave his full support to common-sense restrictions on proprietary trading and fund investing, which he coined the ''Volcker Rule.''

The ''Volcker Rule,'' which Senator LEVIN and I drafted and have championed in the Senate, and which is embodied in section 619, embraces the spirit of the Glass-Steagall Act's separation of ''commercial'' from ''investment'' banking by restoring a protective barrier around our critical financial infrastructure. It covers not simply securities, but also derivatives and other financial products. It applies not only to banks, but also to nonbank financial firms whose size and function render them systemically significant.

While the intent of section 619 is to restore the purpose of the Glass-Steagall barrier between commercial and investment banks, we also update that barrier to reflect the modern financial world and permit a broad array of low-risk, client-oriented financial services. As a result, the barrier constructed in section 619 will not restrict most financial firms.

Section 619 is intended to limit proprietary trading by banking entities and systemically significant nonbank financial companies. Properly implemented, section 619's limits will tamp down on the risk to the system arising from firms competing to obtain greater and greater returns by increasing the size, leverage, and riskiness of their trades. This is a critical part of ending too big to fail financial firms. In addition, section 619 seeks to reorient the U.S. banking system away from leveraged, short-term speculation and instead towards the safe and sound provision of long-term credit to families and business enterprises.

We recognize that regulators are essential partners in the legislative process. Because regulatory interpretation is so critical to the success of the rule, we will now set forth, as the principal authors of Sections 619 to 621, our explanations of how these provisions work.

Section 619's prohibitions and restrictions on proprietary trading are set forth in a new section 13 to the Bank Holding Company Act of 1956, and subsection (a), paragraph (1) establishes the basic principle clearly: a banking entity shall not ''engage in proprietary trading'' or ''acquire or retain . . . ownership interest[s] in or sponsor a hedge fund or private equity fund'', unless otherwise provided in the section. Paragraph (2) establishes the principle for nonbank financial companies supervised by the Board by subjecting their proprietary trading activities to quantitative restrictions and additional capital charges. Such quantitative limits and capital charges are to be set by the regulators to address risks similar to those which lead to the flat prohibition for banking entities.

Subsection (h), paragraph (1) defines ''banking entity'' to be any insured depository institution (as otherwise defined under the Bank Holding Company Act), any entity that controls an insured depository institution, any entity that is treated as a bank holding company under section 8 of the International Banking Act of 1978, and any affiliates or subsidiaries of such entities. We and the Congress specifically rejected proposals to exclude the affiliates and subsidiaries of bank holding companies and insured depository institutions, because it was obvious that restricting a bank, but not its affiliates and subsidiaries, would ultimately be ineffective in restraining the type of high-risk proprietary trading that can undermine an insured depository institution.

The provision recognizes the modern reality that it is difficult to separate the fate of a bank and its bank holding company, and that for the bank holding company to be a source of strength to the bank, its activities, and those of its other subsidiaries and affiliates, cannot be at such great risk as to imperil the bank. We also note that not all banks pose the same risks. Accordingly, the paragraph provides a narrow exception for insured depository institutions that function principally for trust purposes and do not hold public depositor money, make loans, or access Federal Reserve lending or payment services. These specialized entities that offer very limited trust services are elsewhere carved out of the definition of ''bank,'' so we do not treat them as banks for the purposes of the restriction on proprietary trading. However, such institutions are covered by the restriction if they qualify under the provisions covering systemically important nonbank financial companies.

Subsection (h), paragraph (3) defines nonbank financial companies supervised by the Board to be those financial companies whose size, interconnectedness, or core functions are of sufficiently systemic significance as to warrant additional supervision, as directed by the Financial Stability Oversight Council pursuant to Title I of the Dodd-Frank Act. Given the varied nature of such nonbank financial companies, for some of which proprietary trading is effectively their business, an outright statutory prohibition on such trading was not warranted. Instead, the risks posed by their proprietary trading is addressed through robust capital charges and quantitative limits that increase with the size, interconnectedness, and systemic importance of the business functions of the nonbank financial firm. These restrictions should become stricter as size, leverage, and other factors increase. As with banking entities, these restrictions should also help reduce the size and risk of these financial firms.

Naturally, the definition of ''proprietary trading'' is critical to the provision. For the purposes of section 13, proprietary trading means ''engaging as a principal for the trading account'' in transactions to ''purchase or sell, or otherwise acquire or dispose of'' a wide range of traded financial products, including securities, derivatives, futures, and options. There are essentially three key elements to the definition: (1) the firm must be acting ''as a principal,'' (2) the trading must be in its ''trading account'' or another similar account, and (3) the restrictions apply to the full range of its financial instruments.

Purchasing or selling ''as a principal'' refers to when the firm purchases or sells the relevant financial instrument for its own account. The prohibition on proprietary trading does not cover trading engaged with exclusively client funds.

The term ''trading account'' is intended to cover an account used by a firm to make profits from relatively short-term trading positions, as opposed to long-term, multi-year investments. The administration's proposed Volcker Rule focused on short-term trading, using the phrase ''trading book'' to capture that concept. That phrase, which is currently used by some bank regulators was rejected, however, and the ultimate conference report language uses the term ''trading account'' rather than ''trading book'' to ensure that all types of accounts used for proprietary trading are covered by the section.

To ensure broad coverage of the prohibition on proprietary trading, paragraph (3) of subsection (h) defines ''trading account'' as any account used ''principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements)'' and such other accounts as the regulators determine are properly covered by the provision to fulfill the purposes of the section. In designing this definition, we were aware of bank regulatory capital rules that distinguish between short-term trading and long-term investments, and our overall focus was to restrict high-risk proprietary trading. For banking entity subsidiaries that do not maintain a distinction between a trading account and an investment account, all accounts should be presumed to be trading accounts and covered by the restriction.

Linking the prohibition on proprietary trading to trading accounts permits banking entities to hold debt securities and other financial instruments in long-term investment portfolios. Such investments should be maintained with the appropriate capital charges and held for longer periods.

The definition of proprietary trading in paragraph (4) covers a wide range of financial instruments, including securities, commodities, futures, options, derivatives, and any similar financial instruments. Pursuant to the rule of construction in subsection (g), paragraph (2), the definition should not generally include loans sold in the process of securitizing; however, it could include such loans if such loans become financial instruments traded to capture the change in their market value.

Limiting the definition of proprietary trading to near-term holdings has the advantage of permitting banking entities to continue to deploy credit via long-term capital market debt instruments. However, it has the disadvantage of failing to prevent the problems created by longer-term holdings in riskier financial instruments, for example, highly complex collateralized debt obligations and other opaque instruments that are not readily marketable. To address the risks to the banking system arising from those longer-term instruments and related trading, section 620 directs Federal banking regulators to sift through the assets, trading strategies, and other investments of banking entities to identify assets or activities that pose unacceptable risks to banks, even when held in longer-term accounts. Regulators are expected to apply the lessons of that analysis to tighten the range of investments and activities permissible for banking entities, whether they are at the insured depository institution or at an affiliate or subsidiary, and whether they are short or long term in nature.

The new Bank Holding Company Act section 13 also restricts investing in or sponsoring hedge funds and private equity funds. Clearly, if a financial firm were able to structure its proprietary positions simply as an investment in a hedge fund or private equity fund, the prohibition on proprietary trading would be easily avoided, and the risks to the firm and its subsidiaries and affiliates would continue. A financial institution that sponsors or manages a hedge fund or private equity fund also incurs significant risk even when it does not invest in the fund it manages or sponsors. Although piercing the corporate veil between a fund and its sponsoring entity may be difficult, recent history demonstrates that a financial firm will often feel compelled by reputational demands and relationship preservation concerns to bail out clients in a failed fund that it managed or sponsored, rather than risk litigation or lost business. Knowledge of such concerns creates a moral hazard among clients, attracting investment into managed or sponsored funds on the assumption that the sponsoring bank or systemically significant firm will rescue them if markets turn south, as was done by a number of firms during the 2008 crisis. That is why setting limits on involvement in hedge funds and private equity funds is critical to protecting against risks arising from asset management services.

Subsection (h), paragraph (2) sets forth a broad definition of hedge fund and private equity fund, not distinguishing between the two. The definition includes any company that would be an investment company under the Investment Company Act of 1940, but is excluded from such coverage by the provisions of sections 3(c)(1) or 3(c)(7). Although market practice in many cases distinguishes between hedge funds, which tend to be trading vehicles, and private equity funds, which tend to own entire companies, both types of funds can engage in high risk activities and it is exceedingly difficult to limit those risks by focusing on only one type of entity.

Despite the broad prohibition on proprietary trading set forth in subsection (a), the legislation recognizes that there are a number of low-risk proprietary activities that do not pose unreasonable risks and explicitly permits those activities to occur. Those low-risk proprietary trading activities are identified in subsection (d), paragraph (1), subject to certain limitations set forth in paragraph (2), and additional capital charges required in paragraph (3).

While paragraph (1) authorizes several permitted activities, it simultaneously grants regulators broad authority to set further restrictions on any of those activities and to supplement the additional capital charges provided for by paragraph (3).

Subparagraph (d)(1)(A) authorizes the purchase or sale of government obligations, including government-sponsored enterprise, GSE, obligations, on the grounds that such products are used as low-risk, short-term liquidity positions and as low-risk collateral in a wide range of transactions, and so are appropriately retained in a trading account. Allowing trading in a broad range of GSE obligations is also meant to recognize a market reality that removing the use of these securities as liquidity and collateral positions would have significant market implications, including negative implications for the housing and farm credit markets. By authorizing trading in GSE obligations, the language is not meant to imply a view as to GSE operations or structure over the long-term, and permits regulators to add restrictions on this permitted activity as necessary to prevent high-risk proprietary trading activities under paragraph (2). When GSE reform occurs, we expect these provisions to be adjusted accordingly. Moreover, as is the case with all permitted activities under paragraph (1), regulators are expected to apply additional capital restrictions under paragraph (3) as necessary to account for the risks of the trading activities.

Subparagraph (d)(1)(B) permits underwriting and market-making-related transactions that are technically trading for the account of the firm but, in fact, facilitate the provision of near-term client-oriented financial services. Market-making is a customer service whereby a firm assists its customers by providing two-sided markets for speedy acquisition or disposition of certain financial instruments. Done properly, it is not a speculative enterprise, and revenues for the firm should largely arise from the provision of credit provided, and not from the capital gain earned on the change in the price of instruments held in the firm's accounts. Academic literature sets out the distinctions between making markets for customers and holding speculative positions in assets, but in general, the two types of trading are distinguishable by the volume of trading, the size of the positions, the length of time that positions remains open, and the volatility of profits and losses, among other factors. Regulations implementing this permitted activity should focus on these types of factors to assist regulators in distinguishing between financial firms assisting their clients versus those engaged in proprietary trading. Vigorous and robust regulatory oversight of this issue will be essential to the prevent ''market-making'' from being used as a loophole in the ban on proprietary trading.

The administration's draft language, the original section 619 contemplated by the Senate Banking Committee, and amendment 4101 each included the term ''in facilitation of customer relations'' as a permitted activity. The term was removed in the final version of the Dodd-Frank Act out of concern that this phrase was too subjective, ambiguous, and susceptible to abuse. At the same time, we recognize that the term was previously included to permit certain legitimate client-oriented services, such pre-market-making accumulation of small positions that might not rise to the level of fully ''market-making'' in a security or financial instrument, but are intended to nonetheless meet expected near-term client liquidity needs. Accordingly, while previous versions of the legislation referenced ''market-making'', the final version references ''market-making-related'' to provide the regulators with limited additional flexibility to incorporate those types of transactions to meet client needs, without unduly warping the common understanding of market-making.

We note, however, that ''market-making-related'' is not a term whose definition is without limits. It does not implicitly cover every time a firm buys an existing financial instrument with the intent to later sell it, nor does it cover situations in which a firm creates or underwrites a new security with the intent to market it to a client. Testimony by Goldman Sachs Chairman Lloyd Blankfein and other Goldman executives during a hearing before the Permanent Subcommittee on Investigations seemed to suggest that any time the firm created a new mortgage related security and began soliciting clients to buy it, the firm was ''making a market'' for the security. But one-sided marketing or selling securities is not equivalent to providing a two-sided market for clients buying and selling existing securities. The reality was that Goldman Sachs was creating new securities for sale to clients and building large speculative positions in high-risk instruments, including credit default swaps. Such speculative activities are the essence of proprietary trading and cannot be properly considered within the coverage of the terms ''market-making'' or ''market-making-related.''

The subparagraph also specifically limits such underwriting and market-making-related activities to ''reasonably expected near term demands of clients, customers, and counterparties.'' Essentially, the subparagraph creates two restrictions, one on the expected holding period and one on the intent of the holding. These two restrictions greatly limit the types of risks and returns for market-makers. Generally, the revenues for market-making by the covered firms should be made from the fees charged for providing a ready, two-sided market for financial instruments, and not from the changes in prices acquired and sold by the financial institution. The ''near term'' requirement connects to the provision in the definition of trading account whereby the account is defined as trading assets that are acquired ''principally for the purpose of selling in the near term.'' The intent is to focus firms on genuinely making markets for clients, and not taking speculative positions with the firm's capital. Put simply, a firm will not satisfy this requirement by acquiring a position on the hope that the position will be able to be sold at some unknown future date for a trading profit.

Subparagraph (d)(1)(C) permits a banking entity to engage in ''risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of the banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.'' This activity is permitted because its sole purpose is to lower risk.

While this subparagraph is intended to permit banking entities to utilize their trading accounts to hedge, the phrase ''in connection with and related to individual or aggregated positions . . .'' was added between amendment 4101 and the final version in the conference report in order to ensure that the hedge applied to specific, identifiable assets, whether it be on an individual or aggregate basis. Moreover, hedges must be to reduce ''specific risks'' to the banking entity arising from these positions. This formulation is meant to focus banking entities on traditional hedges and prevent proprietary speculation under the guise of general ''hedging.'' For example, for a bank with a significant set of loans to a foreign country, a foreign exchange swap may be an appropriate hedging strategy. On the other hand, purchasing commodity futures to ''hedge'' inflation risks that may generally impact the banking entity may be nothing more than proprietary trading under another name. Distinguishing between true hedges and covert proprietary trades may be one of the more challenging areas for regulators, and will require clear identification by financial firms of the specific assets and risks being hedged, research and analysis of market best practices, and reasonable regulatory judgment calls. Vigorous and robust regulatory oversight of this issue will be essential to the prevent ''hedging'' from being used as a loophole in the ban on proprietary trading.

Subparagraph (d)(1)(D) permits the acquisition of the securities and other affected financial instruments ''on behalf of customers.'' This permitted activity is intended to allow financial firms to use firm funds to purchase assets on behalf of their clients, rather than on behalf of themselves. This subparagraph is intended, in particular, to provide reassurance that trading in ''street name'' for customers or in trust for customers is permitted.

In general, subparagraph (d)(1)(E) provides exceptions to the prohibition on investing in hedge funds or private equity funds, if such investments advance a ''public welfare'' purpose. It permits investments in small business investment companies, which are a form of regulated venture capital fund in which banks have a long history of successful participation. The subparagraph also permits investments ''of the type'' permitted under the paragraph of the National Bank Act enabling banks to invest in a range of low-income community development and other projects. The subparagraph also specifically mentions tax credits for historical building rehabilitation administered by the National Park Service, but is flexible enough to permit the regulators to include other similar low-risk investments with a public welfare purpose.

Subparagraph (d)(1)(F) is meant to accommodate the normal business of insurance at regulated insurance companies that are affiliated with banks. The Volcker Rule was never meant to affect the ordinary business of insurance: the collection and investment of premiums, which are then used to satisfy claims of the insured. These activities, while definitionally proprietary trading, are heavily regulated by State insurance regulators, and in most cases do not pose the same level of risk as other proprietary trading.

However, to prevent abuse, firms seeking to rely on this insurance-related exception must meet two essential qualifications. First, only trading for the general account of the insurance firm would qualify. Second, the trading must be subject to adequate State-level insurance regulation. Trading by insurance companies or their affiliates that is not subject to insurance company investment regulations will not qualify for protection here.

Further, where State laws and regulations do not exist or otherwise fail to appropriately connect the insurance company investments to the actual business of insurance or are found to inadequately protect the firm, the subparagraph's conditions will not be met.

Subparagraph (d)(1)(G) permits firms to organize and offer hedge funds or private equity funds as an asset management service to clients. It is important to remember that nothing in section 619 otherwise prohibits a bank from serving as an investment adviser to an independent hedge fund or private equity fund. Yet, to serve in that capacity, a number of criteria must be met.

First, the firm must be doing so pursuant to its provision of bona fide trust, fiduciary, or investment advisory services to customers. Given the fiduciary obligations that come with such services, these requirements ensure that banking entities are properly engaged in responsible forms of asset management, which should tamp down on the risks taken by the relevant fund.

Second, subparagraph (d)(1)(G) provides strong protections against a firm bailing out its funds. Clause (iv) prohibits banking entities, as provided under paragraph (1) and (2) of subsection (f), from entering into lending or similar transactions with related funds, and clause (v) prohibits banking entities from ''directly or indirectly, guarantee[ing], assum[ing], or otherwise insur[ing] the obligations or performance of the hedge fund or private equity fund.'' To prevent banking entities from engaging in backdoor bailouts of their invested funds, clause (v) extends to the hedge funds and private equity funds in which such subparagraph (G) hedge funds and private equity funds invest.

Third, to prevent a banking entity from having an incentive to bailout its funds and also to limit conflicts of interest, clause (vii) of subparagraph (G) restricts directors and employees of a banking entity from being invested in hedge funds and private equity funds organized and offered by the banking entity, except for directors or employees ''directly engaged'' in offering investment advisory or other services to the hedge fund or private equity fund. Fund managers can have ''skin in the game'' for the hedge fund or private equity fund they run, but to prevent the bank from running its general employee compensation through the hedge fund or private equity fund, other management and employees may not.

Fourth, by stating that a firm may not organize and offer a hedge fund or private equity fund with the firm's name on it, clause (vi) of subparagraph (G) further restores market discipline and supports the restriction on firms bailing out funds on the grounds of reputational risk. Similarly, clause (viii) ensures that investors recognize that the funds are subject to market discipline by requiring that funds provide prominent disclosure that any losses of a hedge fund or private equity fund are borne by investors and not by the firm, and the firm must also comply with any other restrictions to ensure that investors do not rely on the firm, including any of its affiliates or subsidiaries, for a bailout.

Fifth, the firm or its affiliates cannot make or maintain an investment interest in the fund, except in compliance with the limited fund seeding and alignment of interest provisions provided in paragraph (4) of subsection (d). This paragraph allows a firm, for the limited purpose of maintaining an investment management business, to seed a new fund or make and maintain a ''de minimis'' co-investment in a hedge fund or private equity fund to align the interests of the fund managers and the clients, subject to several conditions. As a general rule, firms taking advantage of this provision should maintain only small seed funds, likely to be $5 to $10 million or less. Large funds or funds that are not effectively marketed to investors would be evasions of the restrictions of this section. Similarly, co-investments designed to align the firm with its clients must not be excessive, and should not allow for firms to evade the intent of the restrictions of this section.

These ''de minimis'' investments are to be greatly disfavored, and subject to several significant restrictions. First, a firm may only have, in the aggregate, an immaterial amount of capital in such funds, but in no circumstance may such positions aggregate to more than 3 percent of the firm's Tier 1 capital. Second, by one year after the date of establishment for any fund, the firm must have not more than a 3 percent ownership interest. Third, investments in hedge funds and private equity funds shall be deducted on, at a minimum, a one-to-one basis from capital. As the leverage of a fund increases, the capital charges shall be increased to reflect the greater risk of loss. This is specifically intended to discourage these high-risk investments, and should be used to limit these investments to the size only necessary to facilitate asset management businesses for clients.

Subparagraphs (H) and (I) recognize rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States to engage in activities permitted under relevant foreign law. However, these subparagraphs are not intended to permit a U.S. banking entity to avoid the restrictions on proprietary trading simply by setting up an offshore subsidiary or reincorporating offshore, and regulators should enforce them accordingly. In addition, the subparagraphs seek to maintain a level playing field by prohibiting a foreign bank from improperly offering its hedge fund and private equity fund services to U.S. persons when such offering could not be made in the United States.

Subparagraph (J) permits the regulators to add additional exceptions as necessary to ''promote and protect the safety and soundness of the banking entity and the financial stability of the United States.'' This general exception power is intended to ensure that some unforeseen, low-risk activity is not inadvertently swept in by the prohibition on proprietary trading. However, the subparagraph sets an extremely high bar: the activity must be necessary to promote and protect the safety and soundness of the banking entity and the financial stability of the United States, and not simply pose a competitive disadvantage or a threat to firms' profitability.

Paragraph (2) of section (d) adds explicit statutory limits to the permitted activities under paragraph (1). Specifically, it prevents an activity from qualifying as a permitted activity if it would ''involve or result in a material conflict of interest,'' ''result directly or indirectly in a material exposure . . . to high-risk assets or high-risk trading strategies'' or otherwise pose a threat to the safety and soundness of the firm or the financial stability of the United States. Regulators are directed to define the key terms in the paragraph and implement the restrictions as part of the rulemaking process. Regulators should pay particular attention to the hedge funds and private equity funds organized and offered under subparagraph (G) to ensure that such activities have sufficient distance from other parts of the firm, especially those with windows into the trading flow of other clients. Hedging activities should also be particularly scrutinized to ensure that information about client trading is not improperly utilized.

The limitation on proprietary trading activities that ''involve or result in a material conflict of interest'' is a companion to the conflicts of interest prohibition in section 621, but applies to all types of activities rather than just asset-backed securitizations.

With respect to the definition of high-risk assets and high-risk trading strategies, regulators should pay close attention to the characteristics of assets and trading strategies that have contributed to substantial financial loss, bank failures, bankruptcies, or the collapse of financial firms or financial markets in the past, including but not limited to the crisis of 2008 and the financial crisis of 1998. In assessing high-risk assets and high-risk trading strategies, particular attention should be paid to the transparency of the markets, the availability of consistent pricing information, the depth of the markets, and the risk characteristics of the assets and strategies themselves, including any embedded leverage. Further, these characteristics should be evaluated in times of extreme market stress, such as those experienced recently. With respect to trading strategies, attention should be paid to the role that certain types of trading strategies play in times of relative market calm, as well as times of extreme market stress. While investment advisors may freely deploy high-risk strategies for their clients, attention should be paid to ensure that firms do not utilize them for their own proprietary activities. Barring high risk strategies may be particularly critical when policing market-making-related and hedging activities, as well as trading otherwise permitted under subparagraph (d)(1)(A). In this context, however, it is irrelevant whether or not a firm provides market liquidity: high-risk assets and high-risk trading strategies are never permitted.

Subsection (d), paragraph (3) directs the regulators to set appropriate additional capital charges and quantitative limits for permitted activities. These restrictions apply to both banking entities and nonbank financial companies supervised by the Board. It is left to regulators to determine if those restrictions should apply equally to both, or whether there may appropriately be a distinction between banking entities and non-bank financial companies supervised by the Board. The paragraph also mandates diversification requirements where appropriate, for example, to ensure that banking entities do not deploy their entire permitted amount of de minimis investments into a small number of hedge funds or private equity funds, or that they dangerously over-concentrate in specific products or types of financial products.

Subsection (e) provides vigorous anti-evasion authority, including record-keeping requirements. This authority is designed to allow regulators to appropriately assess the trading of firms, and aggressively enforce the text and intent of section 619.

The restrictions on proprietary trading and relationships with private funds seek to break the internal connection between a bank's balance sheet and taking risk in the markets, with a view towards reestablishing market discipline and refocusing the bank on its credit extension function and client services. In the recent financial crisis, when funds advised by banks suffered significant losses, those off-balance sheet funds came back onto the banks' balance sheets. At times, the banks bailed out the funds because the investors in the funds had other important business with the banks. In some cases, the investors were also key personnel at the banks. Regardless of the motivations, in far too many cases, the banks that bailed out their funds ultimately relied on taxpayers to bail them out. It is precisely for this reason that the permitted activities under subparagraph (d)(1)(G) are so narrowly defined.

Indeed, a large part of protecting firms from bailing out their affiliated funds is by limiting the lending, asset purchases and sales, derivatives trading, and other relationships that a banking entity or nonbank financial company supervised by the Board may maintain with the hedge funds and private equity funds it advises. The relationships that a banking entity maintains with and services it furnishes to its advised funds can provide reasons why and the means through which a firm will bail out an advised fund, be it through a direct loan, an asset acquisition, or through writing a derivative. Further, providing advisory services to a hedge fund or private equity fund creates a conflict of interest and risk because when a banking entity is itself determining the investment strategy of a fund, it no longer can make a fully independent credit evaluation of the hedge fund or private equity fund borrower. These bailout protections will significantly benefit independent hedge funds and private equity funds, and also improve U.S. financial stability.

Accordingly, subsection (f), paragraph (1) sets forth the broad prohibition on a banking entity entering into any ''covered transactions'' as such term is defined in the Federal Reserve Act's section 23A, as if such banking entity were a member bank and the fund were an affiliate thereof. ''Covered transactions'' under section 23A includes loans, asset purchases, and, following the Dodd-Frank bill adoption, derivatives between the member bank and the affiliate. In general, section 23A sets limits on the extension of credit between such entities, but paragraph (1) of subsection (f) prohibits all such transactions. It also prohibits transactions with funds that are controlled by the advised or sponsored fund. In short, if a banking entity organizes and offers a hedge fund or private equity fund or serves as investment advisor, manager, or sponsor of a fund, the fund must seek credit, including from asset purchases and derivatives, from an independent third party.

Subsection (f), paragraph (2) applies section 23B of the Federal Reserve Act to a banking entity and its advised or sponsored hedge fund or private equity fund. This provides, inter alia, that transactions between a banking entity and its fund be conducted at arms length. The fact that section 23B also includes the provision of covered transactions under section 23A as part of its arms-length requirement should not be interpreted to undermine the strict prohibition on such transactions in paragraph (1).

Subsection (f), paragraph (3) permits the Board to allow a very limited exception to paragraph (1) for the provision of certain limited services under the rubric of ''prime brokerage'' between the banking entity and a third-party-advised fund in which the fund managed, sponsored, or advised by the banking entity has taken an ownership interest. Essentially, it was argued that a banking entity should not be prohibited, under proper restrictions, from providing limited services to unaffiliated funds, but in which its own advised fund may invest. Accordingly, paragraph (3) is intended to only cover third-party funds, and should not be used as a means of evading the general prohibition provided in paragraph (1). Put simply, a firm may not create tiered structures and rely upon paragraph (3) to provide these types of services to funds for which it serves as investment advisor.

Further, in recognition of the risks that are created by allowing for these services to unaffiliated funds, several additional criteria must also be met for the banking entity to take advantage of this exception. Most notably, on top of the flat prohibitions on bailouts, the statute requires the chief executive officer of firms taking advantage of this paragraph to also certify that these services are not used directly or indirectly to bail out a fund advised by the firm.

Subsection (f), paragraph (4) requires the regulatory agencies to apply additional capital charges and other restrictions to systemically significant nonbank financial institutions to account for the risks and conflicts of interest that are addressed by the prohibitions for banking entities. Such capital charges and other restrictions should be sufficiently rigorous to account for the significant amount of risks associated with these activities.

To give markets and firms an opportunity to adjust, implementation of section 620 will proceed over a period of several years. First, pursuant to subsection (b), paragraph (1), the Financial Stability Oversight Council will conduct a study to examine the most effective means of implementing the rule. Then, under paragraph (b)(2), the Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall each engage in rulemakings for their regulated entities, with the rulemaking coordinated for consistency through the Financial Stability Oversight Council. In coordinating the rulemaking, the Council should strive to avoid a ''lowest common denominator'' framework, and instead apply the best, most rigorous practice from each regulatory agency.

Pursuant to subsection (c), paragraph (1), most provisions of section 619 become effective 12 months after the issuance of final rules pursuant to subsection (b), but in no case later than 2 years after the enactment of the Dodd-Frank Act. Paragraph (c)(2) provides a 2-year period following effective date of the provision during which entities must bring their activities into conformity with the law, which may be extended for up to 3 more years. Special illiquid funds may, if necessary, receive one 5-year extension and may also continue to honor certain contractual commitments during the transition period. The purpose of this extended wind-down period is to minimize market disruption while still steadily moving firms away from the risks of the restricted activities.

The definition of ''illiquid funds'' set forth in subsection (h) paragraph (7) is meant to cover, in general, very illiquid private equity funds that have deployed capital to illiquid assets such as portfolio companies and real estate with a projected investment holding period of several years. The Board, in consultation with the SEC, should therefore adopt rules to define the contours of an illiquid fund as appropriate to capture the intent of the provision. To facilitate certainty in the market with respect to divestiture, the Board is to conduct a special expedited rulemaking regarding these conformance and wind-down periods. The Board is also to set capital rules and any additional restrictions to protect the banking entities and the U.S. financial system during this wind-down period.

We noted above that the purpose of section 620 is to review the long-term investments and other activities of banks. The concerns reflected in this section arise out of losses that have appeared in the long-term investment portfolios in traditional depository institutions.

Over time, various banking regulators have displayed expansive views and conflicting judgments about permissible investments for banking entities. Some of these activities, including particular trading strategies and investment assets, pose significant risks. While section 619 provides numerous restrictions to proprietary trading and relationships to hedge funds and private equity funds, it does not seek to significantly alter the traditional business of banking.

Section 620 is an attempt to reevaluate banking assets and strategies and see what types of restrictions are most appropriate. The Federal banking agencies should closely review the risks contained in the types of assets retained in the investment portfolio of depository institutions, as well as risks in affiliates' activities such as merchant banking. The review should dovetail with the determination of what constitutes ''high-risk assets'' and ''high risk trading strategies'' under paragraph (d)(2).

At this point, I yield to Senator LEVIN to discuss an issue that is of particular interest to him involving section 621's conflict of interest provisions.

Mr. LEVIN. I thank my colleague for the detailed explanation he has provided of sections 619 and 620, and fully concur in it. I would like to add our joint explanation of section 621, which addresses the blatant conflicts of interest in the underwriting of asset-backed securities highlighted in a hearing with Goldman Sachs before the Permanent Subcommittee on Investigations, which I chair.

The intent of section 621 is to prohibit underwriters, sponsors, and others who assemble asset-backed securities, from packaging and selling those securities and profiting from the securities' failures. This practice has been likened to selling someone a car with no brakes and then taking out a life insurance policy on the purchaser. In the asset-backed securities context, the sponsors and underwriters of the asset-backed securities are the parties who select and understand the underlying assets, and who are best positioned to design a security to succeed or fail. They, like the mechanic servicing a car, would know if the vehicle has been designed to fail. And so they must be prevented from securing handsome rewards for designing and selling malfunctioning vehicles that undermine the asset-backed securities markets. It is for that reason that we prohibit those entities from engaging in transactions that would involve or result in material conflicts of interest with the purchasers of their products.

Section 621 is not intended to limit the ability of an underwriter to support the value of a security in the aftermarket by providing liquidity and a ready two-sided market for it. Nor does it restrict a firm from creating a synthetic asset-backed security, which inherently contains both long and short positions with respect to securities it previously created, so long as the firm does not take the short position. But a firm that underwrites an asset-backed security would run afoul of the provision if it also takes the short position in a synthetic asset-backed security that references the same assets it created. In such an instance, even a disclosure to the purchaser of the underlying asset-backed security that the underwriter has or might in the future bet against the security will not cure the material conflict of interest.

