favor this bill? The reason is simple: The legislation would entrench their privileged status. It would institutionalize the idea that certain big financial firms deserve preferential treatment by Federal regulators. These firms would be insulated from the negative effects of the new consumer protection bureaucracy. However, that bureaucracy would severely diminish credit access for small businesses and middle-class Americans.

What we have before us is a bill that is supported by Wall Street but opposed by the Chamber of Commerce, the Business Roundtable, and many others on Main Street.

For all these reasons that I have discussed and others, despite my strong desire to enact prudent financial reform, I cannot support this legislation. It does not effectively take on the fundamental problems that we all agree needed to be addressed.

I suggest 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. DODD. Madam President, I ask unanimous consent the call of the quorum be rescinded.

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

## JOINT MEETING OF THE TWO HOUSES—ADDRESS BY PRESIDENT FELIPE CALDERON HINOJOSA OF MEXICO

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 12 noon.

Thereupon, the Senate, at 10:40 a.m., recessed until 12 noon, and the Senate, preceded by the Vice President, JOSEPH R. BIDEN, Jr., the Secretary of the Senate, Nancy Erickson, and the Deputy Sergeant at Arms, Drew Willison, proceeded to the Hall of the House of Representatives to hear an address to be delivered by President Felipe Calderon Hinojosa of Mexico.

(For the address delivered by the President of Mexico, see today's proceedings of the House of Representatives.)

Whereupon, at 12 noon, the Senate, having returned to its Chamber, reassembled and was called to order by the Presiding Officer (Mrs. HAGAN).

## RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 I ask unanimous consent that the order for the quorum call be rescinded.

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

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

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

### IMMIGRATION REFORM

Mr. DURBIN. Madam President, I just left the address of President Calderon to the joint session of Congress in the House of Representatives. I think President Calderon's speech to Congress and to the American people was important and timely and really touched some issues of controversy which we cannot ignore.

He acknowledged the fact that his country is being torn apart by drug gangs and drug cartels. He acknowledged the obvious: the object of their commerce is to sell drugs in the United States of America. Our insatiable appetite for narcotics is creating a situation where people are engaged in lawlessness and violence and murder and mayhem in his country. We have to acknowledge that as the reality of the relationship between our two countries. It is not enough for us to lament the violence in Mexico without equally being prepared to say we have to do something on our side of the border to deal with drugs moving into the United States and the market for those drugs in our cities and States.

He also raised the important issue about the firearms that are flowing from the United States of America into Mexico, into the hands of these lawless members of these drug cartels. In the last several years, he told us, some 75,000 firearms have been confiscated. They believe 80 percent of them came from the United States, and many of them were military-type weapons, assault weapons and the like. He said—and I am sure it was not welcome to all corners on Capitol Hill—that we have to accept our responsibility when it comes to sensible gun safety and sensible gun laws.

The Supreme Court has said that under the second amendment, individuals are entitled to possess firearms for self-defense and for legitimate and legal purposes. The President of Mexico doesn't question that. I don't either. But the people who are buying and shipping guns into Mexico from the United States are not engaged in the type of protected constitutional activity the Supreme Court has noted. They have gone way beyond that. They are using, unfortunately, an open system in the United States to feed a drug war in a country south of us. So what are the results of this drug war? Thousands of innocent people are being killed. It is true that the gang violence back and forth results in the death of criminals on both sides, but innocent people are being caught in this crossfire in Mexico as well.

I might also add that the lawless nature of the situation in the northern part of the border is forcing more people into migration into the United States. It is not just the economics that drives people across the border; it is also the fear that they have to continue to live within communities and cities that are rife with violence.

I am glad the President of Mexico came forward to speak to these issues. We addressed them earlier this week in my Subcommittee on Human Rights and the Law in the Senate Judiciary Committee. We had testimony from experts in the administration and outside the administration. It is obvious we need to do more to support Mexico, to try to do what we can to end this violence and the root causes of it on both sides of the border.

But there was one other issue the President of Mexico raised which needs to be discussed honestly. Yesterday, the First Lady of the United States visited an elementary school in a suburb of Washington with the First Lady of Mexico. Their purpose was to salute this school because of the physical activities that were available to the students and their commitment to a healthy lifestyle, which has been one of the real causes the First Lady has espoused in her role.

Then she had a little meeting there. You probably saw it on television. There were some small children around who asked questions, and one little girl said to the First Lady—she wanted to know why Obama, the President, was taking everybody away who does not have papers. This first-grader asked that question, sitting in with about a dozen other schoolchildren. And, of course, the First Lady of Mexico was sitting alongside our First Lady.

The First Lady, Michelle Obama, said: That is something we have to work on, right, to make sure people can be here with the right kind of papers.

Then this first-grader, this six- or seven-year-old girl, said: But my mom does not have any papers.

She blurted that out. I would say that was a telling moment for us in the United States to pause and reflect on what we are engaged in and what we are refusing to do in Congress. Had this young girl, this first-grader, made that statement in the State of Arizona today, it is my understanding their new law would have compelled an investigation of her family. What she said could create reasonable suspicion that someone in her family was here illegally. That innocent statement by that first-grader could have launched an investigation and an arrest and deportation. Is that where we are in America today? Is that what we have come to? I hope not.

I hope we accept our responsibility here in Congress. The President of Mexico invited us, challenged us—and he should—to do our job here to deal with comprehensive immigration reform. It is long overdue. We have to deal with our border situation, with the workplace situation, and with the fact that there are millions of people here today undocumented. We have to decide what is a just outcome for their fate.

I listened to many of my colleagues say: Well, I will not talk about any comprehensive immigration reform until we seal the border. Seal the border.

We should reflect on the obvious. The border between the United States and Mexico is the longest international border in the world between two countries, almost 2,000 miles long. And across that border every day, tens of thousands of people travel legally between the two countries—in commerce, on vacation, moving from one place to another, tens of thousands each day. We estimate that 250 million people legally cross the border between the United States and Mexico every single year. We also estimate that during the course of a year, 500,000 people cross that border illegally—250 million legally, 500,000 illegally.

I hope those who stand and say we have to seal the border are not suggesting we end all commerce and all travel between the United States and Mexico. That would work a great hardship on both nations as we try to ship our goods and services to them for purchase, and they do the same. The trade between the two countries is an important part of both of our economies.

But we do have to do what is reasonable and as complete as possible to deal with those borders, to make certain we reduce the flow of those who are coming in illegally. To say we are going to seal them off to the point where no one crosses illegally is perhaps to set a standard no one would ever be able to meet. I analogize it to saying that on I–95 near Washington, DC, we want to guarantee that no car or truck will pass along that interstate today illegally carrying narcotics or firearms. How would you enforce it? Could you stop all of the traffic? I assume that is one way to do it. But could you guarantee that each car and truck is coming through legally should you do it?

So let's start with the premise that we need to have better enforcement at the borders. We need more people there even though we have dramatically increased the agents who are working there. We need the very best technology to stop the illegal flow of people or other goods across that border. We need to have obstacles where they work but acknowledge that they are not the complete answer to the challenge. But let's not stop the conversation by requiring that we have a perfect border. There is not a perfect border in the world today. People get across borders. Things cross borders. They may not do it legally.

Secondly, we need to move forward with enforcement in the workplace. I salute Senator SCHUMER from New York, who has been working on this issue for quite a long time now.

He has come up with the notion that there would be an identification card associated with Social Security numbers so we would be able to establish when a person goes for a job that that, in fact, is a valid Social Security number belonging to a person with a certain name whom we can identify perhaps by biometric identification as the person standing before you. That would give employers peace of mind to know they are not hiring someone who is here in undocumented or illegal status. It is an important step forward so we can make sure the workplace is not an opportunity for those who come here illegally.

Finally, we have to deal with people who are here and do it in an honest and humane way, making certain we don't allow anyone who is a danger to America to remain but also say to those who have obeyed the laws and are willing to pay taxes and fines that they will be given a chance—a chance.

The last point I wish to make goes to this particular instance that was in the paper this morning involving the First Lady. Ten years ago I got a call in my office in Chicago from a Korean American, a woman who was a single mom who owned a dry cleaners. She had four children. Her oldest daughter had come to the United States with her from Korea when she was 1 or 2 years old. She was now 18 or 19 years of age and had been accepted to college. Her mom called because when she was filling out the application, there was a question about her daughter's citizenship and nationality. She said she was not certain because they had never filed any papers for her daughter, and they wanted to know what to do. They called Senator DURBIN's office. So we checked into it with the immigration service and were advised that the girl, 18 or 19 years old, in the United States for 16 or 17 years, since she was a baby was, in fact, here illegally. The immigration service said there was only one recourse. She had to leave the United States and return to Korea for 10 years before she could be considered for legal status, 10 years to a country she has never known. It was because of that situation that I introduced the DREAM Act.

The DREAM Act says if you were brought here to America as a child, if you have lived in this country without a criminal record that would disqualify you, if you graduate from high school, if you have no moral flaws that might disqualify you otherwise, you have an opportunity to reach legalization one of two ways: You may volunteer to serve in our military or you may complete 2 years of college. I introduced that 10 years ago because I thought it was reasonable. We are not a nation that penalizes children for the crimes of their parents. The tens of thousands of young people who have never known another country but the United States and only want to be part of our future deserve a chance. We cannot, we should not, deport them.

When I think about what happened to the First Lady yesterday with the 6-year-old girl, I wonder, 10 or 11 years from now, if she is still here in the only country she has ever known, if she came here perhaps in undocumented status, what will happen to her? I have met many like her, many who have completed high school, college, graduate school, and beyond. They have nowhere to go. They have no country. Their talents cannot be used to make this a better nation in and of itself. They could be our next nurse, teacher, doctor, engineer, business leader. They don't have a chance.

I hope my colleagues will consider cosponsoring the DREAM Act. We can save the big debate for comprehensive immigration reform. I support it. But I hope they will believe and join me in this one part of it to say that we won't penalize the children for this contentious, divisive political debate on immigration. Before the end of the year, I want us to take up comprehensive immigration reform. I thank Senator SCHUMER and others who have included the DREAM Act in the bill. I hope we can move forward. I think the experience of the First Lady yesterday is an indication that immigration is an issue whose time has come.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 4064

Mr. MENENDEZ. Madam President, I rise to speak about an amendment I hope is noncontroversial and one that creates jobs. When one of my colleagues on the other side of the aisle is present, I will make a unanimous consent request, but I will start off by speaking on the amendment.

Amendment No. 4064 would create more than 40,000 new jobs. It would help revitalize Main Street in some of the economically hardest hit communities all around the country and at no cost to the taxpayer. We have been talking a lot about the financial crisis and how to prevent the next one. That is obviously important. It is essential work. But what we cannot lose sight of is the devastating impact this crisis has had on small businesses and economic development in local neighborhoods and communities.

I, like many in this Chamber, watched in frustration as the ranks of the unemployed rose to 15 million people and the unemployment rate increased to nearly 10 percent. I, like many of you, have watched in frustration as small businesses shut their doors, unable to get the credit they needed to keep the lights on.

The problem is the big banks—the same banks that took billions upon billions of dollars in TARP funds—are not making loans to small businesses. According to a just-released report by the Congressional Oversight Panel, Wall Street's largest banks reduced their small business loan portfolios between

2008 and 2009 by more than double the overall drop in lending.

Let me read you the conclusion of that report. It says:

Small business credit remains severely constricted. Unable to find credit, many small businesses have had to shut their doors, and some of the survivors are still struggling to find adequate financing.

So despite all of our efforts to restore liquidity in banks, they refuse to hold up their end of the bargain and are not lending to small businesses.

We know small businesses are the engines of growth. More than 99 percent of American businesses employ 500 or fewer employees, and together these companies employ half of the private workforce and create 2 of every 3 new jobs. So the question throughout the recession has always been, How can small businesses get the credit they need not only to keep the lights on but to grow and create jobs, to get the economy humming again?

Today, we are showing signs of improvement. We have stopped job losses, from three-quarters of a million jobs, to over 260,000 jobs created last month. The economy is recovering, but there are still millions of people who do not have work—people who expect us to do something to help them.

I believe this bill we are passing is essential to an economic recovery. In making our banking system more secure and stable, we are directing banks to focus on the core business of lending and extending credit, rather than the reckless casino speculation that brought us to this recession.

But we can also do something that is more direct and more immediate to help jump-start more job growth. We can invest directly in small businesses and local communities by supporting community development financial institutions or, as they are called, CDFIs. Based on what we know about this community from its historic performance, the amendment I am proposing will create approximately 40,000 new jobs by authorizing the government to guarantee bonds issued by qualified CDFIs for community and economic development loans. And best of all, there are no pay-go implications.

As their name implies, the primary mission of community development financial institutions is to foster economic and community development in underserved areas. They have a proven track record of job creation and are arguably the most effective way to infuse capital in underserved areas for community and economic development.

CDFIs leverage public and private dollars to support economic development projects, such as job-training clinics and startup loans for small businesses in areas full of potential but desperate for development. CDFIs have been hit hard by the recession because they have had to rely on big banks for capital. As we have seen, that capital is neither affordable nor accessible.

I am proud to have bipartisan support on this amendment. Senator SNOWE is a cosponsor, as are Senators JOHNSON, LEAHY, and SCHUMER, and I want to say to all of our cosponsors, we thank you for your support.

The idea is simple: If big banks do not care about lending to small businesses and communities in need of capital, then we should empower the very organizations that do care, that make it their mission every day to rebuild Main Streets across this country, and that are ready and willing to do even more if they only had the resources and tools to meet the growing demand.

So I ask all of us in this Chamber, do we want to go home to our States and tell the folks on Main Street that, no, we did not think they deserved the loan guarantees—that would not cost taxpayers a dollar but would create more than 40,000 new jobs? I certainly do not think so.

We have talked a lot about protecting Main Street from Wall Street here in the last few weeks, but we have not talked about doing anything directly to benefit Main Street. Here is our chance. Again, we know the big banks have dried up their lending to small businesses. We know small businesses are the engine of economic growth.

I am proposing an amendment that would not wait around for the big banks to start lending again while Main Street businesses continue to struggle to meet payroll. I am proposing an amendment that would give our communities the guarantees they need to get lending started again to put money into our engines of job growth—and all without any pay-go implications, without any cost to the Federal taxpayers.

I urge my colleagues to join us in supporting this important amendment and to help small businesses create jobs on Main Street. I appreciate that Senator SNOWE, Senator JOHNSON, and others—Senator SCHUMER—have joined us on this effort.

Madam President, seeing the distinguished ranking member of the Banking Committee is now on the floor, I ask unanimous consent to set aside the pending amendment and call up my amendment No. 4064, which is the CDFI amendment, and ask unanimous consent for a vote on this amendment prior to the cloture vote.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MENENDEZ. Madam President, I regret that my dear friend and colleague from Alabama has the need to object. This is an opportunity, with a bipartisan amendment, to help Main Street and small businesses; an opportunity to create 40,000 jobs; an opportunity to do it without cost to the taxpayers; an opportunity to do it with organizations, CDFIs, that have a proven track record; an opportunity to lend to Main Street because big banks are not doing it.

We all lament the lack of job growth. We all lament the lack of access to capital. This would be a tremendous opportunity to do that. So I do hope I can work with Senator DODD and Senator SHELBY to get this in order prior to the cloture vote or hopefully, if we do not achieve that, to be able to get this in any managers' amendment. It is bipartisan. It creates jobs. It does not cost the taxpayers any money. I do not know how much more you can come to the floor and offer an amendment that should have bipartisan support than an effort like that.

With that, Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Minnesota.

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

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

Mr. FRANKEN. Madam President, I ask unanimous consent that it be in order to offer amendment No. 3902, my amendment with Senator SNOWE, to create an Office of the Homeowner Advocate to help prevent mistaken home foreclosures, and that it be voted upon at the appropriate time.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRANKEN. Madam President, I am truly disappointed that my colleague would object to an amendment such as this one. This amendment does not contain any new appropriations or authorization of appropriations. But, more importantly, it is about helping people who have worked their whole lives to own homes but now are at risk of losing them, often through absolutely no fault of their own.

When I last spoke about this on the Senate floor, I told my colleagues about a woman named Tecora, a homeowner from south Minneapolis. Tecora now owes $317,000 on a $288,000 loan due to an exotic mortgage called an option ARM—or option adjustable rate mortgage—that made her monthly payments double.

Tecora has not missed a mortgage payment, but unless something changes, she is going to lose her home. She had been looking forward to retirement, but now she looks at her future with a sense of dread. ''I'm squeaking by,'' she told the Minneapolis Star Tribune, ''by the plaque on my teeth.''

It shouldn't have to be this way. President Obama created a program known as HAMP to encourage mortgage servicers to modify people's loans and help keep homeowners in their homes. But this program, while a good start, has been plagued by mistakes. Tecora's mortgage servicer told her that her file is closed because she voluntarily left HAMP, but she never did. In other words, the servicer made a mistake. Now she is fighting to get her mortgage modified so she can afford to keep her house.

The amendment Senator SNOWE and I are proposing would set up a temporary—temporary—homeowner advocate within the Treasury Department to fix problems with HAMP. This amendment is supported by the Treasury Department. The White House declared it 1 of the top 10 amendments that would improve the Wall Street reform bill. Also, it is supported by consumer groups from around the country, ranging from Americans for Financial Reform to Consumers Unions, SEIU, and the National Council of La Raza. It is also supported by the superintendent of the New York State banking system who called it a ''big step forward for homeowners.''

When you boil it down, this amendment is about one thing: making sure homeowners know someone has their backs. The amendment would establish a temporary office that homeowners can call when they are having problems with HAMP. Homeowners need to know someone is looking out for them, someone with the authority to actually fix the problems. People should not be losing their homes just because the mortgage servicers lose their paperwork or misunderstand eligibility for HAMP.

When homeowners call in with a concern, this new office has two important powers. First, it could make sure servicers obey the rules of the program or suffer the consequences. But at least as important, it makes sure people's homes don't get sold right away, giving the homeowner advocate time to resolve the problem. People's homes are being lost to mistakes—let me repeat that. People's homes are being lost to mistakes every day in Minnesota, in Nevada, in South Carolina, in Georgia. We need a homeowner advocate to stop these mistakes before it is too late for these homeowners.

The homeowner advocate is modeled after the Office of the Taxpayer Advocate. That office has been extremely successful, looking out for taxpayers when the system fails them. The Homeowner Advocate's Office, while temporary, would do exactly the same.

As I mentioned before, this amendment does not authorize any additional appropriations. It would be funded by existing HAMP administrative funds.

I am glad this amendment is a bipartisan effort, and I am sorry to hear the objection from my colleague. I hope we can work together to figure something out. I think we have been doing a lot of that during this whole process, and I certainly respect the ranking member for the work he has been doing in that regard.

I wish to end with this: Protecting homeowners isn't left or right. It isn't liberal or conservative. It is just the right thing to do. It is the smart thing to do.

Thank you. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WHITEHOUSE. Madam President, I wanted to discuss very briefly an amendment that I have filed with respect to the independence of compensation consultants.

As we all know, executive compensation has been a significant issue in this country. Much of executive compensation is set on the advice of compensation consultants. I had an interesting meeting earlier this year with the Obama administration's ''pay czar,'' he is called, and he said when he was in the process of trying to work out how he should try to restructure executive compensation, he tried to find an independent compensation consultant to advise him. He found he could not find a single compensation consultant in the country who met his standards for independence.

This amendment would ask the Securities and Exchange Commission to set standards for independence for compensation consultants, so that when, consistent with this legislation, the compensation committee of a board has to evaluate which compensation consultant to hire, they get an independent seal of approval from the SEC, and they can know they are doing the right thing; and, of course, we can assure that we have independent compensation consultants and not people who get paid in order to encourage higher salaries for CEOs in our country.

I had a brief discussion about this with the chairman. He expressed some interest in it. I understand we will be continuing to work together to try to get this language incorporated into the final bill. I expressed my appreciation to him for his consideration. I believe it matches the language on the House side, so maybe it is something we can do in conference. But, clearly, this question of compensation is an area where the chairman has been a leader, and I look forward to working with him.

Mr. DODD. Madam President, in response to my colleague, I thank him. He was been very active in the debate on this bill. I am grateful for his thoughts and ideas. This is a very important proposal—one that we have not adopted. It is in the House bill. I told my friend I would be anxious to pursue the idea he has incorporated because, obviously, this is subject matter that has probably evoked more public interest almost more than any other aspect of the crisis over the last 2 years. Obviously, people have lost homes and jobs and retirement income and the economic damage done to the country; but people seemed to understand this issue from the very beginning more than almost anything else, particularly in light of the fact that taxpayers were writing the check of $700 billion to stabilize, we are told, and preserve many of these institutions.

What was degrading to many people is, in the midst of all that, we watched some executives take excessive bonuses who could only receive them because the American taxpayer stabilized and preserved those companies as a result of that legislation.

What also bothered me beyond that, I might have thought at some particular point the executives might have expressed their appreciation to the American taxpayers for stabilizing and saving some of these institutions. They not only didn't do that, in most instances they went out and took significant bonuses that were only available because the companies had been saved by the American taxpayer. So this issue is one that I think had more to do with inflaming public passions about what happened almost more than anything else I can think of.