We believe that the Securities and Exchange Commission has sufficient authority to define the contours of the rule in such a way as to remove the vast majority of conflicts of interest from these transactions, while also protecting the healthy functioning of our capital markets.

In conclusion, we would like to acknowledge all our supporters, co-sponsors, and advisers who assisted us greatly in bringing this legislation to fruition. From the time President Obama announced his support for the Volcker Rule, a diverse and collaborative effort has emerged, uniting community bankers to old school financiers to reformers. Senator MERKLEY and I further extend special thanks to the original cosponsors of the PROP Trading Act, Senators TED KAUFMAN, SHERROD BROWN, and JEANNE SHAHEEN, who have been with us since the beginning.

Senator JACK REED and his staff did yeoman's work in advancing this cause. We further tip our hat to our tireless and vocal colleague, Senator BYRON DORGAN, who opposed the repeal of Glass-Steagall and has been speaking about the risks from proprietary trading for a number of years. Above all, we pay tribute to the tremendous labors of Chairman CHRIS DODD and his entire team and staff on the Senate Banking Committee, as well as the support of Chairman BARNEY FRANK and Representative PAUL KANJORSKI. We extend our deep gratitude to our staffs, including the entire team and staff at the Permanent Subcommittee on Investigations, for their outstanding work. And last but not least, we highlight the visionary leadership of Paul Volcker and his staff. Without the support of all of them and many others, the Merkley-Levin language would not have been included in the Conference Report.

We believe this provision will stand the test of time. We hope that our regulators have learned with Congress that tearing down regulatory walls without erecting new ones undermines our financial stability and threatens economic growth. We have legislated to the best of our ability. It is now up to our regulators to fully and faithfully implement these strong provisions.

I yield the floor to Senator MERKLEY.

Mr. MERKLEY. I thank my colleague for his remarks and concur in all respects.

Mr. DODD. Mr. President, I said so yesterday, and I will say it again: I thank Senator MERKLEY. I guess there are four new Members of the Senate serving on the Banking Committee. Senator MERKLEY, Senator WARNER, Senator TESTER, and Senator BENNET are all new Members of the Senate from their respective States of Oregon, Virginia, Montana, and Colorado. To be thrown into what has been the largest undertaking of the Banking Committee, certainly in my three decades here—and many have argued going back almost 100 years—was certainly an awful lot to ask.

I have already pointed out the contribution Senator WARNER has made to this bill. But I must say as well that Senator BENNET of Colorado has been invaluable in his contributions. I just mentioned Senator TESTER a moment ago for his contribution on talking about rural America and the importance of those issues. And Senator MERKLEY, as a member of the committee, on matters we included here dealing particularly with the mortgage reforms, the underwriting standards, the protections people have to go through, and credit cards as well—we passed the credit card bill—again, it was Senator JEFF MERKLEY of Oregon who played a critical role in that whole debate not to mention, of course, working with CARL LEVIN, one of the more senior Members here, having served for many years in the Senate. But the Merkley-Levin, Levin-Merkley provisions in this bill have added substantial contributions to this effort. So I thank him for his contribution.

I see my colleague from North Dakota is here. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided among both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DODD. Mr. President, we listened to Senator CONRAD, the chairman of the Budget Committee, address the budget point of order. I urge my colleagues to waive the point of order.

We came up with an alternative offset in the conference committee, much at the insistence—and I thanked him for that—of Senator BROWN of Massachusetts, looking for a better offset than the ones which were originally in the conference report. I know my colleague from Maine as well had reservations about what we originally included.

The offset here ends TARP, which I presume most people would welcome with open arms, saving us $11 billion by terminating it early, as well as then complying with the request by the chairperson of the Federal Deposit Insurance Corporation, Sheila Bair, to provide for additional assessments to meet the obligations of the FDIC and the insurance fund. Both of those items provide the necessary offsets to the cost of this bill.

The long-term deficit point of order is caused by the orderly liquidation authority for systemically significant financial institutions.

Let me note that this critically important aspect of the legislation was developed in very close cooperation with Senator SHELBY in the Shelby-Dodd amendment. It also reflects the bipartisan cooperation of Senators CORKER and WARNER. The Shelby-Dodd amendment passed this body overwhelmingly with over 90 votes.

Even though the liquidation authority is the source of long-term budget costs, it is still 100 percent paid for. The Shelby-Dodd amendment and the Boxer amendment made sure that this would be the case. Let me repeat, the liquidation authority, which is the dominant source of the budget cost in the bill, is 100 percent paid for over time.

The only reason that the liquidation authority scores at all is because of timing. The FDIC may initially have to borrow funds from the Treasury in order to wind down the failed company and put it out of business. Because it will take time to liquidate a large, interconnected financial company, there is a lag between when the funds are borrowed and when they are repaid by the sale of the failed companies' assets, its creditors and assessments on the industry if necessary.

One more important point on budget scoring and the liquidation authority. CBO cannot factor in the costs to our nation of a failure to address the possibility of future bailouts. We have lived through that nightmare and it has cost our country dearly.

Now I would like to discuss the way in which we address the budget consequences of the legislation. In particular, I would like to respond to some comments that have been made about the provisions increasing the long-term minimum target for the FDIC and thereby strengthening the Deposit Insurance Fund, a goal that no one can credibly argue with in light of the recent crisis.

In fact, this provision is supported by FDIC Chairman Sheila Bair, and she has sent us a letter expressing her support. I will submit that for the RECORD at the end of this statement.

Some of my colleagues on the other side of the aisle have claimed that the use of the FDIC in this way is unprecedented and questioned how this could count as budget savings or offsets and at the same time preserve the funds for bank failures.

Let us clear up the misinformation. First, no FDIC funds are being spent on, or transferred to, other programs. Premiums paid by banks remain, as they have for over 75 years, in the FDIC fund solely to protect insured deposits.

And counting FDIC premiums as budget savings in legislation absolutely does have precedent. We have to look no further than relatively recent actions of Republican Congresses to find them.

Budget reconciliation legislation enacted in February 2006 and sponsored by my colleague from New Hampshire, who was then the Chairman of the Budget Committee, included FDIC reforms authored by my colleague from Alabama, who was then Chairman of the Banking Committee. Those provisions resulted in higher FDIC premiums, which CBO said yielded almost $2 billion in budget savings over 10 years.

So, my colleagues from New Hampshire and Alabama in fact relied on reforms to the Deposit Insurance Fund to obtain savings that CBO favorably scored.

And 10 years earlier, Congress attached to an omnibus spending bill enacted in September 1996 a provision calling for a special premium on thrifts to capitalize the FDIC's thrift insurance fund.

The appropriators in that earlier Republican Congress justified higher discretionary spending based partly on the budget savings scored by CBO for the FDIC assessment.

I would also like to respond to some comments that have been made about the treatment of TARP in this legislation.

We end TARP in the conference report. With the comprehensive financial reform put in place under this bill, we think it is the right time to bring TARP to a close, ending it earlier than had been planned. I think that is something everyone should be happy about. And ending TARP saves the government money. That is not just my conclusion. It is the conclusion of the Congressional Budget Office, $11 billion in savings.

It is true that the original TARP legislation passed as an emergency, its costs were declared an emergency when it passed, so rescinding those funds or ending the program now is ending spending that is considered ''emergency'' spending.

But the savings are no less real because of that. Interestingly, my Republican colleague who has raised the point of order offered an amendment in conference that would have rescinded stimulus funding to pay for this bill. Why is that relevant? Because the stimulus money was also designated as an emergency, so it would have received the same accounting treatment here in the Senate as TARP. Both were emergencies.

Both ending TARP early and rescinding stimulus funding would reduce the deficit, but the burden of cuts in stimulus funding would fall disproportionately on families and small businesses who have been victims of the economic fallout from the Wall Street crisis. Cutting such spending would be exactly the wrong thing to do as we try to get the economy back on track and people back to work.

The fact is that overall this bill does not do damage to our budgetary outlook.

It does make vital changes to make our financial system stronger and more stable and should be passed as soon as possible.

So I urge my colleagues to support a motion to waive the long-term deficit point of order.

FEDERAL DEPOSIT
INSURANCE CORPORATION,
Washington, DC, June 29, 2010.

Hon. CHRIS DODD,
Chairman, Committee on Banking, U.S. Senate, Washington, DC.

Hon. RICHARD SHELBY,
Ranking Minority Member, Committee on Banking, U.S. Senate, Washington, DC.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.

Hon. SPENCER BACHUS,
Ranking Minority Member, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR CHAIRMEN DODD AND FRANK AND RANKING MEMBERS SHELBY AND BACHUS: Thank you for your interest in our views regarding increasing the Deposit Insurance Fund (DIF) ratio to 1.35.

Federal deposit insurance promotes public confidence in our nation's banking system by providing a safe place for consumers' funds. Deposit insurance has provided much needed stability throughout this crisis. Moreover, insured deposits provide banks with a stable and cost-effective source of funds for lending in their communities. Importantly, the DIF is funded by the insured banking industry.

A key measure of the strength of the insurance fund is the reserve ratio, which is the amount in the DIF as a percentage of the industry's estimated insured deposits. Current law requires us to maintain a reserve ratio of at least 1.15 percent. One of the lessons learned from the current crisis is that a minimum reserve ratio of 1.15 is insufficient to avoid the need for pro-cyclical assessments in times of stress. One of my first priorities when I assumed the Chairmanship of the FDIC in June of 2006 was to begin building our reserves. Regrettably, there was insufficient time before the crisis hit. Indeed, we started this crisis with a DIF reserve ratio of 1.22 percent (as of December 31, 2007). Beginning in mid–2008, as bank failures increased and the insurance fund incurred losses, the Fund balance and reserve ratio dropped precipitously. The reserve ratio became negative in the third quarter of 2009 and hit a low of negative 0.39 percent as of December 31, 2009. To date, we have collected more than $65 billion in assessments, and are projected to collect another $80 billion by 2016 to restore the fund.

Given this experience, we believe it is clear that as the economy strengthens and the banking system heals, the reserve ratio needs to be increased. In fact, our Board has acted through regulation to target the reserve ratio at 1.25 percent, and a further increase to 1.35 percent is consistent with our view that the Fund should build up in good economic times and be allowed to fall in poor economic times, while maintaining relatively steady premiums throughout the economic cycle, thereby reducing the procyclicality of the assessment system.

Please let me know if you have any questions or would like to discuss further.

Sincerely,

SHEILA C. BAIR.

I again urge my colleagues to vote to waive the budget point of order, and, of course, I urge them as well to support the legislation when that vote occurs.

INTENT BEHIND SECTIONS 691–621

Mr. MERKLEY. Mr. President, I rise to engage my colleagues, Senators DODD and LEVIN, in a colloquy regarding some key aspects of our legislative intent behind sections 619 through 621, the Merkley-Levin rule on proprietary trading and conflicts of interest as included in the conference report.

First, I would like to clarify several issues surrounding the ''de minimis'' investment provisions in subsection (d)(4). These provisions complement subsection (d)(1)(G), which permits firms to offer hedge funds and private equity funds to clients. ''De minimis'' investments under paragraph (4) are intended to facilitate these offerings principally by allowing a firm to start new funds and to maintain coinvestments in funds, which help the firm align its interests with those of its clients. During the initial start-up period, during which time firms may maintain 100 percent ownership, the fund should be relatively small, but sufficient to effectively implement the investment strategy. After the start up period, a firm may keep an ongoing ''alignment of interest'' coinvestment at 3 percent of a fund. Our intent is not to allow for large, revolving ''seed'' funds to evade the strong restrictions on proprietary trading of this section, and regulators will need to be vigilant against such evasion. The aggregate of all seed and coinvestments should be immaterial to the banking entity, and never exceed 3 percent of a firm's Tier 1 capital.

Second, I would like to clarify the intent of subsection (f)'s provisions to prohibit banking entities from bailing out funds they manage, sponsor, or advise, as well as funds in which those funds invest. The ''permitted services'' provisions outlined in subsection (f) are intended to permit banks to maintain certain limited ''prime brokerage'' service relationships with unaffiliated funds in which a fund-of-funds that they manage invests, but are not intended to permit fund-of-fund structures to be used to weaken or undermine the prohibition on bailouts. Given the risk that a banking entity may want to bail out a failing fund directly or its investors, the ''permitted services'' exception must be implemented in a narrow, well-defined, and arms-length manner and regulators are not empowered to create loopholes allowing high-risk activities like leveraged securities lending or repurchase agreements. While we implement a number of legal restrictions designed to ensure that prime brokerage activities are not used to bail out a fund, we expect the regulators will nevertheless need to be vigilant.

Before I yield the floor to Senator LEVIN to discuss several additional items, let me say a word of thanks to my good friend, Chairman DODD, for taking the time to join me in clarifying these provisions. I also honor him for his extraordinary leadership on the entire financial reform package. As a fellow member of the Banking Committee, it has been a privilege to work with him on the entire bill, and not just these critical provisions. I also would like to recognize Senator LEVIN, whose determined efforts with his Permanent Subcommittee on Investigations helped highlight the causes of the recent crisis, as well as the need for reform. It has been a privilege working with him on this provision.

Mr. LEVIN. I thank the Senator, and I concur with his detailed explanations. His tireless efforts in putting these commonsense restrictions into law will help protect American families from reckless risk-taking that endangers our financial system and our economy.

The conflicts of interest provision under section 621 arises directly from the hearings and findings of our Permanent Subcommittee on Investigations, which dramatically showed how some firms were creating financial products, selling those products to their customers, and betting against those same products. This practice has been likened to selling someone a car with no brakes and then taking out a life insurance policy on the purchaser. In the asset-backed securities context, the sponsors and underwriters of the asset-backed securities are the parties who select and understand the underlying assets, and who are best positioned to design a security to succeed or fail. They, like the mechanic servicing a car, would know if the vehicle has been designed to fail. And so they must be prevented from securing handsome rewards for designing and selling malfunctioning vehicles that undermine the asset-backed securities markets. It is for that reason that we prohibit those entities from engaging in transactions that would involve or result in material conflicts of interest with the purchasers of their products.

First, I would like to address certain areas which we exclude from coverage. While a strong prohibition on material conflicts of interest is central to section 621, we recognize that underwriters are often asked to support issuances of asset-backed securities in the aftermarket by providing liquidity to the initial purchasers, which may mean buying and selling the securities for some time. That activity is consistent with the goal of supporting the offering, is not likely to pose a material conflict, and accordingly we are comfortable excluding it from the general prohibition. Similarly, market conditions change over time and may lead an underwriter to wish to sell the securities it holds. That is also not likely to pose a conflict. But regulators must act diligently to ensure that an underwriter is not making bets against the very financial products that it assembled and sold.

Second, I would like to address the role of disclosures in relations to conflicts of interest. In our view, disclosures alone may not cure these types of conflicts in all cases. Indeed, while a meaningful disclosure may alleviate the appearance of a material conflict of interest in some circumstances, in others, such as if the disclosures cannot be made to the appropriate party or because the disclosure is not sufficiently meaningful, disclosures are likely insufficient. Our intent is to provide the regulators with the authority and strong directive to stop the egregious practices, and not to allow for regulators to enable them to continue behind the fig leaf of vague, technically worded, fine print disclosures.

These provisions shall be interpreted strictly, and regulators are directed to use their authority to act decisively to protect our critical financial infrastructure from the risks and conflicts inherent in allowing banking entities and other large financial firms to engage in high risk proprietary trading and investing in hedge funds and private equity funds.

Mr. President, I would like to thank Chairman DODD for his extraordinary dedication in shepherding this massive financial regulatory reform package through the Senate and the conference committee. This has been a long process, and he and his staff have been very able and supportive partners in this effort.

Mr. DODD. I thank the Senator, and I strongly concur with the intentions and interpretations set forth by the principal authors of these provisions, Senators MERKLEY and LEVIN, as reflecting the legislative intent of the conference committee. I thank Senators MERKLEY and LEVIN for their leadership, which was so essential in achieving the conference report provisions governing proprietary trading and prohibiting conflicts of interest.

ASSESSING INDIVIDUAL ENTITIES

Mr. KOHL. Mr. President, I thank the Chairman for his continued work to ensure that appropriate resources are available to protect the economy from a future failure of a systemically risky financial institution and to help pay back taxpayers for the recent failures we experienced.

With regard to assessments under the orderly liquidation authority of the bill, the bill requires that a risk-based matrix of factors be established by the FDIC, taking into account the recommendations of the Financial Stability Oversight Council, to be used in connection with assessing any individual entity. One of the factors listed in the bill's risk matrix provision would take into account the activities of financial entities and their affiliates. Is it the intent of that language that a consideration of such factors should specifically include the impact of potential assessments on the ability of an institution that is a tax-exempt, not-for-profit organization to carry out their legally required charitable and educational activities?

As the Senator knows, many Members of the Senate—like me—feel strongly that we must ensure that our constituents and communities continue to have access to these vital resources, and any potential assessment on tax-exempt groups which are charitable and/or educational by mission could severely hamper these groups' ability to fulfill their obligations to carry out their legally required activities.

Mr. DODD. Yes, that is correct. The language is not intended to reduce such charitable and educational activities that are legally required for tax-exempt, not-for-profit organizations that are so important to communities across the country. I thank the Senator for his continued help on these efforts.

SECTION 603 TRUST COMPANIES

Ms. COLLINS. Mr. President, I ask the chairman of the Senate Banking Committee, my colleague from Connecticut, Senator DODD, to clarify the types of trust companies that fall within the scope of section 603(a), a provision that prohibits the Federal Deposit Insurance Corporation from approving an application for deposit insurance for certain companies, including certain trust companies, until 3 years after the date of enactment of this act.

Mr. DODD. I would be glad to clarify the nature of trust companies subject to the moratorium under section 603(a). The moratorium applies to an institution that is directly or indirectly owned or controlled by a commercial firm that functions solely in a trust or fiduciary capacity and is exempt from the definition of a bank in the Bank Holding Company Act. It does not apply to a nondepository trust company that does not have FDIC insurance and that does not offer demand deposit accounts or other deposits that may be withdrawn by check or similar means for payment to third parties.

Ms. COLLINS. I thank my colleague for his clarification.

NONBANK FINANCIAL COMPANIES

Ms. COLLINS. Mr. President, as we move to final passage of this historic legislation, I would like to thank Senator DODD again for his leadership and strong support for my amendment to ensure that all insured depository institutions and depository institution holding companies regardless of size, as well as nonbank financial companies supervised by the Federal Reserve, meet statutory minimum capital standards and thus have adequate capital throughout the economic cycle. Those standards required under section 171 serve as the starting point for the development of more stringent standards as required under section 165 of the bill.

I did, however, have questions about the designation of certain nonbank financial companies under section 113 for Federal Reserve supervision and the significance of such a designation in light of the minimum capital standards established by section 171. While I can envision circumstances where a company engaged in the business of insurance could be designated under section 113, I would not ordinarily expect insurance companies engaged in traditional insurance company activities to be designated by the council based on those activities alone. Rather, in considering a designation, I would expect the council to specifically take into account, among other risk factors, how the nature of insurance differs from that of other financial products, including how traditional insurance products differ from various off-balance-sheet and derivative contract exposures and how that different nature is reflected in the structure of traditional insurance companies. I would also expect the council to consider whether the designation of an insurance company is appropriate given the existence of State-based guaranty funds to pay claims and protect policyholders. Am I correct in that understanding?

Mr. DODD. The Senator is correct. The council must consider a number of factors, including, for example, the extent of leverage, the extent and nature of off-balance-sheet exposures, and the nature, scope, size, scale, concentration, interconnectedness, and mix of the company's activities. Where a company is engaged only in traditional insurance activities, the council should also take into account the matters you raised.

Ms. COLLINS. Would the Senator agree that the council should not base designations simply on the size of the financial companies?

Mr. DODD. Yes. The size of a financial company should not by itself be determinative.

Ms. COLLINS. As the Senator knows, insurance companies are already heavily regulated by State regulators who impose their own, very different regulatory and capital requirements. The fact that those capital requirements are not the same as those imposed by section 171 should not increase the likelihood that the council will designate an insurer. Does the Senator agree?

Mr. DODD. Yes, I do not believe that the council should decide to designate an insurer simply based on whether the insurer would meet bank capital requirements.

PREEMPTION STANDARD

Mr. CARPER. Mr. President, I am very pleased to see that the conference committee on the Dodd-Frank Wall Street Reform and Consumer Protection Act retained my amendment regarding the preemption standard for State consumer financial laws with only minor modifications. I very much appreciate the effort of Chairman DODD in fighting to retain the amendment in conference.

Mr. DODD. I thank the Senator. As the Senator knows, his amendment received strong bipartisan support on the Senate floor and passed by a vote of 80 to 18. It was therefore a Senate priority to retain his provision in our negotiations with the House of Representatives.

Mr. CARPER. One change made by the conference committee was to restate the preemption standard in a slightly different way, but my reading of the language indicates that the conference report still maintains the Barnett standard for determining when a State law is preempted.

Mr. DODD. The Senator is correct. That is why the conference report specifically cites the Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, 517 U.S. 25(1996) case. There should be no doubt that the legislation codifies the preemption standard stated by the U.S. Supreme Court in that case.

Mr. CARPER. I again thank the Senator. This will provide certainty to everyone—those who offer consumers financial products and to consumer themselves.

NONBANK FINANCIAL COMPANIES

Mr. KERRY. Mr. President, the conference report to accompany H.R. 4173, the Dodd-Frank Wall Street reform bill, creates a mechanism through which the Financial Stability Oversight Council may determine that material financial distress at a U.S. nonbank financial company could pose such a threat to the financial stability of the United States that the company should be supervised by the Board of Governors of the Federal Reserve System and should be subject to heightened prudential standards. It is my understanding that in making such a determination, the Congress intends that the council should focus on risk factors that contributed to the recent financial crisis, such as the use of excessive leverage and major off-balance-sheet exposure. The fact that a company is large or is significantly involved in financial services does not mean that it poses significant risks to the financial stability of the United States. There are large companies providing financial services that are in fact traditionally low-risk businesses, such as mutual funds and mutual fund advisers. We do not envision nonbank financial companies that pose little risk to the stability of the financial system to be supervised by the Federal Reserve. Does the chairman of the Banking Committee share my understanding of this provision?

Mr. DODD. The Senator from Massachusetts is correct. Size and involvement in providing credit or liquidity alone should not be determining factors. The Banking Committee intends that only a limited number of high-risk, nonbank financial companies would join large bank holding companies in being regulated and supervised by the Federal Reserve.

CAPITAL REQUIREMENTS

Ms. COLLINS. Mr. President, I understand that it is the intent of paragraph 7 of section 171(b) of this legislation to require the Federal banking agencies, subject to the recommendations of the council, to develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that are engaged in activities that are subject to heightened standards under section 120. It is well understood that minimum capital requirements can help to shield various public and private stakeholders from risks posed by material distress that could arise at these entities from engaging in these activities. It is also understood and recognized that minimum capital requirements may not be an appropriate tool to apply under all circumstances and that by prescribing section 171 capital requirements as the correct tool with respect to companies covered by paragraph 7, it should not be inferred that capital requirements should be required for any other companies not covered by paragraph 7.

Mrs. SHAHEEN. I also understand that the intent of this section is not to create any inference that minimum capital requirements are the appropriate standard or safeguard for the council to recommend to be applied to any nonbank financial company that is not subject to supervision by the Federal Reserve under title I of this legislation, with respect to any activity subject to section 120. Rather, the council should have full discretion not to recommend the application of capital requirements to any such nonbank financial company engaged in any such activity.

Mr. DODD. I concur with Senator COLLINS and Senator SHAHEEN. Section 171 of this legislation came from an amendment that Senator COLLINS offered on the Senate floor, and I truly appreciate the constructive contribution she has made to this legislative process. My understanding also is that the capital requirements under paragraph 7 are intended to apply only to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. I thank my friends from Maine and New Hampshire for this clarification.

INSURANCE COMPANY DEFINITION

Mr. NELSON of Nebraska. Mr. President, first, I would like to commend Chairman DODD for his hard work on the Wall Street reform bill and for maintaining an open and transparent process while developing this legislation. With regard to the orderly liquidation authority under title II of the bill, an ''insurance company'' is defined in section 201 as any entity that is engaged in the business of insurance, subject to regulation by a State insurance regulator, and covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company. Is it the intent of this definition that a mutual insurance holding company organized and operating under State insurance laws should be considered an insurance company for the purpose of this title?

Mr. DODD. Yes, that is correct. It is intended that a mutual insurance holding company organized and operating under State insurance laws should be considered an insurance company for the purpose of title II of this legislation. I thank the Senator from Nebraska for this clarification.

INDEPENDENT REPRESENTATIVES

Mrs. LINCOLN. Mr. President, as chairman of the Agriculture, Nutrition, and Forestry Committee, I became acutely aware that our pension plans, governmental investors, and charitable endowments were falling victim to swap dealers marketing swaps and security-based swaps that they knew or should have known to be inappropriate or unsuitable for their clients. Jefferson County, AL, is probably the most infamous example, but there are many others in Pennsylvania and across the country. That is why I worked with Senator HARKIN and our colleagues in the House to include protections for pension funds, governmental entities, and charitable endowments in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Those protections—set forth in section 731 and section 764 of the conference report—place certain duties and obligations on swap dealers and security-based swap dealers when they deal with special entities. One of those obligations is that a swap dealer or the security-based swap dealer entering into a swap or security-based swap with a special entity must have a reasonable basis for believing that the special entity has an independent representative evaluating the transaction. Our intention in imposing the independent representative requirement was to ensure that there was always someone independent of the swap dealer or the security-based swap dealer reviewing and approving swap or security-based swap transactions. However, we did not intend to require that the special entity hire an investment manager independent of the special entity. Is that your understanding, Senator HARKIN?

Mr. HARKIN. Yes, that is correct. We certainly understand that many special entities have internal managers that may meet the independent representative requirement. For example, many public electric and gas systems have employees whose job is to handle the day-to-day hedging operations of the system, and we intended to allow them to continue to rely on those in-house managers to evaluate and approve swap and security-based swap transactions, provided that the manager remained independent of the swap dealer or the security-based swap dealer and met the other conditions of the provision. Similarly, the named fiduciary or in-house asset manager—INHAM—for a pension plan may continue to approve swap and security-based swap transactions.

FOREIGN BANKS

Mrs. LINCOLN. Mr. President, I wish to engage my colleague, Senator DODD, in a brief colloquy related to the section 716, the bank swap desk provision.

In the rush to complete the conference, there was a significant oversight made in finalizing section 716 as it relates to the treatment of uninsured U.S. branches and agencies of foreign banks. Under the U.S. policy of national treatment, which has been part of U.S. law since the International Banking Act of 1978, uninsured U.S. branches and agencies of foreign banks are authorized to engage in the same activities as insured depository institutions. While these U.S. branches and agencies of foreign banks do not have deposits insured by the FDIC, they are registered and regulated by a Federal banking regulator, they have access to the Federal Reserve discount window, and other Federal Reserve credit facilities.

It is my understanding that a number of these U.S. branches and agencies of foreign banks will be swap entities under section 716 and title VII of Dodd-Frank. Due to the fact that the section 716 safe harbor only applies to ''insured depository institutions'' it means that U.S. branches and agencies of foreign banks will be forced to push out all their swaps activities. This result was not intended. U.S. branches and agencies of foreign banks should be subject to the same swap desk push out requirements as insured depository institutions under section 716. Under section 716, insured depository institutions must push out all swaps and security-based swaps activities except for specifically enumerated activities, such as hedging and other similar risk mitigating activities directly related to the insured depository institution's activities, acting as a swaps entity for swaps or security-based swaps that are permissible for investment, and acting as a swaps entity for cleared credit default swaps. U.S. branches and agencies of foreign banks should, and are willing to, meet the push out requirements of section 716 as if they were insured depository institutions.

This oversight on our part is unfortunate and clearly unintended. Does my colleague agree with me about the need to include uninsured U.S. branches and agencies of foreign banks in the safe harbor of section 716?

Mr. DODD. Mr. President, I agree completely with Senator LINCOLN's analysis and with the need to address this issue to ensure that uninsured U.S. branches and agencies of foreign banks are treated the same as insured depository institutions under the provisions of section 716, including the safe harbor language.

END USERS

Mrs. LINCOLN. Mr. President, I will ask unanimous consent to have printed in the RECORD a letter that Chairman DODD and I wrote to Chairmen FRANK and PETERSON during House consideration of this Conference Report regarding the derivatives title. The letter emphasizes congressional intent regarding commercial end users who enter into swaps contracts.

As we point out, it is clear in this legislation that the regulators only have the authority to set capital and margin requirements on swap dealers and major swap participants for uncleared swaps, not on end users who qualify for the exemption from mandatory clearing.

As the letter also makes clear, it is our intent that the any margin required by the regulators will be risk-based, keeping with the standards we have put into the bill regarding capital. It is in the interest of the financial system and end user counterparties that swap dealers and major swap participants are sufficiently capitalized. At the same time, Congress did not mandate that regulators set a specific margin level. Instead, we granted a broad authority to the regulators to set margin. Again, margin and capital standards must be risk-based and not be punitive.

It is also important to note that few end users will be major swap participants, as we have excluded ''positions held for hedging or mitigating commercial risk'' from being considered as a ''substantial position'' under that definition. I would ask Chairman DODD whether he concurs with my view of the bill.

Mr. DODD. I agree with the Chairman's assessment. There is no authority to set margin on end users, only major swap participants and swap dealers. It is also the intent of this bill to distinguish between commercial end users hedging their risk and larger, riskier market participants. Regulators should distinguish between these types of companies when implementing new regulatory requirements.

Mrs. LINCOLN. Mr. President, I ask unanimous consent to have printed in the RECORD the letter that Chairman DODD and I wrote to Chairmen FRANK and PETERSON to which I referred.

INVESTMENT ADVISER

Mrs. LINCOLN. Mr. President, I rise to discuss section 409 of the Dodd-Frank bill, which excludes family offices from the definition of investment adviser under the Investment Advisers Act. In section 409, the SEC is directed to define the term family offices and to provide exemptions that recognize the range of organizational, management, and employment structures and arrangement employed by family offices, and I thought it would be worthwhile to provide guidance on this provision.

For many decades, family offices have managed money for members of individual families, and they do not pose systemic risk or any other regulatory issues. The SEC has provided exemptive relief to some family offices in the past, but many family offices have simply relied on the ''under 15 clients'' exception to the Investment Advisers Act, and when Congress eliminated this exception, it was not our intent to include family offices in the bill.

The bill provides specific direction for the SEC in its rulemaking to recognize that most family offices often have officers, directors, and employees who may not be family members, and who are employed by the family office itself or affiliated entities owned, directly or indirectly, by the family members. Often, such persons co-invest with family members, which enable those persons to share in the profits of investments they oversee and better align the interests of those persons with those of the family members served by the family office. In addition, family offices may have a small number of co-investors such as persons who help identify investment opportunities, provide professional advice, or manage portfolio companies. However, the value of investments by such other persons should not exceed a de minimis percentage of the total value of the assets managed by the family office. Accordingly, section 409 directs the SEC not to exclude a family office from the definition by reason of its providing investment advice to these persons.