Our colleague from Rhode Island has crafted a proposal that would go to deal with this issue. I applaud him for that. I hope we can work something out that will meet his concerns.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURRIS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENSIGN. 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. ENSIGN. Mr. President, the American people have accused Washington and this Chamber of being far too partisan, and they have been right. But I would venture to guess that we can reach a bipartisan agreement on the fact that our economy has taken a major hit over the last few years—a hit that I would argue we have yet to recover from. So here we are, debating another massive bill that is supposed to stave off another economic disaster. But does it do that?

I am sure that most here are familiar with the children's tale of the boy who cried wolf far too often. The problem faced by this character was that when there was an emergency—such as the wolf verging on attack—there wasn't anyone around to take that alarm seriously. This is the path we are heading down.

The Senate is passing a massive bill, after many other massive bills that we have passed, and expanding the Federal Government to an unsustainable level, all in the name of avoiding another economic downturn. But what we are doing here is setting our country up on a course that we cannot correct and creating unintended consequences that may ultimately rain more economic damage down on the American people.

I think it is important to remind the American people why the government felt it necessary to use taxpayer dollars to bail out the GSEs—Fannie Mae and Freddie Mac. They did this because they claimed the two companies were too big to fail. The idea that the failure of two mortgage companies could bring down the whole U.S. economy was frightening to many, but confusing to many more. Make no mistake about it, this was a problem the Congress created.

Beginning in the 1990s, Congress decided to expand the goals of the Community Reinvestment Act by writing laws designed to encourage the GSEs—Fannie Mae and Freddie Mac—to meet certain affordable housing goals, giving Fannie and Freddie government permission to buy subprime home loans. This of course created an incentive for lenders to make more and more bad loans since the GSEs would stand ready to buy them and take on the risk.

We now know, however, that it is the American taxpayer who actually was taking on this risk. Before September 2008, few Americans realized that Fannie and Freddie had taken over the subprime markets and were single-handedly making the dream of home ownership a reality for thousands of Americans. However, those Americans were realistically unable to afford the mortgages Fannie and Freddie guaranteed. As home after home and neighborhood after neighborhood fell victim to the home foreclosure plague, Fannie and Freddie's losses started to greatly impact the U.S. economy—hence the notion of being too big to fail.

I have spent the last 2 years arguing that the government's interference in the situation with a taxpayer bailout was not the right move to make. By stepping in, blank taxpayer check in hand, the government set the American people up for bailout after bailout of Fannie and Freddie, with no plan in place to reform these government-sponsored companies so that taxpayer support would eventually end.

Last Christmas, the Obama administration lifted its $400 billion—$400 billion—limit to aid Fannie and Freddie. They took the cap off. They pledged unlimited support through 2012. This is unlimited support for Fannie and Freddie. Imagine what that means. We don't have the funds to provide that kind of support, and the American people should not be on the hook for an indefinite blank check.

In this last month, while we were debating this bill on the floor, Fannie Mae asked for another $8.4 billion from the taxpayer and Freddie has asked for an additional $10.6 billion from the taxpayer. Is the American taxpayer to assume we will continue to fund the demands for more and more money every single time they ask? What if this happens to be a monthly request for the next 2 years? The American taxpayer right now has no choice but to pay up. Simply put, I believe this is ridiculous.

Fannie and Freddie are referred to as government-sponsored entities because the wallets of the American people go straight into the bank accounts of these companies. The purpose of this financial reform bill before us should be to protect taxpayers against this concept known as too big to fail, but unfortunately it does little to address this issue.

I offered an amendment to address the too-big-to-fail issue with Fannie and Freddie. However, it was defeated, mostly along party lines. My amendment would have protected the taxpayers from future bailouts of Fannie and Freddie by restricting their size so they do not continue to be too big to fail. Fannie and Freddie remain large enough to threaten the stability of our economy in another economic downturn. My amendment would have limited their size to less than 3 percent of our GDP. Again, the amendment was defeated, mostly along party lines.

If the government is arguing we have to continue bailouts of Fannie and Freddie because they are too big to fail, shouldn't we be doing something to fix the internal problems of Fannie and Freddie? Senator MCCAIN and Senator SHELBY introduced an amendment to protect the taxpayers from Fannie and Freddie and their too-big-to-fail state, but once again their amendment was also defeated along party lines.

Their amendment, of which I was a cosponsor, would have meaningfully reformed these government-sponsored entities in an orderly fashion. It would have ended the government takeover of Fannie and Freddie within 3 years, would have provided more oversight to the companies, and would have eventually eliminated all government subsidies to Fannie and Freddie. This amendment was a thoughtful, clear-eyed approach to dealing with the two companies that drove my State of Nevada and our country into the housing foreclosure crisis. But again, this amendment was defeated along party lines.

Instead of seeking meaningful reform of Fannie and Freddie through the financial reform bill, those on the other side of the aisle have decided they will study the issue of Fannie and Freddie. They have asked the Treasury Department to make recommendations on these companies in 2011. In simple terms, this means we have punted dealing with the risk of Fannie and Freddie, the risk they pose to our economy for another year and, undoubtedly, more blank checks are on the way to Fannie and Freddie.

By the time the Democrats and the Treasury Department have further evaluated their risk, 30 months—2½ years—will have come and gone, with taxpayers holding up these two companies with their hard-earned money. I believe that is unacceptable and, frankly, it is unconscionable to ask the hard-working taxpayers of this country to foot the bill for hundreds of billions of dollars of bailouts when Congress and the administration cannot even come up with a plan for Fannie and Freddie within 2½ years of taking them over.

Additionally, the bill before us creates this new Financial Stability Oversight Council that will have the authority to vote on which companies are, in their opinion, too big to fail. As we saw during the height of the financial crisis, the government, given the opportunity, is willing to arbitrarily select which companies can get government support and sponsorship. I believe this sets a dangerous precedent that will encourage large companies to take more unnecessary risk, since they will ultimately pass any losses associated with that risk on to the taxpayers in the form of a bailout.

Under the bill before us, the Financial Stability Oversight Council, under the guise of monitoring systemic risk to the financial system, will have the unintended consequences of encouraging more taxpayer bailouts. This is because the council has the authority to identify firms that would ''pose a threat to the financial stability of the United States,'' and would place those firms under the Federal Reserve's supervision.

The benefit of being placed on this exclusive list is that it comes with a market understanding that the U.S. Government stands ready to keep the company afloat when it gets in trouble. It means that company will have certain advantages over its competitors, including access to cheaper funds from the Fed. This will consolidate the market and enable the company to use the savings to take bigger and unnecessary risks. A regulatory structure that facilitates this kind of moral hazard does not work.

Remember the boy who cried wolf I was rehashing earlier? Well, the wolf came when confronted with the collapse of Fannie and Freddie and the government rushed in, no plan in hand, to bail out these companies. Now we are sitting around debating legislation that does not even address the risks they will pose in another economic downturn. We have to ask the question: Do we honestly think we are protecting ourselves from another too-big-to-fail bailout of Fannie and Freddie?

This bill should have been our chance to protect the taxpayer and reform Fannie and Freddie, but we are ignoring this issue altogether and the systemic risk that follows with it.

More simply put: We are ignoring the American people. The next time the government cries wolf and steps in to bail out Fannie and Freddie again, the American people are going to be up in arms, as they should be.

We are ignoring the American people at a time when they have joined together across this country to shout from every rooftop, mountaintop, and platform they can find that they are done with bailouts. Unfortunately, Washington isn't listening. People in this body believe we know better than the American people; and if the American people would just sit back and let us do our jobs, we will figure all this out. Is that the reality? When Washington is in charge of something, we undoubtedly make a larger mess than what there was to begin with.

Some of us just don't get it. Some don't get that the taxpayer should not be on the hook for bailing out the financial industry when there is a proper course of action for companies that are struggling to pay their debts—it is called bankruptcy. Wouldn't you agree that if the bankruptcy process is good enough for Main Street it should be good enough for Wall Street?

When the automakers were struggling with an economic downturn, I argued they should utilize the orderly bankruptcy process to reorganize. But the government thought it knew better and decided to bail them out. The government then decided who the winners and losers would be in that process instead of following the rule of law.

The same has happened with the financial industry. Instead of declaring bankruptcy, the financial giants waited for the government to step in and lend them an American taxpayer hand. The executives who drove these companies into the ground when the bailout came are those same executives who later received huge bonuses. Does this make sense to anybody? Moving forward, this needs to end. But this bill does not do that.

Under this bill, the Federal Deposit Insurance Corporation—the FDIC—would have expanded authority to take over, manage, and liquidate troubled financial companies. The FDIC would take over the assets and operate the financial company with all of the powers of management, shareholders. In that way, the government acting through the FDIC, will continue to determine financial companies continue and which do not.

This bill would essentially institutionalize the kinds of bailouts that have occurred in the recent crisis. Rather than providing an alternative to policy of bailouts, it would permanently establish such a policy. Second, the expanded resolution authority would be operated with a considerable degree of discretion about when to start the intervention and about the priority to give different creditors.

People talk about the impact of Lehman Brothers' sudden collapse on sparking a market panic, and the authors of this bill seem to think that the answer is to create a system to prop up future banks. It was not the collapse, but rather the surprise involvement and then abandonment by the government, that created market turmoil.

Do you understand why one bank might be bailed, but another would be left to collapse?

It was all done behind closed doors. The better lesson learned from the crisis is that we need a predictable, rule-based bankruptcy process rather than an expanded discretionary resolution authority.

These bailouts do not incentivize these institutions to minimize their risk, instead they go as far as to privatize their profits while socializing their losses. In other words, putting that risk onto the taxpayer.

Senator SESSIONS introduced an amendment, that I cosponsored, to offer hard-working American families a reprieve from footing another financial sector bailout, while also discouraging these companies from continuing the irresponsible practices that got them into trouble in the first place. Again, this amendment was defeated along party lines.

The amendment would have made these companies utilize an enhanced bankruptcy process to ensure that the costs are covered by the financial institutions and their creditors, not the taxpayer.

Additionally it would have created a new chapter 14 in the Bankruptcy Code that would utilize many of the tenets of chapter 11 bankruptcy, but would be for the specific use of these financial institutions. This addition to the Bankruptcy Code would have created a new pathway to limit the cascading spread of risk and panic through the financial system and assured the more orderly winddown of financial institutions—insulated from bailouts and political influence.

The Sessions amendment would have delivered much-needed transparency, accountability, stability, and due process through the use of bankruptcy courts. Further, to protect taxpayers, it specifically denied the Federal Government the authority to take over firms, dictate the terms of their reorganization or liquidation and support them with Federal bailouts. It protected the taxpayer.

The amendment guaranteed real reform that would have resulted in real stability. Unfortunately, the Democrats decided to go in a different direction, one that moves away from protecting the taxpayers, and swiftly defeated this bankruptcy amendment. So, what does this mean for the average American?

It means that this financial reform bill does not end ''too big to fail'' and ensures more taxpayer bailouts with the next financial crisis.

In fact, this legislation goes as far as to create unnecessary and burdensome regulatory requirements that will ultimately hurt small businesses. Nowhere is this clearer than the creation of the new Consumer Financial Protection Bureau.

This new government bureaucracy will have the authority to write and enforce rules that could ultimately tighten the availability of credit and discourage business investment at a time when we can least afford it. I am deeply concerned about the jurisdictional reach of this new agency.

I was pleased that the Senate adopted my amendment last night that would exempt from the new agency all sellers of nonfinancial goods that give customers the option of making installment payments.

At a time when the economy has taken its toll on many American families, it is vital that businesses are not discouraged from offering their customers flexible payment options. This is classic overreach by Washington, and I am glad that my colleagues narrowed the scope of the agency so that we don't further stunt our country's economic growth.

However, my amendment fixes but one problem with the Consumer Financial Protection Bureau. This new bureau has no oversight and has access to billions of dollars. We have seen too often bureaucracies grow and grow normally; that's simply what bureaucracies do.

Can you imagine what this monstrosity with no size restriction and no oversight can become?

So, I ask you, do you feel like we are really reforming this financial industry with this legislation?

The purpose of my speech today was to highlight all that is wrong with this bill for the American people, but I ran into a problem when doing this because what's wrong with the bill is literally every single line in the bill. I point out the issues of Fannie and Freddie, bailouts versus bankruptcy, because had those amendments been offered to this legislation, they would have been the sole examples of what is right with this financial reform bill; but they were not adopted and were defeated along party lines.

The American people are tired and frankly, so am I. I am tired of standing up to speak about real reform, all the while, watching as my colleagues pass massive pieces of legislation through this body as solutions looking for a problem, while continuing to ignore that we have real problems that need real solutions.

This financial reform bill does nothing to address real reform of the financial industry, but it does ensure that the taxpayers guarantee the bad debt of Fannie and Freddie and Wall Street, just as these companies guaranteed bad debt that eventually brought them to their knees.

At the rate we are going, this will become our reality. The economic issues plaguing Greece aren't just a scary thing to watch unfold on TV, it is the future of our country, the great United States of America, if we don't start shaping up.

Rushing legislation through Congress and into law doesn't mean that we are addressing pressing issues, it means that we are passing time and passing unintended consequences on the taxpayers' dime. We are passing time that we do not have, using money that we do not have, and doing so in a country that can not afford another bailout or another collapse of another ''too big to fail'' company.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. KAUFMAN. I ask to speak as in morning business.

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

IN PRAISE OF STUART LEVEY

Mr. KAUFMAN. I rise today to speak once more about our Nation's great Federal employees.

The United States and our allies are engaged in an ongoing effort to disrupt and dismantle terrorist groups overseas. Every day, our troops act with great courage and commitment to take the fight to al-Qaida and its allies. Complementing their efforts are public servants who target individuals providing financial backing and other forms of support to terrorists overseas.

One of the key government officials leading that effort here in Washington is a great Federal employee at the Treasury Department.

Stuart Levey has served as the Under Secretary of the Treasury for Terrorism and Financial Intelligence since 2004. Appointed to the position by President Bush, he was asked to continue after President Obama took office as a testament to his effectiveness and unique abilities. Stuart has done an outstanding job cutting off the flow of money to terror groups and their sponsors, and support for his efforts crosses political divides.

Today, one of the leading state-sponsors of terrorism is Iran. While an array of unilateral and multilateral sanctions remain in place with regard to Iran, many foreign businesses, banks, and other entities do business with Iran, which helps the Iranian government finance its nuclear program and terrorist activities.

In 2006, Stuart adopted a new tactic to deal with this problem. Instead of focusing solely on government action, he began exploring opportunities for cooperation with the private sector and urging private sector institutions to take action.

In this regard, Stuart led an effort to convince foreign banks to cease conducting business with Iran until that country agreed to comply with international banking standards. By showing companies and banks that doing business in Iran has financial and diplomatic repercussions, he has convinced corporations to cut off business with Iran. All of this was done in addition to the more traditional strategies of adding Iranian banks to the U.S. terrorist list and imposing more stringent regulations on American financial institutions.

As Stuart's efforts took off, banks throughout the world—including in China and Muslim-majority countries—began cutting financial ties with Iran. Energy companies have been persuaded to avoid initiating deals to extract Iranian oil and gas, and such action has had far-reaching financial implications.

Our multilateral efforts against terrorism and nuclear nonproliferation have also been strengthened by Stuart's work.

At the Treasury Department, Stuart oversees the Office of Terrorist Finance and Financial Crime, the Office of Intelligence and Analysis, the Financial Crimes Enforcement Network, the Office of Foreign Assets Control, and the Treasury Executive Office of Asset Forfeiture. In his leadership of these offices, Stuart has shaped a new role for the Treasury Department as a key player in national security matters and decisions, ranging from Iran to North Korea.

Before coming to the Treasury Department, Stuart served as Principal Associate Deputy Attorney General at the Justice Department. There, he coordinated a number of the department's counterterrorism activities. He worked for several years in private practice before entering public service in 2001, and he holds undergraduate and law degrees from Harvard University.

I hope my colleagues will join me in thanking Stuart Levy for his achievements and wish him continued success in his efforts, which are ongoing. He and his colleagues working at the Treasury Department on counterterrorism and financial intelligence are deserving of both praise and recognition for all they do to keep Americans safe and to secure American interests, both domestically and abroad.

They are all truly great Federal employees.

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.

Mrs. MCCASKILL. 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. MCCASKILL. I ask unanimous consent to speak as in morning business.

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

REVERSE MORTGAGES

Mrs. MCCASKILL. Mr. President, there are many issues that are pending on this bill that we are currently considering; unfortunately, many of them that we will not get to. But I did want to take a minute to sound the alarm about a very important topic that is, in all likelihood, not going to get addressed but something that everyone needs to be aware of because it is a subprime mess in the making. That is the area of reverse mortgages.

You cannot turn on TV these days without seeing an advertisement from someone about an important government benefit that you should take advantage of, get cash out of your home now and participate in a reverse mortgage.

Senator KOHL has been great to work with on the Committee on Aging. We had an oversight hearing on reverse mortgages. In fact, we conducted one of them in St. Louis. These are tricky financial vehicles.

Keep in mind to whom these are being marketed. They are being marketed to seniors. So seniors are being told: Enter into a reverse mortgage and you can get all of the money out of your house, and you never have to worry about paying it back and everything is great.

The problem is, they are very expensive and not everyone is well suited for a reverse mortgage. In some instances, a reverse mortgage might be appropriate. But, frankly, they are certainly not appropriate if someone is selling you a reserve mortgage when you are 80 years old and turns around and sells you an annuity in the same sales pitch.

Believe it or not, we had testimony from families saying that is exactly what had happened to them. There is not enough consumer protection in the area of reverse mortgages.

Here is the other shoe that is going to drop. Unlike the subprime mess which occurred because people were selling mortgages to people who were not suited for them, and they were trying to sell them because they had no skin in the game, they did not care if they were ever paid back, they were making money by selling the mortgages and had no risk if the loans were not paid back. Guess what. Same thing. The people selling these mortgages have no risk. Now, in the subprime mess, the risk was transferred to all of these financial institutions that sliced and diced these mortgages and securitized them and sold them short, sold them long.

Guess who takes the risk in a reverse mortgage, every stinking dime. The Federal Government, which is shorthand for the taxpayers of this great country. So if someone does a phony appraisal on a reverse mortgage and says the property is worth more than it is, and they get the money out of there or if property values were to drop again in 15 or 20 years when these mortgages came due, guess what happens. The Federal Government and the Federal taxpayers get left holding the bag for every darn dime.

Clearly, this is a problem. The amendment I had was going to address some of the deficiencies in this area as it relates to consumer protection and would put in a suitability standard.

Here is the other scary part about this cautionary tale. They have started securitizing reverse mortgages. Securitizing is the process that we saw in subprime where they gathered all of those subprime mortgages together and said: OK, let's slice them all up, and we will do it at levels. This top level is not very risky, and we will slap a AAA on that. Then we will slap another AAA on the second tranche, and maybe down here at the bottom we will get a AA.

Then the different tranches will pay different rates. Guess what is happening now to reverse mortgages because that market has dried up because of the subprime mess. All of a sudden we are seeing an explosion in the securitization of reverse mortgages.

In the security market for these mortgages, in the past year, the security market for reverse mortgages went—in 1 year—from $1.5 billion to $13 billion—in the last 12 months. In 1 year. That gives you some indication of what is happening.

I know we may not be the brightest lights in the marquis sometimes around here, and I know sometimes we may not get it. But, goodness gracious, that ought to set off some alarm bells somewhere. So I urge my colleagues to take a look at the reverse mortgage problem.

I urge them to convey to their seniors in their States, through the senior centers and other ways that you can communicate with your constituents, to be careful of reverse mortgages. They are very expensive.

I did not really make a true confession, and I probably ought to do that. There is a reason this place likes reverse mortgages. We are busy trying to find pay-fors in our budget. We are busy trying to find ways to pay for things. Well, guess who gets a cut of the initial fees on a reverse mortgage. The Federal Government.

So one part of this place loves the idea that more reverse mortgages are occurring. In fact, we took the cap off how many could occur for this year because we can count that money and spend it in the appropriations process, just hoping that maybe we are not around when we have to pay the piper at the end of the rainbow when perhaps the value of that home is not sufficient when sold to pay off the loan.

So I am disappointed it appears that we are not going to get to this amendment. I will continue to work on this issue. I urge my colleagues to continue to work on this issue. I will say this: If this body tries to lift the cap—the cap will go back on in September—if this body tries to lift the cap and allow unlimited reverse mortgages out there this year, under the guise of, oh, we need to be doing this because it helps the economy, or it is going to help the—no. No. No. No. I say no.

We need to go back to a cap on reverse mortgages so we have a firm handle on what potential liabilities down the road could be to the taxpayers of the country for this program.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NELSON of Florida. 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. NELSON of Florida. I ask unanimous consent to speak as in morning business.

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

GULF OILSPILL

Mr. NELSON of Florida. Mr. President, British Petroleum has just announced that it has conceded that the amount of oil gushing from the floor of the Gulf of Mexico is much more than what they admitted several weeks ago. You will recall that they first said it was gushing about 1,000 barrels a day. They then revised that up to 5,000 barrels a day.

All along they refused the entreaties of Senator BOXER and me to release the video that is being done by the little remote submersibles that are down there in two places: at the wellhead where the broken pipe is partially broken, at the wellhead 5,000 feet below the surface, and at the other end of that pipe that used to go up to the surface with the rig that sank but is now lying on the floor of the ocean. At the end of that pipe called the riser is where additional oil is coming out.