Mr. DODD. I thank the Senator. Pursuant to negotiations during the conference committee, it was my desire that the SEC write rules to exempt certain family offices already in operation from the definition of investment adviser, regardless of whether they had previously received an SEC exemptive order. It was my intent that the rule would: exempt family offices, provided that they operated in a manner consistent with the previous exemptive policy of the Commission as reflected in exemptive orders for family offices in effect on the date of enactment of the Dodd-Frank Act; reflect a recognition of the range of organizational, management and employment structures and arrangements employed by family offices; and not exclude any person who was not registered or required to be registered under the Advisers Act from the definition of the term ''family office'' solely because such person provides investment advice to natural persons who, at the time of their applicable investment, are officers, directors or employees of the family office who have previously invested with the family office and are accredited investors, any company owned exclusively by such officers, directors or employees or their successors-in-interest and controlled by the family office, or any other natural persons who identify investment opportunities to the family office and invest in such transactions on substantially the same terms as the family office invests, but do not invest in other funds advised by the family office, and whose assets to which the family office provides investment advice represent, in the aggregate, not more than 5 percent of the total assets as to which the family office provides investment advice.

Mrs. LINCOLN. I appreciate the Senator's explanation and ask that the Senator work with me to make this point in a technical corrections bill.

Mr. DODD. I agree that this position should be raised in a corrections bill and I look forward to working with the Senator towards this goal on this point.

Mrs. LINCOLN. I thank the Senator for his leadership and his assistance and cooperation in ensuring the passage of this important bill.

VOLCKER RULE

Mrs. BOXER. Mr. President, I wish to ask my good friend, the Senator from Connecticut and the chairman of the Banking Committee, to engage in a brief discussion relating to the final Volcker rule and the role of venture capital in creating jobs and growing companies.

I strongly support the Dodd-Frank Wall Street Reform and Consumer Protection Act, including a strong and effective Volcker rule, which is found in section 619 of the legislation.

I know the chairman recognizes, as we all do, the crucial and unique role that venture capital plays in spurring innovation, creating jobs and growing companies. I also know the authors of this bill do not intend the Volcker rule to cut off sources of capital for America's technology startups, particularly in this difficult economy. Section 619 explicitly exempts small business investment companies from the rule, and because these companies often provide venture capital investment, I believe the intent of the rule is not to harm venture capital investment.

Is my understanding correct?

Mr. DODD. Mr. President, I thank my friend, the Senator from California, for her support and for all the work we have done together on this important issue. Her understanding is correct.

The purpose of the Volcker rule is to eliminate excessive risk taking activities by banks and their affiliates while at the same time preserving safe, sound investment activities that serve the public interest. It prohibits proprietary trading and limits bank investment in hedge funds and private equity for that reason. But properly conducted venture capital investment will not cause the harms at which the Volcker rule is directed. In the event that properly conducted venture capital investment is excessively restricted by the provisions of section 619, I would expect the appropriate Federal regulators to exempt it using their authority under section 619(J).

CAPTIVE FINANCE

Ms. STABENOW. Mr. President, I would like to discuss the derivatives title of the Wall Street reform legislation with chairman of the Senate Agriculture, Nutrition, and Forestry Committee, Senator LINCOLN.

I would like to first commend the Senator and her staff's hard work on this critically important bill, which brings accountability, transparency, and oversight to the opaque derivatives market.

For too long the over-the-counter derivatives market has been unregulated, transferring risk between firms and creating a web of fragility in a system where entities became too interconnected to fail.

It is clear that unregulated derivative markets contributed to the financial crisis that crippled middle-class families. Small businesses and our manufacturers couldn't get the credit they needed to keep the lights on, and many had to close their doors permanently. People who had saved money and played by the rules lost $1.6 trillion from their retirement accounts. More than 6 million families lost their homes to foreclosure. And before the recession was over, more than 7 million Americans had lost their jobs.

The status quo is clearly not an option.

The conference between the Senate and the House produced a strong bill that will make sure these markets are accountable and fair and that the consumers are back in control.

I particularly want to thank the Senator for her efforts to protect manufacturers that use derivatives to manage risks associated with their operations. Whether it is hedging the risks related to fluctuating oil prices or foreign currency revenues, the ability to provide financial certainty to companies' balance sheets is critical to their viability and global competitiveness.

I am glad that the conference recognizes the distinction between entities that are using the derivatives market to engage in speculative trading and our manufacturers and businesses that are not speculating. Instead, they use this market responsibly to hedge legitimate business risk in order to reduce volatility and protect their plans to make investments and create jobs.

Is it the Senator's understanding that manufacturers and companies that are using derivatives to hedge legitimate business risk and do not engage in speculative behavior will not be subjected to the capital or margin requirements in the bill?

Mrs. LINCOLN. I thank the Senator for her efforts to protect manufacturers. I share the Senator's concerns, which is why our language preserves the ability of manufacturers and businesses to use derivatives to hedge legitimate business risk.

Working closely with the Senator, I believe the legislation reflects our intent by providing a clear and narrow end-user exemption from clearing and margin requirements for derivatives held by companies that are not major swap participants and do not engage in speculation but use these products solely as a risk-management tool to hedge or mitigate commercial risks.

Ms. STABENOW. Again, I appreciate the Senator's efforts to work with me on language that ensures manufacturers are not forced to unnecessarily divert working capital from core business activities, such as investing in new equipment and creating more jobs. As you know, large manufacturers of high-cost products often establish wholly owned captive finance affiliates to support the sales of its products by providing financing to customers and dealers.

Captive finance affiliates of manufacturing companies play an integral role in keeping the parent company's plants running and new products moving. This role is even more important during downturns and in times of limited market liquidity. As an example, Ford's captive finance affiliate, Ford Credit, continued to consistently support over 3,000 of Ford's dealers and Ford Credit's portfolio of more than 3 million retail customers during the recent financial crisis—at a time when banks had almost completely withdrawn from auto lending.

Many finance arms securitize their loans through wholly owned affiliate entities, thereby raising the funds they need to keep lending. Derivatives are integral to the securitization funding process and consequently facilitating the necessary financing for the purchase of the manufacturer's products.

If captive finance affiliates of manufacturing companies are forced to post margin to a clearinghouse it will divert a significant amount of capital out of the U.S. manufacturing sector and could endanger the recovery of credit markets on which manufacturers and their captive finance affiliates depend.

Is it the Senator's understanding that this legislation recognizes the unique role that captive finance companies play in supporting manufacturers by exempting transactions entered into by such companies and their affiliate entities from clearing and margin so long as they are engaged in financing that facilitates the purchase or lease of their commercial end user parents products and these swaps contracts are used for non-speculative hedging?

Mrs. LINCOLN. Yes, this legislation recognizes that captive finance companies support the jobs and investments of their parent company. It would ensure that clearing and margin requirements would not be applied to captive finance or affiliate company transactions that are used for legitimate, nonspeculative hedging of commercial risk arising from supporting their parent company's operations. All swap trades, even those which are not cleared, would still be reported to regulators, a swap data repository, and subject to the public reporting requirements under the legislation.

This bill also ensures that these exemptions are tailored and narrow to ensure that financial institutions do not alter behavior to exploit these legitimate exemptions.

Based on the Senator's hard work and interest in captive finance entities of manufacturing companies, I would like to discuss briefly the two captive finance provisions in the legislation and how they work together. The first captive finance provision is found in section 2(h)(7) of the CEA, the ''treatment of affiliates'' provision in the end-user clearing exemption and is entitled ''transition rule for affiliates.'' This provision is available to captive finance entities which are predominantly engaged in financing the purchase of products made by its parent or an affiliate. The provision permits the captive finance entity to use the clearing exemption for not less than two years after the date of enactment. The exact transition period for this provision will be subject to rulemaking. The second captive finance provision differs in two important ways from the first provision. The second captive finance provision does not expire after 2 years. The second provision is a permanent exclusion from the definition of ''financial entity'' for those captive finance entities who use derivatives to hedge commercial risks 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company. It is also limited to the captive finance entity's use of interest rate swaps and foreign exchange swaps. The second captive finance provision is also found in Section 2(h)(7) of the CEA at the end of the definition of ''financial entity.'' Together, these 2 provisions provide the captive finance entities of manufacturing companies with significant relief which will assist in job creation and investment by our manufacturing companies.

Ms. STABENOW. I agree that the integrity of these exemptions is critical to the reforms enacted in this bill and to the safety of our financial system. That is why I support the strong anti-abuse provisions included in the bill.

Would you please explain the safeguards included in this bill to prevent abuse?

Mrs. LINCOLN. It is also critical to ensure that we only exempt those transactions that are used to hedge by manufacturers, commercial entities and a limited number of financial entities. We were surgical in our approach to a clearing exemption, making it as narrow as possible and excluding speculators.

In addition to a narrow end-user exemption, this bill empowers regulators to take action against manipulation. Also, the Commodity Futures Trading Commission and the Securities Exchange Commission will have a broad authority to write and enforce rules to prevent abuse and to go after anyone that attempts to circumvent regulation.

America's consumers and businesses deserve strong derivatives reform that will ensure that the country's financial oversight system promotes and fosters the most honest, open and reliable financial markets in the world.

Ms. STABENOW. I thank the Chairman for this opportunity to clarify some of the provisions in this bill. I appreciate the Senator's help to ensure that this bill recognizes that manufacturers and commercial entities were victims of this financial crisis, not the cause, and that it does not unfairly penalize them for using these products as part of a risk-mitigation strategy.

It is time we shine a light on derivatives trading and bring transparency and fairness to this market, not just for the families and businesses that were taken advantage of but also for the long-term health of our economy and particularly our manufacturers.

STABLE VALUE FUNDS

Mr. HARKIN. Mr. President, as chairman of the Health, Education, Labor, and Pensions Committee, the pensions community approached me about a possible unintended consequence of the derivatives title of the Dodd-Frank Wall Street Reform and Consumer Protection Act. They were concerned that the provisions regulating swaps might also apply to stable value funds.

Stable value funds are a popular, conservative investment choice for many employee benefit plans because they provide a guaranteed rate of return. As I understand it, there are about $640 billion invested in stable value funds, and retirees and those approaching retirement often favor those funds to minimize their exposure to market fluctuations. When the derivatives title was put together, I do not think anyone had stable value funds or stable value wrap contracts—some of which could be viewed as swaps—specifically in mind, and I do not think it is clear to any of us what effect this legislation would have on them.

Therefore, I worked with Chairman LINCOLN, Senator LEAHY, and Senator CASEY to develop a proposal to direct the SEC and CFTC to conduct a study—in consultation with DOL, Treasury, and State insurance regulators—to determine whether it is in the public interest to treat stable value funds and wrap contracts like swaps. This provision is intended to apply to all stable value fund and wrap contracts held by employee benefit plans—defined contribution, defined benefit, health, or welfare—subject to any degree of direction provided directly by participants, including benefit payment elections, or by persons who are legally required to act solely in the interest of participants such as trustees.

If the SEC and CFTC determine that it is in the public interest to regulate stable value fund and wrap contracts as swaps, then they would have the power to do so. I think this achieves the policy goals underlying the derivatives title while still making sure that we don't cause unintended harm to people's pension plans.

Mrs. LINCOLN. Mr. President, I share Chairman HARKIN's concern about possible unintended consequences the Dodd-Frank Wall Street Reform and Consumer Protection Act could have on pension and welfare plans which provide their participant with stable value fund options. These stable value fund options and their contract wrappers could be viewed as being a swap or a security-based swap. As Chairman HARKIN has stated, there is a significant amount of retirement savings in stable value funds, $640 billion, which represents the retirement funds of millions of hardworking Americans. One of my major goals in this legislation was to protect Main Street. We should try to avoid doing any harm to pension plan beneficiaries. When the stable value fund issue was brought to my attention, I knew it was something we had to address. That is why I worked with Chairman HARKIN and Senators LEAHY and CASEY to craft a provision that would give the CFTC and the SEC time to study the issue of whether the stable value fund options and/or the contract wrappers for these stable value funds are ''swaps'' or some other type of financial instrument such as an insurance contract. I think subjecting this issue to further study will provide a measure of stability to participants and beneficiaries in employee benefit plans—including those participants in defined benefit pension plans, 401(k) plans, annuity plans, supplemental retirement plans, 457 plans, 403(b) plans, and voluntary employee beneficiary associations—while allowing the CFTC and SEC to make an informed decision about what the stable value fund options and their contract wrappers are and whether they should be regulated as swaps or security-based swaps. It is a commonsense solution, and I am proud we were able to address this important issue which could affect the retirement funds of millions of pension beneficiaries.

VOLCKER RULE

Mr. BAYH. I thank the Chairman. With respect to the Volcker Rule, the conference report states that banking entities are not prohibited from purchasing and disposing of securities and other instruments in connection with underwriting or market making activities, provided that activity does not exceed the reasonably expected near term demands of clients, customers, or counterparties. I want to clarify this language would allow banks to maintain an appropriate dealer inventory and residual risk positions, which are essential parts of the market making function. Without that flexibility, market makers would not be able to provide liquidity to markets.

Mr. DODD. The gentleman is correct in his description of the language.

EVENT CONTRACTS

Mrs. FEINSTEIN. I thank Chairman LINCOLN and Chairman DODD for maintaining section 745 in the conference report accompanying the Dodd-Frank Wall Street Reform and Consumer Protection Act, which gives authority to the Commodity Futures Trading Commission to prevent the trading of futures and swaps contracts that are contrary to the public interest.

Mrs. LINCOLN. Chairman DODD and I maintained this provision in the conference report to assure that the Commission has the power to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets. I thank the Senator from California for encouraging Chairman DODD and me to include it. I agree that this provision will strengthen the government's ability to protect the public interest from gaming contracts and other events contracts.

Mrs. FEINSTEIN. It is very important to restore CFTC's authority to prevent trading that is contrary to the public interest. As you know, the Commodity Exchange Act required CFTC to prevent trading in futures contracts that were ''contrary to the public interest'' from 1974 to 2000. But the Commodity Futures Modernization Act of 2000 stripped the CFTC of this authority, at the urging of industry. Since 2000, derivatives traders have bet billions of dollars on derivatives contracts that served no commercial purpose at all and often threaten the public interest.

I am glad the Senator is restoring this authority to the CFTC. I hope it was the Senator's intent, as the author of this provision, to define ''public interest'' broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest. Will CFTC have the power to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use?

Mrs. LINCOLN. That is our intent. The Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed ''event contracts.'' It would be quite easy to construct an ''event contract'' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.

Mrs. FEINSTEIN. And does the Senator agree that this provision will also empower the Commission to prevent trading in contracts that may serve a limited commercial function but threaten the public good by allowing some to profit from events that threaten our national security?

Mrs. LINCOLN. I do. National security threats, such as a terrorist attack, war, or hijacking pose a real commercial risk to many businesses in America, but a futures contract that allowed people to hedge that risk would also involve betting on the likelihood of events that threaten our national security. That would be contrary to the public interest.

Mrs. FEINSTEIN. I thank the Senator for including this provision. No one should profit by speculating on the likelihood of a terrorist attack. Firms facing financial risk posed by threats to our national security may take out insurance, but they should not buy a derivative. A futures market is for hedging. It is not an insurance market.

COLLATERALIZED INVESTMENTS

Mrs. HAGAN. Mr. President, I would like to engage Senator LINCOLN, chairman of the Agriculture, Nutrition and Forestry Committee, in a colloquy.

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which Chairman LINCOLN was the primary architect of, creates a new regulatory framework for the over-the-counter derivatives market. It will require a significant portion of derivatives trades to be cleared through a centralized clearinghouse and traded on an exchange, and it will also increase reporting and capital and margin requirements on significant players in the market. The new regulatory framework will help improve transparency and disclosure within the derivatives market for the benefit of all investors.

Under the bill, the Commodity Futures Trading Commission, CFTC, and the Securities and Exchange Commission, SEC, are instructed to further define the terms ''major swap participant'' and ''major security-based swap participant.'' The definitions of major swap participant and major security-based swap participant included in the bill require the CFTC and the SEC to determine whether a person dealing in swaps maintains a ''substantial position'' in swaps, as well as whether such outstanding swaps create ''substantial counterparty exposure'' that could have ''serious adverse effects on the financial stability of the United States banking system or financial markets.'' The definition also encompasses ''financial entities'' that are highly leveraged relative to the amount of capital it holds, are not already subject to capital requirements set by a Federal banking regulator, and maintain a substantial position in outstanding swaps.

I understand when the CFTC and SEC are making the determination as to whether a person dealing in swaps is a major swap participant or major security-based swap participant, it is the intent of the conference committee that both the CFTC and the SEC focus on risk factors that contributed to the recent financial crisis, such as excessive leverage, under-collateralization of swap positions, and a lack of information about the aggregate size of positions. Is this correct?

Mrs. LINCOLN. Yes. My good friend from North Carolina is correct. We made some important changes during the conference with respect to the ''major swap participant'' and ''major security-based swap participant'' definitions. When determining whether a person has a ''substantial position,'' the CFTC and the SEC should consider the person's relative position in cleared versus the uncleared swaps and may take into account the value and quality of the collateral held against counterparty exposures. The committee wanted to make it clear that the regulators should distinguish between cleared and uncleared swap positions when defining what a ''substantial position'' would be. Similarly where a person has uncleared swaps, the regulators should consider the value and quality of such collateral when defining ''substantial position.'' Bilateral collateralization and proper segregation substantially reduces the potential for adverse effects on the stability of the market. Entities that are not excessively leveraged and have taken the necessary steps to segregate and fully collateralize swap positions on a bilateral basis with their counterparties should be viewed differently.

In addition, it may be appropriate for the CFTC and the SEC to consider the nature and current regulation of the entity when designating an entity a major swap participant or a major security-based swap participant. For instance, entities such as registered investment companies and employee benefit plans are already subject to extensive regulation relating to their usage of swaps under other titles of the U.S. Code. They typically post collateral, are not overly leveraged, and may not pose the same types of risks as unregulated major swap participants.

Mrs. HAGAN. I thank the Senator. If I may, I have one additional question. When considering whether an entity maintains a substantial position in swaps, should the CFTC and the SEC look at the aggregate positions of funds managed by asset managers or at the individual fund level?

Mrs. LINCOLN. As a general rule, the CFTC and the SEC should look at each entity on an individual basis when determining its status as a major swap participant.

SWAP DEALER PROVISIONS

Ms. COLLINS. Mr. President, I rise today as a supporter of the Wall Street Transparency and Accountability Act, but also as one who has concerns over how the derivatives title of the bill will be implemented. I applaud the chairman of the Senate Banking Committee for his work on the underlying bill. At the same time, I am concerned that some of the provisions in the derivatives title will harm U.S. businesses unnecessarily.

I would like to engage the chairman of the Senate Banking Committee in a colloquy that addresses an important issue. The Wall Street Transparency and Accountability Act will regulate ''swap dealers'' for the first time by subjecting them to new clearing, capital and margin requirements. ''Swap dealers'' are banks and other financial institutions that hold themselves out to the derivatives market and are known as dealers or market makers in swaps. The definition of a swap dealer in the bill includes an entity that ''regularly enters into swaps with counterparties as an ordinary course of business for its own account.'' It is possible the definition could be read broadly and include end users that execute swaps through an affiliate. I want to make clear that it is not Congress' intention to capture as swap dealers end users that primarily enter into swaps to manage their business risks, including risks among affiliates.

I would ask the distinguished chairman whether he agrees that end users that execute swaps through an affiliate should not be deemed to be ''swap dealers'' under the bill just because they hedge their risks through affiliates.

Mr. DODD. I do agree and thank my colleague for raising another important point of clarification. I believe the bill is clear that an end user does not become a swap dealer by virtue of using an affiliate to hedge its own commercial risk. Senator COLLINS has been a champion for end users and it is a pleasure working with her.

Mr. MCCAIN. Mr. President, we are poised to pass what some have termed a ''sweeping overhaul'' of our Nation's financial regulatory system. Unfortunately, this legislation does little, if anything—to tackle the tough problems facing the financial sector, nor does it institute real, meaningful and comprehensive reform. This bill is simply an abysmal failure and serves as yet another example of Congress's inability to make the choices necessary to bring our country back into economic prosperity.

What this bill does represent is a guarantee of future bailouts. In a recent Wall Street Journal op-ed titled ''The Dodd-Frank Financial Fiasco,'' John Taylor—a professor of economics at Stanford and a senior fellow at the Hoover Institution—wrote:

The sheer complexity of the 2,319-page Dodd-Frank financial reform bill is certainly a threat to future economic growth. But if you sift through the many sections and subsections, you find much more than complexity to worry about.

The main problem with the bill is that it is based on a misdiagnosis of the causes of the financial crisis, which is not surprising since the bill was rolled out before the congressionally mandated Financial Crisis Inquiry Commission finished its diagnosis.

The biggest misdiagnosis is the presumption that the government did not have enough power to avoid the crisis. But the Federal Reserve had the power to avoid the monetary excesses that accelerated the housing boom that went bust in 2007. The New York Fed had the power to stop Citigroup's questionable lending and trading decisions and, with hundreds of regulators on the premises of such large banks, should have had the information to do so. The Securities and Exchange Commission (SEC) could have insisted on reasonable liquidity rules to prevent investment banks from relying so much on short-term borrowing through repurchase agreements to fund long-term investments. And the Treasury working with the Fed had the power to intervene with troubled financial firms, and in fact used this power in a highly discretionary way to create an on-again off-again bailout policy that spooked the markets and led to the panic in the fall of 2008.

But instead of trying to make implementation of existing government regulations more effective, the bill vastly increases the power of government in ways that are unrelated to the recent crisis and may even encourage future crises.

Mr. Taylor then goes on to highlight the many ''false remedies'' contained in this legislation including the ''orderly liquidation'' authority given to the FDIC—which effectively institutionalizes the bailout process. Other examples are the new Bureau of Consumer Financial Protection, the new Office of Financial Research, and a new regulation for nonfinancial firms that use financial instruments to reduce risks of interest-rate or exchange-rate volatility.

In addition to the ''false remedies,'' the huge expansion of government, and the outright power-grab by the Federal Government contained in this so-called reform measure—recent press reports note that this bill has also become the vehicle for imposing racial and gender quotas on the financial industry. Section 342 of this bill establishes Offices of Minority and Women Inclusion in at least 20 Federal financial services agencies. These offices will be tasked with implementing ''standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.''

This ''fair inclusion'' policy will apply to ''financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants and providers of legal services.''

The provision goes on to assert that the government will terminate contracts with institutions they deem have ''failed to make a good faith effort to include minorities and women in their workforce.''

Diana Furchtgott-Roth, former chief economist at the U.S. Department of Labor and senior fellow at the Hudson Institute, spotlighted the controversial section in an article on Real Clear Markets on July 8th. She wrote:

This is a radical shift in employment legislation. The law effectively changes the standard by which institutions are evaluated from anti-discrimination regulations to quotas. In order to be in compliance with the law these businesses will have to show that they have a certain percentage of women and a certain percentage of minorities.

This provision was never considered or debated in the Senate. I do not think it is unreasonable to expect that such a major change in government policy—indeed a complete shift from anti-discrimination regulations to a system of quotas for the financial industry—be fully aired and debated by both Chambers before it is enacted.

Finally, let me return to Mr. Taylor's piece from the Wall Street Journal. Mr. Taylor added:

By far the most significant error of omission in the bill is the failure to reform Fannie Mae and Freddie Mac, the government sponsored enterprises that encouraged the origination of risky mortgages in the first place by purchasing them with the support of many in Congress. Some excuse this omission by saying that it can be handled later. But the purpose of ''comprehensive reform'' is to balance competing political interests and reach compromise; that will be much harder to do if the Frank-Dodd bill becomes law.

I could not agree more. It is clear to any rational observer that the housing market has been the catalyst of our current economic turmoil. And it is impossible to ignore the significant role played by Fannie Mae and Freddie Mac. The events of the past 2 years have made it clear that never again can we allow the taxpayer to be responsible for poorly managed financial entities who gambled away billions of dollars. Fannie Mae and Freddie Mac are synonymous with mismanagement and waste and have become the face of ''too big to fail.''

During the debate on this financial ''reform'' bill, we heard much about how the U.S. Government will never again allow a financial institution to become ''too big to fail.'' We heard countless calls for more regulation to ensure that taxpayers are never again placed at such tremendous risk. Sadly, the conference report before us now completely ignores the elephant in the room—because no other entity's failure would be as disastrous to our economy as Fannie Mae's and Freddie Mac's.

As my colleagues know, during Senate consideration of this bill, I offered a good, common-sense amendment designed to end the taxpayer-backed conservatorship of Fannie Mae and Freddie Mac by putting in place an orderly transition period and eventually requiring them to operate—without government subsidies—on a level playing field with their private sector competitors. Unfortunately that amendment was defeated by a near-party-line vote.

The majority, however, did offer an alternative proposal to my amendment. Was it a good, well thought out, comprehensive plan to end the taxpayer-backed free ride of Fannie and Freddie and require them to operate on a level playing field with their private sector competitors? Nope. It was a study. The majority included language in this bill to study the problem of Fannie and Freddie for 6 months. Wow! Instead of dealing head-on with the two enterprises that brought our entire economy to its knees—the majority wants to study them for 6 more months.

According to a recent article published by the Associated Press, these two entities have already cost taxpayers over $145 billion in bailouts and—according to CBO—those losses could balloon to $400 billion. And if housing prices fall further, some experts caution, the cost to the taxpayer could hit as much as $1 trillion. And all the majority is willing to do is study them for 6 months. It is no wonder the American people view us with such contempt.

The Federal Government has set a dangerous precedent here. We sent the wrong message to the financial industry: when you engage in bad, risky business practices, and you get into trouble, the government will be there to save your hide. It amounts to nothing more than a taxpayer-funded subsidy for risky behavior and this bill does nothing to prevent it from happening all over again.

Again, I regret that I have to vote against this bill. I assure my colleagues, and the American people, that if this were truly a bill that instituted real, serious and effective reforms—I would be the first in line to cast a vote in its favor. But it is not. It serves as evidence of a dereliction of our duty and a missed opportunity to provide the American people with the protections necessary to avert yet another financial disaster. They deserve better from us.

Mr. GRASSLEY. Mr. President, I have long worked for the continued viability of rural low-volume hospitals so that Medicare beneficiaries living in rural areas in Iowa and elsewhere in the country will continue to have needed access to care.

Today, I want to discuss another concern, one regarding low-volume dialysis clinics in rural areas and the kidney dialysis patients they serve.

Congress enacted a new end-stage renal dialysis, ESRD, bundled payment system in the Medicare Improvements for Patients and Providers Act of 2008 that takes effect next year.

I support the establishment of a fully bundled payment system for renal dialysis services.

It is intended to improve payments for ESRD services and to ensure access to critical renal dialysis services, including those in rural areas.

It will also improve the quality of care for dialysis patients by requiring ESRD providers to meet certain standards through a new quality incentive program that is established for ESRD providers.

It establishes a permanent annual update for ESRD providers.

It also provides for payment adjustments in certain circumstances, such as payments for low-volume facilities and for dialysis facilities and providers in rural areas that need additional resources.

Last fall, the Centers for Medicare and Medicaid Services, CMS, issued a proposed rule to implement the new ESRD bundled payment system. That rule will be finalized later this year.

I am concerned that overall some of the proposed adjustments that reduce payments for dialysis treatment may be unduly low.

But today I want to focus on one issue in particular—the adjustment that CMS has proposed for low-volume facilities.

The legislation that established this new bundled payment system specifically requires CMS to adopt a payment adjustment of not less than 10 percent for low-volume facilities to ensure their continued viability with other facilities.

The Secretary was given the discretion to define low-volume facilities.

Unfortunately, CMS has proposed a very restrictive definition and set of criteria to qualify as a low-volume facility so the payment adjustment would only apply to facilities that furnish fewer than 3,000 treatments a year.

According to CMS, ''the low-volume adjustment should encourage small ESRD facilities to continue to provide access to care to an ESRD patient population where providing that care would otherwise be problematic.''

CMS also notes that low-volume facilities have substantially higher treatment costs.

Previously, CMS considered an ESRD facility with less than 5,000 treatments a year to be small.

But now CMS is proposing to limit eligible ESRD facilities to those with less than 3,000 treatments a year and requiring this limit to be met for 3 years preceding the payment year, along with certain ownership restrictions.

CMS has not proposed any geographic restriction that would limit the low-volume payment adjustment to dialysis facilities in rural areas.

Medicare reimbursement is already problematic for small dialysis organizations because they operate on very low Medicare margins.

According to the March 2010 report of the Medicare Payment Advisory Commission, MedPAC, large dialysis organizations have Medicare margins of 4.0 percent compared to other dialysis facilities with Medicare margins of only 1.6 percent.

MedPAC also found that rural dialysis providers have Medicare margins that average -0.3 percent compared to urban providers with positive margins of 3.9 percent, and they expressed concern that the gap in rural and urban margins has widened.

They project that Medicare margins will fall from an aggregate 3.2 percent margin in 2008 to an aggregate 2.5 percent in 2010.

If corresponding declines are seen in rural areas, negative margins for rural facilities will increase, and low-volume rural facilities will be hit even harder.

And this projection does not take into account any of the additional reductions that CMS has proposed as part of the new bundled payment system even though these reductions would have a significant adverse impact on small dialysis facilities.

Should the proposed restrictions on low-volume facilities be finalized, the continued viability of these small dialysis facilities will be questionable.

This will be especially true in rural areas, and beneficiary access to these critical dialysis services will be severely jeopardized.

Small rural dialysis clinics provide beneficiaries with end-stage-renal disease access to critically-needed dialysis services in medically underserved areas.

In some rural areas, a single clinic may be the only facility that furnishes this life-sustaining care.

Should the unduly restrictive treatment limit for low-volume facilities be finalized as proposed, small rural facilities with slightly higher treatment volumes will lose these essential low-volume payments.

Since rural dialysis facilities already face negative Medicare margins, many are likely to close, further limiting access to crucial dialysis services that these kidney patients depend upon to survive.

New facilities would not be eligible for low-volume payments until their fourth year of operation under the proposed rule, making it unlikely that other facilities would take the place of those that had closed.

The prospect of Medicare beneficiaries' losing access to these life-sustaining services is simply unacceptable.

I, therefore, urge CMS to modify the proposed restrictions for low-volume adjustments by raising the treatment limit to the existing 5,000 treatment definition for small rural dialysis facilities.

One of my constituents, Laura Beyer, RN, BSN, is the manager of dialysis at Pella Regional Health Center, a critical access hospital in rural Iowa. She has written an editorial about this problem and the financial crises that small outpatient dialysis facilities, such as Pella Regional Health Center, are facing. Her editorial will be appearing in Nephrology News in July.

I ask unanimous consent to have printed in the RECORD this editorial.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WILL THE NEW ESRD BUNDLE CAUSE THE DEATH OF RURAL HOSPITAL-BASED DIALYSIS UNITS?

The new End Stage Renal Disease (ESRD) Bundled payment system scheduled to begin in January, 2011 is expected to create a financial loss for dialysis clinics across the United States. According to the CMS Office of Public Affairs (2009) ''MIPPA [Medicare Improvements for Patients and Providers Act] specifically requires that the new system trim two percent of the estimated payments that would have been made in 2011 under the previous payment system'' (¶3). Although this is of concern to all dialysis clinics, it is particularly alarming to non-profit hospital based dialysis units which are already operating at a loss.

These small hospital-owned dialysis clinics are simply trying to provide a service to an underserved rural area. Patients would have no option but to let ESRD claim their lives because the resources are not available for them to drive the extended distances to urban areas where dialysis services are more available. Pella Regional Health Center (PRHC), a Critical Access Hospital (CAH) in rural Iowa, offers outpatient dialysis services. Robert Kroese, CEO of PRHC stated, ''We choose to keep this dialysis clinic open despite the financial liability to the hospital for one reason only, people will have no choice but to die without it. Our community needs this service.''

Currently hospital-based dialysis units represent 13.6 percent of all dialysis facilities in the United States. Facilities classified as rural only make up 4.4 percent. The current CMS payment system defines a small facility as <5000 treatments annually as well as other control variables to include urban vs. rural and facility ownership. The proposed bundled payment system will decrease reimbursement further for these rural hospital-based units by decreasing the low-volume definition to <3000 treatments per year and eliminating rural facility payment adjustments (Leavitt, 2008). Considering the lack of buying power these small facilities face compared to the large dialysis companies, the hope of continuing this service in these rural areas is diminishing.

At what point is the financial burden going to be too much for these small rural hospitals to carry? The result will be thousands of patients without the healthcare services needed to sustain their lives. Please consider the effects on the unseen heroes in rural America trying to provide the best care possible to all Americans who need it. Help protect the dialysis patients who live in the underserved areas of America by contacting your state representatives regarding the preservation of Hospital-based rural dialysis units.

Mr. FEINGOLD. Mr. President, I will oppose the conference version of the Dodd-Frank bill. While it includes some positive provisions, it fails its most important mission, namely to ensure that taxpayers, consumers, businesses, and workers won't be victims of another financial crisis like the one which a few years ago triggered the worst recession our Nation has experienced since the Great Depression.

The measure certainly contains many good things, but those positive provisions do not outweigh the bill's serious failings. Of the several significant flaws in the bill, I will focus on two—the failure to reinstate the well-proven protections first established by the Glass-Steagall Act of 1933 that were repealed a decade ago, and the failure to firmly and finally address the essential problem posed by too-big-to-fail financial institutions.

Earlier this year I was pleased to cosponsor a bill introduced by the Senator from Washington, Ms. CANTWELL, to restore the safeguards that were enacted as part of the famous Glass-Steagall Act of 1933. And I was also pleased to cosponsor her amendment to the Financial Regulatory Reform bill, which was based on that legislation. It went to the very core of what the underlying bill we are considering seeks to address.

Unlike some other proposals we considered, that amendment had a track record we can review, because the economic history of this country can be divided into three eras—the time before Glass-Steagall, the Glass-Steagall era, and the most recent post-Glass-Steagall era.

In the first era—the time before the enactment of the Glass-Steagall Act of 1933—financial panics were frequent and devastating. Even before the market crash in 1929, the panics of 1857, 1873, 1893, 1901, and 1907 wrecked our economy, putting thousands of firms out of business, and leaving family breadwinners across the country without jobs.

In the wake of the 1929 crash—the last great panic of that first era—4,000 commercial banks and 1,700 savings and loans failed in this country, triggering the Great Depression that eliminated jobs for a quarter of the workforce.

It was that last financial crisis that spurred enactment of the Glass-Steagall Act of 1933, which marks the beginning of the second of our financial history's three eras.

The Glass-Steagall Act of 1933 put a stop to financial panics. It stabilized our banking system by implementing two key reforms. First, it established an insurance system for deposits, reassuring bank customers that their deposits were safe and thus forestalling bank runs. And second, it erected a firewall between securities underwriting and commercial banking. Financial firms had to choose which business to be in; they couldn't do both.

That wall between Main Street commercial banking and Wall Street investment financing was a crucial part of establishing the deposit insurance safety net because it prevented banks that accepted FDIC-insured deposits from making speculative investment bets with that insured money.

The Glass-Steagall Act was an enormous success. It helped prevent any major financial crisis in this country for most of the 20th century, and that financial market stability helped foster the economic growth we enjoyed for decades.

And that brings us to the last of the three eras—the post-Glass-Steagall era.

All that wonderful financial market stability that we had enjoyed for decades began to unravel when, in the 1980s, Wall Street lobbyists spurred regulators to undermine financial regulations, including the very firewall between Main Street banking and Wall Street investing that Glass-Steagall had established, and that had worked so well. That firewall was completely torn down when Wall Street lobbyists convinced Congress to pass the Gramm-Leach-Bliley Act of 1999.

We have seen the disastrous results of that ill-considered policy. It's a major part of the reason the financial regulatory reform bill was considered by this body.

I voted against the Gramm-Leach-Bliley Act, which eliminated the Glass-Steagall protections. The financial and economic record of that bill has been disastrous. If the financial regulatory reform bill before us did nothing else, it should have fixed the problems created by that ill-advised act.

Just a few weeks ago, at one of the listening sessions I hold in each of Wisconsin's 72 counties every year, a community banker from northwestern Wisconsin urged me to support restoring the Glass-Steagall protections. He rightly pointed out how the lack of those protections led directly to the Great Depression. And he argued that the bill we are currently debating doesn't go far enough in this respect. That community banker was absolutely right.

The bill before us tries to make up for the lack of a Glass-Steagall firewall by establishing some new limitations on the activities of banks, and gives greater power and responsibility to regulators. All of that is well intentioned, but we all know just how creative financial firms can be at eluding these kinds of limits and regulatory oversight when so much profit is at stake. No amount of oversight is an effective substitute for the legal firewall established by Glass-Steagall.

The era in our financial history in which the Glass-Steagall protections were in force was notable for the lack of instability and turmoil that had been a regular feature of our financial markets prior to Glass-Steagall, and that helped bring our economy to the brink after Glass-Steagall safeguards were repealed. Congress should have restored those time-tested protections, and reestablished the stability that brought our Nation half a century of remarkable economic growth.

We could have achieved that by adopting the Cantwell amendment. But, as we know, the Cantwell amendment was not even permitted a vote, such was the opposition to that commonsense reform by those who were guiding this legislation. So our financial markets will continue to remain adrift in the brief but ruinous post-Glass-Steagall era.

The other flaw I will highlight is the measure's failure to directly address what in many ways is the reason we are here today, namely the problem of too big to fail.

During the Senate's consideration of the measure, several amendments were offered that sought to confront that problem. Two of them, one offered by the Senator from North Dakota, Mr. DORGAN, and one offered by the Senators from Ohio, Mr. BROWN, and Delaware, Mr. KAUFMAN, took the problem on directly. Only one of those amendments even got a vote, and that proposal, from Senators BROWN and KAUFMAN, was strongly opposed, and ultimately defeated, by those who were shepherding the bill through the Senate.

As I noted, the problem of too big to fail is the reason we are considering financial regulatory reform legislation. It was the threat of the failure of the Nation's largest financial institutions that spurred the Wall Street bailout. I opposed that measure as well, in part because it was not tied to fundamental reforms of our financial system that would prevent a future crisis and the need for another bailout. There can be no doubt that we could have had a much tougher reform package if the bailout had been tied to such a measure.

Nor should there be any doubt about the role Congress has played in aggravating the problem of too big to fail. Fifteen years ago, the six largest U.S. banks had assets equal to 17 percent of our GDP. Today, after the enactment of the Riegle-Neal Interstate Banking and Branching bill and the Gramm-Leach-Bliley bill, the six largest U.S. banks have assets equal to more than 60 percent of our GDP.

Years ago, a former Senator from Wisconsin, William Proxmire, noted that as banking assets become more concentrated, the banking system itself becomes less stable, as there is greater potential for system wide failures. Sadly, Senator Proxmire was absolutely right, as recent events have proved. Even beyond the issue of systemic stability, the trend toward further concentration of economic power and economic decisionmaking, especially in the financial sector, simply is not healthy for the Nation's economy.

Historically, banks have had a very special role in our free market system: They are rationers of capital. While in recent decades we have seen changes in the capital markets that provide the largest corporations with other options to access needed capital, small businesses still remain dependent on the traditional banking system for the capital that is essential to them. So when fewer and fewer banks are making the critical decisions about where capital is allocated, there is an increased risk that many worthy enterprises will not receive the capital needed to grow and flourish.

For years, a strength of the American banking system was the strong community and local nature of that system. Locally made decisions made by locally owned financial institutions—institutions whose economic prospects were tied to the financial health of the communities they served—have long played a critical role in the economic development of our Nation and especially for our smaller communities and rural areas. But we have moved away from that system. Directly as a result of policy changes made by Congress and regulators, banking assets are controlled by fewer and fewer institutions, and the diminishment of that locally owned and controlled capital has not benefited either businesses or consumers.

Beyond the problems to our capital markets created by this development, there is Senator Proxmire's warning about the increased risk of system wide failure. Taxpayers across the country must now realize that Senator Proxmire's warning about the concentration of banking assets proved to be all too prescient when President Bush and Congress decided to bail out those mammoth financial institutions rather than allowing them to fail.

Some may argue that instead of imposing clear limits on the size of these financial behemoths, the bill before us seeks to limit their risk of failing by tightening the rules that should govern their behavior. And, they might add, the measure also permits regulators to address these matters more directly than ever before. But we have seen how Wall Street interests can maneuver around inconvenient regulations. Moreover, the track record of the regulators themselves has been troubling at best, and yet this bill relies on that same system to protect taxpayers and the economy from another financial market meltdown.

Today, the 10 largest banks have more than $10 trillion in assets. That is the equivalent of more than three-quarters of our Nation's GDP. And no one believes that, if one or more of those financial institutions were to get into trouble, they would be allowed to simply fail. The risk to the financial markets and the economy is seen as too great. They are literally too big to fail. And that is the problem.

As economist Dean Baker has noted, too big to fail implies two things: First, knowing the government will stand behind the debt-of-too-big to fail institutions, creditors will view those institutions as better credit risks and lower the cost of credit to them; and second, too-big-to-fail firms are able to engage in riskier behavior than other firms because creditors know the government will stand behind a too-big-to-fail firm if it gets in trouble, they will keep the money flowing when they otherwise might have closed it off. Baker is exactly right when he says that this is a recipe for many more bailouts.

Too big to fail has been a growing problem for more than a decade. Yet nothing in the Dodd-Frank bill requires that those enormous financial firms be whittled down to a size that would permit them to fail without disastrous consequences for financial markets or the economy. In fact, as Peter Eavis noted in the Wall Street Journal, the bill actually ''enshrines the bailout architecture, and thus the 'too-big-to-fail' distortions in the economy.'' And those distortions are not limited to the kind of massive, systemic collapse of the financial markets, which we just experienced. Too-big-to-fail distortions occur daily. They happen whenever a smaller community bank is competing with an enormous too-big-to-fail bank. Dean Baker calculated that the credit advantage the very biggest banks have over smaller institutions because of too-big-to-fail distortions is worth possibly $34 billion a year. Those who doubt such a distortion need only talk to a community banker for a few minutes to understand just how real it is.

Some suggest we should pass this bill because, despite the failings I have just described, it contains some positive reforms and that we should enact those improvements and then work to achieve the critically needed reforms that remain. That analysis assumes there will be some second great reform effort which will build on the work begun in this legislation, and that simply isn't going to happen. This is the bill. In the wake of the financial crisis and bailout, Congress essentially gets one shot to correct things and prevent a future crisis and bailout. There will be no financial regulatory reform, part two. Nobody seriously thinks the White House is planning a second reform package to go after too big to fail and to reinstate Glass-Steagall protections. Nor does anyone believe the Senate Banking Committee or the House Banking Committee is drafting a followup bill to deal with those issues. For that matter, I know of no advocacy groups that are seriously planning a followup reform effort to go after too big to fail or to reinstate the Glass-Steagall firewalls between commercial banking and Wall Street investment firms. It is not happening, because this is the moment and this is bill. To minimize the failings of this bill by suggesting there will be another one coming down the pike is at best misleading and at worst dishonest.

Mr. President, in this case, we have to get it right—completely right, not just make a good start. This bill fails the key test of preventing another crisis, and I will oppose it.

Mr. BROWNBACK. Mr. President, I rise to speak regarding the auto dealer exclusion in section 1029 of H.R. 4173, the Restoring American Financial Stability Act of 2010.

I am pleased that my amendment excluding auto dealers from the jurisdiction of the Bureau of Consumer Financial Protection, CFPB, was included in the conference report to H.R. 4173. This proposal attracted bipartisan support because the auto dealers should not have been regulated in this bill in the first place. They are retailers. They should not be regulated as bankers. They did not cause the Wall Street meltdown. They didn't bring down Lehman Brothers or Bear Stearns.

The purpose of my amendment was to protect third party auto financing. The CFPB could have abolished that kind of financing, but keeping these provisions in the bill will preserve a variety of auto financing choices for consumers, and we know that more choices result in lower prices. And the provisions of my amendment keep auto loans convenient and affordable while retaining existing consumer protection laws and policies.

The end result is a balance between consumer protection and the availability of affordable and accessible credit for consumers to meet their transportation needs. Except for subsection (d), Section 1029 is the result of a lot of debate and discussion in both houses of Congress dating back to last year. During the House Financial Services Committee's markup of this legislation, Representative JOHN CAMPBELL of California offered an amendment to exclude auto dealers from the jurisdiction of the CFPB. The Campbell amendment passed on a bipartisan vote of 47–21. A modified form of the Campbell amendment was included during floor consideration of H.R. 4173, which passed by a vote of 223–202 on December 11, 2009.

I offered an amendment during Senate consideration of H.R. 4173 to serve as a companion to the Campbell amendment. Although my amendment did not receive a direct vote, on May 24, the Senate voted to instruct its conferees to recede to the House on this matter, subject to the modifications of the Brownback amendment. This motion passed on a bipartisan vote of 60–30.

The final conference committee agreement incorporates the Brownback-Campbell language with some modifications. I want to discuss those provisions specifically and highlight some significant points.

First, section 1029(a) provides that the CFPB ''may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominately engaged in the sale and servicing of motor vehicle, the leasing and servicing of motor vehicles, or both.'' This is a clear, unambiguous exclusion from the authority of the CFPB for motor vehicle dealers.

Three exceptions to the exclusion for dealers are enumerated in section 1029(b). Subsection (b)(1) describes activity related to real estate transactions with consumers. Subsection (b)(2) describes motor vehicle transactions in which the dealer underwrites, funds, and services motor vehicle retail installment sales contracts and lease agreements without the involvement of an unaffiliated third party finance or leasing source so-called ''buy-here-pay-here'' transactions. Subsection (b)(3) describes the consumer financial products and services offered by motor vehicle dealers and limits the exclusion to those activities or any related or ancillary product or service. The combination of

1029(a) and 1029(b) ensures that motor vehicle dealers providing financial products or services related to the activities described in subsection (b)(3) are completely excluded from the CFPB.

Section 1029(c) preserves the authority of the Federal Reserve Board, the Federal Trade Commission and any other Federal agency having authority to regulate motor vehicle dealers.

Section 1029(d) provides that the Federal Trade Commission, FTC, will have the authority to write rules to address unfair or deceptive acts or practices by motor vehicle dealers pursuant to the procedures set forth in the Administrative Procedures Act instead of the Magnuson-Moss Act. Motor vehicles dealers are set to become the only businesses in America singled out for regulation in this manner. I want to emphasize that this specific provision was neither in the House or Senate bill and was not under consideration in either chamber. It was added by House-Senate conferees. Section 1029(d) was included without any evidence to justify its inclusion, or any debate for that matter. I do not support this provision, as I believe it invites the FTC to again engage in regulatory overreach. I am concerned that the removal of the well-established ''Magnuson-Moss'' safeguards gives the FTC free rein to conduct fishing expeditions into any area of automotive finance it perceives as ''unfair.''

The present leadership of the FTC has promised that if Magnuson-Moss were repealed, they would use their new power prudently. I hope that this is the case, because we do not want to repeat the kind of excessive FTC regulation that occurred in the 1970s. For that reason, Congress must monitor the FTC very closely to ensure the vast power Congress will now bestow on this agency is not once again abused.

Section 1029(e) requires the Federal Reserve Board and the Federal Trade Commission to coordinate with the Office of Service Member Affairs to ensure that any complaints raised by men and women in the armed services are addressed effectively by the appropriate enforcement agency.

Section 1029(f) defines certain terms in the bill. My amendment expanded the House language to also exclude similarly situated RV and boat dealers.

The concept of excluding auto dealers from the jurisdiction of the CFPB gained bipartisan support, but there was some debate about its effect on members of the U.S. Armed Forces. Because we all share the utmost concern for our service men and women, I think it is appropriate to revisit that argument briefly and to reiterate my strong belief that this exclusion will not hurt members of the military.

On February 26, Under Secretary of Defense Clifford Stanley wrote a widely distributed letter contending that excluding auto dealers from the CFPB would have a harmful effect on servicemembers. On May 14, I sent a letter to Under Secretary Stanley asking him to further clarify and substantiate the claims he made in his letter to ensure that the Senate would not take action that would harm military members.

Under Secretary Stanley's May 18 response to my letter offered a series of anecdotes about finance practices that were already illegal. In addition, Under Secretary Stanley's letter related the results of a survey of military members regarding auto financing. That survey, which was informal and unscientific, unfortunately failed to specify the sources of the problems some servicemembers encountered. It gave no indication that auto dealers were responsible for bad loans made to military members and made, and I think it is unfortunate that auto dealers were blamed for problems they did not cause on the basis of this survey.

In fact, I was surprised that Pentagon officials cited this survey instead of relying on their comprehensive 2006 report on abusive lending practices. This study, entitled ''Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents'' did not include dealer-assisted financing among its list of predatory lending practices. In the end, in my view, the best information available indicates that servicemembers will not be harmed by exempting dealers from the jurisdiction of the CFPB. I am glad that argument carried the day.

I am very concerned that the CFPB, which will not be overseen by the Office of Management and Budget and will not depend on Congress for its funding, will at some point in the future engage in regulatory overreach that will hurt our economy. Excluding auto, boat and RV dealers from the CFPB jurisdiction will ensure that these Main Street small businesses are protected from such harmful regulation. For consumers, my amendment guarantees that access to affordable credit is preserved, and all consumer protections laws are maintained. While I am very concerned about the implications of H.R. 4173 overall, I am pleased that at least in this instance we have found a way to limit the threat of regulations that hurt consumers and strangle our economy.

Mr. LEAHY. Mr. President, I strongly support the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The American people often are cynical, with good reason, about the success that powerful corporate interests have in trumping the interests and rights of everyday Americans, on Wall Street, in Congress and even on our Supreme Court. Backed by multimillions of dollars that ordinary Americans cannot match, the lobbying pressure that was sharply focused on trying to shape this bill at every step, including the conference, was almost without parallel. Yet the bill that emerged from conference truly reflects the Nation's interests in real Wall Street reform. This is a great, unheralded victory for the American people and one that should serve as an example again and again.

The recent financial crisis clearly exposed several flaws in our current regulatory system. Many large Wall Street investment banks and insurance companies hid their shaky finances from stockholders and government regulators. Corporate executives saw their salaries rise to extreme heights, even as their companies were failing and seeking government assistance. Through it all, Federal regulatory agencies failed to provide the necessary oversight to rein in these reckless actions. If this crisis has taught us anything, it is that the look-the-other way, hands-off deregulatory policies that were in vogue in recent times can jeopardize not only private investments but our entire economy.

The conference report we are voting on today goes directly to the heart of the Wall Street excesses that brought our economy to the brink. For far too long Wall Street firms made risky bets in the dark and reaped enormous profits. Then, when their bets went sour, they turned to America's taxpayers to bail them out. This bill is about changing the culture of rampant Wall Street speculation and doing what needs to be done to get our economy back on track. We need more transparency and oversight of Wall Street. These improvements will increase transparency in and oversight of the financial sector. These historic reforms will set clear standards and real enforcement—including jail time for executives—to finally curb the fraud, manipulation, and riotous speculation that punctured confidence in our markets and derailed our economy.

I commend Chairman BARNEY FRANK and Chairman CHRIS DODD for their excellent leadership of the conference. As a conferee, I know full well the pressure that powerful Wall Street special interests put on all Members to water down the bill, and I appreciate the difficulty the two chairmen have endured corralling the votes needed for final passage. Despite heavy and expensive lobbying from those who support the status quo, the conference committee put together a strong and balanced bill that will clean up Wall Street abuses, build confidence in our economy, and continue our progress toward economic recovery.

This bill makes several significant improvements to our financial services regulations. Specifically, it will create a new systemic regulatory council to watch for broad economic bubbles and red flags; end taxpayer bailouts of Wall Street institutions by establishing a new resolution authority to wind down failing megafirms outside of bankruptcy; create a new Consumer Financial Protection Bureau to oversee financial products on the market and rein in subprime lending; set new capital and leverage limits for financial institutions; give the SEC and CFTC new authorities and resources to protect investors; bring the massive derivatives market under Federal regulation for the first time; require hedge fund and other private investment advisers to register with the SEC; establish reasonable and fair swipe fees for debit and credit cards; and provide new resources for unemployed homeowners who are having trouble making their mortgage payments.

As chairman of the Senate Judiciary Committee, I am particularly pleased that the conference report also includes provisions I authored, working with Senator GRASSLEY, Senator SPECTER, and Senator KAUFMAN, to ensure law enforcement and Federal agencies have the necessary tools to investigate and prosecute financial crimes and to protect whistleblowers who help uncover these crimes. I am pleased that the conference report preserves meaningful antitrust oversight in the financial industry. I also am heartened that the conference agreement includes provisions I put forward to introduce true transparency into the complex operations of large financial institutions and the Federal agencies that regulate them. It has seemed to me that promoting transparency should be a vital element of Wall Street reform. Transparency is a cleansing agent for healthy markets. Open information helps investors make sound decisions. When information is murky, market decisions must be based on guesses or rumors that corrode trust and that encourage fraud and deception.

Another major step forward is the derivatives section of the conference report, crafted by the Agriculture Committee on which I serve. I applaud our committee chair, Senator BLANCHE LINCOLN, who fought tirelessly for these reforms. These changes will finally bring the $600 trillion derivatives market out of the dark and into the light of day, ending the days of backroom deals that put our entire economy at risk. The narrow end-user exemption in the bill will allow legitimate commercial interests, such as electric cooperatives and heating oil dealers on Main Street, to continue hedging their business risks, but it will stop Wall Street traders from artificially driving up prices of heating oil, gasoline, diesel fuel, and other commodities through unchecked speculation.

The conference report also includes a provision by Senator DICK DURBIN and Representative Peter Welch that I supported to protect our small businesses from complicated predatory rules that big credit card companies could otherwise impose on Vermont grocers and convenience stores. The Durbin-Welch amendment will ensure that a small business will be able to advertise a discount for paying cash or for using one card instead of another. I do not want Vermonters to pay more for a gallon of milk just because the credit card companies are demanding a high fee on small transactions and are not allowing the grocer to ask for cash instead of credit.

Another amendment I offered that is included in the final agreement is of particular importance to small States such as Vermont. My amendment will guarantee that Vermont and other small States each receive at least $5 million of the $1 billion in new Neighborhood Stabilization Program funds in the bill. Originally created in 2008, this program is designed to stabilize communities that have suffered from foreclosures and abandonment. My amendment overrode language proposed by the House that expressly prohibited a small-State-minimum from being used to allocate funds.

The extractive industries transparency disclosure provision that I sponsored is another major step forward for protecting U.S. taxpayers and shareholders and increasing the transparency of major financial transactions. This provision is about good governance and transparency so the American people and investors can know if they are investing in companies that are operating in dangerous or unstable parts of the world, thereby putting their investments at risk. This provision also will enable citizens of these resource-rich countries to know what their governments and governmental officials are receiving from foreign companies in exchange for mining rights. This will begin to hold governments accountable for how those funds are used and help ensure that the sale of their countries' natural resources are used for the public good.

I am also pleased that the bill includes a provision I cosponsored with Senator BERNIE SANDERS to increase transparency on the bailout transactions made by the Federal Reserve. Under this bill, we will finally have an audit of all of the emergency actions taken by the Federal Reserve since the financial crisis began, to determine whether there were any conflicts of interest surrounding the Federal Reserve's emergency activities. It is time we know more about the closed-door decisions made by the Federal Reserve throughout this financial crisis.

Mr. President, the Senate has before it today a conference report that will rein in Wall Street abuses, end government bailouts, and give everyday Americans the consumer protection they deserve and expect. It will help restore faith in our markets, which are part of the vital foundation of our economic progress. Taking this broom to Wall Street abuses will help build confidence in our economy and continue our progress toward economic recovery.

Mr. REED. Mr. President, on June 29, 2010, the House-Senate conference committee completed its deliberations on the most significant financial regulatory legislation since the 1930s. And, now, this conference report is before the Senate for final enactment. It will fundamentally change how we protect consumers, families, and small business from the reckless and abusive practices of the financial sector, and it will provide a framework for economic growth without the peril of periodic taxpayer bailouts of the financial sector.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 is a significant achievement. The legislation before the Senate declares that big banks cannot continue to take enormous risk, reaping billions in profits and rewarding their executives with hefty bonuses while counting on taxpayers to bail them out when they get in trouble. Unregulated mortgage lenders will no longer be able to make loans they know will not be repaid; loans that cripple families and communities. And, banks will no longer operate in an unregulated, opaque, and dangerous market for derivatives that helped lead us to the brink of financial catastrophe last year.

However, the events of the last decade and, particularly, the last several years should caution all of us with respect to the efficacy of any single legislative initiative. This bill must be thoughtfully and vigorously implemented. Indeed, the regulators must be particularly vigilant to ensure that this legislative effort is not undone by powerful interests who will be constrained by its provisions. In the years ahead, regulators must have the resources and the will to enforce these provisions to protect consumers and to protect the economy. The Congress must be prepared to provide rigorous oversight and move quickly to ensure that regulatory supervision will keep pace with a dynamic global marketplace.

More than a decade of excessive risk taking and lax regulation culminated in financial collapse in the autumn of 2008. The ensuing economic chaos has left millions unemployed and underemployed, precipitated a foreclosure crisis that still haunts neighborhoods throughout the country, and shattered the dreams of millions of American families.

With this new legislation, we create for the first time a consumer watchdog—the Consumer Financial Protection Bureau—that will solely focus on protecting consumers from unscrupulous financial activities. The law gives this agency independent rulemaking, examination, and enforcement responsibilities, and clear authority to prohibit unfair, deceptive, and abusive financial activities against middle-class families. And it consolidates the existing responsibilities of many regulators to ensure that there is a less fragmented, more comprehensive, and a fully accountable approach to protecting consumers.

The new Bureau represents a fundamental shift in how we inform Americans about abuses by banks, credit card companies, finance companies, payday lenders, and other financial institutions. It will focus these companies on doing their job of providing responsible and constructive financial products to help families and small businesses succeed, rather than destructive products that cause them to fail by draining their income and savings.

I am also pleased that the Senate voted 98 to 1 to approve the bipartisan amendment I offered with Senator SCOTT BROWN to create an Office of Service Member Affairs within the Consumer Financial Protection Bureau. This office will educate and empower members of the military and their families, help monitor and respond to complaints, and help coordinate consumer protection efforts among Federal and State agencies.

Although I would have preferred for the new Consumer Financial Protection Bureau to have sole authority over consumer protection matters for all banks and nonbank financial companies, the final bill represents a strong regime for consumer protection, including rulewriting authority over all entities. It also provides the Bureau with authority to examine and enforce regulations for banks and credit unions with assets of over $10 billion; all mortgage-related businesses, such as lenders, servicers, and mortgage brokers; payday lenders; student lenders; and all large debt collectors and consumer reporting agencies.

One glaring exception is the carveout for auto lenders. I opposed the Brownback amendment that created a special loophole for auto dealer-lenders, and I also opposed the compromise that is included in the conference report. The original protections in the bill were not meant to vilify auto dealers. The vast majority of dealers in my State of Rhode Island and across the country are hard-working business owners who operate responsibly. Rather, this debate was about ensuring fair and consistent scrutiny of all lending institutions. We cannot ignore the abuses that service members and others have endured because of predatory auto loans. We have learned from the debate that the abuse of service members by some auto dealers is an epidemic. During the debate I received a memo citing 15 recent examples of auto finance abuses just at Camp Lejeune alone. This problem will require close scrutiny after the bill is implemented.

I am also pleased that the legislation includes provisions from the Durbin amendment that will protect small business from unreasonable credit card company fees by requiring the Federal Reserve to issue rules ensuring that fees charged to merchants by credit card companies for debit card transactions are both reasonable and proportional to the cost of processing those transactions. These provisions will allow small businesses to invest more and pass on greater savings to their customers rather than spend their earnings on unreasonable interchange fees.

The Dodd-Frank Act also creates a new Financial Stability Oversight Council, comprised of existing regulators, to identify and respond to emerging risks throughout the financial system. This new council represents another significant improvement to protect families from devastating economic trends by, for the first time, creating one single entity responsible for looking across the financial system to prevent and respond to problems.

This section of the conference report also puts in place a new rigorous system of capital and leverage standards that will discourage banks from getting so large that they put our financial system at risk again. The new Financial Stability Oversight Council will make recommendations to the Federal Reserve to apply strict rules for capital, leverage, liquidity, and risk management so that firms that grow too big will face stricter rules that will likely deter the bigger is better mentality of too many banks. The council will also make recommendations for nonbank financial companies that have grown so large or complex that their activities pose a threat to the financial stability of the United Sates. No financial institution, bank or otherwise, will be able to take risks to multiply their gains without holding adequate capital. And, more importantly, such institutions will be on notice that the taxpayers will not bail them out.

The conference report includes a new Office of Financial Research, a proposal that I developed to provide an entity capable of researching, modeling, and analyzing risks throughout the financial system. For too long, those charged with keeping the banking system stable have lacked the data and analytical power to keep up with complex financial activities. This office ends that situation and takes a bold step forward to understand the factors that threaten to rip holes in our financial system, provide early warnings, and allow regulators to act on that information. As we create this new office, I will ensure that it retains its independence and broad data collection, budget, and hiring authority, so we are sure to better identify and mitigate economic challenges in the future. The challenge presented by the task of understanding the financial markets and monitoring systemic risk will require a sustained, integrated research effort that brings together some of the top researchers and practitioners in the country from a diverse range of relevant disciplines. The Office of Financial Research must become a world class institution that can go ‘‘toe to toe’’ with the top Wall Street banks.

In addition, this law creates a safe way to liquidate large financial companies, so that taxpayers will never again have to prop up a failing firm to avoid sending shockwaves through the financial system. Shareholders and unsecured creditors, not taxpayers, will bear losses, and culpable management will be removed. Financial institutions will pay for their failures, not taxpayers. Indeed, the existing rules on emergency lending authority and debt guarantees will be substantially changed to ensure that such tools cannot be used to bail out individual firms. This will send an important message to Wall Street: operate at your own risk since the taxpayers will no longer be in the business of bailing you out.

The Dodd-Frank Act also establishes important new limits on banks engaging in proprietary trading and in owning and investing in hedge funds and private equity funds. These provisions are known as the Volcker rule or the Merkley-Levin amendment. These new rules will help ensure that banks are not betting with consumer bank deposits on risky activities for the banks' own profit.

Until the last few decades, commercial banking and investment banking were largely conducted by separate institutions. However, in recent years, banks have engaged in a multitude of higher risk activities, such as short-term trading for a bank's own profit, and the sponsoring of hedge funds and private equity funds. The law changes that and prohibits any bank, thrift, holding company, or affiliate from engaging in proprietary trading or sponsoring or investing in a hedge fund or private equity fund. It also prohibits activities that involve material conflicts of interest between banks and their clients, customers, and counterparties.

The conference report also includes two provisions in this area that I authored. One requires the chief executive officer at a banking entity to certify annually that it does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private fund. The other provision requires banking entities to set aside more capital commensurate with the leverage of the hedge fund or private equity fund.

Although the final provisions included in the bill represent a stronger and more targeted approach to reducing risk in our banking system, I believe the change during the conference to allow for a 3 percent de minimus exclusion from the ban on sponsoring or investing in hedge funds or private equity funds was unwise. The original Merkley-Levin proposal did not include such an exclusion. Congress and the regulators will need to monitor bank activities very closely in the coming years to ensure that this exclusion is not abused.