I am happy to tell you Senator BOXER and I just announced that we now have gotten BP to release the live feed of those remote submersibles, and we should be able to go on any number of sites and see this live—those two places: at the wellhead and at the end of the riser pipe.

When you look at it, what you should note is—and why BP has now publicly admitted, and AP just moved the story—that they concede the amount gushing out is much more than 5,000 barrels a day. That is obvious when you see the live feed.

Now, in addition, they released to Senator BOXER and me—and I want to hear from her in just a second. What they released was 9 hours of archival value tape of this video.

What we found in there is the part where they are injecting the dispersant into the gushing oil. There is a picture of that we have put on my Web site, and what is astounding is that dispersant in this photograph is so much, is it any wonder, then, at midnight last night the Environmental Protection Agency ordered the stoppage of the use of this dispersant, as it is harmful to the environment?

What we have is a gusher that is out of control. Remember, this has been gushing now for a month. They say it is going to be at least another 2 months before the relief well gets there with which they can stop it. If it does gush for another 2 months, it is going to cover up the Gulf of Mexico. And we already know it is in the Loop Current on the way to the Florida Keys.

Mrs. BOXER. Will the Senator yield?

Mr. NELSON of Florida. Certainly. And I thank the Senator from California, the chairman of the Environment Committee, for her leadership in getting the truth out.

Mrs. BOXER. I thank the Senator from Florida. He represents a State that relies on a beautiful coastline, beautiful ocean, the ability for the fishermen to earn their living, the ability of the tourism industry to thrive, the jobs that are related in both of our States.

I see Senator CANTWELL and Senator FEINSTEIN in the Chamber. The six Senators from the west coast came together in an unusual press conference, an unusual moment to say: We don't want to put our coastlines at risk. We can't afford to do it, let alone our moral responsibility to future generations.

What we are seeing here are the limits of the technology. I know the Senator saw the words BP wrote on the permit application when they wanted to move forward with this exploratory well. They said the chances of a spill were remote. But even if there would be a spill, they said the technology was up to the task. After the spill, the first thing they said was: We have never had experience in cleaning up a spill in this deep water.

Doesn't this strike my friend as something the Justice Department ought to look at, which several of us on the Environment Committee have asked for? Did they, in fact, tell the truth on their permit application or did they not? I ask my friend to respond to that.

One more thing—and I thank the Senator from Florida so much. We are a good, strong team. It is a good east coast-west coast team. When we looked at that riser, the technique that is kind of a straw that they say is siphoning off the oil, they claimed it was taking out 1,000 barrels a day. Then they said 2,000 barrels a day. Now they say it is 3,000 barrels a day. Remember, they told us it was 5,000 in total that was being spilled. Now they are claiming 3,000. When we looked at that—and now the American people can look at this—didn't you see what I saw? It is a fraction of the oil that is being siphoned off. In fact, most of the oil is gushing like mad out there, with just a little bit being siphoned off, which tells us there is a much greater volume than BP said.

If I may ask my friend to answer the two questions. Does he believe the Justice Department ought to take a look at these reassurances BP gave before they got the permit and then what they said after, and also comment on this whole notion of siphoning off the oil that they said was successful.

Mr. NELSON of Florida. The answer to the first question is yes. I am not sure we have had the truth, the whole truth, and nothing but the truth. That would suggest why BP was so reluctant to release the video. Each step, it was like pulling teeth to get the video released. Live video pictures don't lie. What they are showing at this moment, anyone who looks at the live video, is exactly what Senator BOXER said. There is this huge gusher of oil at the wellhead that is spewing into the gulf. There is a little pipe that one can see in the video that is coming in and is being inserted, and that was supposed to be sucking most of the oil out. But, in fact, the pictures don't lie. The live video is showing the gusher spewing black oil 5,000 feet below the surface of the Gulf of Mexico.

Again, I thank my colleague from California for her cooperation. As chairman of the Environment Committee, she has the access of snapping her fingers and making things happen.

I hope other Senators don't have to suffer what it looks as if those of us on the gulf coast and now in the Florida Keys and the east coast, the Atlantic coast are going to have to suffer.

Mr. JOHANNS. Mr. President, I rise today to talk about why cloture should not be invoked on this so-called financial reform bill. The events that transpired in the fall of 2008 and into 2009 are times that no one wants to repeat. That time was marked with extreme market volatility; credit all but drying up; a housing crisis we are still struggling to overcome; and taxpayers bailing out Wall Street. History books will undoubtedly look at that period with a magnifying glass. Hearings were held, testimony was heard—all in an attempt to identify what went wrong and what Congress could do to fix the broken parts of our system. I began this multiyear process with a resolve to the American people to fix the system. It is our job to protect taxpayers from ever again being on the hook for reckless and risky Wall Street players.

Unfortunately, this final bill is anything but reform. Instead, this bill pays little regard to its massive government expansion or host of unintended consequences. In addition, it ignores some of the major causes of the last crisis. Proponents simply say reforming Fannie and Freddie will have to wait for another day. And in a twist of irony, it turns out that supporters of this bill are the Wall Street giants themselves such as Goldman Sachs and Citigroup. Yet, proponents of the bill are attempting to paint those opposed to the bill as attempting to protect Wall Street. The American people are not buying it. Those actually opposing the bill are Main Street businesses, those with little, if anything, to do with the last crisis. Groups like the Chamber and the NFIB hardly represent Wall Street insiders. And when the average American thinks of a Wall Street reform bill, they do not expect it to regulate the local HyVee grocery or Tractor Supply Store.

Today, I would like to highlight some of my biggest concerns. If this bill becomes law, we are going to see a massive new government bureaucracy with unchecked powers and limitless authority. The new Consumer Financial Protection Bureau's powers are so broad—it will be allowed to creep into every area of American business and monitor consumer behavior. Have we not listened to anything the American people are telling us? They want less, not more government intrusion into their lives. We have now seen the U.S. Government become the majority owner of an American car company. We have seen government take over the student loan business. Most recently, a health care law added massive new costs and a massive new government entitlement program. And now the Consumer Financial Protection Bureau adds the potential for the government to creep into every avenue of our economy.

How can we claim we are addressing the root causes of the financial crisis by creating new consumer rules that cause a restriction in credit? How will regulating community banks, florists, dentists, and manufacturers help prevent another Wall Street meltdown? What other agency in our system has this type of authority? It is telling that NFIB is against this new agency. They don't represent the big banks, but instead the businesses and job creators of our country. They are worried they will be swept under these new rules and I don't blame them.

I also have deep reservations with the legislation's derivatives title. What started out as a bipartisan Agriculture Committee agreement has morphed into what almost everyone agrees is unworkable. The White House has concerns, Treasury Secretary Geithner has concerns, Obama administration adviser Volcker has concerns, Federal Reserve Chairman Bernanke has concerns, FDIC Chair Sheila Bair has concerns. Yet Senators just keep ignoring the warnings. This is legislative malpractice.

The derivatives title seeks to address the largest dealers. Yet this derivatives title overreaches—impacting community banks, farmers, manufacturers, and thousands of others who use these instruments to manage their risks. A failure to provide an appropriate end user exemption will have the perverse effect of actually making businesses more risky. As derivatives contracts become more expensive, legitimate businesses will be unable to adequately plan for unexpected events. Furthermore, by banning the large dealers from engaging in derivative transactions, we won't really be banning them. We will only prevent them from occurring in the United States. No one should kid themselves into thinking our global competitors won't step in. A massive migration of derivative contracts into areas of the world that are unregulated, helps no one. By pushing these contracts into the dark, we are only increasing our global systemic risk. The problems at AIG have clouded our judgment regarding the usefulness of the rest of the derivatives market. Now are reforms needed? Without a doubt. However, the current approach unfortunately throws the baby out with the bathwater. It will only harm our U.S. competitiveness and those that use derivatives to legitimately protect their business from risks.

And finally, let me say what this legislation is missing. Shocking as it is, nothing in the bill addresses Fannie Mae and Freddie Mac. Already, the taxpayer has given these mortgage giants $130 billion and now we find they want another $18 billion more. Unfortunately, once you have turned on this faucet, it is hard to turn off. And the taxpayer well is running dry. The government took over these mega firms in 2008 and we have done nothing to extricate ourselves from them. In fact, since the United States guarantees Fannie and Freddie, taxpayers are on the hook for roughly $5 trillion in mortgage liabilities. So if everyone knows we must do something, how can we ignore them in this massive 1,400-page bill?

Furthermore, how could my colleagues reject an amendment that would have—at the very least—provided transparent accounting of the liabilities of Fannie and Freddie? If the taxpayers are on the hook for these liabilities, shouldn't this risk be on the Federal balance sheet? Wasn't it President Obama himself who advocated for honest accounting in our budget? This elephant in the room will cause further destruction to our fragile economy if we don't take serious action. The root cause of the housing crisis was that people bought houses they couldn't afford. No one can claim that the mortgage market was not a major factor in our financial meltdown. Yet we ignore underwriting standards. Unfortunately, the Senate rejected an amendment that would have mandated stricter underwriting standards including a 5-percent downpayment requirement.

Instead, we kicked the problem to the financial protection bureau to put on their already long to-do list. It is with regret that I will not be supporting the final regulatory bill. Government expansion, overreaching regulations, and impacting Main Street businesses that had nothing to do with the crisis are not the reforms the American people want.

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

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

Under the previous order, the motion to proceed to the motion to reconsider is agreed to, the motion to reconsider is agreed to.

CLOTURE MOTION

The question is on agreeing to the motion to invoke cloture, upon reconsideration, on amendment No. 3739.

The Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant bill 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 Dodd substitute amendment No. 3739 to S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Jon Tester, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F.

Kerry, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, Sheldon Whitehouse, John D. Rockefeller, IV, Michael F. Bennet

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on amendment No. 3739 to S. 3217, the Restoring American Financial Stability 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 bill clerk called the roll.

The yeas and nays resulted—yeas 60, nays 40, as follows:

[Rollcall Vote No. 160 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 |
| Byrd | 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—40

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|---|---|---|
| Alexander | DeMint | Lugar |
| Barrasso | Ensign | McCain |
| Bennett | Enzi | McConnell |
| Bond | Feingold | Murkowski |
| Brownback | Graham | Risch |
| Bunning | Grassley | Roberts |
| Burr | Gregg | Sessions |
| Cantwell | Hatch | Shelby |
| Chambliss | Hutchison | Thune |
| Coburn | Inhofe | Vitter |
| Cochran | Isakson | Voinovich |
| Corker | Johanns | Wicker |
| Cornyn | Kyl | |
| Crapo | LeMieux | |

Mr. BURRIS. On this vote, the yeas are 60, the nays are 40. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The majority leader.