The bill also makes some changes to consolidate our country's fragmented and inefficient system for supervising banks and holding companies. It eliminates the Office of Thrift Supervision, a particularly lax supervisor, and redistributes responsibilities for bank oversight and supervision to bring greater consistency and more effective oversight to all firms. These changes are an important step forward, although additional consolidation and streamlining of our regulatory agencies could have further improved the effectiveness of the system.

The Dodd-Frank bill also closes a significant gap in financial regulation by requiring advisers to hedge funds and private equity funds to register with the Securities and Exchange Commission. Based on legislation that I introduced, we will for the first time bring advisers to those funds within the umbrella of financial regulation. This will allow regulators to obtain the basic information they need to prevent fraud and mitigate systemic risk, while at the same time providing investors with more information and greater transparency.

Advisers to hedge funds and private equity funds—called ''private funds'' in the legislation—will have to register with either the SEC or a State, depending on the size of the funds they manage. Fund advisers with assets under management over $150 million must register with the SEC. Advisers to other types of funds will continue to have similar requirements, but the threshold for SEC registration will be $100 million. I also successfully included language in the conference report to ensure that State registration is only available to eligible fund advisers if the State has a registration and examination program.

From the beginning of this process I fought against any carve-outs in this title for private equity, venture capital, and family offices. While I successfully convinced the conferees to drop a carve-out for private equity advisers, the bill still contains problematic exemptions for venture capital firms and family offices. Through hearings and other means, I will continue to work to create a regulatory system in which none of the fraud and systemic risks that may lurk within private pools of capital remain out of view and reach of regulators.

On derivatives, the bill closes another huge set of regulatory gaps by overturning a law that prevented regulators from overseeing the shadowy over-the-counter derivatives market and, as a result, bringing accountability and transparency to the market. As we have learned from AIG and Lehman Brothers, derivatives were at a minimum the accelerant that complicated and expanded the financial crisis.

A major problem with derivatives is that they have not been regulated nor well-understood by even those buying and selling them. The legislation changes that and brings transparency and greater efficiency to the marketplace for swaps—derivatives in which two parties exchange certain benefits based on the value of an underlying reference like an interest rate—by requiring the reporting of the terms of these contracts to regulators and market participants. It will move as many swaps as possible from being opaque, bilateral transactions onto clearinghouses, exchanges, and other trading platforms. This should help make the marketplace fairer and more efficient by providing companies and investors with complete information on the market. Firms will also be required to put forward sufficient capital to engage in these transactions, which should help rein in the excessive speculation we saw in the past.

I successfully offered several amendments during the conference to correct potential opportunities for regulatory arbitrage between the Securities and Exchange Commission and the Commodity Futures Trading Commission. One of my improvements requires the SEC and the CFTC to conduct joint rulemaking in certain key areas rather than create potential gaps by conducting them separately. Other amendments clarify the definitions of mixed swap, security-based swap agreements, and index—which are all important terms that fall at the nexus of the two agencies' oversight—to ensure that the new swaps rules cannot be gamed and manipulated.

In a significant improvement to public transparency of swaps data, I successfully included another amendment that will ensure that regulators can require public reporting of trading and pricing data for uncleared transactions, not just aggregate data on transactions, just as they can for cleared transactions.

Also important are provisions to give the Federal Reserve a role in setting risk management standards for derivatives clearinghouses and other critical payment, clearing, and settlement functions, which has been a priority of mine given their importance to the financial system and their potential vulnerability to both natural and manmade disruptions.

The Dodd-Frank conference report also makes important improvements to the Federal Reserve System to ensure that as a financial regulator, it is accountable to the American public rather than to Wall Street. Among other governance improvements, the bill incorporates my proposal to create a new position of Vice Chairman for Supervision on the Federal Reserve Board of Governors, which should help ensure that supervision does not take a back seat to other priorities. The new Vice Chairman will develop policy recommendations for the board regarding the supervision and regulation of depository institution holding companies and other financial firms supervised by the board. He or she will also oversee the supervision and regulation of such firms.

Although the Senate bill included my proposal to require the head of the Federal Reserve Bank of New York to be Presidentially appointed and Senate confirmed, the provision was stripped out during conference. If the Governors of the Federal Reserve System in Washington are required to be confirmed by the Senate, then the President of the Federal Reserve Bank of New York, who played a pivotal and perhaps more powerful role in obligating taxpayer dollars during the financial crisis, should also be subject to the same public confirmation process. Wall Street should not have the ability to choose who is in such a powerful position. Although the final bill limits class A directors—who represent the stockholding member banks of the Federal Reserve District—from participating in the process, it still allows the other directors, who could be bankers or represent other powerful interests, to vote for the head of the New York Reserve Bank. I believe that more still needs to be done to make this position truly accountable to the taxpayers.

The Dodd-Frank Act also includes a number of strong investor protection provisions that represent a significant step forward in how we oversee our capital markets and ensure that investors have the best information available for their decisionmaking. This title reflects strong proposals I have put forward as the chairman of the Securities, Insurance, and Investment Subcommittee, including robust accountability provisions for credit rating agencies, and provisions to strengthen the tools and authorities of the Securities and Exchange Commission.

The conference report includes strong new rules I helped write to address problems we saw at credit rating agencies leading up to the financial crisis. It creates an Office of Credit Ratings at the SEC to increase oversight of nationally recognized statistical rating organizations, and contains strong new rules regarding disclosure, conflicts of interest, and analyst qualifications. Perhaps most significantly, it includes a strong new pleading standard I crafted that will make it easier for investors to take legal action if a rating agency knowingly or recklessly fails to review key information in developing a rating.

I also worked with the chairman and my colleagues in conference to incorporate more than a dozen improvements to the securities laws that will protect investors by strengthening the SEC's ability to bring enforcement actions, addressing issues revealed by the Madoff fraud, and modernizing the SEC's ability to obtain critical information. In particular, these provisions would enhance the ability of the SEC to hire outside experts, strengthen oversight of fund custodians, modernize the ability of the SEC to obtain information from the firms it oversees, and clarify and enhance SEC penalties and other authorities. I am particularly pleased that the conference report contains extraterritoriality language that clarifies that in actions brought by the SEC or the Department of Justice, specified provisions in the securities laws apply if the conduct within the United States is significant, or the external U.S. conduct has a foreseeable substantial effect within our country, whether or not the securities are traded on a domestic exchange or the transactions occur in the United

States. I also support the establishment of a program to reward whistleblowers when the SEC brings significant enforcement actions based upon original information provided by the whistleblower, and I look forward to the SEC rules that will detail the framework for this program.

Although I would have preferred the proposal in the Senate bill by Senator SCHUMER to provide the SEC with self-funding, I am pleased that the amendment on SEC funding that I offered with Senator SHELBY during conference was included in the conference report. These provisions would keep the SEC budget within the annual appropriations process, but change how the funding process would work for the Commission. Our proposal includes budget bypass authority, under which the SEC would provide Congress with its assessment of its budget needs at the same time it provides this information to the Office of Management and Budget. In addition, the President, as part of his annual budget request to the Congress, would be required to include the SEC's budget request in unaltered form. The language will also have the SEC deposit up to $50 million per year of the registration fees into a new reserve fund, which can be used for longer range planning for technology and other agency tools. The SEC will have permanent authority to obligate up to $100 million in any fiscal year out of the reserve fund.

One important investor protection that was also supported by Senators LEVIN, COBURN, and KAUFMAN but not included in the final bill was language that would have corrected what we and many others, including legal scholars, regard as the mistaken Supreme Court decision in Gustafson v. Alloyd. Before the Supreme Court's decision in this case, the rule was simple but clear: be careful not to mislead when selling securities in both public and private offerings. After Gustafson, this simple rule was needlessly complicated and limited just to public offerings.

Our amendment, which we will continue to work on a bipartisan basis to add to another legislative vehicle in the future, would have put investors in private offerings on the same level as investors in public offerings, thereby restoring congressional intent and a standard that was in place for 60 years before the Supreme Court decided Gustafson.

One of the lessons learned from the Bush era financial collapse is that too often rules were ignored and information was hidden. That is why I am extremely disappointed that the conference report includes an exemption for companies with less than $75 million in market capitalization from the requirements of Sarbanes-Oxley section 404(b). This change will exempt more than 5,000 public companies from audits, despite the fact that small companies have often been shown to be more prone to both accounting fraud and to accounting errors, including among the highest rates of restatements. Enacting this exemption in the name of reducing paperwork, when extensive evidence indicates that the costs of compliance are reasonable and dropping, is unnecessary and unwise. I think there will be a price in the future as fraud increases and investors suffer.

I am also disappointed that conferees included a provision that overturns a recent court case regarding equity indexed annuities. Equity indexed annuities are financial products that combine aspects of insurance and securities, but are sold primarily as investments. This language will preclude State and Federal securities regulators from applying strong disclosure, suitability, and sales practice standards to these often risky and harmful products. I believe this is bad policy.

Clearly with the State securities regulators on one side of this issue, and the insurance regulators on the other—this is not a matter which should have been resolved in a conference committee. The regulation of equity indexed annuities deserves more consideration through hearings and the development of a legislative record that informs the Congress of what changes should happen in this area.

I am pleased that the conference report makes it clear that after conducting a study, the SEC has the authority to impose a fiduciary duty on brokers who give investment advice, and that the advice must be in the best interest of their customers. It also includes language that gives shareholders a say on CEO pay with the right to a nonbinding vote on salaries and golden parachutes. This gives shareholders the ability to hold executives accountable, and to disapprove of misguided incentive schemes. I am also happy that after much dispute, the bill makes it clear that the SEC has the authority to grant shareholders proxy access to nominate directors. These requirements can help shift management's focus from short-term profits to long-term stability and productivity.

I am pleased that the conference report includes several provisions to discourage predatory lending and provide much needed foreclosure relief. To reduce risk, this legislation requires those companies that sell products like mortgage backed securities to hold onto at least 5 percent of what they're selling so that these companies have the incentive to sell only those products they would own themselves. In other words, we make sure that there is some ''skin in the game''.

The conference report also further levels the playing field by enacting some commonsense proposals to protect borrowers. Lenders will now have to ensure that a borrower has the ability to repay a mortgage, and they can no longer steer borrowers into a more expensive mortgage product when the borrower qualifies for a more affordable one. The bill outlaws pre-payment penalties that trapped so many borrowers into unaffordable loans, and those lenders who continue their predatory ways will be held accountable by consumers for as high as 3 years of interest payments and damages plus attorney's fees.

Additionally, the Consumer Financial Protection Bureau will have the authority to investigate and enforce rules against all mortgage lenders, servicers, mortgage brokers, and foreclosure scam operators so that hard-working Americans have a strong financial cop on the beat that has the interests of consumers in mind.

Finally, I am particularly pleased that the conference report includes several provisions, some of which come from legislation I first introduced last Congress and revised this Congress, to provide much needed foreclosure relief to those who have borne the brunt of this crisis. First, it provides $1 billion for loans to help qualified unemployed homeowners with reasonable prospects for reemployment to help cover mortgage payments. Second, I worked with my colleagues to ensure that the additional funding for HUD's Neighborhood Stabilization Program would reach all States, including Rhode Island. Third, I not only supported the inclusion of legal assistance for foreclosure-related issues, but I also fought to ensure that Rhode Island, which has one of the highest rates of foreclosure and unemployment, would be in a better position to receive priority consideration for this assistance. Lastly, I worked to include a national foreclosure database to give regulators an important tool to monitor and anticipate issues stemming from foreclosures and defaults in our housing markets and better pinpoint assistance to struggling homeowners.

Before I conclude I would like to take a moment to thank Kara Stein of my staff, who also serves as the staff director of the Securities, Insurance, and Investment Subcommittee, which I chair, and Randy Fasnacht, a detailee to the subcommittee from the GAO. They did a remarkable job and worked tirelessly. I also want to recognize the contributions of James Ahn of my staff as well as the foundation that Didem Nisanci, formerly of my staff, helped lay for this process. I also want to acknowledge the contributions of many others, including Chairman DODD and his staff.

I urge my colleagues to support this critical legislation. But the Senate's work does not end with the bill's passage. It will have to monitor and oversee the law's implementation very closely. The Dodd-Frank Wall Street Reform and Consumer Protection Act will make significant improvements to consumer protection that will benefit families and communities in my own State of Rhode Island and across the country. It will help create more transparent, fair, and efficient capital markets in our country, which will help create jobs and support American businesses. And it will provide a more secure and stable economic footing for the decades ahead.

Mr. AKAKA Mr. President, while I strongly support the Dodd-Frank conference report, I am concerned and disappointed that the legislation includes a particular provision that would exempt indexed annuity products from securities regulation. I ask unanimous consent that the accompanying letters in opposition to this provision from AARP, the North American Securities Administrators Association, the Consumer Federation of America, and the Financial Planning Association be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. AKAKA. Indexed annuities combine aspects of insurance and securities and are sold primarily as investment products. Consumers across the country, including some in Hawaii, have been harmed by the deceptive manner in which these products are being sold. For example, a seller in Hawaii pushed equity indexed annuities to collect unreasonably high commissions at the expense of senior citizens. Those investors were harmed by these financial products. Exempting indexed annuities from securities regulation would establish a dangerous precedent that promotes the development of financial products not subject to regulation and investor protection standards.

Opponents might argue that federal regulation is unnecessary or distracts from state regulation. However, Federal regulation is necessary to help protect investors by providing consistency and uniformity because securities laws can vary across states. Others are concerned that Federal regulation will limit access to indexed annuities. I counter that these products should only be sold when they are subject to the strong disclosure, suitability, and sales practice standards provided within the context of our Nation's securities laws.

I welcome further debate on and examination of this matter, including hearings to learn more about the consequences of this provision.

AARP,
Washington, DC, May 19, 2010.

Hon. CHRISTOPHER DODD,
U.S. Senate, Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: AARP writes to strongly oppose Harkin Amendment #3920, which would deprive investors in equity-indexed annuities of needed protections provided by state and federal securities laws.

These hybrid products combine elements of insurance and securities, but they are sold primarily as investments, not insurance, especially to people who are investing for their own retirement. Growth in equity-indexed annuity value is tied to one of several securities indexes (e.g. the S&P 500 or the Dow Jones Industrial Average), and comparing and choosing suitable products can be difficult for investors. These products also come with high fees and have long surrender periods, which may make them unsuitable as investments for most seniors.

In the fall of 2008, the Securities and Exchange Commission adopted a rule to regulate equity-indexed annuities as securities (Rule 151A). The rule was later challenged, and the Court of Appeals for the District of Columbia Circuit upheld the legal foundation for the SEC's action.

Because seniors are a target audience for these products, AARP submitted comments to the SEC supporting the rule, stating it was important that Rule 151A supplement, not supplant, state insurance law. In fact, the rule applies specifically to annuities regulated under state insurance law. AARP also submitted a joint amicus brief, along with the North American Securities Administrators Association and MetLife, supporting Rule 151A.

The Harkin amendment would overturn the SEC rule, which is designed to provide disclosure, suitability, and sales practice protections afforded by state and federal securities laws. The amendment would preempt any further ability of the SEC to regulate in this area. This not only deprives investors of needed protections against widespread abusive sales practices associated with these complex financial products, it also sets a dangerous precedent. If this amendment is adopted, the industry will be encouraged to develop hybrid products in the future specifically designed to evade a regulatory regime designed to protect consumers.

Regulating indexed annuities as securities is long overdue and vitally important for our nation's investors saving for a secure retirement.

The SEC's rule on indexed annuities accomplishes this goal in a thoughtful and reasonable fashion, and it should be allowed to take effect. AARP therefore opposes the Harkin amendment.

Sincerely,

DAVID SLOANE,
Senior Vice President, Government Relations and Advocacy.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, June 14, 2010.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services, Washington, DC.

Hon. SPENCER BACHUS,
Chairman, Committee on Financial Services, Washington, DC.

Hon. CHRISTOPHER DODD,
Chairman, Committee on Banking, Housing and Urban Development, Washington, DC.

Hon. RICHARD SHELBY,
Ranking Member, Committee on Banking, Housing and Urban Development, Washington, DC.

OPPOSE ATTEMPT TO NULLIFY SEC RULEMAKING ON EQUITY INDEXED ANNUITIES

DEAR CHAIRMEN AND RANKING MEMBERS: On behalf of state securities regulators, I am writing to oppose an attempt to deprive investors in indexed annuities of the strong protections afforded by our nation's securities laws. A provision to nullify SEC Rule 151 A was not included in either the House or the Senate bill. I would argue that it is not germane to the conference, and the provision should not be accepted by the conferees. Furthermore, efforts such as this one that will ultimately deprive investors of important protections should not be allowed to succeed.

Indexed annuities are securities, and they are heavily marketed as such. All too often, deceptive sales practices have been used to promote these complicated investment products. As a result, investors—and senior citizens in particular—can fall prey to sales pitches designed to make these investments seem safe and straightforward when in fact they may be neither. Accordingly, it is vitally important that indexed annuities be regulated as securities and subjected to the strong standards afforded by our nation's securities laws.

To ensure that investors receive these protections, the Securities and Exchange Commission (''SEC'') adopted Rule 151A, which would subject indexed annuities to regulation as securities. The United States Court of Appeals for the District of Columbia Circuit upheld the legal foundation for Rule 151 A. Although remanding with respect to certain procedural requirements, the court upheld the rule on substantive legal grounds, finding it was reasonable for the SEC to conclude that indexed annuities should be subject to federal securities regulation.

Attempts to disparage the SEC's rule as a federal attack on state regulation are unfounded. Critics who level that charge ignore the fact that the rule will NOT interfere with the authority of state insurance commissioners to continue regulating indexed annuities and the companies that issue them. In fact, in order to be covered by the rule, a contract must be subject to regulation as an annuity under state insurance law.

Nor will the rule impose unreasonable burdens on industry. It will simply require compliance with essentially the same regulatory standards that for 75 years have applied to all companies that issue securities. Moreover, the rule is strictly prospective, applying only to indexed annuities issued after the effective date, and it does not take effect for two years, affording the industry ample time to prepare for compliance. In short, the rule will provide much needed protections for investors without unfairly burdening industry.

Indexed annuities are hybrid products that supposedly offer investors the combined advantages of guaranteed minimum returns along with profits from stock market gains. Although indexed annuities may be legitimate vehicles for some people, they have many features, including high costs, significant risks, and long surrender periods, that make these products unsuitable for many investors. Investors have a difficult time understanding these hazards because indexed annuities are hopelessly complex. Compounding the problem are the generous commissions that agents can earn from the sale of these products.

The problems associated with the marketing of indexed annuities are a matter of record in countless news articles, government warnings, regulatory enforcement actions, and lawsuits filed by innumerable investors seeking damages for the unsuitable and fraudulent sale of indexed annuities. Indeed, these products have become so infamous that they were featured in a prime time Dateline NBC report entitled ''Tricks of the Trade.''

Without question, the single most effective way to address abuses in the sale of indexed annuities is to regulate them as securities. This is legally appropriate because indexed annuities shift a significant degree of investment risk to purchasers, and therefore pose the very dangers that the federal securities laws were intended to address. Licensing standards under the securities laws will help ensure that agents have the requisite knowledge and character to sell these complex investment products. Under the securities laws, those agents will also be subject to strong supervision requirements. Mandatory registration of indexed annuities as securities will vastly increase the amount of information available to investors concerning the terms, risks, and costs of these offerings. Perhaps most important, the strong investor protection standards that have been a part of securities regulation for decades will deter abuses in the sale of indexed annuities and provide more effective remedies for those who are victimized.

The goal of financial reform is to strengthen investor confidence in our markets and regulating indexed annuities as securities under federal law is vitally important to meeting this objective. The SEC's Rule 151A on indexed annuities is a step in the right direction and it should be allowed to take effect. Any attempt to reverse this important regulatory initiative should not be adopted.

Sincerely,

DENISE VOIGT CRAWFORD,
Texas Securities Commissioner,
NASAA President.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, June 23, 2010.

PROTECT INVESTORS: REJECT SENATE PROPOSALS INCLUDED IN TITLE IX

DEAR CONFEREE: State securities regulators are profoundly disappointed that the Senate conferees approved a Title IX counteroffer that includes two provisions that seriously weaken investor protections in a bill purportedly written to strengthen them. I urge you to reject the Senate fiduciary duty study/rulemaking language and the amendment to exempt certain hybrid annuity products from securities regulation.

Fiduciary Duty. Instead of the strongest possible fiduciary duty for every financial intermediary providing investment advice, the ''compromise'' study in the Senate offer has been modified to lessen the chances that investors will ever realize the benefits of a fiduciary duty, the single most important investor protection in the reform package. For the following reasons, NASAA must strongly oppose it.

The study is nothing more than a delay tactic and should be rejected outright.

It is wasteful of the SEC's resources in that it requires the agency to review and study issues that have already been repeatedly studied.

If the study remains in place, it should be significantly streamlined so as to avoid needless repetition of prior studies. Further, if there must be a study, it should be required to be conducted on a fully-cooperative basis by both governmental regulators, the SEC and the states, in order to maximize resources and insure its completion within the one-year time frame.

To make matters worse, the rulemaking language proposed by the Senate fails to achieve the original goal of both the Senate Banking Committee and the House Financial Services Committee to impose the Investment Advisers Act fiduciary duty on broker-dealers when providing personalized investment advice to retail customers about securities. Our specific opposition to the Senate rulemaking language includes the following:

The two year rulemaking provision would mean that it could be three years before the SEC even undertakes an attempt to implement a rule to address the study findings. Further, and as more fully discussed below, the conditions imposed by this amendment on any such rulemaking process are so arduous that it is highly doubtful that a rule of any kind would be promulgated.

The new rulemaking language would not result in a fiduciary duty for broker-dealers providing investment advice. The House language authorizing the SEC to adopt rules imposing the full Investment Advisers Act fiduciary duty on brokers when they give personalized advice about securities to retail investors has been removed. It has been replaced by language authorizing the SEC to adopt rules requiring brokers to act in their customers' ''best interests'' which is far short of the fiduciary duty.

That weakened authority provided to the SEC is subject to such burdensome conditions and limitations that it is unlikely ever to be exercised. Before the SEC could even adopt a rule it would have to complete the study required above and then, as part of the rulemaking, show that no other approach could address the findings of the study. These draconian conditions would make any rule promulgated by the Commission subject to a legal challenge the agency would be unlikely to win.

The provisions requiring the SEC to harmonize enforcement of the standard, so that it is applied equally to brokers and advisers, have also been deleted.

Equity Indexed Annuities. The Senate conferees also approved an amendment to preempt securities regulation of equity-indexed annuities and future hybrid products that have both securities and insurance features. State securities regulators have actively pursued enforcement cases involving sales practice abuses of agents selling equity indexed annuities. These state enforcement actions are in danger of being preempted by the Harkin amendment and investors, especially seniors, would be left without the protection of vigorous securities enforcement activity.

The problems associated with the marketing of indexed annuities are a matter of record in countless news articles, government warnings, regulatory enforcement actions, and lawsuits filed by innumerable investors seeking damages for the unsuitable and fraudulent sale of indexed annuities. It was these problems that led the SEC to adopt Rule 151A after a fair and open rulemaking process.

The best way to ensure adequate investor protections in the sale of equity indexed annuities is to allow the SEC to exercise its appropriate authority over these products. State securities regulators urge you to reject this amendment as it has no place in a bill intended to strengthen investor protections.

In closing, we are extremely dissatisfied that the provisions in the Investor Protection title continue to be weakened. We urge you to reverse this trend, reject the Senate counteroffer and insist on strong protections for our nation's investors.

Sincerely,

DENISE VOIGT CRAWFORD,
NASAA President,
Texas Securities Commissioner.

NASAA & CFA,
May 14, 2010.

OPPOSITION TO HARKIN/JOHANNS/LEAHY AMENDMENT NO. 3920

DEAR SENATOR: We are writing to oppose the Harkin/Johanns/Leahy amendment, which deprives investors in indexed annuities of the strong protections afforded by our nation's securities laws. Indexed annuities are securities, and they are heavily marketed as such. All too often, deceptive sales practices have been used to promote these complicated investment products. As a result, investors—and senior citizens in particular—can fall prey to unsuitable sales. Accordingly, it is vitally important that indexed annuities be regulated as securities and subjected to the strong disclosure, suitability, and sales practice standards afforded by our nation's securities laws.

To ensure that investors receive these protections, the Securities and Exchange Commission (''SEC'') adopted Rule 151A, which would subject indexed annuities to regulation as securities. The United States Court of Appeals for the District of Columbia Circuit upheld the legal foundation for Rule 151A. Although remanding with respect to certain procedural requirements, the court upheld the rule on substantive legal grounds, finding it was reasonable for the SEC to conclude that indexed annuities should be subject to federal securities regulation.

Attempts to disparage the SEC's rule as a federal attack on state regulation are unfounded. Critics who level that charge ignore the fact that the rule will NOT interfere with the authority of state insurance commissioners to continue regulating indexed annuities and the companies that issue them. In fact, in order to be covered by the rule, a contract must be subject to regulation as an annuity under state insurance law.

Nor will the rule impose unreasonable burdens on industry. It will simply require compliance with essentially the same regulatory standards that for 75 years have applied to all companies that issue securities. Moreover, the rule is strictly prospective, applying only to indexed annuities issued after the effective date, and it does not take effect for two years, affording the industry ample time to prepare for compliance. In short, the rule will provide much needed protections for investors without unfairly burdening industry.

Indexed annuities are hybrid products that supposedly offer investors the combined advantages of guaranteed minimum returns along with profits from stock market gains. Although indexed annuities may be legitimate vehicles for some people, they have many features, including high costs, significant risks, and long surrender periods, that make these products unsuitable for many investors. Investors have a difficult time understanding these hazards because indexed annuities are hopelessly complex. Compounding the problem are the generous commissions that agents can earn from the sale of these products.

The problems associated with the marketing of indexed annuities are a matter of record in countless news articles, government warnings, regulatory enforcement actions, and lawsuits filed by innumerable investors seeking damages for the unsuitable and fraudulent sale of indexed annuities. Indeed, these products have become so infamous that they were featured in a prime time Dateline NBC report entitled ''Tricks of the Trade.''

Without question, the single most effective way to address abuses in the sale of indexed annuities is to regulate them as securities. This is legally appropriate because indexed annuities shift a significant degree of investment risk to purchasers, and therefore pose the very dangers that the federal securities laws were intended to address. Licensing standards under the securities laws will help ensure that agents have the requisite knowledge and character to sell these complex investment products. Under the securities laws, those agents will also be subject to strong supervision requirements. Mandatory registration of indexed annuities as securities will vastly increase the amount of information available to investors concerning the terms, risks, and costs of these offerings. Perhaps most important, the strong anti-fraud provisions and suitability standards that have been a part of securities regulation for decades will deter abuses in the sale of indexed annuities and provide more effective remedies for those who are victimized.

Regulating indexed annuities as securities under federal law is long overdue and vitally important for our nation's investors. The SEC's Rule 151A on indexed annuities accomplishes this goal in a thoughtful and reasonable fashion, and it should be allowed to take effect. The Harkin/Johanns/Leahy amendment would reverse this important regulatory initiative and should not be adopted.

Respectfully submitted,

DENISE VOIGT CRAWFORD,
President, NASAA.
BARBARA ROPER,

Director of Investor Protection, CFA.

CONSUMER FEDERATION OF AMERICA,
FUND DEMOCRACY,
June 12, 2010.

Hon. CHRISTOPHER DODD,
Chairman, Committee on Banking, Housing and Urban Development, U.S. Senate, Washington, DC.
Hon. BARNEY FRANK,
Chairman, Financial Services Committee, House of Representatives, Washington, DC.
Hon. RICHARD SHELBY,
Ranking Member, Committee on Banking, Housing and Urban Development, U.S. Senate, Washington, DC.
Hon. SPENCER BACHUS,
Ranking Member, Financial Services Committee, House of Representatives, Washington, DC.

PROTECT INVESTORS AND THE LEGISLATIVE PROCESS: REJECT EQUITY-INDEXED ANNUITIES PREEMPTION AMENDMENT

DEAR CHAIRMAN DODD, RANKING MEMBER SHELBY, CHAIRMAN FRANK, AND RANKING MEMBER BACHUS: We understand that members of the insurance industry continue to press for inclusion in the conference report of anti-consumer legislation to exempt equity-indexed annuities from securities regulation. We are writing to urge you to resist any such efforts.

Equity-indexed annuities are hybrid products that combine elements of both insurance and securities, but they are sold primarily as investments. Indeed, as documented in a seven-part Dateline NBC hidden camera expose, they are among the most abusively sold products on the market today. Responding to a rising level of complaints, the Securities and Exchange Commission voted in late 2008 to adopt rules regulating equity-indexed annuities as securities, a move that was immediately challenged in court by the insurance industry. In deciding the case, a U.S. Court of Appeals sided with the agency on the basic issue of whether equity-indexed annuities should be regulated as securities while remanding the rule with respect to procedural issues.

Having failed to prevail in court, the insurance industry has turned to Congress to preempt legitimate securities regulation of this product. We urge you to resist these efforts for the following reasons:

Equity-indexed annuities are complex products whose returns fluctuate with performance of the securities markets. Absent regulation under securities laws, they can be sold by salespeople with no more understanding of the markets than the customer.

Although the National Association of Insurance Commissioners has developed a model suitability rule for annuity sales, it has not been adopted in all states. Regulation under securities laws would provide national uniformity, would bring to bear the added regulatory resources of the SEC, state securities regulators, and FINRA, and would provide additional investor protections in the form of improved disclosures and limits on excessive compensation.

Exempting equity-indexed annuities from securities regulation would set a dangerous precedent and encourage the development of additional hybrid products designed specifically to evade a more rigorous form of regulation.

This highly controversial measure—which is opposed by consumer advocates as well as state and federal securities regulators—was not included in either the House or the Senate bill and is not germane to the underlying legislation. To include it in the conference report would be a gross violation of the integrity of the legislative process. We urge you to protect investors and the legislative process by preventing the equity-indexed annuities provision from being added to the conference report.

Respectfully submitted,
BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.
MERCER BULLARD,
Executive Director, Fund Democracy.

FINANCIAL PLANNING ASSOCIATION,
Washington, DC, June 15, 2010.

Hon. BARNEY FRANK, *Chairman,*
Hon. SPENCER BACHUS,
Ranking Member, Committee on Financial Services, House of Representatives, Washington, DC.
Hon. CHRISTOPHER J. DODD, *Chairman,*
Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing and Urgan Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN FRANK, CHAIRMAN DODD, RANKING MEMBER BACHUS, AND RANKING MEMBER SHELBY: I am writing to oppose efforts to strip the Securities and Exchange Commission (SEC) of authority to oversee sales practices in connection with indexed annuities that are marketed as investment products. At a time when Congress is seeking ways to improve consumer protections in the financial services sector, the Financial Planning Association (FPA) believes it would be completely inappropriate to preempt the SEC from exercising its existing authority to protect consumers from well-documented abuses.

Indexed annuities have a minimum guaranteed return, but the actual return will vary based on the performance of a securities index, such as the S&P 500. FPA members are very familiar with indexed annuities, with many financial planners specializing in retirement planning and more than half of our membership licensed to sell insurance and annuity products. They may recommend annuities, including indexed annuities, as an important component of a client's overall financial plan. As with other financial products, however, proper oversight is needed to help protect consumers from the few who would take advantage of them. FPA urges you to reject any efforts to strip the SEC of authority to protect purchasers of indexed annuities in the same way they protect those who purchase variable annuities.