Mr. REID. Mr. President, for the benefit of all Senators, we are now postcloture 30 hours. I have been speaking off and on over the last couple of days with the Republican leader. We are trying to work our way through this. There are a lot of procedural things we have to work through. There are only a couple of amendments that are germane postcloture, but they are ones we have to figure out a way to get resolved. I am in communication with the Republican leader. I am in communication regarding an amendment that is germane over here, a germane amendment over here, and we are going to try to work through this.

We could have some more votes this afternoon. In the best of all worlds we would finish this thing and move on to other issues. We are going to try to do that, but as everyone has heard over the last few days, it is hard to get that extra little distance we need.

We have made great progress. I don't want to belabor the point, but it has been hard to get to this point. This has been a good debate. I wish we had more of my friends over here join us on the cloture vote. We didn't, but I think it has been a good debate, and I think it is the way the Senate should operate more often than it has, and maybe this is setting a good tone for the future.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

Mr. CORKER. Madam President, I wish to talk for a few moments about the pending legislation. My guess is we will have final passage, after reaching cloture a few minutes ago.

I would like to go back and say we began the process of looking at financial regulation after the crisis that occurred a couple years ago, where institutions all across this country made loans—very poor loans—to people who used that money to buy homes. That was the genesis of this crisis, the fact that institutions across this country made those bad loans and made them to people who could not pay them back.

Certainly, that was exacerbated by the fact, with all the easy credit that occurred, there was a housing bubble that no doubt was going to put housing back into its normal state at some point. The combination of those two factors created a tremendous crisis in our country.

When the banks involved in all these loans got into trouble, there was not a good mechanism to deal with so many of them being in trouble at the same time. We ended up with a moral hazard with which this legislation is trying to deal; that is, we had institutions around this country that had capital injected into them because many people at that time felt the Bankruptcy Code or other mechanisms were not there to deal with these institutions.

A process began where we in this body and people on the other side of the Capitol tried to pass legislation to deal with this situation.

I know there has been a good attempt to deal with it. I have been involved in some of those negotiations. As my colleagues can tell by my vote, I am disappointed with the outcome of that involvement. Still, it is an issue that is important to this country.

In spite of my disappointment with the outcome, I will say, on the front end, I think the process we have had on the floor has been a good one. We have had a lot of amendments voted on, and that speaks well for this body.

The one issue we did not deal with in this 1,400-page bill—that I am sure will be lengthened by a managers' amendment and other things—the one issue we did not deal with is the fact that underwriting has been so terrible. This bill absolutely does not address loan underwriting.

I offered an amendment to try to deal with that issue, where when Americans apply for a loan, there has to be a verification of their income, people will look at their debt-to-equity ratio to make sure they have the ability, with all their indebtedness, to pay back everything they have before they are able to take out a home mortgage and the fact they would have a 5-percent downpayment.

All of us know that in other countries—Canada just to the north of us did not have this crisis because most people there put 15 percent down on their home mortgages. We did not want to deal with that.

There is no one in this body who would say the genesis of this crisis was not the fact that a lot of loans were made to people who could not pay them back. We did not deal with that in this bill. That, to me, is a major oversight and one of the reasons I am disappointed with the outcome.

I do think, by the way, much of that has been dealt with appropriately. I appreciate the chairman allowing me to work on that title with the Senator from—I say ''allowing.'' We were working on it anyway—allowing us to be engaged in a way that I think helped improve this bill on resolution.

One of the issues we did not deal with was trying to strengthen bankruptcy. Resolution, as we discussed over this last year, was to be the last resource—orderly liquidation I guess we would call it. One of the things we had hoped to do was, working with the Judiciary Committee, to strengthen our bankruptcy laws so bankruptcy could work for these large institutions that failed.

We did not do that. We not only did not do that, we did not deal with some of the judicial checks that I thought were important as related to ensuring that as we pay creditors off through this resolution mechanism, we do it in a way that is appropriate.

I am also disappointed we have not ended up with what I call orderly liquidation. We are now giving the FDIC 5 years to resolve a firm. That means, if a large firm fails in this country, we have the possibility of the FDIC running a large financial holding company for 5 years. I think that is inappropriate. I do not think many Americans would view a government taking over an entity and running it for 5 years as actually resolving it out of business.

Obviously, I am disappointed. I do think the chairman and others have tried to deal with resolution in a responsible manner. To me, it did not get to where it needed to go.

On derivatives, I agree with the thrust of trying to make sure the derivatives activity that takes place in this country, that major participants actually have to clear and making sure that the plumbing of ensuring things are margined and that people are money bad on that day occurs. I think that is very appropriate.

I am very concerned, on the other hand, with the fact that end users still feel—and I think there is still a lot of concern about end users being caught up in this legislation. I handed something to the chairman. I hope there are some clarifications that can occur before this bill actually becomes law.

At present, here is what has happened. We have people on Wall Street, obviously, who deal with these on a daily basis. They need to clear. We have, on the other hand, people across this country who are part of our heartland who manufacture products, process products, who use derivatives to make sure metal prices down the road, if they are trying to make heavy equipment, do not fluctuate in such a way that they end up losing money.

Maybe they are selling their goods to a company in another country, and they want to make sure the money they are being paid is in U.S. dollars. They might buy a currency swap.

The way this legislation is now crafted, there is great question as to whether these people who are spread across this country, who create great manufacturing and other kinds of jobs, are going to be without capital. They are going to have to unnecessarily tie up capital which takes away from their ability to create jobs.

For some reason, the Agriculture Committee sent over something called 106 or 716, which basically moves the swap desk out of a commercial bank into an affiliate, which means a whole new round of capitalization has to take place—again, money that is taken out of the markets at a time when we would hope these institutions would be creating loans.

What happens when a company is trying to formulate capital? They go to an institution, a commercial bank. They may borrow or have a line of credit to make payroll or maybe even out payments. Their accounts receivable may be uneven. They go there and work out a line of credit. While they are doing that, they also deal with these other activities. They deal with currency swaps. They deal with making sure metal prices are hedged or other commodity prices.

What this would do is alleviate the ability for an institution to use capital they already have. I am talking about the actual financial institution. It also makes it far less convenient and far more difficult, I might add, for those people across our country who create these great jobs from being able to do so. There is absolutely no reason for it. People on both sides of the aisle understand this is a problem. My sense is the chairman possibly believes this to be a problem. Yet we still have not dealt with that issue.

If this bill passes, which it looks like it may in 3 or 4 hours, we have ended up doing something that accomplishes nothing as relates to financial stability in our country and yet creates a situation where there is less capital available for lending, and it is far more difficult for those institutions that are trying to form that capital.

The one thing that is difficult for me to understand is why we did not take the time to deal with Fannie and Freddie. There are people in this body, on both sides of the aisle, who have concerns about these two GSEs against which we all know we have incredible liabilities.

We had an amendment that I thought was thoughtful. That was the McCain amendment. It did not prescribe what we did with Fannie and Freddie, but it made sure we as a body dealt with them over the next couple years.

We know they have been enablers because of their mixed messages with two divergent missions. They have created lots of problems for this country. They have enabled lots of bad things to happen in this country as relates to home mortgages. I also know they are a big part of the market and we have to deal with them over time.

The McCain amendment gave us the ability to do that. This body chose not to deal with underwriting, the core issue, not to deal with creating a Bankruptcy Code that would work, in most cases—I am one of those who believes that even with that, we ought to have some ability to resolve, in the event there is a systemic risk—but we also did not deal with Fannie and Freddie.

The credit rating amendment we added is a good step in the right direction. I voted for it. Again, we did not take the time, within our committee, to even understand what we ought to do with credit rating agencies. So we had an amendment that was drafted a day before a vote, and we voted on it. It is pretty draconian, but what it does mean—and I thank my friend from Florida for offering it—is that we will actually deal with credit rating agencies down the road.

Right as this bill was in committee, something was sort of air-dropped out of the sky, and that was the Volcker language. Certainly, Chairman Volcker, who used to be head of the Federal Reserve—somebody I respect—came up with some language out of the blue that is a part of this bill. We had one hearing on it and the person who was the author of the Volcker language couldn't even describe to us exactly what he meant. I mean, he said you know it when you see it. So we are going to have this Volcker language, and we may need to do something on it, but I would hope we would have a neutral study first before we decide. In essence, we are doing something and sort of sending it off in a direction.

I realize there is still a degree of study language, but we are sending it off in a direction when, in fact, prop trading—as much as people like to talk negative about it—and private equity and hedge funds had absolutely nothing to do with this last crisis. Nada, zero, not a single institution in this country was negatively affected by those activities—not one—as it relates to creating a systemic crisis. Yet, again, it is a part of this bill. I think these types of things go under the adage of what we have heard from the White House for the last year and a half; that is, ''never let a good crisis go to waste.''

Another area of concern is proxy access. I know the Senator from New York has been a proponent of proxy access. For those of you not paying much attention to this, what this means is, if you own a very small portion of a publicly traded company, you have access to their proxy documents and, therefore, you have the ability to call people to be voting on up to 25 percent of the board. To me, all this does is put board members of these companies in the same place we in the Senate and those in the House are in, and that is subject to political whims.

You can imagine a special interest group, whether it be labor or an environmentalist group, basically targeting a company in order to make a statement; basically taking those board members away from dealing with the long-term interests of the company. By the way, proxy access has absolutely nothing, zero to do with financial regulation. But this has become a Christmas tree for those kinds of things because people realize it is something that is going to pass.

I think the best example I can possibly imagine of using a piece of legislation or using a crisis to create something through legislation that is, in my opinion, way overreaching, is this consumer protection agency. I still am sort of shocked at where we have gone with this. I agree with people in this body that mortgage brokers in many cases took advantage of people who were borrowing money. I agree with that, and I think we ought to have a regulation to deal with that. But instead of dealing surgically with that particular issue, which is something that was a part—a small part but a part—of this crisis, what we have done is create another czar—a czar that has no board.

This czar is appointed for 5 years and has absolutely no board, no governance, but does have the ability to create rules with no real veto authority. The agency will have the ability to enforce those rules, and it has a very generous budget.

One of the worst issues regarding this agency is that it has the ability to deal with underwriting loans. So we have a consumer organization—not a banking regulator but a consumer organization—that is going to be dealing with underwriting of loans. I know this may sound a little far-fetched, but you can have the wrong person in this position—again, there is no board, no check and balance—and that person could use this organization to create social justice, if you will, in the financial system. On top of that, we have turned back from where we were in having a national banking system. Now we are allowing 50 State AGs across this country to take the rules that are created by this consumer czar, without veto—these rules we now will place on banks and other financial institutions across the country—and for the first time in a long time, these 50 AGs will have the ability to sue those firms over the rules this consumer organization writes—without any check and balance from Congress; certainly no real check and balance, in my opinion, from the prudential regulators that oversee the safety and soundness of these institutions.

So, Madam President, I am obviously disappointed. I think I have spent as much time as any Senator on this floor—maybe slightly less than the chairman—on policy regarding our financial system and trying to make sure we create stability for the future. I think any bill—even this bill—has good things in it. There is no question. And I appreciate the thrust. But I think there is a lot of overreaching, and I think not enough time was spent on some of the core issues that are important.

To add insult to injury, Madam President, this bill is not paid for. This bill is going to add $17 billion to $23 billion in debt to our country, and we haven't even addressed that in this bill. So I know there has been some discussion of bipartisanship, and I think certainly the chairman put out some effort toward bipartisanship, but I must say it has begun to feel, in many ways—not necessarily as it relates to this bill—that bipartisanship means everybody on the other side of the aisle, with maybe one or two exceptions, being supportive of something, and a few people, less than a handful, on our side of the aisle being supportive. That is not the kind of bipartisanship I thought we were all pushing for when this bill began.

So I think the process on this floor has been good—on the Senate floor—but I do wish we had spent more time developing a bipartisan template. I think there have been plenty of missed opportunities. I am proud of the role I was able to play on this bill and believe I have had some input in its shaping, but I wish the policy was far different than it is. It is my hope that in the next 6 months or so there will be a little different balance in this body where we take each other a little more seriously than we now do, and we actually end up with centrist, middle-of-the-road policies.

I know the President has to be very happy. It seems to me this bill, as it has turned out, is exactly the bill he talked about some time ago. I know it has to be a major victory for him. In my opinion, it is an overreach. I believe we could have done better, and I am regretful of the fact that we did not do better in the process. I think some steps were made, over the last month in particular, that I hope will cause this body to function better.

Obviously, Madam President, I don't support this legislation and wish it could have been better. I think we have had opportunities where we could have made it better, but we didn't. I think over the course of the next decade we are going to be unwinding much of what we have done. It is my hope that in conference—and I think there is actually a possibility of this—many of the issues that are problematic will be unwound. As a matter of fact, I sense there is a desire to do that, and I hope that is the case.

Madam President, I came to this body because I wanted to see good policies put in place for this country. I wanted to see us become a stronger country than we already are in the world—the greatest Nation on Earth. I hope, as this piece of legislation moves through conference and comes back to this body, it is strengthened. I did support amendments on this floor that made the bill better. I think some improvements were made, but I think we also stepped backwards in a number of cases.

In spite of the outcome, Madam President, I want to thank the chairman and the ranking member for their efforts in trying to create a piece of legislation for this body.

The PRESIDING OFFICER (Mr. FRANKEN). The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that when the Senator from Iowa finishes his statement, I be recognized.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I hope we have a chance now, during the final hours of debate, to take into consideration some of the reasons we got from where we have been over the last 3 or 4 years with the bubble, and that bubble bursting a couple of years ago, and the financial crisis and the recession that has come as a result of it.

I want to start out with something that is familiar to all my colleagues, something that George Santayana said:

> Those who cannot remember the past are condemned to repeat it.

As the Senate continues to debate the financial regulation bill, I think it is important to consider how we got from where we are today.

Many people believe the housing and financial crisis was the result of too much greed on Wall Street. No doubt. No doubt whatsoever; there was plenty of greed on Wall Street. But greed is like gravity—it is a constant of nature. When planes crash we don't blame gravity. If you search the Internet for the term "decade of greed," you will discover that is what some people called the 1980s. There is no reason to believe people are greedier now than they were then. Greed has always existed. The Ten Commandments admonish us not to covet our neighbor's possessions. Everyone is tempted by greed. Some are more successful than others in resisting temptation. But greed alone does not explain our current crisis. We need to look further.

Many people blame the crisis on deregulation. According to this explanation, Congress repealed all the rules and let Wall Street run wild. Greedy bankers tricked innocent consumers into taking out risky mortgages and sold them to unsuspecting investors. This explanation views the crisis in terms of victims and villains. If it were only that simple.

Obviously, anyone who has committed a crime should be prosecuted to the fullest extent of the law. But this explanation overlooks several important facts: First, the United States is not alone in this crisis. Housing booms and busts are occurring all around the world resulting in government bailouts. According to the Organization for Economic Cooperation and Development—we refer to this as the OECD—nearly a dozen European countries are experiencing bigger housing bubbles than our own. These countries include Australia, Canada, Denmark, France, Ireland, Italy, New Zealand, Norway, Spain, Sweden, and the United Kingdom. The global nature of this crisis shows the problem is not ours alone.

Second, we do not have an unregulated free market. Let me underscore that point. This crisis occurred with lots of government involvement. The Federal Reserve controls the money supply. The Federal Deposit Insurance Corporation insures bank deposits. The Fannie, Freddie, Ginnie, FHA, and the Federal Home Loan Bank boards insure subsidized or guaranteed mortgages. We have an entire alphabet soup of government agencies that regulate our financial institutions—CFTC, FDIC, FHFA, FTC, NCUA, OCC, OTS, SEC, plus all the State agencies and the Federal Reserve. Finally, we have adopted a policy of too big to fail.

The essence of a free market is the opportunity to succeed and the potential to fail. As economist Milton Friedman observed: capitalism is a profit-and-loss system. The loss part is just as important as the profit part. Profits encourage risk taking and losses encourage what they should—prudence.

Unfortunately, we have privatized the profits and socialized the risks. In some cases, we have bailed out individual companies. In others, we have bailed out the financial markets. In recent years, market participants even coined a phrase for such bailouts—"the Greenspan put." In other words, Wall Street was betting on former Federal Reserve Chairman Alan Greenspan to protect them from their own mistakes.

Recent government bailouts, both industry-specific and market-wide, include Lockheed in 1971; Penn Central Railroad in 1974; Franklin National Bank in 1974; New York City in 1975 and 1978; Chrysler in 1980; Continental Illinois in 1984; the stock market crisis in 1987; Latin American debt crisis in the early-1980s; the Savings & Loan crisis in the late-1980s; the Mexican peso crisis in 1994; Asian financial crisis in

1997; Long-Term Capital Management in 1998; the stock market crisis in 2000; the airline industry in 2001; AIG, Bank of America, Bear Stearns; Citigroup, Chrysler, GM, Fannie and Freddie in 2008.

Reducing the cost of failure encourages reckless behavior. When people come to expect and accept government bailouts that's not capitalism—it is cronyism. Until we eliminate the perverse incentives created by these bailouts, no one can honestly say we have an unregulated free market.

I do not mean to say regulation is unnecessary. Indeed, the exact opposite is true. Free markets are not possible without laws to protect property and enforce contracts. The problem is government regulation often has unintended consequences.

The desire to control human greed through regulation is understandable. But we forget regulators are human too. They are subject to the same temptations as everyone else. History is replete with examples of regulatory capture and government corruption. The revolving door between Washington, Wall Street, and the Fed make these problems even worse. Second, regulation can provide a false sense of security. They encourage people to rely on the government instead of their own common sense. Third, regulation designed to solve one problem often create another problem. That can lead to more regulation and more problems.

But most of all, regulation cannot succeed when it is undermined by good intentions.

For most of the past century our government—under both Democrats and Republicans—has pursued an ad hoc industrial policy. We have encouraged home building to stimulate the economy, and home ownership to promote a better society. Unfortunately, we pursued these policies by undermining the safety and soundness of our financial system, which was already a house built upon sand. I will have more to say on that later.

A review of U.S. housing policy during the 20th century illustrates this point. Consider the government's first major campaign to boost homeownership as described by Steven Malanga of the Manhattan Institute.

As Secretary of Commerce, Herbert Hoover declared that nothing was worse than increased tenancy and landlordism. In 1922, Hoover launched the ''Own Your Own Home'' campaign, urging Americans to buy homes. According to Hoover, homeowners work harder, spend leisure time more profitably, live finer lives, and enjoy more comforts of civilization. He urged the lending institutions, the construction industry, and the great real estate men to counteract the growing menace of tenancy.

Hoover called for new rules that would allow nationally chartered banks to devote a greater share of their lending to residential properties. Until that time mortgage lending had primarily been conducted by savings and loans, or as they were originally known, building and loans.

In 1927, Congress responded by passing the McFadden Act, which allowed national banks to expand their residential lending to encourage homeownership. The act also prohibited interstate branching to protect smaller local financial institutions.

Congress would later pass the Riegle-Neal Act of 1994, which repealed the ban on interstate banking, subject to certain limits. This partial repeal followed the savings and loan crisis in the 1980s. Many observers suggest the lack of diversification and concentration of risk among smaller local institutions contributed to the S&L crisis.

The housing market boomed during the 1920s right along with the stock market. When stocks crashed in 1929, so did housing. According to one study, nearly 50 percent of the mortgages in America were in default by 1934. As panicked depositors withdrew their money, banks were forced to call in loans or stop rolling them over.

Before the Great Depression, home mortgages typically required a substantial down payment—as much as 50 percent. They usually had a very short maturity—as few as 5 years. They often had a balloon payment at the end. Homeowners had to refinance their mortgage or give up their home if they could not afford to pay off the balance when their loan came due.

In response to the housing and financial crisis caused by the Great Depression, Congress enacted the Home Owners' Loan Corporation and the Reconstruction Finance Corporation. These programs were designed to bailout insolvent financial institutions; buy up troubled mortgages; and refinance them on more affordable terms. A report by HUD on the history of the era, noted that many borrowers deliberately defaulted on their mortgages to take advantage of these bailouts.

One might think of these earlier programs as the original versions of the current TARP and HAMP.

In 1934, Congress attempted to strengthen the housing and financial markets by creating the Federal Home Loan Banks—FHLB—to lend money to other banks; the Federal Housing Administration—FHA—to guarantee home loans; the Federal Deposit Insurance Corporation—FDIC—to insure bank deposits, the Federal Savings and Loan Insurance Corporation—FSLIC—to insure the deposits of S&Ls; and the Federal National Mortgage Association—Fannie Mae—to create a secondary market for government insured mortgages.

Congress would later abolish FSLIC by merging it with the FDIC following the S&L crisis in the late 1980s.

In 1944, Congress passed the GI bill, which provided low interest, zero down payment home loans for servicemen. This enabled millions of American families to move out of urban apartments and into suburban homes.

In 1945, President Truman proposed the ''Fair Deal,'' which included several housing proposals, including temporary price controls. President Truman declared:

> Such measures are necessary stopgaps-but only stopgaps. This emergency action, taken alone, is good—but not enough. The housing shortage did not start with the war or with demobilization; it began years before that and has steadily accumulated. The speed with which the Congress establishes the foundation for a permanent, long-range housing program will determine how effectively we grasp the immense opportunity to achieve our goal of decent housing and to make housing a major instrument of continuing prosperity and full employment in the years ahead. It will determine whether we move forward to a stable and healthy housing enterprise and toward providing a decent home for every American family.

I ask unanimous consent to include President Truman's full statement on housing policy in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered. (See Exhibit 1.)