In 2008, the SEC promulgated rules that would have brought indexed annuities under the same sales practice standards as variable annuities and other securities if they are marketed as investment products. Applying a two part test in accordance with Supreme Court precedent, the SEC sought to exercise oversight based on the allocation of investment risk between the insurance company and the customer, and on how the annuity is marketed. Notably, the SEC left regulation of the product itself to state insurance regulators and sought to merely oversee sales practices when the insurer chooses to market indexed annuities as an investment product.

FPA supported the SEC rule, as a measured and appropriate move to address a very real problem (See comment letter at www.fpanet.org/GovernmentRelations/). Opponents challenged the rule in court arguing that the SEC lacked authority, but the rule was vacated on other, technical grounds. Now they are seeking to preempt the SEC from overseeing the sales practices of these products, as it has effectively done so for variable annuities.

But the calculus is simple: if a product is marketed and sold as an investment product, and if the purchaser is bearing a certain investment risk, applying standard investor protections is common sense. Any issues particular to indexed annuities can be addressed through the normal rulemaking and comment process.

Consumer confidence and consumer protection are two of the most important considerations as you deliberate over important changes to our financial regulatory system. I urge you to resist any attempts to handcuff the SEC before it has even had an opportunity to bring its consumer protection resources to bear in this area.

Thank you for your consideration. If you have any questions, or if FPA can provide additional information, please contact me.

Very truly yours,
DANIEL J. BARRY,
Director of Government Relations.

Mrs. LINCOLN. Mr. President, as I have previously discussed, section 737 of H.R. 4173 will grant broad authority to the Commodity Futures Trading Commission to once and for all set aggregate position limits across all markets on non-commercial market participants. During consideration of this bill we all learned many valuable lessons about how the commodities markets operate and the impact that highly leveraged, and heretofore unregulated swaps, have on the price discovery function in the futures markets. I believe the adoption of aggregate position limits, along with greater transparency, will help bring some normalcy back to our markets and reduce some of the volatility we have witnessed over the last few years.

I also recognize that in setting these limits, regulators must balance the needs of market participants, while at the same time ensuring that our markets remain liquid so as to afford end-users and producers of commodities the ability to hedge their commercial risk. Along these lines I do believe that there is a legitimate role to be played by market participants that are willing to enter into futures positions opposite a commercial end-user or producer. Through this process the markets gain additional liquidity and accurate price discovery can be found for end-users and producers of commodities.

However, I still hold some reservations about these financial market participants and the negative impact of excessive speculation or long only positions on the commodities markets. While I have concerns about the role these participants play in the markets, I do believe that important distinctions in setting position limits on these participants are warranted. In implementing section 737, I would encourage the CFTC to give due consideration to trading activity that is unleveraged or fully collateralized, solely exchange-traded, fully transparent, clearinghouse guaranteed, and poses no systemic risk to the clearing system. This type of trading activity is distinguishable from highly leveraged swaps trading, which not only poses systemic risk absent the proper safeguards that an exchange traded, cleared system provides, but also may distort price discovery. Further, I would encourage the CFTC to consider whether it is appropriate to aggregate the positions of entities advised by the same advisor where such entities have different and systematically determined investment objectives.

I wish to also point out that section 719 of the conference report calls for a study of position limits to be undertaken by the CFTC. In conducting that study, it is my expectation that the CFTC will address the soundness of prudential investing by pension funds, index funds and other institutional investors in unleveraged indices of commodities that may also serve to provide agricultural and other commodity contracts with the necessary liquidity to assist in price discovery and hedging for the commercial users of such contracts.

Mr. President, as the Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, I am proud to say that the bill coming out of our committee was the base text for the derivatives title in the Senate passed bill. The Senate passed bill's derivatives title was the base text used by the conference committee. The conference committee made changes to the derivatives title, adopting several provisions from the House passed bill. The additional materials that I am submitting today are primarily focused on the derivatives title of the conference report. They are intended to provide clarifying legislative history regarding certain provisions of the derivatives title and how they are supposed to work together.

I ask unanimous consent that this material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The major components of the derivatives title include: 100 percent reporting of swaps and security-based swaps, mandatory trading and clearing of standardized swaps and security-based swaps, and real-time price reporting for all swap transactions—those subject to mandatory trading and clearing as well as those subject to the end user clearing exemption and customized swaps. Swap dealers, security-based swap dealers, major swap participants and major security-based swap participants will all be required to register with either the Commodity Futures Trading Commission, CFTC, or the Securities and Exchange Commission, SEC, and meet additional requirements including capital, margin, reporting, examination, and business conduct requirements. All swaps that are ''traded'' must be traded on either a designated contract market or a swap execution facility. All security-based swaps must be traded on either a national securities exchange or a security-based swap execution facility. It is a sea change for the $600 trillion swaps market. Swaps and security-based swaps which are not subject to mandatory exchange trading or clearing will be required to submit transaction data to swap data repositories or security-based swap data repositories. These new ''data repositories'' will be required to register with the CFTC and SEC and be subject to statutory duties and core principals which will assist the CFTC and SEC in their oversight and market regulation responsibilities.

There are several important definitional and jurisdictional provisions in title VII. For instance, the new definitions of ''swap'' and ''security-based swap'' are designed to maintain the existing Shad Johnson jurisdictional lines between the CFTC and the SEC which have been in place since 1982. Under the Shad Johnson accord, the CFTC has jurisdiction over commodity-based instruments as well as futures and options on broad-based security indices (and now swaps), while the SEC has jurisdiction over security-based instruments—both single name and narrow-based security indices—and now security-based swaps. The Shad Johnson jurisdictional lines were reaffirmed in 2000 with the passage of the Commodity Futures Modernization Act, CFMA, as it related to security futures products. Maintaining existing jurisdictional lines between the two agencies was an important goal of the Administration, as reflected in their draft legislation. This priority was reflected in the bills passed out of the Senate and House agricultural committees and through our respective chambers and now reflected in the conference report.

As noted above, the conference report maintains the Shad Johnson jurisdictional accord. We made it clear that the CFTC has jurisdiction under Section 2(a)(1) of the Commodity Exchange Act, ''CEA'', over both interest rate swaps and foreign exchange swaps and forwards. The definition of ''swap'' under the CEA specifically lists interest rate swaps as being a swap. This is CEA Section 1a(47)(A)(iii)(I). This is appropriate as the CFTC has a long history of overseeing interest rate futures. The futures exchanges have listed and traded interest rate contracts for nearly 40 years. The CME has listed for trading quarterly settled interest rate swap future contracts. In the last 24 months, some designated contract markets have listed futures contracts which mirror interest rate swaps in design, function, maturity date and all other material aspects. In addition, some of the CFTC registered clearing houses have listed and started to clear both these interest rate swap futures contracts as well as interest rate swap contracts. This is on top of the nearly $200 trillion in interest rate swap contracts which have been cleared at LCH.Clearnet in London.

Also, under this legislation, foreign exchange swaps and forwards come under the CFTC's jurisdiction under Section 2(a)(1) of the CEA. We listed in the definition of ''swap'' certain types of common swaps, including ''foreign exchange swaps'' so it would be clear that they are regulated under the CEA. See CEA Section 1a(47)(A)(iii)(VIII). In addition, the terms ''foreign exchange forward'' and ''foreign exchange swap'' are defined in the CEA itself. See CEA Section 1a(24) and (25). One should note that foreign exchange forwards are treated as swaps under the CEA.

The CEA as amended permits the Secretary of the Treasury to make a written determination to exempt either or both foreign exchange swaps and or foreign exchange forwards from the mandatory trading and clearing requirements of the CEA, which applies to swaps generally. Under new Section 1b of the CEA, the Secretary must consider certain factors in determining whether to exempt either foreign exchange swaps or foreign exchange forwards from being treated like all other swaps. These factors include: (1) whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States; (2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this Act for other classes of swaps; (3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements; (4) the extent of adequate payment and settlement systems; and (5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements. In making a written determination to exempt such swaps from regulation, the Secretary must make certain findings. The Secretary's written determination is not effective until it is filed with the appropriate Congressional Committees and provides the following information: (1) an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and (2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status. These provisions and this process related to exempting foreign exchange swaps and foreign exchange forwards from swaps regulation will be, and should be, difficult for the Secretary of the Treasury to meet. The foreign exchange swaps and foreign exchange forward market is approximately $65 trillion and the second largest part of the swaps market. It is important that the foreign exchange swaps market be transparent as well as subject to comprehensive and vigorous market oversight so there are no questions about possible manipulation of currencies or exchange rates.

I would also note that we have made it clear that even if foreign exchange swaps and forwards are exempted by the Secretary of the Treasury from the mandatory trading and clearing requirements which are applicable to standardized swaps, that all foreign exchange swaps and forwards transactions must be reported to a swap data repository under the CFTC's jurisdiction. In addition, we have made it clear that to the extent foreign exchange swaps and forwards are listed for trading on a designated contract market or cleared through a registered derivatives clearing organization that such swap contracts are subject to the CFTC's jurisdiction under the CEA and that the CFTC retains its jurisdiction over retail foreign exchange transactions.

We have made some progress in this legislation with respect to clarifying CFTC jurisdiction and preserving SEC enforcement jurisdiction over instruments which are ''security-based swap agreements.'' Security-based swap agreements are actually ''swaps'' and subject to both the CFTC and the SEC's jurisdiction. One will notice that we have inserted the definition of ''security-based swap agreements'' in both the Commodity Exchange Act and the Securities and Exchange Act—section 1a(47)(A)(v) of the CEA (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the SEA of 1934 (15 U.S.C. 78c(a)(78)). The term ''security-based swap agreement'' is a hold-over term from the CFMA of 2000. In the CFMA, Congress chose to exclude ''swap agreements'' from regulation by the CFTC and ''security-based swap agreements'' from regulation by the SEC. While the CFMA exclusions were broad, the SEC retained limited authority—anti fraud and anti manipulation enforcement authority—with respect to security-based swap agreements. The Agriculture Committee and Congress chose to preserve that existing enforcement jurisdiction of the SEC related to those swaps which qualify as security-based swap agreements. The swaps which will qualify as security-based swap agreements is quite limited. It would appear that non narrow-based security index swaps and credit default swaps may be the only swaps considered to be security-based swap agreements. The rationale for providing the SEC with enforcement authority with respect to security-based swap agreements in the CFMA was premised on the fact that the CFTC didn't have as extensive an anti-fraud or anti-manipulation authority as the SEC. This lack of CFTC authority was remedied in the title VII so that the CFTC now has the same authority as the SEC. It is good policy to have a second set of enforcement eyes in this area. The SEC can and should be able to back up the CFTC on enforcement issues without interceding in the main market and product regulation. In the new legislation, we repeal the specific exclusions related to swap agreements and security-based swap agreements in both the CEA and the Securities Exchange Act of 1934, ''SEA''. One should note that the definition of ''security-based swap agreement'' in the SEA specifically excludes any ''security-based swap'', which means that SBSAs are really swaps. This point is made clear in the definition of ''swap'' under the CEA. Under Section 1a(47)(A)(v) it states that ''any security-based swap agreement which meets the definition of ''swap agreement'' as defined in Section 206A of the Gramm-Leach-Bliley Act of which a material term is based on the price, yield, value or volatility of any security, or any group or index of securities, or any interest therein.'' Regulators should note that Congress chose to refer to security-based swap agreements as swaps at several points in the CEA. Further, the CFTC and the SEC, after consultation with the Federal Reserve, are to undertake a joint rulemaking related to security-based swap agreements. The regulators should follow Congressional intent in this area and preserve the SEC's anti-fraud and anti-manipulation enforcement authority for that limited group of swaps which are considered to be security-based swap agreements.

We have introduced a new term in this legislation, which is ''mixed swap''. The term is found in both the CEA and the SEA—CEA Section 1a(47)(D) and SEA Section 3(a)(68)(D). The term is subject to a joint rulemaking between the CFTC and the SEC. The term ''mixed swap'' refers to those swaps which have attributes of both security-based swaps and regular swaps. A ''mixed swap'' is somewhat similar to a ''hybrid product'' under the CEA which has attributes of both securities and futures. CEA Section 2(f). Hybrid products must be predominantly securities to be excluded from regulation as contracts of sale of a commodity for future delivery under the CEA. While there is no ''predominance'' or ''primarily'' test in the definition of ''mixed swap'' the regulators should ensure that when deciding the jurisdictional allocation of such mixed swaps in the joint rulemaking process, that mixed swaps should be allocated to either the CFTC or the SEC based on clear and unambiguous criteria like a primarily test. A de minimis amount of security-based swap attributes should not bring a swap into the SEC's jurisdiction just as a de minimis amount of swap attributes should not bring a security-based swap into the CFTC's jurisdiction. While there will be some difficult decisions to be made on individual swap contracts, it will be fairly clear most of the time whether a particular swap is more security-based swap or swap. We expect the regulators to be reasonable in their joint rulemaking and interpretations.

The mandatory clearing and trading of certain swaps and security-based swaps, along with real-time price reporting, is at the heart of swaps market reform. Under the conference report, swaps and security-based swaps determined to be subject to the mandatory clearing requirement by the regulators would also be required to be traded on a designated contract market, a national securities exchange, or new swap execution facilities or security-based swap execution facilities. To avoid any conflict of interests, the regulators—the CFTC and the SEC—will make a determination as to what swaps must be cleared following certain statutory factors. It is expected that the standardized, plain vanilla, high volume swaps contracts—which according to the Treasury Department are about 90 percent of the $600 trillion swaps market—will be subject to mandatory clearing. Derivatives clearing organizations and clearing agencies are required to submit all swaps and security-based swaps for review and mandatory clearing determination by regulators. It will also be unlawful for any entity to enter into a swap without submitting it for clearing if that swap has been determined to be required to clear. It is our understanding that approximately 1,200 swaps and security-based swaps contracts are currently listed by CFTC-registered clearing houses and SEC-registered clearing agencies for clearing. Under the conference report, these 1,200 swaps and security-based swaps already listed for clearing are deemed ''submitted'' to the regulators for review upon the date of enactment. It is my expectation that the regulators, who are already familiar with these 1,200 swap and security-based swap contracts, will work within the 90 day time frame they are provided to identify which of the current 1,200 swap and security-based swap agreements should be subject to mandatory clearing requirements. The regulators may also identify and review swaps and security-based swaps which are not submitted for clearinghouse or clearing agency listing and determine that they are or should be subject to mandatory clearing requirement. This provision is considered to be an important provision by senior members of the Senate Agriculture Committee, as it removes the ability for the clearinghouse or clearing agency to block a mandatory clearing determination.

The conference report also contains an end user clearing exemption. Under the conference report, end users have the option, but not the obligation, to clear or not clear their swaps and security-based swaps that have been determined to be required to clear, as long as those swaps are being used to hedge or mitigate commercial risk. This option is solely the end users' right. If the end user opts to clear a swap, the end user also has the right to choose the clearing house where the swap will be cleared. Further, the end user has the right, but not the obligation, to force clearing of any swap or security-based swap which is listed for clearing by a clearing house or clearing agency but which is not subject to mandatory clearing requirement. Again the end user has the right to choose the clearing house or clearing agency where the swap or security-based swap will be cleared. The option to clear is meant to empower end users and address the disparity in market power between the end users and the swap dealers. Under the conference report, certain specified financial entities are prohibited from using the end user clearing exemption. While most large financial entities are not eligible to use the end user clearing exemption for standardized swaps entered into with third parties, it would appropriate for regulators to exempt from mandatory clearing and trading inter affiliate swap transactions which are between for wholly-owned affiliates of a financial entity. We would further note that small financial entities, such as banks, credit unions and farm credit institutions below $10 billion in assets—and possibly larger entities—will be permitted to utilize the end user clearing exemption with approval from the regulators. The conference report also includes an anti-evasion provision which provides the CFTC and SEC with authority to review and take action against entities which abuse the end user clearing exemption.

In addition to the mandatory clearing and trading of swaps discussed above, the conference report retains and expands the Senate Agriculture Committee's real time swap transaction and price reporting requirements. The Agriculture Committee focused on swap market transparency while it was constructing the derivatives title. As stated earlier, the conference report requires 100% of all swaps transactions to be reported. It was universally agreed that regulators should have access to all swaps data in real time. On the other hand, there was some outstanding questions regarding the capacity, utility and benefits from public reporting of swaps transaction and pricing data. I would like to respond to those questions. Market participants—including exchanges, contract markets, brokers, clearing houses and clearing agencies—were consulted and affirmed that the existing communications and data infrastructure for the swaps markets could accommodate real time swap transaction and price reporting. Speaking to the benefits of such a reporting requirement, the committee could not ignore the experience of the U.S. Securities and Futures markets. These markets have had public disclosure of real time transaction and pricing data for decades. We concluded that real time swap transaction and price reporting will narrow swap bid/ask spreads, make for a more efficient swaps market and benefit consumers/counterparties overall. For these reasons, the Senate Agriculture Committee required ''real time'' price reporting for: (1) All swap transactions which are subject to mandatory clearing requirement; (2) All swaps under the end user clearing exemption which are not cleared but reported to a swap data repository subject; and, (3) all swaps which aren't subject to the mandatory clearing requirement but which are cleared at a clearing house or clearing agency—under permissive, as opposed to mandatory, clearing. The conference report adopted this Senate approach with one notable addition authored by Senator Reed. The Reed amendment, which the conference adopted, extended real time swap transaction and pricing data reporting to ''non-standardized'' swaps which are reported to swap data repositories and security-based swap data repositories. Regulators are to ensure that the public reporting of swap transactions and pricing data does not disclose the names or identities of the parties to the transactions.

I would like to specifically note the treatment of ''block trades'' or ''large notional'' swap transactions. Block trades, which are transactions involving a very large number of shares or dollar amount of a particular security or commodity and which transactions could move the market price for the security or contract, are very common in the securities and futures markets. Block trades, which are normally arranged privately, off exchange, are subject to certain minimum size requirements and time delayed reporting. Under the conference report, the regulators are given authority to establish what constitutes a ''block trade'' or ''large notional'' swap transaction for particular contracts and commodities as well as an appropriate time delay in reporting such transaction to the public. The committee expects the regulators to distinguish between different types of swaps based on the commodity involved, size of the market, term of the contract and liquidity in that contract and related contracts, i.e; for instance the size/dollar amount of what constitutes a block trade in 10-year interest rate swap, 2-year dollar/euro swap, 5-year CDS, 3-year gold swap, or a 1-year unleaded gasoline swap are all going to be different. While we expect the regulators to distinguish between particular contracts and markets, the guiding principal in setting appropriate block-trade levels should be that the vast majority of swap transactions should be exposed to the public market through exchange trading. With respect to delays in public reporting of block trades, we expect the regulators to keep the reporting delays as short as possible.

I firmly believe that taking the Senate bill language improved the final conference report by strengthening the regulators enforcement authority dramatically. The Senate Agriculture Committee looked at existing enforcement authority and tried to give the CFTC the authority which it needs to police both the futures and swaps markets. As I mentioned above, we provided the CFTC with anti-fraud and anti-manipulation authority equal to that of the SEC with respect to non narrow-based security index futures and swaps so as to equalize the SEC and CFTC enforcement authority in this area. The CFTC requested, and received, enforcement authority with respect to insider trading, restitution authority, and disruptive trading practices. In addition, we added in anti-manipulation authority from my good friend Senator Cantwell. Senator Cantwell and I were concerned with swaps participants knowingly and intentionally avoiding the mandatory clearing requirement. We were able to reach an agreement with the other committees of jurisdiction by providing additional enforcement authority that I believe will address the root problem. Further, I would be remiss in not mentioning that we provided specific enforcement authority under Section 9 for the CFTC to bring actions against persons who purposely evade the mandatory clearing requirement. This provision is supposed to work together with the anti-evasion provision in the clearing section. Another important provision is one related to fraud and an episode earlier this year involving Greece and the use of cross currency swaps. We gave new authority to the CFTC to go after persons who enter into a swap knowing that its counterparty intends to use the swap for purposes of defrauding a third party. This authority, which is meant to expand the CFTC's existing aiding and abetting authority, should permit the CFTC to bring actions against swap dealers and others who assist their counterparties in perpetrating frauds on third parties. All in all, the CFTC's enforcement authority was expanded to meet known problems and fill existing holes. It should give them the tools which are necessary to police this market.

A significant issue which was fixed during conference was clarifying that in most situations community banks aren't swap dealers or major swap participants. The definition of swap dealer was adjusted in a couple of respects so that a community bank which is hedging its interest rate risk on its loan portfolio would not be viewed as a Swap Dealer. In addition, we made it clear that a bank that originates a loan with a customer and offers a swap in connection with that loan shouldn't be viewed as a swap dealer. It was never the intention of the Senate Agriculture Committee to catch community banks in either situation. We worked very hard to make sure that this understanding came through in revised statutory language which was worked out during conference. There were some concerns expressed about banks being caught up as being highly leveraged financial entities under prong (iii) of the major swap participant definition. This concern was addressed by adding language clarifying that if the financial entity had a capital requirement set by a federal banking regulator that it wouldn't be included in the definition under that prong. This particular prong of the major swap participant provision was intended to catch entities like the hedge fund LTCM and AIG's financial products subsidiary, not community banks. We also clarified in Section 716 that banks which are major swap participants are not subject to the federal assistance bans. These changes and clarifications should ensure that community banks, when acting as banks, are not caught by the swap dealer or major swap participant definitions.

Section 716 and the ban on federal assistance to swap entities is an incredibly important provision. It was agreed by the administration, and accepted by the conference, that under the revised Section 716, insured depository institutions would be forced to ''push out'' the riskiest swap activities into a separate affiliate. The swap dealer activities which would have to be pushed out included: swaps on equities, energy, agriculture, metal other than silver and gold, non investment grade debt, uncleared credit default swaps and other swaps that are not bank permissible investments. We were assured by the administration that all of the types of swaps enumerated above are not bank permissible and will be subject to the push out. Further, it is our understanding that no regulatory action, interpretation or guidance will be issued or taken which might turn such swaps into bank permissible investments or activities.

It should also be noted that a mini-Volcker rule was incorporated into Section 716 during the conference. Banks, their affiliates and their bank holding companies would be prohibited from engaging in proprietary trading in derivatives. This provision would prohibit banks and bank holding companies, or any affiliate, from proprietary trading in swaps as well as other derivatives. This was an important expansion and linking of the Lincoln Rule in Section 716 with the Volcker Rule in Section 619 of Dodd-Frank.

Section 716's effective date is 2 years from the effective date of the title, with the possibility of a 1 year extension by the appropriate Federal banking agency. It should be noted that the appropriate federal banking agencies should be looking at the affected banks and evaluating the appropriate length of time which a bank should receive in connection with its ''push out.'' Under the revised Section 716, banks do not have a ''right'' to 24 month phase-in for the push out of the impermissible swap activities. The appropriate federal banking agencies should be evaluating the particular banks and their circumstances under the statutory factors to determine the appropriate time frame for the push out.

The Senate Agriculture Committee bill revised and updated several of the CEA definitions related to intermediaries such as floor trader, floor broker, introducing broker, futures commission merchant, commodity trading advisor, and commodity pool operator as well as adding a statutory definition of the term commodity pool. We note that the definition of futures commission merchant is amended to include persons that are registered as FCMs. This makes clear that such persons must comply with the regulatory standards, including the capital and customer funds protections that apply to FCMs. The Senate Agriculture Committee wanted to ensure that all the intermediary and other definitions were current and reflected the activities and financial instruments which CFTC registered and regulated entities would be advising on, trading or holding, especially in light of Congress adding swaps to the financial instruments over which the CFTC has jurisdiction. We note that in addition to swaps, we added other financial instruments such as security futures products, leverage contracts, retail foreign exchange contracts and retail commodity transactions which the CFTC has jurisdiction over and which would require registration where appropriate.

With respect to commodity trading advisors, CTAs, commodity pool operators, CPOs, and commodity pools, we wanted to provide clarity regarding the activities and jurisdiction over these entities. Under Section 749 we have provided additional clarity regarding what it means to be ''primarily engaged'' in the business of being a commodity trading advisor and being a commodity pool. To the extent an entity is ''primarily engaged'' in advising on swaps, such as interest rate swaps, foreign exchange swaps or broad-based security index swaps, then it would be required to register as a commodity trading advisor with the CFTC. On the other hand, to the extent an entity is primarily engaged in advising on security-based swaps it would be required register as an investment adviser with the SEC or the states. We would note that under existing law the CEA and the Investment Advisers Act have mirror provisions which exempts from dual registration and regulation SEC registered IAs and CFTC registered CTAs as long as they only provide very limited advice related to futures and securities, respectively. This policy is continued and expanded to the extent it now covers advice related to swaps and security-based swaps.

With respect to commodity pools, the SEC has long recognized that commodity pools are not investment companies which are subject to registration or regulation under the Investment Company Act of 1940. Alpha Delta Fund No Action Letter (pub avail. May 4, 1976); Peavey Commodity Futures Fund I, II and III No action letter (pub avail. June 2, 1983)); Managed Futures Association No Action Letter (Pub Avail. July 15, 1996). To be an ''investment company'' under Section 3(a) of the Investment Company Act an entity has to be primarily engaged in the business of investing, reinvesting, or trading securities. In the matter of the Tonopah Mining Company of Nevada, 26 S.E.C. 426 (July 22, 1947) and SEC v. National Presto Industries, Inc., 486 F.3d 305 (7th Cir. 2007). Commodity pools are primarily engaged in the business of investing, reinvesting or trading in commodity interests, not securities. For this reason, commodity pools are not investment companies and are not utilizing an exemption under the Investment Company Act. A recent and well know example of commodity pools which the SEC has recognized as not being investment companies, and not being required to register under the Investment Company Act, comes in the commodity based exchange traded funds (ETF) world. While recent ETFs based on gold, silver, oil, natural gas and other commodities have registered their securities under the 1933 and 1934 Acts and listed them on national securities exchanges for trading, these funds, which are commodity pools which are operated by CFTC registered commodity pool operators, are not registered as investment companies under the Investment Company Act of 1940. See the Investment Company Institute 2010 Fact Book, Chapter 3. We have clarified that commodity interests include not only contracts of sale of a commodity for future delivery and options on such contracts but would also include swaps, security futures products, leverage contracts, retail foreign exchange contracts, retail commodity transactions, physical commodities and any funds held in a margin account for trading such instruments. I am pleased that the Conference Report includes these new provisions which were in the bill passed out of the Senate Agriculture Committee.

I would also note the importance of Section 769 and Section 770. These sections amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 so that certain terms in the CEA are now incorporated into both of the 1940 Acts, which are administered by the SEC. We believed it was appropriate to incorporate these important definitions from the CEA into the two 1940 Acts as it relates to advice on futures and swaps, such as interest rate swaps and foreign exchange swaps and forwards, as well as what constitutes being a commodity pool and being primarily engaged in the business of investing in commodity interests as distinguished from being an investment company which is primarily engaged in the business of investing, reinvesting, holding, trading securities. I am pleased that the Conference Report includes these new updated definitions as it should help clarify jurisdictional and registration requirements.

Another extremely important issue which originated in the Senate Agriculture Committee was imposing a fiduciary duty on swap dealers when dealing with special entities, such as municipalities, pension funds, endowments, and retirement plans. The problems in this area, especially with respect to municipalities and Jefferson County, Alabama in particular are very well known. I would like to note that Senators Harkin and Casey have been quite active in this area and worked closely with me on this issue. While Senators Harkin, Casey and I did not get everything which we were looking for, we ended up with a very good product. First, there is a clear fiduciary duty which swap dealers and major swap participants must meet when acting as advisors to special entities. This is a dramatic improvement over the House passed bill and should help protect both tax payers and plan beneficiaries. Further, we have expanded the business conduct standards which swap dealers and major swap participants must follow even when they are not acting as advisors to special entities. I'd make a very important point, nothing in this provision prohibits a swap dealer from entering into transactions with special entities. Indeed, we believe it will be quite common that swap dealers will both provide advice and offer to enter into or enter into a swap with a special entity. However, unlike the status quo, in this case, the swap dealer would be subject to both the acting as advisor and business conduct requirements under subsections (h)(4) and (h)(5). These provisions will place tighter requirements on swap entities that we believe will help to prevent many of the abuses we have seen over the last few years. Importantly, the CFTC and the SEC have the authority to add to the statutory business conduct standards which swap dealers and major swap participants must follow. We expect the regulators to utilize this authority. Among other areas, regulators should consider whether to impose business conduct standards that would require swap dealers to further disclose fees and compensation, ensure that swap dealers maintain the confidentiality of hedging and portfolio information provided by special entities, and prohibit swap dealers from using information received from a special entity to engage in trades that would take advantage of the special entity's positions or strategies. These are very important issues and should be addressed.

Section 713 clarifies the authority and means for the CFTC and SEC to facilitate portfolio margining of futures positions and securities positions together, subject to account-specific programs. The agencies are required to consult with each other to ensure that such transactions and accounts are subject to ''comparable requirements to the extent practicable for similar products.'' The term ''comparable'' in this provision does not mean ''identical.'' Rather, the term is intended to recognize the legal and operational differences of the regulatory regimes governing futures and securities accounts.

Title VII establishes a new process for the CFTC and SEC to resolve the status of novel derivative products. In the past, these types of novel and innovative products have gotten caught up in protracted jurisdictional disputes between the agencies, resulting in delays in bringing products to market and placing U.S. firms and exchanges at a competitive disadvantage to their overseas counterparts.

In their Joint Harmonization Report from October 2009, the two agencies recommended legislation to provide legal certainty with respect to novel derivative product listings, either by a legal determination about the nature of a product or through the use of the agencies' respective exemptive authorities. Title VII includes provisions in Sections 717 and 718 to implement these recommendations.

It does so by establishing a process that requires public accountability by ensuring that jurisdictional disputes are resolved at the Commission rather than staff level, and within a firm timeframe. Specifically, either agency can request that the other one: 1) make a legal determination whether a particular product is a security under SEC jurisdiction or a futures contract or commodity option under CFTC jurisdiction; or 2) grant an exemption with respect to the product. An agency receiving such a request from the other agency is to act on it within 120 days. Title VII also provides for an expedited judicial review process for a legal determination where the agency making the request disagrees with the other's determination.

Title VII also includes amendments to existing law to ensure that if either agency grants an exemption, the product will be subject to the other's jurisdiction, so there will be no regulatory gaps. For example, the Commodity Exchange Act is amended to clarify that CFTC has jurisdiction over options on securities and security indexes that are exempted by the SEC. And Section 741 grants the CFTC insider trading enforcement authority over futures, options on futures, and swaps, on a group or index of securities.

We strongly urge the agencies to work together under these new provisions to alleviate the ills that they themselves have identified. The agencies should make liberal use of their exemptive authorities to avoid spending taxpayer resources on legal fights over whether these novel derivative products are securities or futures, and to permit these important new products to trade in either or both a CFTC- or SEC-regulated environment.

Section 721 includes a broad and expansive definition of the term ''swap'' that is subject to the new regulatory regime established in Title VII. It also provides the CFTC with the authority to further define the term ''swap'' (and various other new terms in Title VII) in order to include transactions and entities that have been structured to evade these important new legal requirements. The CFTC must not allow market participants to ''game the system'' by labeling or structuring transactions that are swaps as another type of instrument and then claim the instrument to be outside the scope of the legislation that Congress has enacted.

Section 723 creates a ''Trade Execution Requirement'' in new section 2(h)(8) of the Commodity Exchange Act (CEA). Section 2(h)(8)(A) requires that swaps that are subject to the mandatory clearing requirement under new CEA Section 2(h)(1) must be executed on either a designated contract market or a swap execution facility. Section 2(h)(8)(B) provides an exception to the Trade Execution Requirement if the swap is subject to the commercial end-user exception to the clearing requirement in CEA Section 2(h)(7), or if no contract market or swap execution facility ''makes the swap available to trade.'' This provision was included in the bill as reported by the Senate Agriculture Committee and then in the bill that was passed by the Senate.

In interpreting the phrase ''makes the swap available to trade,'' it is intended that the CFTC should take a practical rather than a formal or legalistic approach. Thus, in determining whether a swap execution facility ''makes the swap available to trade,'' the CFTC should evaluate not just whether the swap execution facility permits the swap to be traded on the facility, or identifies the swap as a candidate for trading on the facility, but also whether, as a practical matter, it is in fact possible to trade the swap on the facility. The CFTC could consider, for example, whether there is a minimum amount of liquidity such that the swap can actually be traded on the facility. The mere ''listing'' of the swap by a swap execution facility, in and of itself, without a minimum amount of liquidity to make trading possible, should not be sufficient to trigger the Trade Execution Requirement.

Both Section 723 and Section 729 establish requirements pertaining to the reporting of pre-enactment and post-enactment swaps to swap data repositories or the CFTC. They do so in new Sections 2(h)(5) and 4r(a) of the Commodity Exchange Act, respectively, which provide generally that swaps must be reported pursuant to such rules or regulations as the CFTC prescribes. These provisions should be interpreted as complementary to one another and to assure consistency between them. This is particularly true with respect to issues such as the effective dates of these reporting requirements, the applicability of these provisions to cleared and/or uncleared swaps, and their applicability—or non-applicability—to swaps whose terms have expired at the date of enactment.

Section 724 creates a segregation and bankruptcy regime for cleared swaps that is intended to parallel the regime that currently exists for futures. Section 724 requires any person holding customer positions in cleared swaps at a derivatives clearing organization to be registered as an FCM with the CFTC. Section 724 does not require, and there is no intention to require, swap dealers, major swap participants, or end users to register as FCMs with the CFTC to the extent that such entities hold collateral or margin which has been put up by a counterparty of theirs in connection with a swap transaction. In amending both the Commodity Exchange Act (CEA) and the Bankruptcy Code to clarify that cleared swaps are ''commodity contracts,'' Section 724 makes explicit what had been left implicit under the Commodity Futures Modernization Act of 2000. Specifically, we have clarified that: 1) title 11, Chapter 7, Subchapter IV of the United States Bankruptcy Code applies to cleared swaps to the same extent that it applies to futures; and 2) the CFTC has the same authority under Section 20 of the CEA to interpret such provisions of the Bankruptcy Code with respect to cleared swaps as it has with respect to futures contracts.

Section 731 prohibits a swap dealer or major swap participant from permitting any associated person who is subject to a statutory disqualification under the Commodity Exchange Act (CEA) to effect or be involved in effecting swaps on its behalf, if it knew or reasonably should have known of the statutory disqualification. In order to implement this statutory disqualification provision, the CFTC may require such associated persons to register with the CFTC under such terms, and subject to such exceptions, as the CFTC deems appropriate.

The term ''associated person of a swap dealer or major swap participant'' is defined in Section 721 as a person who, among other things, is involved in the ''solicitation'' or ''acceptance'' of swaps. These terms would also include the negotiation of swaps.

Section 731 includes a new Section 4s(g) of the CEA to impose requirements regarding the maintenance of daily trading records on swap dealers and major swap participants. To reflect advances in technology, CEA Section 4s(g) expressly requires that these registrants maintain ''recorded communications, including electronic mail, instant messages, and recordings of telephone calls.'' Under current law, Section 4g of the CEA governs the maintenance of daily trading records by certain existing classes of CFTC registrants, and is worded more generally and without expressly mentioning the recorded communications enumerated in CEA Section 4s(g). The enactment of this provision should not be interpreted to mean or imply that the specifically-identified types of recorded communications that must be maintained by swap dealers and major swap participants under CEA Section 4s(g) would be beyond the authority of the CFTC to require of other registrants by rule under Section 4g.

Sections 733 and 735 establish a regime of core principles to govern the operations of swap execution facilities and designated contract markets, respectively. Certain of these swap execution facility and designated contract market core principles are identically worded. Given that swap execution facilities will trade swaps exclusively, whereas designated contract markets will be able to trade swaps or futures contracts, we expect that the CFTC may interpret identically-worded core principles differently where they apply to different types of instruments or for different types of trading facilities or platforms.

Section 737 amends Section 4a(a)(1) of the Commodity Exchange Act (CEA) to authorize the CFTC to establish position limits for ''swaps that perform or affect a significant price discovery function with respect to registered entities.'' Subsequent descriptions of the significant price discovery function concept in Section 737, though, refer to an impact on ''regulated markets'' or ''regulated entities.'' The term ''registered entity'' is specifically defined in the CEA, and clearly includes designated contract markets and swap execution facilities. By contrast, the terms ''regulated markets'' and ''regulated entities'' are not defined or used anywhere else in the CEA. This different terminology is not intended to suggest a substantive difference, and it is expected that the CFTC may interpret the terms ''regulated markets'' and ''regulated entities'' to mean ''registered entities'' as defined in the statute for purposes of position limits under Section 737.

Section 737 also amends CEA Section 4a(a)(1) to authorize the CFTC to establish position limits for ''swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity.'' Later, Section 737 sets out additional provisions authorizing CFTC position limits to reach swaps, but without utilizing this same wording regarding swaps traded on or off designated contract markets or swap execution facilities. The absence of this wording is not intended to preclude the CFTC from applying any of the position limit provisions in Section 737 in the same manner with respect to DCM or SEF traded swaps as is explicitly provided for in CEA Section 4a(a)(1).

Finally, Section 737 amends CEA Section 4a(a)(4) to authorize the CFTC to establish position limits on swaps that perform a significant price discovery function with respect to regulated markets, including price linkage situations where a swap relies on the daily or final settlement price of a contract traded on a regulated market based upon the same underlying commodity. Section 737 also amends CEA Section 4a(a)(5) to provide that the CFTC shall establish position limits on swaps that are ''economically equivalent'' to futures or options traded on designated contract markets. It is intended that this ''economically equivalent'' provision reaches swaps that link to a settlement price of a contract on a designated contract market, without the CFTC having to first make a determination that the swaps perform a significant price discovery function.

Section 741, among other things, clarifies that the CFTC's enforcement authority extends to accounts and pooled investment vehicles that are offered for the purpose of trading, or that trade, off-exchange contracts in foreign currency involving retail customers. Thus, the CFTC may bring an enforcement action for fraud in the offer and sale of such managed or pooled foreign currency investments or accounts. These provisions overrule an adverse decision in the CFTC enforcement case of CFTC v. White Pine Trust Corporation, 574 F.3d 1219 (9th Cir. 2009), which erected an inappropriate limitation on the broad mandate that Congress has given the CFTC to protect this country's retail customers from fraud.

Section 742 includes several important provisions to enhance the protections afforded to customers in retail commodity transactions, and I would like to highlight three of them. First, Section 742 clarifies the prohibition on off-exchange retail futures contracts that has been at the heart of the Commodity Exchange Act (CEA) throughout its history. In recent years, there have been instances of fraudsters using what are known as ''rolling spot contracts'' with retail customers in order to evade the CFTC's jurisdiction over futures contracts. These contracts function just like futures, but the court of appeals in the Zelener case (CFTC v. Zelener, 373 F.3d 861 (7th Cir. 2004)), based on the wording of the contract documents, held them to be spot contracts outside of CFTC jurisdiction. The CFTC Reauthorization Act of 2008, which was enacted as part of that year's Farm Bill, clarified that such transactions in foreign currency are subject to CFTC anti-fraud authority. It left open the possibility, however, that such Zelener-type contracts could still escape CFTC jurisdiction if used for other commodities such as energy and metals.

Section 742 corrects this by extending the Farm Bill's ''Zelener fraud fix'' to retail off-exchange transactions in all commodities. Further, a transaction with a retail customer that meets the leverage and other requirements set forth in Section 742 is subject not only to the anti-fraud provisions of CEA Section 4b (which is the case for foreign currency), but also to the on-exchange trading requirement of CEA Section 4(a), ''as if'' the transaction was a futures contract. As a result, such transactions are unlawful, and may not be intermediated by any person, unless they are conducted on or subject to the rules of a designated contract market subject to the full array of regulatory requirements applicable to on-exchange futures under the CEA. Retail off-exchange transactions in foreign currency will continue to be covered by the ''Zelener fraud fix'' enacted in the Farm Bill; further, cash or spot contracts, forward contracts, securities, and certain banking products are excluded from this provision in Section 742, just as they were excluded in the Farm Bill.

Second, Section 742 addresses the risk of regulatory arbitrage with respect to retail foreign currency transactions. Under the CEA, several types of regulated entities can provide retail foreign currency trading platforms—among them, broker-dealers, banks, futures commission merchants, and the category of ''retail foreign exchange dealers'' that was recognized by Congress in the Farm Bill in 2008. Section 742 requires that the agencies regulating these entities have comparable regulations in place before their regulated entities are allowed to offer retail foreign currency trading. This will ensure that all domestic retail foreign currency trading is subject to similar protections.

Finally, Section 742 also addresses a situation where domestic retail foreign currency firms were apparently moving their activities offshore in order to avoid regulations required by the National Futures Association. It removes foreign financial institutions as an acceptable counterparty for off-exchange retail foreign currency transactions under section 2(c) of the CEA. Foreign financial institutions seeking to offer them to retail customers within the United States will now have to offer such contracts through one of the other legal mechanisms available under the CEA for accessing U.S. retail customers.

Section 745 provides that in connection with the listing of a swap for clearing by a derivatives clearing organization, the CFTC shall determine, both the initial eligibility and the continuing qualification of the DCO to clear the swap under criteria determined by the CFTC, including the financial integrity of the DCO. Thus, the CFTC has the flexibility to impose terns or conditions that it determines to be appropriate with regard to swaps that a DCO plans to accept for clearing. No DCO may clear a swap absent a determination by the CFTC that the DCO has proper risk management processes in place and that the DCO's clearing operation is in accordance with the Commodity Exchange Act and the CFTC's regulations thereunder.

Section 753 adds a new anti-manipulation provision to the Commodity Exchange Act (CEA) addressing fraud-based manipulation, including manipulation by false reporting. Importantly, this new enforcement authority being provided to the CFTC supplements, and does not supplant, its existing anti-manipulation authority for other types of manipulative conduct. Nor does it negate or undermine any of the case law that has developed construing the CEA's existing anti-manipulation provisions.

The good faith mistake provision in Section 753 is an affirmative defense. The burden of proof is on the person asserting the good faith mistake defense to show that he or she did not know or act in reckless disregard of the fact that the report was false, misleading, or inaccurate.

Section 753 also re-formats CEA Section 6(c), which is where the new anti-manipulation authority is placed, to make it easier for courts and the public to use and understand. Changes made to existing text as part of this re-formatting were made to streamline or eliminate redundancies, not to effect substantive changes to these provisions.

Title VIII of the legislation provides enhanced authorities and procedures for those clearing organizations and activities of financial institutions that have been designated as systemically important by a super-majority of the new Financial Stability Oversight Council. Title VIII preserves the authority of the CFTC and SEC as primary regulators of clearinghouses and clearing activities within their jurisdiction. Title VIII further expands the CFTC's and SEC's authorities in prescribing risk management standards and other regulations to govern designated clearing entities, and financial institutions engaged in designated activities. Similarly, Title VIII preserves and expands the CFTC's and SEC's examination and enforcement authorities with respect to designated entities within their respective jurisdictions.

Title VIII sets forth specific standards and procedures that permit the Council, upon a supermajority vote of the Council, and upon a determination that additional risk management standards are necessary to prevent significant risks to the stability of the financial system, to require the CFTC or SEC to impose additional risk management standards regarding designated financial market utilities or financial institutions engaged in designated activities.

Thus, the authorities granted in Title VIII are intended to be both additive and complementary to the authorities granted to the CFTC and SEC in Title VII and to those agencies' already existing legal authorities. The authority provided in Title VIII to the CFTC and SEC with respect to designated clearing entities and financial institutions engaged in designated activities would not and is not intended to displace the CFTC's and SEC's regulatory regime that would apply to these institutions or activities.

Whereas Title VIII is specifically addressed to payment, settlement, and clearing activities, Title I is addressed to consolidated entity supervision of complex financial institutions. Accordingly, to prevent coverage under two separate regulatory schemes, clearing agencies and derivatives clearing organizations are generally excepted from Title I. Also excepted from Title I are national exchanges, designated contract markets, swap execution facilities and other enumerated entities.

Title X of the legislation, which establishes a new Bureau of Consumer Financial Protection, maintains the supervisory, enforcement, rulemaking and other authorities of the CFTC over the persons it regulates. The legislation expressly prohibits the new Bureau from exercising any powers with respect to any persons regulated by the CFTC, to the extent that the actions of those persons are subject to the jurisdiction of the CFTC. It is not intended that Title X would lead to overlapping supervision of such persons by the Bureau. In this respect, the legislation is fully consistent with the Treasury Department's White Paper on Financial Regulatory Reform, which proposed the creation of an agency ''dedicated to protecting consumers in the financial products and services markets, except for investment products and services already regulated by the SEC or CFTC.'' (See Treasury White Paper at 55–56 (June 17, 2009) (emphasis added)).

Mr. DURBIN. Mr. President, I rise to speak about my interchange fee amendment that was incorporated into the Dodd-Frank Wall Street Reform and Consumer Protection Act. There are some important aspects of the amendment that I want to clarify for the record.

First, it is important to note that while this amendment will bring much-needed reform to the credit card and debit card industries, in no way should enactment of this amendment be construed as preempting other crucial steps that must be taken to bring competition and fairness to those industries. For example, a key component of the Senate-passed version of my amendment was a provision that would prohibit payment card networks from blocking merchants from offering a discount for customers who use a competing card network. This provision was unfortunately left out of the final conference report, but the need for this provision remains undiminished. It is blatantly anticompetitive for one company to prohibit its customers from offering a discounted price for a competitor's product, and I will continue to pursue steps to end this practice.

Additionally, in no way should my amendment be construed as preempting or superseding scrutiny of the credit card and debit card industries under the antitrust laws. Section 6 of the Dodd-Frank act conference report contains an antitrust savings clause which provides that nothing in the act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. I want to make clear that nothing in my amendment is intended to modify, impair, or supersede the operation of any of the antitrust laws, nor should my amendment be construed as having that effect. Vigorous antitrust scrutiny over the credit and debit card industries will continue to be needed after enactment of the Dodd-Frank act, particularly in light of the highly concentrated nature of those industries.

With respect to the new subsection 920(a) of the Electronic Fund Transfer Act that would be created by my amendment, there are a few issues that should be clarified. The core provisions of subsection (a) are its grant of regulatory authority to the Federal Reserve Board over debit interchange transaction fees, and its requirement that an interchange transaction fee amount charged or received with respect to an electronic debit transaction be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Paragraph (a)(4) makes clear that the cost to be considered by the Board in conducting its reasonable and proportional analysis is the incremental cost incurred by the issuer for its role in the authorization, clearance, or settlement of a particular electronic debit transaction, as opposed to other costs incurred by an issuer which are not specific to the authorization, clearance, or settlement of a particular electronic debit transaction.

Paragraph (5) of subsection (a) provides that the Federal Reserve Board may allow for an adjustment of an interchange transaction fee amount received by a particular issuer if the adjustment is reasonably necessary to make allowance for the fraud prevention costs incurred by the issuer seeking the adjustment in relation to its electronic debit transactions, provided that the issuer has demonstrated compliance with fraud-related standards established by the Board. The standards established by the Board will ensure that any adjustments to the fee shall be limited to reasonably necessary costs and shall take into account fraud-related reimbursements that the issuer receives from consumers, merchants, or networks. The standards shall also require issuers that want an adjustment to their interchange fees to take effective steps to reduce the occurrence of and costs from fraud in electronic debit transactions, including through the development of cost-effective fraud prevention technology.

It should be noted that any fraud prevention adjustment to the fee amount would occur after the base calculation of the reasonable and proportional interchange fee amount takes place, and fraud prevention costs would not be considered as part of the incremental issuer costs upon which the reasonable and proportional fee amount is based. Further, any fraud prevention cost adjustment would be made on an issuer-specific basis, as each issuer must individually demonstrate that it complies with the standards established by the Board, and as the adjustment would be limited to what is reasonably necessary to make allowance for fraud prevention costs incurred by that particular issuer. The fraud prevention adjustment provision in paragraph (a)(5) is intended to apply to all electronic debit transactions, whether authorization is based on signature, PIN or other means.

Paragraph (6) of subsection (a) exempts debit card issuers with assets of less than $10 billion from interchange fee regulation. This paragraph makes clear that for purposes of this exemption, the term ''issuer'' is limited to the person holding the asset account which is debited, and thus does not count the assets of any agents of the issuer. However, the affiliates of an issuer are counted for purposes of the $10 billion exemption threshold, so if an issuer together with its affiliates has assets of greater than $10 billion, then the issuer does not fall within the exemption.

It should be noted that the intent of my amendment is not to diminish competition in the debit issuance market. I will be watching closely to ensure that the giant payment card networks Visa and MasterCard do not collude with one another or with large financial institutions to take steps to purposefully disadvantage small issuers in response to enactment of this amendment.

Paragraph (7) of subsection (a) exempts from interchange fee regulation electronic debit transactions involving debit cards or prepaid cards that are provided to persons as part of a federal, state or local government-administered payment program in which the person uses the card to debit assets provided under the program. The Federal Reserve Board will issue regulations to implement this provision, but it is important to note that this exemption is only intended to apply to cards which can be used to transfer or debit assets that are provided pursuant to the government-administered program. The exemption is not intended to apply to multi-purpose cards that mingle the assets provided pursuant to the government-administered program with other assets, nor is it intended to apply to cards that can be used to debit assets placed into an account by entities that are not participants in the government-administered program.

The amendment would also create subsection 920(b) of the Electronic Fund Transfer Act, which provides several restrictions on payment card networks. Paragraphs (1), (2) and (3) of 920(b) are intended only to serve as restrictions on payment card networks to prohibit them from engaging in certain anticompetitive practices. These provisions are not intended to preclude those who accept cards from engaging in any discounting or other practices, nor should they be construed to preclude contractual arrangements that deal with matters not covered by these provisions. Further, nothing in these provisions should be construed to mean that merchants can only provide a discount that is exactly specified in the amendment. The provisions also should not be read to confer any congressional blessing or approval of any other particular contractual restrictions that payment card networks may place on those who accept cards as payment. All these provisions say is that Federal law now blocks payment card networks from engaging in certain specific enumerated anti-competitive practices, and the provisions describe precisely the boundaries over which payment card networks cannot cross with respect to these specific practices.

Paragraph (b)(1) directs the Federal Reserve Board to prescribe regulations providing that issuers and card networks shall not restrict the number of networks on which an electronic debit transaction may be processed to just one network, or to multiple networks that are all affiliated with each other. It further directs the Board to issue regulations providing that issuers and card networks shall not restrict a person who accepts debit cards from directing the routing of electronic debit transactions for processing over any network that may process the transactions. This paragraph is intended to enable each and every electronic debit transaction—no matter whether that transaction is authorized by a signature, PIN, or otherwise—to be run over at least two unaffiliated networks, and the Board's regulations should ensure that networks or issuers do not try to evade the intent of this amendment by having cards that may run on only two unaffiliated networks where one of those networks is limited and cannot be used for many types of transactions.

Paragraph (b)(2) provides that a payment card network shall not inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of a particular form of payment—cash, checks, debit cards or credit cards—provided that discounts for debit cards and credit cards do not differentiate on the basis of the issuer or the card network, and provided that the discount is offered in a way that complies with applicable Federal and State laws. This paragraph is in no way intended to preclude the use by merchants of any other types of discounts. It just makes clear that Federal law prohibits payment card networks from inhibiting the offering of discounts which are for a form of payment—for example, a 1-percent discount for payment by debit card. This paragraph also provides that a network may not penalize a person for the way that the person offers or discloses a discount to customers, which will end the current practice whereby payment card networks have regularly sought to penalize merchants for providing cash, check or debit discounts that are fully in compliance with applicable Federal and State laws.

Paragraph (b)(3) provides that a payment card network shall not inhibit the ability of any person to set a minimum dollar value for acceptance of credit cards, provided that the minimum does not differentiate between issuers or card networks, and provided that the minimum does not exceed $10. This paragraph authorizes the Board to increase this dollar amount by regulation. The paragraph also provides that card networks shall not inhibit the ability of a Federal agency or an institution of higher education to set a maximum dollar value for acceptance of credit cards, provided that the maximum does not differentiate between issuers or card networks. As with the discounts, this provision is not intended to preclude merchants, agencies or higher education institutions from setting other types of minimums or maximums by card or amount. It simply makes clear that payment card networks must at least allow for the minimums and maximums described in the provision.

Paragraph (b)(4) contains a rule of construction providing that nothing in this subsection shall be construed to authorize any person to discriminate between debit cards within a card network or to discriminate between credit cards within a card network on the basis of the issuer that issued the card. The intent of this rule of construction is to make clear that nothing in this subsection should be cited by any person as justification for the violation of contractual agreements not to engage in the forms of discrimination cited in this paragraph. This provision does not, however, prohibit such discrimination as a matter of federal law, nor does it make any statement regarding the legality of such discrimination. In addition, this provision makes no statement as to whether a payment card network's contractual rule preventing such discrimination would be legal under the antitrust laws.

Finally, it should be noted that the payment card networks as defined in the amendment are entities such as Visa, MasterCard, Discover, and American Express that directly, or through licensed members, processors or agents, provide the proprietary services, infrastructure and software that route information to conduct credit and debit card transaction authorization, clearance and settlement. The amendment does not intend, for example, to define ATM operators or acquiring banks as payment card networks unless those entities also operate card networks as do Visa, MasterCard, Discover and American Express.

Overall, my amendment contains much needed reforms that will help increase fairness, transparency and competition in the debit card and credit card industries. More work remains to be done along these lines, but this amendment represents an important first step, and I thank my colleagues who have supported this effort.

Mr. KOHL. Mr. President, I rise to speak on the Wall Street Reform and Consumer Protection Act which the Senate will pass today. After 2 years of work, the reckless practices of Wall Street firms that resulted in terrible losses for people in Wisconsin and across the nation will finally be ended.

These events showed us that maintaining the current regulatory system is not an acceptable option. Wall Street needs accountability and transparency to avoid future financial meltdowns. Congress has the duty to ensure that this kind of failure never happens again. The Wall Street Reform and Consumer Protection Act takes vital steps to end ''too big to fail,'' bring unregulated shadow markets into the light, and make our financial system work better for everyone.

This bill has been thoroughly deliberated in both the House and the Senate. The Banking Committee held more than 80 hearings since 2008 on the financial crisis, addressing its causes, grave impacts and potential remedies. These hearings explored all of the elements of this legislation in detail, and also looked at the specific regulatory failures that contributed to the crisis.

The information gathered at these hearings laid down the foundation for the current bill. The bill was carefully debated and deliberated while on the Senate floor for 3 weeks—almost as long as the debate on health care reform.

After the bill passed in the House and the Senate it was then negotiated by the Conference Committee. I was pleased with the Conference Committee's ability to address Members' concerns in both Chambers. The conference lasted 2 weeks and was televised and open to the public for viewing. This all brought welcome transparency to the legislative process.

Throughout the consideration of financial reform, I met with people, banks and businesses in Wisconsin to better understand their needs so that our businesses and families can be protected from future recklessness. I have worked hard to make sure that this bill protects Main Street and its businesses by focusing on Wall Street—the source of this crisis.

I am proud to say that we now have a bill that will change our regulatory system in a way that will prevent and mitigate future crises. The bill will ensure that a Federal bailout will never again be an option for irresponsible businesses. The bill creates a council of regulators to monitor the economy for systemic threats. It will institute new regulations on hedge funds and over-the-counter derivatives and create a Bureau of Consumer Financial Protection that will oversee mortgage, credit cards and other credit products.

Consumers will now have a single entity to report their concerns about abusive financial practices, allowing regulators to address these issues in a timelier manner—before more consumers are harmed. The bill improves access to credit, increases protections and expands financial education programs enabling consumers to make smart financial decisions and reducing widespread predatory practices

In addition to providing consumers with adequate protections against fraud and predatory practices, I also believe that consumers need affordable alternatives to predatory lending products like pay day loans. Senator DANIEL AKAKA shares this belief which is why we worked together to draft title XII of this bill.

Title XII will help to improve the lives of the millions of low- and moderate-income households in America that do not have access to mainstream financial institutions by providing grants to community development financial institutions so that they can give small dollar loans at affordable terms to people who are currently limited to riskier choices like payday loans. This grant making program will dramatically help to increase the number of small dollar loan options to consumers that need quick access to money so that they can pay for emergency medical costs, car repairs and other items they need to maintain their lives. This legislation is modeled in part after the FDIC's Small Dollar Loan Pilot Program.

As chairman of the Judiciary Subcommittee on Antitrust, I am pleased to see that this bill will preserve the ability of the Federal antitrust agencies to protect competition and American consumers in the financial services industries. The legislation includes a broad antitrust savings clause that makes clear that nothing in the act will modify, impair or supersede the operation of any of the antitrust laws. It also includes more specific antitrust savings clauses in key provisions, further ensuring the continued ability of the antitrust agencies to fully enforce the relevant laws in these critical sectors in our economy.In addition to strengthening the oversight of mergers and acquisitions involving financial services firms, the bill specifically maintains the ability of the antitrust agencies to perform a thorough competition review of the transactions between these firms.

This robust merger review authority ensures that the Federal antitrust agencies can continue to play their key role in protecting competition and ensuring consumers have choices for financial services and products at competitive rates and prices. Competition is the cornerstone of our Nation's economy, and the antitrust laws ensure strong competitive markets that make our economy strong and protect consumers. This bill will ensure that the antitrust laws retain their critical role in the financial services industry.

This bill is another step in a long process of financial overhaul. The Wall Street Reform and Consumer Protection Act provides regulators with flexibility to implement a number of new rules. They will have to make decisions on issues ranging from determining fair charges on debit card swipe fees to deciding when a risky firm should be taken over. We need to make sure that our regulators have the tools and resources they need to get the job done right. As a member of the Banking Committee, I am going to keep a watchful eye on the regulators to make sure they are given adequate resources and oversight to do the job that they have been charged with.

Clearly we would not have this bill without the hard work and effort of Senator CHRIS DODD. It has been an honor to work with him and I hope he is as proud of this great accomplishment as I am.

Finally I would like to take a moment to recognize the staff that worked so hard on this bill. I would like to acknowledge the staff of the Banking Committee for all of their exceptional work: including Levon Bagramian, Julie Chon, Brian Filipowich, Amy Friend, Catherine Galicia, Lynsey Graham Rea, Matthew Green, Marc Jarsulic, Mark Jickling, Deborah Katz, Jonathan Miller, Misha Mintz-Roth, Dean Shahinian, Ed Silverman, and Charles Yi.

I also express my appreciation for all of the work done by the Legislative Assistants of the Banking Committee Members including Laura Swanson, Kara Stein, Jonah Crane, Linda Jeng, Ellen Chube, Michael Passante, Lee Drutman, Graham Steele, Alison O'Donnell, Hilary Swab, Harry Stein, Karolina Arias, Nathan Steinwald, Andy Green, Brian Appel, and Matt Pippin.

Mr. DODD. Mr. President, I would like to clarify the intent behind one of the provisions in the conference report to accompany the financial reform bill, H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 204(d) contemplates that the FDIC, as receiver, may take a lien on assets of a covered financial company or a covered subsidiary. With respect to assets of a covered subsidiary that is an insurance company or a direct or indirect subsidiary of an insurance company, I believe that the FDIC should exercise such authority cautiously to avoid weakening the insurance company and thereby undermining policyholder protection. Indeed, any lien taken on the assets of a covered subsidiary that is an insurance company or a direct or indirect subsidiary of an insurance company must avoid weakening or undermining policyholder protection. As a result, the FDIC should normally not take a lien on the assets of such a covered subsidiary except where the FDIC sells the covered subsidiary to a third party, provides financing in connection with the sale, and takes a lien on the assets of the covered subsidiary to secure the third party's repayment obligation to the FDIC. I understand that the FDIC intends to promulgate regulations consistent with this view.

Mr. President, I would also like to clarify the intent behind another of the provisions in the conference report to accompany the financial reform bill, H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 1075 of the bill amends the Electronic Fund Transfer Act to create a new section 920 regarding interchange fees. This is a very complicated subject involving many different stakeholders, including payment networks, issuing banks, acquiring banks, merchants, and, of course, consumers. Section 1075 therefore is also complicated, and I would like to make a clarification with regard to that section.

Since interchange revenues are a major source of paying for the administrative costs of prepaid cards used in connection with health care and employee benefits programs such as FSAs, HSAs, HRAs, and qualified transportation accounts—programs which are widely used by both public and private sector employers and which are more expensive to operate given substantiation and other regulatory requirements—we do not wish to interfere with those arrangements in a way that could lead to higher fees being imposed by administrators to make up for lost revenue. That could directly raise health care costs, which would hurt consumers and which, of course, is not at all what we wish to do. Hence, we intend that prepaid cards associated with these types of programs would be exempted within the language of section 920(a)(7)(A)(ii)(II) as well as from the prohibition on use of exclusive networks under section 920(b)(1)(A).

Mr. President, I want to clarify a provision of the conference report of the Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173. Section 1012 sets forth the executive and administrative powers of the Consumer Financial Protection Bureau, CFPB, and section 1012(c)(1)—Coordination with the Board of Governors—provides that ''Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.'' This provision is not intended to override section 1026, which will continue to define the Bureau's examination and enforcement authority over insured depository institutions and insured credit unions with assets of less than $10 billion. The conferees expect that the board will not delegate to the Bureau its authority to examine insured depository institutions with assets of less than $10 billion.

Throughout the development of and debate on the Consumer Financial Protection Bureau, CFPB, I have insisted that the legislation meet three requirements—independent rule writing, independent examination and enforcement authority, and independent funding for the CFPB. The CFPB, as established by the conference report, meets each of those requirements. I want to speak for a moment about section 1017, which establishes the independent funding mechanism for the CFPB.

The conference report requires the Federal Reserve System to automatically fund the CFPB based on the total operating expenses of the system, using 2009 as the baseline. This will ensure that the CFPB has the resources it needs to perform its functions without subjecting it to annual congressional appropriations. The failure of the Congress to provide the Office of Federal Housing Enterprises Oversight, OFHEO, with a steady stream of independent funding outside the appropriations process led to repeated interference with the operations of that regulator. Even when there was not explicit interference, the threat of congressional interference could very well have served to circumscribe the actions OFHEO was willing to take. We did not want to repeat that mistake in this legislation.

In addition, because many of the employees of the CFPB will come from existing financial regulators, the conferees take the view that it is important that the new entity have the resources to keep these high quality staff and to attract new equally qualified staff, and to provide them with the support that they need to operate effectively. To that end, the conferees adopted the employment cost index for total compensation of State and Federal employees, ECI, as the index by which the funding baseline will be adjusted in the future. This index has generally risen faster than the CPI, which was the index used in the Senate bill. However, the ECI has typically risen at a more gradual rate than the average operating costs of the banking regulators, which was the index proposed by the House conferees.

In the end, the conferees agreed to use the ECI and provide for a contingent authorization of appropriations of $200 million per year through fiscal year 2014. In order to trigger this authorization, the CFPB Director would have to report to the Appropriations Committees that the CFPB's formula funding is not sufficient.

Section 1085 of the legislation adds the Consumer Financial Protection Bureau, CFPB, to the list of agencies authorized to enforce the Equal Credit Opportunity Act, ECOA—15 U.S.C. §1691c(a)(9). The legislation also amends section 706(g)—15 U.S.C. §1691e(g)—to require the CFPB to refer a matter to the Attorney General whenever the CFPB has reason to believe that 1 or more creditors has engaged in a ''pattern or practice of discouraging or denying applications for credit'' in violation of section 701, 15 U.S.C. §1691(a). The general grant of civil litigation authority to the CFPB, in section 1054(a), should not be construed to override, in any way, the CFPB's referral obligations under the ECOA.

The requirement in section 706(g) of the ECOA that the CFPB refer a matter involving a pattern-or-practice violation of section 701, rather than first filing its own pattern-or-practice action, furthers the legislation's purpose of reducing fragmentation in consumer protection and fair lending enforcement under the ECOA. The Attorney General, who currently has authority under section 706(g) to file those pattern-or-practice ECOA actions in court on behalf of the government, receives such pattern-or-practice referrals from other agencies with ECOA enforcement responsibilities and will continue to do so under the legislation. By subjecting the CFPB to the same referral requirement, the legislation intends to avoid creating fragmentation in this enforcement system under the ECOA where none currently exists.

Title XIV creates a strong, new set of underwriting requirements for residential mortgage loans. An important part of this new regime is the creation of a safe harbor for certain loans made according to the standards set out in the bill, and which will be detailed further in forthcoming regulations. Loans that meet this standard, called ''qualified mortgages,'' will have the benefit of a presumption that they are affordable to the borrowers.

Section 1411 explains the basis on which the regulator must establish the standards lenders will use to determine the ability of borrowers to repay their mortgages. Section 1412 provides that lenders that make loans according to these standards would enjoy the rebuttable presumption of the safe harbor for qualified mortgages established by this section. These standards include the need to document a borrower's income, among others. However, certain refinance loans, such as VA-guaranteed mortgages refinanced under the VA Interest Rate Reduction Loan Program or the FHA streamlined refinance program, which are rate-term refinance loans and are not cash-out refinances, may be made without fully reunderwriting the borrower, subject to certain protections laid out in the legislation, while still remaining qualified mortgages.

It is the conferees' intent that the Federal Reserve Board and the CFPB use their rulemaking authority under the enumerated consumer statutes and this legislation to extend this same benefit for conventional streamlined refinance programs where the party making the new loan already owns the credit risk. This will enable current homeowners to take advantage of current low interest rates to refinance their mortgages.

There are a number of provisions in title XIV for which there is not a specified effective date other than what is provided in section 1400(c). It is the intention of the conferees that provisions in title XIV that do not require regulations become effective no later than 18 months after the designated transfer date for the CFPB, as required by section 1400(c). However, the conferees encourage the Federal Reserve Board and the CFPB to act as expeditiously as possible to promulgate regulations so that the provisions of title XIV are put into effect sooner.

I would like to clarify that the conferees consider any program or initiative that was announced before June 25 to have been initiated for the purposes of section 1302 of the conference report. I also want to make clear that the conferees do not intend for section 1302 to prevent the Treasury Department from adjusting available resources that remain after the adoption of the conference report among such existing programs, based on effectiveness.

Mr. President, I also wish to explain some of the securities-related changes that emerged from the conference committee in the conference report.

The report amends section 408 to eliminate the blanket exemption for private equity funds and replace it with an exemption for private fund advisers with less than $150 million under management. The amendment also requires the SEC in its rulemaking to impose registration and examination procedures for such funds that reflect the level of systemic risk posed by midsized private funds.

Section 913 has been amended to combine the principle of conducting a study on the standard of care to investors in the Senate bill with a grant of additional authority to the SEC to act, such as is contained in the House-passed bill. The section requires the SEC to conduct a study prior to taking action or conducting rulemaking in this area. The study will include a review of the effectiveness of existing legal or regulatory standards of care and whether there are regulatory gaps, shortcomings or overlaps in legal or regulatory standards. Even if there is an overlap or a gap, the Commission should not act unless eliminating the overlap or filling a gap would improve investor protection and is in the public interest. The study would require a review of the effectiveness, frequency, and duration of the regulatory examinations of brokers, dealers, and investment advisers. In this review, the paramount issue is effectiveness. If regulatory examinations are frequent or lengthy but fail to identify significant misconduct—for example, examinations of Bernard L. Madoff Investment Securities, LLC—they waste resources and create an illusion of effective regulatory oversight that misleads the public. The SEC, in studying potential impacts that would result from changes to the regulation or standard of care, should seek to preserve consumer access to products and services, including access for persons in rural locations. In assessing the potential costs and benefits, the SEC should take into account the net costs or the difference between additional costs and additional benefits. For example, it should consider not only higher transaction or advisory charges or fees but also the return on investment if an investor receives better recommendations that result in higher profits through paying higher fees. After reporting to Congress, the SEC is required to consider the findings, conclusions, and recommendations of its study.

New section 914 requires the SEC to study the need for enhanced examination and enforcement ''resources.'' The study of resources should not be limited to financial resources but should consider human resources also. Human resources involves whether there is a need for enhanced expertise, competence, and motivation to conduct examinations that satisfactorily identify problems or misconduct in the regulated entity. For example, if examinations fail to identify misconduct due to insufficient staff expertise, competence, or motivation, the study should conclude that there is a need for more effective staff or better management rather than merely more financial resources devoted to hiring additional staff of the same caliber.

New section 919D creates the SEC Ombudsman under the Office of the Investor Advocate. The Ombudsman can act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations and to review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws. This list of duties in subsection (8)(B) is not intended to be an exhaustive list. For example, if the Investor Advocate assigns the Ombudsman duties to act as a liaison with persons who have problems in dealing with the Commission resulting from the regulatory activities of the Commission, this would not be prohibited by this legislation.

Title IX, subtitle B creates many new powers for the SEC. The SEC is expected to use these powers responsibly to better protect investors.

Section 922 has been amended to eliminate the right of a whistleblower to appeal the amount of an award. While the whistleblower cannot appeal the SEC's monetary award determination, this provision is intended to limit the SEC's administrative burden and not to encourage making small awards. The Congress intends that the SEC make awards that are sufficiently robust to motivate potential whistleblowers to share their information and to overcome the fear of risk of the loss of their positions. Unless the whistleblowers come forward, the Federal Government will not know about the frauds and misconduct.

In section 939B, the Report eliminated an exception so that credit rating agencies will be subject to regulation FD. Under this change, issuers would be required to disclose financial information to the public when they give it to rating agencies.

In section 939F, the report requires the SEC to study the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models; the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products. The report directs the SEC to implement the system for assigning credit ratings that was in the base text unless it determines that an alternative system would better serve the public interest and the protection of investors.

The report limits the exemption from risk retention requirements for qualified residential mortgages, by specifying that the definition of ''qualified residential mortgage'' may be no broader than the definition of ''qualified mortgage'' contained in section 1412 of the report, which amends section 129C of the Truth in Lending Act. The report contains the following technical errors: the reference to ''section 129C(c)(2)'' in subsection (e)(4)(C) of the new section 15G of the Securities and Exchange Act, created by section 941 of the report should read ''section 129C(b)(2).'' In addition, the references to ''subsection'' in paragraphs (e)(4)(A) and (e)(5) of the newly created section 15G should read ''section.'' We intend to correct these in future legislation.

The report amended the say on pay provision in section 951 by adding a shareholder vote on how frequently the compare should give shareholders a ''say on pay'' vote. The shareholders will vote to have it every 1, 2, or 3 years, and the issuer must allow them to have this choice at least every 6 years. Also in section 951, the report required issuers to give shareholders an advisory vote on any agreements, or golden parachutes, that they make with their executive officers regarding compensation the executives would receive upon completion of an acquisition, merger, or sale of the company.

The report required Federal financial regulators to jointly write rules requiring financial institutions such as banks, investment advisers, and broker-dealers to disclose the structures of their incentive-based compensation arrangements, to determine whether such structures provide excessive compensation or could lead to material losses at the financial institution and prohibiting types of incentive-based payment arrangements that encourage inappropriate risks.

In section 952, the report exempted controlled companies, limited partnerships, and certain other entities from requirements for an independent compensation committee.

Section 962 provides for triennial reports on personnel management. One item to be studied involves Commission actions regarding employees who have failed to perform their duties, an issue that members raised during the Banking Committee's hearing entitled ''Oversight of the SEC's Failure to Identify the Bernard L. Madoff Ponzi Scheme and How to Improve SEC Performance,'' as well as circumstances under which the Commission has issued to employees a notice of termination. The GAO is directed to study how the Commission deals with employees who fail to perform their duties as well as its fairness when they issue a notice of termination. In the latter situation, they should consider specific cases and circumstances, while preserving employee privacy. The SEC is expected to cooperate in making data available to the GAO to perform its studies.

In section 967, the report directs the SEC to hire an independent consultant with expertise in organizational restructuring and the capital markets to examine the SEC's internal operations, structure, funding, relationship with self-regulatory organizations and other entities and make recommendations. During the conference, some conferees expressed concern about objectivity of a study undertaken by the SEC itself. We are confident that the SEC will allow the ''independent consultant'' to work without censorship or inappropriate influence and the final product will be objective and accurate.

The report also added section 968 which directs the GAO to study the ''revolving door'' at the SEC. The GAO will review the number of employees who leave the SEC to work for financial institutions and conflicts related to this situation.

The report removed the Senate provision on majority voting in subtitle G which required a nominee for director who does not receive the majority of shareholder votes in uncontested elections to resign unless the remaining directors unanimously voted that it was in the best interest of the company and shareholders not to accept the resignation.

The report added the authority for the SEC to exempt an issuer or class of issuers from proxy access rules written under section 971 after taking into account the burden on small issuers.

In section 975, the report added a requirement that the MSRB rules require municipal advisors to observe a fiduciary duty to the municipal entities they advise.

In section 975, the report changed the requirement that a majority of the board ''are not associated with any broker, dealer, municipal securities dealer, or municipal advisor'' to a requirement that the majority be ''independent of any municipal securities broker, municipal securities dealer, or municipal advisor.''

In section 978, the report authorized the SEC to set up a system to fund the Government Accounting Standards Board, the body which establishes standards of State and local government accounting and financial reporting.

The report added section 989F, a GAO Study of Person to Person Lending, to recommend how this activity should be regulated.

The report added section 989G to exempt issuers with less than $75 million market capitalization from section 404(b) of the Sarbanes-Oxley Act of 2002 which regulates companies' internal financial controls. This section also adds an SEC study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxle Act of 2002 for companies whose market capitalization is between $75 million and $250 million for the relevant reporting period while maintaining investor protections for such companies.

Section 989I adds a follow-up GAO study on the impact of the Sarbanes-Oxley section 404(b) exemption in section 989G of this bill involving the frequency of accounting restatements, cost of capital, investor confidence in the integrity of financial statements and other matters, so we can understand its effect.

The report added section 989J, which provides that fixed-index annuities be regulated as insurance products, not as securities. This provision clarifies a disagreement on the legal status of these products.

In section 991, the report changed the method of funding for the SEC so that it remains under the congressional appropriations process while giving the SEC much more control over the amount of its funding. The report also doubled the SEC authorization between 2010 and 2015, going from $1.1 billion to $2.25 billion, which will provide tremendous increase in SEC financial resources. These resources can be used to improve technology and attract needed securities and managerial expertise. However, the inspector general of the SEC and others have reported on situations where SEC financial or human resources have not been used effectively or with appropriate prior cost-benefit analysis. While the SEC is receiving more resources, we expect that it will use resources efficiently.

Mr. President, Senator DORGAN wishes to be heard, which pretty much will end the debate. I will take a minute or so to conclude, and then the votes will occur around 2 o'clock.

I ask unanimous consent that even though time may be expired, at least 10 minutes be reserved for the minority to be heard.

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

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I will vote for the conference report on financial reform. Before I describe why I think it is essential to vote in favor, let me compliment Senator DODD. We have had some differences on some issues, but that is not unusual. What is unusual is when a piece of legislation this complicated, this consequential, and this large gets to this point so we will have a final vote and it will go to the President for signature. It is going to make a difference. It is not all I would want. I would have written some of it differently. But there are provisions in this legislation that will prevent that which happened that nearly caused this country to have a complete economic collapse. That was the purpose of writing the legislation.

This bill on financial reform establishes a new independent bureau, housed at the Federal Reserve Board but not reporting to it, dedicated to protecting consumers from abusive financial products and practices. It puts in place systems to ensure taxpayer funds will not be used for Wall Street bailouts in the future. It creates an advanced warning system, looking out for troubled institutions to make sure we understand who they are and where they are, those whose failure would threaten financial markets and the economy. It imposes some curbs on proprietary trading and hedge fund ownership by banks. There are a number of things that are salutatory and important.

The vote this afternoon is a starting point, not an ending point. I make the point by showing the headlines that exist in the newspapers these days about the fact that there will be substantial amounts of work done to try to curb activities even in the executive branch with respect to rules and regulations which are now essential.

The PRESIDING OFFICER. The time under the control of the majority has expired.

Mr. DORGAN. I ask the Senator from Connecticut, my understanding is Republicans have 10 minutes. I began the process because the Republican Senator was not here to claim that. I will be happy to cease at this point, if he wishes to take his 10 minutes, and then complete my statement, or I could complete my statement with more time.

Mr. DODD. How much more time would my colleague require?

Mr. DORGAN. Probably 7 more minutes or so.

Mr. DODD. I think it follows more naturally that way.

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

Mr. DORGAN. I appreciate the courtesy of the Senator from Nebraska.

We all understand why this legislation is trying to prevent this from ever happening again. I have shown this on the floor many times. This was from a credit company called Zoom advertising mortgages. We ran up to a near collapse of the economy with companies advertising this: Credit approval is just seconds away. Get on the fast track at Zoom Credit. At the speed of light, Zoom Credit will preapprove you for a car loan, a home loan, a credit card, even if your credit is in the tank.

Then it says: Zoom Credit is like money in the bank. We specialize in credit repair and debt consolidation. Bankruptcy, slow credit, no credit? Who cares?

We wonder how this country got in trouble. Today on the Internet this exists. Nothing has changed. Speedy, bad credit loans. If you want to get a loan, you have bad credit, go to the Internet to this site. I am not advertising for them because clearly it is probably a bunch of shylocks running this operation. Bad credit, no credit, bankruptcy, no problem, no downpayment, no delays. Come to us, if you want money. Unbelievable.

This is on the Internet today. It describes why we have to pass this legislation and what we are trying to do to protect the American consumer and why regulations that come from this are so important. Easy loan for you. Instant approval. Regardless of your credit score or history, approval is guaranteed.

This sort of nonsense is not good business. It is not a sensible way to do things. It is what nearly bankrupted this country.

Wall Street Journal, July 14, let me read the first sentence: Shirley Davis, 66 years old, retired phone company administrator, lives in Brooklyn, NY, is more than $33,000 dollars in debt, earns $2,400 a month, filed for bankruptcy last month. Shortly before that, she ripped open an envelope from Capitol One Financial Corporation which pitched her a credit card, even though it sued her 4 years ago to recover $4,400 she owed on a different credit card from the same bank.

She is quoting now from the letter from Capital One:

> At some point we lost you as a customer, and we would like to get you back.

Mrs. Davis said she was stunned. ''Even I wouldn't give me a credit card at this point.''

It is still going on. It is why passing this conference report is so essential.

Would I have written it differently? Yes. I would have restored part of Glass-Steagall. Ten years ago that was taken apart. Those protections were put in place after the last Great Depression, and they protected this country for 70 years or so. It should have been put back together.

I would ban the trading of naked credit default swaps. That is betting, not investing. I would have done that.

I would have imposed more aggressive curbs on proprietary trading by banks. If the taxpayer has to underwrite you as a commercial bank, you ought not have a casino atmosphere in your lobby.

Having said that, what was done in this legislation is a very substantial beginning. It is not an ending, No. 1. No. 2, the regulatory agencies now have to do a lot of work to make this bill work, to make this bill effective, to stop what happened from ever happening again.

Finally, I believe there will be an additional need to legislate in the future to address some of the things I mentioned.

I believe the work done to get to this point in a Chamber in which it is very difficult for us to accomplish anything is a success. I commend my colleague, Senator DODD from Connecticut, and others who worked on this legislation in a thoughtful way to try to decide how we can stop this sort of thing. We all understood it. We heard these things on the radio and television. Massive loans, they would securitize them. They would trade the securities back up in derivatives and credit default swaps. Everybody was making money on all sides, but they were building a house of cards that came down and nearly collapsed this entire country's economy.

A lot of people, as I speak today, are still paying the price. They got up this morning without a job, millions and millions of them. They can't find work. They are the victims of this cesspool of greed we have watched for far too long. This legislation has great merit in advancing solutions to these issues. That is why I will vote yes. Is it perfect? No. Is it an end point? No. It is a starting point in a process that is very important.

I hope in the months ahead those who are charged with creating the regulatory environment to fix this, to implement this legislation, will get it right because they have the opportunity the way this is written to get this right if they are smart and effective and want to protect this country's economy.

Thanks to those who put this together. I intend to cast my vote as yes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Briefly, I thank my colleague from North Dakota. He has been an outspoken advocate on behalf of working families in the time we have served together. The concerns he has expressed consistently in this process are ones I appreciate very much. We did have a couple of disagreements over how to proceed, but that is the normal process of doing business. It was done with civility during the debate and consideration of the legislation. But I am deeply grateful to him for his contributions and those of his staff. He made some good suggestions, and I thank my friend.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. JOHANNS. Mr. President, I ask unanimous consent to speak for 10 minutes as in morning business.

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

(The remarks of Mr. JOHANNS pertaining to the introduction of S. 3593 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, if there is no one on the minority side waiting to speak, I ask unanimous consent that I be allowed to speak for 4 minutes.

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

Mr. LEVIN. Mr. President, for too long, too many firms on Wall Street have had free rein to profit at the expense of their own clients, to engage in the riskiest sorts of speculation, to prosper from their risky bets when they pan out, and to have the taxpayers cover the losses when they do not pan out. For too long, there has been no cop on the beat on Wall Street.

That must end, and we can end it today by passing the Dodd-Frank bill. The legislation before us will rebuild the firewall between the worst high-risk excesses of Wall Street and the jobs and homes and futures of ordinary Americans.

The Permanent Subcommittee on Investigations, which I chair, spent 18 months and held four hearings investigating the causes of the financial crisis. The bill Senator DODD and so many others have crafted will do much to rein in the problems we identified in our four hearings and during our investigation, and I greatly appreciate the recognition of the role of our work on the subcommittee in Senator DODD's remarks last night.

This bill will prevent mortgage lenders such as Washington Mutual, the subject of our first hearing, from making "liar loans" to borrowers who cannot repay, from paying their salespeople more for selling loans with higher interest rates, and from unloading all the risk from their reckless loans on to the rest of the financial system.

This bill will dissolve the Office of Thrift Supervision, which looked the other way despite abundant evidence of Washington Mutual's abuses, as our second hearing showed.

This bill will bring new oversight and accountability to credit rating agencies, which, as our third hearing showed, issued inaccurate ratings that misled investors. Those ratings were paid for by the very same companies that produced the products being rated, which is a clear conflict of interest.

The bill before us will rein in the abusive practices of investment banks such as Goldman Sachs, the subject of our fourth hearing. It will sharply limit their risky proprietary trading. It will stop the egregious conflicts of interest that result when these firms package and sell investment products, often containing junk they want to dispose of, and then make a bundle betting against those very same products.

Those who claim this bill fails to rein in Wall Street cannot explain the massive amounts of effort and money Wall Street has spent to defeat this bill. If Wall Street likes this bill, it sure has a funny way of showing it.

The evidence from our investigation and from so many other sources is clear: We must put an officer back on the beat on Wall Street so the jobs, homes, and futures of Americans are not again destroyed by excessive greed. I commend Senator DODD and his staff and all those who have brought us to this historic moment. More than anything else, it is the power of Senator DODD's arguments and the deep respect for him among the Members of this body that have brought us to the finish line.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me again say to my great friend, we have served here a long time together, Senator CARL LEVIN of Michigan and I. He does a remarkable job as chairman of the Armed Services Committee and the Governmental Oversight Committee, which he also handles as well.

I am not sure my colleague was here, but I pointed out yesterday that the hearings the Senator held just prior—I am sure people think we orchestrate all these things; we look more organized than we usually are around here, but the fact is, the Senator from Michigan went off and had planned the hearings for months. The amount of work he and his staff did for months in preparation for those hearings threw a tremendous amount of light and great clarity on the subject so that the average citizen in this country could actually see—not just read something but see—a moment occurring during those 2 days when the exposure of what had occurred was so vivid and so clear. Then, frankly, it was a matter of days after that when we were on the floor considering the legislation.

As I said, I would love to tell people that was a highly organized set of events. It was purely coincidental the way it occurred. Again, those hearings that occurred publicly involved weeks and months of preparation before they were actually conducted.

So I say to my friend from Michigan, I thank him immensely for his work, for his contribution to this bill as well, not for just the set of hearings but then working to include the provisions that are a part of this legislation. The Senator has made a very valuable contribution and has highlighted a very important point.

It was fascinating to me, by the way, as to the number of former chief executive officers from major financial firms in the country who strongly endorsed what the Senator was doing. This was not merely a suggestion coming from consumer groups or labor organizations or others that one might associate with the Senator's idea. But people who literally had spent their careers in the financial services sector were strongly recommending the contributions the Senator made to the bill.

I do not think that was said often enough, that this was a significant contribution endorsed by those who understood, had worked, had earned livelihoods in this industry, who had watched an industry change dramatically over the years which subjected this country to the exposure that we are suffering from today.

So I thank my friend from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my dear friend from Connecticut. He has made such an extraordinary contribution, not just to this bill but to this Senate over the years. I cannot say enough about him, his extraordinary integrity and passion that he brings to these subjects.

Senator MERKLEY, on the proprietary trading language, of course, as the Senator from Connecticut has already recognized, is in the lead there and has been an absolutely great partner and leader on that.

But I want to especially thank the Senator from Connecticut for his passion and for his—and I was very serious about the respect with which the Senator is held in this body. Without it, without that feeling about the Senator, as well as the cause the Senator espouses with others, obviously, we would not be where we are today.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank my friend.

We are about to wrap up this long journey, now going back a long ways.

Let me mention a couple things. First of all, yesterday I included the names of the Senate Banking Committee staff who have made such a difference in the bill. I am not going to go back over all their names. They are arrayed in the Chamber. A couple of them are sitting next to me on the floor. Others are in the back. They are led by Eddie Silverman, who worked with me 20 years ago, as I arrived in the Senate. He spent decades with me and then left Senate service and went off and did other things in his life. At my request, he came back for the last year or so to be a part of this effort. So I thank a great personal friend, Eddie Silverman, for the job he did.

I thank Amy Friend, who was also deeply involved in this legislation. If I start down the list, I am going to miss somebody. That is always a danger. But I thank all of the Members for the tremendous work they have contributed to this legislation.

I thank HARRY REID, the majority leader. Again, I know I have talked about him on a couple of occasions. But if we do not have someone to help bring this all together, it does not happen.

I see my colleague from the State of Washington. I do not know if she cares to be heard. I was sort of filling in time for the next few minutes.

Let me thank the Senator. She has been an advocate with great passion on these issues. She brought a great deal of knowledge. She is someone who has spent a career herself in the area of financial services and understands this issue beyond just the intellectual and theoretical standpoint but has lived it. She saw the successes of it and the failures of it. So she brings a great wealth of information and ability to the issue.

I yield to my colleague.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank the chairman for yielding time.

I thank the Senator for his diligence, particularly in the area of the derivatives market and the fact that this legislation will be the first time—the first time—the over-the-counter derivatives market in this country will be regulated.

The fact that Congress made a mistake and said hands off to derivatives in 2000, and then an $80 trillion market exploded into what is today a $600 trillion dark market—the chairman has now made sure that for the first time ever, over-the-counter derivatives will be regulated. That means for the first time over-the-counter derivatives will have to be exchange-traded, which means there will be transparency. It is the first time over-the-counter derivatives will have to be cleared, which means a third party will have to validate whether there is real money behind these transactions.

It is the first time the CFTC will be able to enforce aggregate position limits across all exchanges, which means you cannot hide this dark market derivative money on some exchange that is not properly regulated or try to make the market across all exchanges. It is the first time things like the London Loophole will be closed so we cannot have markets and exchanges that are not regulated. So the American people will know something as dangerous as credit default swaps—which brought down our economy—that now for the first time we will have regulation of these over-the-counter derivatives.

I thank the chairman for his efforts in that area.

A $600 trillion market, which is greater than 10 times the size of world GDP, is a danger to our economy if it is not regulated. Thank God we are going to be regulating it for the first time. I would encourage all my colleagues on the other side of the aisle, who at one point in time said these are too complicated to understand—understand, they brought down our economy and understand we are going to, for the first time, regulate over-the-counter derivatives.

I thank the chairman for his leadership.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Senator from Washington. Again, I thank her for her contribution.

Mr. President, we have arrived at that moment. Let me make a parliamentary inquiry. There are two votes, as I understand it. One is on the waiver of the budget point of order, and the second vote that will occur will be on adoption of the conference report. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. Mr. President, have the yeas and nays been ordered on the waiver of the budget point of order?

The PRESIDING OFFICER. They have.

Mr. DODD. Have the yeas and nays been ordered on adoption of the conference report?

The PRESIDING OFFICER. They have not.

Mr. DODD. Mr. President, I ask for the yeas and nays on the adoption of the conference report.

The PRESIDING OFFICER? Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DODD. Mr. President, in conclusion, I express my thanks to all. I want to thank the floor staff as well, both on the minority and majority side. We have spent a lot of time together over the last year, and I am deeply grateful to them for the orderly way in which they conduct their business and how fair and disciplined they are about making sure the floor of the Senate runs so well. So I thank them immensely for their work.

I urge my colleagues to waive the point of order and to support this historic landmark piece of legislation that we hope will set our country on a course of financial stability and success in the generations to come.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 60, nays 39, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

NAYS—39

Alexander	Bennett	Brownback
Barrasso	Bond	Bunning

Burr	Graham	McCain
Chambliss	Grassley	McConnell
Coburn	Gregg	Murkowski
Cochran	Hatch	Risch
Corker	Hutchison	Roberts
Cornyn	Inhofe	Sessions
Crapo	Isakson	Shelby
DeMint	Johanns	Thune
Ensign	Kyl	Vitter
Enzi	LeMieux	Voinovich
Feingold	Lugar	Wicker

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. Mr. President, I have been conferring off and on throughout the day with the Republican leader. There will be no more votes today following final passage. That will be the last vote today.

We are going to swear in the new Senator from West Virginia at 2:15 p.m. on Tuesday. Immediately after that, as soon as that is over, at 2:30, we will vote on extending unemployment benefits.

The Republican leader and I are working on a way to move forward on small business. I think we have a pretty good path figured out on that.

After that, it is my intention to move to the supplemental appropriations bill. It appears that we are going to have to have a cloture vote. I think we can work out the time on that and not spend too much time.

I have conferred with the Republican leader at the beginning of the work period, on Monday. We have a list of things we need to accomplish before we leave here. As everybody knows, we are going to be here either 4 or 5 weeks. The leaders—Democrat and Republican—are betting on 4 rather than 5 weeks. But we need cooperation to get that done.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The yeas and nays having been ordered, the clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

NAYS—39

Alexander	DeMint	LeMieux
Barrasso	Ensign	Lugar
Bennett	Enzi	McCain
Bond	Feingold	McConnell
Brownback	Graham	Murkowski
Bunning	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Thune
Corker	Isakson	Vitter
Cornyn	Johanns	Voinovich
Crapo	Kyl	Wicker

The conference report was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the conference report was agreed to and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 30 minutes.

NOMINATION OF ELENA KAGAN

Mr. SPECTER. Mr. President, I have sought recognition to state my position on the nomination of Solicitor General Elena Kagan to be Associate Justice of the Supreme Court of the United States and to comment about the appropriate role of the Senate, what is happening to the doctrine of separation of powers, and how institutionally the Senate might assert itself to stop the erosion of powers from this body to the Court and from the Congress to the executive branch.

I am supporting Ms. Kagan because of her intellect, her professional background, her academic background, and because I think she will be an effective balance in the ideological battle which is being waged in the conference room of the Supreme Court—the ideological balance which is so sorely needed at the present time.

The hesitancy I have had, as I have expressed it in the hearings, has been on the failure of Ms. Kagan to respond with substantive answers so that Senators would have a realistic idea as to where she stands philosophically on some of the very important questions of the day—not how she would decide cases but what standards she would apply if confirmed, and I will be very specific about that.

It has been especially troublesome because Ms. Kagan has been outspoken in the past about the importance of having substantive answers in nomination proceedings. She wrote a now-famous article for the University of Chicago Law Review criticizing Supreme Court proceedings on nominations by saying that they were vacuous and a farce and by name criticized Justice Ruth Bader Ginsburg and Justice Stephen Breyer for not answering questions and, in effect, criticized the Senate and Senators for not asking and pressing questions to find out where nominees stood. There was a similar article written by a young lawyer in Phoenix, AZ, named Bill Rehnquist, back in 1958, for the Harvard Law Record, where he criticized the confirmation proceeding of Supreme Court Justice Whittaker, saying that the Senate did not ask questions about the important substantive matters. During the confirmation of Chief Justice Rehnquist, I asked him a series of questions which he declined to answer; I cited his own words, and then he answered a few—not very many, just about enough to be confirmed. Which has been my conclusion, generally, having been a party now to 13 confirmation hearings. Nominees answer just about as many questions as they think they have to.

When Justice Scalia came up for confirmation in 1986, he answered virtually nothing. When the question came up about Marbury v. Madison, he said: Well, I can't answer that question. It might come before the Court.

May the RECORD show the look of amazement on the face of the distinguished Senator from Minnesota who is presiding. I was frankly amazed by it myself.

But, with the tenor of the times, following the very contentious nomination proceeding of Chief Justice Rehnquist, and other factors, Justice Scalia was confirmed handily, 98 to nothing.

I have seen him frequently at social events. I saw him at one a couple of weeks ago. I commented to a group standing with him that prisoners of war give their name, rank, and serial number, but in the Scalia nomination proceeding he would only give his name and rank. It just about amounted to that.

Following the hearing on Justice Scalia, Senator DeConcini and I were formulating a resolution which would establish standards that Senators would insist on, or could insist on—some guidance to try to get more forthcoming answers. Then we had the confirmation hearing of Judge Robert Bork, who answered questions. Judge Bork did so in a context of having very extensive legal writings, an article in the Indiana Law Journal in 1971 on original intent. In the context of that article, and books, many speeches, law review articles, I think it is realistic to say that Judge Bork had no alternative but to answer questions.

Since the Bork hearings, the pattern has evolved where nominees do not give substantive answers. It is a well-known fact of confirmation life that there are murder boards. That is what they call them, when the nominee goes down to the White House and they have practice sessions. Since that time it has been pure prepared pablum. That is what we get in these hearings.

So there had been reason to expect more from Ms. Kagan. We didn't get it. I had expressed at the hearings the concern as to how we could get answers on substantive issues and was there any way to find that out short of voting ''no,'' and rejecting a nominee? I decided it would not be sensible to vote no to issue a protest vote in the context of what has regrettably become