Mr. GRASSLEY. In 1949, Congress enacted the Federal Housing Act, which provided Federal funding for slum clearance, urban renewal, and public housing. The act also expanded the FHA mortgage insurance program.

To understand the origins of our current housing and financial crisis, it is critical to recognize the role played by the FHA—the Federal Housing Administration. The FHA was created in 1934. At the time, State and Federal laws prevented lenders from reducing their down payments and lengthening the terms of their loans. As I noted earlier, the typical mortgage required a 50-percent down payment and had a maturity of 5 years. These features were considered essential to maintaining the safety and soundness of the banking system.

Lower down payments increased the risk of foreclosure because buyers had less equity in their houses. If home values declined, more borrowers might walk away from their homes instead of continuing to make payments on their mortgage. Longer terms increased the risk of insolvency among financial institutions because of an increase in interest rates or a decline in the economy.

The FHA challenged conventional wisdom. It sought to waive all of the safety and soundness regulations that applied to the mortgages it insured. According to an article by Adam Gordon published in the Yale Law Journal:

> The FHA had a compelling economic case for requesting such waivers: Treating insured loans differently from uninsured loans made sense from a safety-and-soundness standpoint. From the banks' perspective, insurance balanced out the risks of lower-down-payment, longer-term loans by guaranteeing that, even if the property value went down and the buyer quit making payments, or if the buyer defaulted twenty years into a 25-year loan, the bank would be made whole by the insurance fund. These assurances and the political pressure for new ways to support homeownership led Congress and every state legislature to rapidly pass the requisite

exemptions from bank safety-and-soundness laws.

By 1937, all 50 States had enacted legislation giving the FHA free rein to write its own rules with respect to the mortgages that it insured. The results were predictable. Delinquencies, defaults, and foreclosures increased dramatically.

The FHA lowered down payments from 20 percent, to 10 percent, and finally to 3 percent by the mid-1960s. As a result, the foreclosure rate increased sixfold, from less than 2 for every 1,000 mortgages to more than 12 per 1,000 mortgages.

Almost everyone seemed prepared to accept rising foreclosure rates as the price to be paid for expanding homeownership. However, the FHA soon faced a bigger scandal.

Today, we often forget just how much of the pre-civil rights era in America was marked by racial discrimination. The FHA program was a prime example. During its first 30 years in existence, the FHA maintained various policies to deny insurance to minorities. These policies effectively prevented most African Americans from obtaining FHA insured mortgages.

Being denied an FHA loan usually meant being denied any opportunity to obtain lower down payments and longer terms because such provisions were still illegal for conventional loans.

FHA's discriminatory policies did not end until Congress passed the Fair Housing Act of 1968. Unfortunately, efforts to end racial discrimination marked the beginning of what we now call predatory lending. According to Beryl Satter of Rutgers University:

> After decades of refusing to insure mortgages in areas with black residents no matter what their economic status, in 1968 the FHA went to the other extreme and told mortgage companies that if they would loan in low-income minority neighborhoods, the FHA would guarantee those loans 100%.
>
> Speculators immediately exploited the new policy by buying slum properties, and then bribing someone to appraise the properties at, say, quadruple their real value. Speculators might buy a house for $5000 but get a corrupt FHA appraiser to say it was worth $20,000. Once they had that appraisal, they could easily sell that property for $20,000. So what if the price seemed high? The mortgage lender couldn't lose—after all, $20,000 was the property's appraised value, and more importantly, the FHA insured the loan 100%. [Speculators] enticed buyers by emphasizing the low down payment rather than the high final cost. People eager to buy on such terms were easy to find. They were usually black or Latino, and often low income. Given the desperate housing shortage facing low income families during that decade of massive inflation, an offer of a home of one's own for $200 down was often irresistible.
>
> The speculators made the procedure quick and easy. They did all the paperwork, routinely falsifying the buyers' income to make it look like they could carry the overpriced loan. The lenders didn't ask any questions about these loan applications because the mortgages were fully insured; the creditworthiness of the borrower was therefore of no relevance. Since mortgage companies also made profits through the exorbitant service fees they charged for FHA loans, they made money on every sale, with no risk whatsoever.
>
> By 1972, similar abuses of FHA programs were being reported in Boston, New York, Newark, Philadelphia, Wilmington, Miami, Detroit, St. Louis, Seattle, Los Angeles, and Lubbock, Texas. The New York Times noted that FHA-guaranteed loans were being given on ''substandard'' buildings that lacked ''such essentials as adequate heating and plumbing.'' The confluence of inflated mortgage payments and high repair costs meant that the low-income buyer never had a chance. The repossessed buildings sometimes ended up back in the hands of the speculators, who started the cycle anew.
>
> While the scandal meant ruin for low and moderate-income home buyers, it meant huge profits for those in the game. . . .
>
> The companies exploiting FHA policies were not marginal. In New York top officials of three of the largest mortgage lenders in the region were convicted of housing fraud in 1975. In Brooklyn alone, the U.S. Attorney's office produced a five hundred-count indictment demonstrating that ''real estate speculators, brokers, lawyers, appraisers and bribed FHA employees conspired in the scheme'' to get FHA insurance on slums sold at inflated prices.

The FHA planted many of the seeds that ultimately grew into the current housing crisis.

The goal of making homes affordable was used to justify the weakening of traditional standards of safety and soundness. The goal of eliminating discrimination was used to justify extending both FHA and conventional loans to borrowers with poor credit and low income. These changes led to rising foreclosures. Lenders responded by charging higher rates and fees to cover their losses. Higher rates and fees increased the cost of buying a home and led to new charges of discrimination on the basis of predatory lending. That led to renewed calls for innovative ways to reduce the cost of housing. That led to a further weakening of safety and soundness standards. All of that brings us to where we are today.

Before discussing our current crisis, however, let me conclude my brief review of the history of U.S. housing policy.

In the midst of the FHA scandal, Congress created more programs to promote the American dream of home ownership.

In 1968, Congress enacted the Truth in Lending Act to require clear disclosure of lending arrangements and costs associated with a loan.

Also in 1968, Congress split Fannie Mae into two parts creating the Government National Mortgage Association, Ginnie Mae, which now deals with government guaranteed mortgages, primarily those insured by the Department of Veterans and the FHA.

In 1970, Congress created the Federal Home Loan Mortgage Corporation, Freddie Mac, to compete with Fannie Mae.

In 1974, Congress passed the Real Estate Settlement Procedures Act to prohibit kickbacks between lenders and settlement agents and require a good faith estimate of all closing costs.

In 1977, Congress enacted the Community Reinvestment Act, CRA, to encourage banks to meet the needs of their local communities in a manner consistent with safe and sound lending practices. According to Peter Wallison of the American Enterprise Institute, the CRA had a vague mandate to prevent banks from refusing to lend to qualified borrowers, which was enforced by denying mergers and acquisitions among banks. Initially, enforcement actions were rare. But over time, Congress shifted its emphasis from ''encouraging'' to ''requiring'' and from ''safe and sound'' to ''innovative and flexible.'' Ultimately, the CRA helped undermine the banking system by encouraging more risky loans.

As Stan Liebowitz of the University of Texas at Dallas observed: ''From the current hand-wringing, you'd think that the banks came up with the idea of looser underwriting standards on their own, with regulators just asleep on the job. In fact, it was the regulators who relaxed these standards—at the behest of community groups and 'progressive' political forces . . .''

But before faulty underwriting helped create the current housing crisis, there was the S&L crisis.

The late 1970s and early 1980s saw a dramatic rise in inflation due to the steady erosion of sound monetary policy in previous decades. Rising inflation led to higher interest rates, which threatened to destroy the Savings and Loan industry.

S&Ls relied on short-term deposits to fund long-term, fixed-rate mortgages. Rising inflation forced them to pay higher rates to attract new deposits. But they continued to earn the same rate on their existing mortgages. Rising costs relative to a fixed income undermined profits and threatened insolvency.

The S&Ls were further hampered by Regulation Q, which limited the interest rate they could pay to attract new deposits. The origin of Regulation Q dates back to the 1930s when Congress authorized the Federal Reserve to set interest rate ceilings.

According to proponents, the ceiling on interest rates would encourage smaller rural banks to lend in their own communities rather than send their money to larger urban banks where they might earn more. The ceiling was also seen as a way to increase bank profits by limiting the competition for deposits; in other words, it would prevent banks from engaging in a bidding war for new customers. Regulation Q was extended to S&Ls in 1966.

State usury laws also placed limits on the interest rate paid to depositors as well as the interest rate charged to borrowers further undermining the S&Ls' financial viability.

Congress took numerous steps throughout the 1980s to forestall the S&L crisis. These steps ultimately failed as more than 1,600 banks and S&Ls were either closed or bailed out by the government. The S&L crisis ultimately cost taxpayers more than $120 billion.

The S&L crisis shows the failure of many small banks can be just as costly as the failure of a few large banks. That is a lesson we must not forget as we consider ways to address the problem of too big to fail.

In 1980, Congress enacted the Depository Institutions Deregulation and Monetary Control Act to abolish caps on both the interest paid and the interest received.

The Alternative Mortgage Transactions Parity Act of 1982 preempted State laws to enable the nationwide use of adjustable rate mortgages, balloon payments, and negative amortization.

These flexible features proved useful during the inflationary 1970s and 1980s. But they also set the stage for the emergence of the housing crisis of today.

The Secondary Mortgage Market Enhancement Act of 1984 made it easier to issue mortgage backed securities and enabled financial institutions, pension funds, and insurance companies to invest in the top rated tranches of these securities.

The Tax Reform Act of 1986 eliminated the double taxation of dividends paid to those who invest in real estate mortgage investment conduits, REMICs. The act also eliminated the tax deduction for interest paid on consumer loans, except for those secured by a home mortgage.

These two acts established the path toward the creation of collateralize debt obligations, CDO, and the off-balance sheet entities known as special investment vehicles, SIVs, which featured prominently in the latest crisis. The tax deduction for home equity loans contributed to the overleveraging of housing.

The Financial Institutions Reform and Recovery and Enforcement Act of 1989 abolished the Federal Savings and Loan Insurance Corporation; it transferred the regulation of thrift institutions from the Federal Home Loan Bank board to the Office of Thrift Supervision; it allowed bank holding companies to acquire thrifts; it established new regulations for real estate appraisals; it established new capital reserve requirements; it required the publication of CRA evaluations.

This act also included reforms of the real estate appraisal system, which had broken down during the FHA scandal in the 1970s, and contributed to the S&L crisis. Despite these reforms, faulty or fraudulent appraisals contributed to the most recent crisis as well.

Federal Deposit Insurance Corporation Improvement Act of 1991 allowed the FDIC to borrow from the Treasury and created new capital requirements and risk-based deposit insurance premiums. Moreover, it granted the Federal Reserve authority to lend directly to nonbank firms during times of emergency.

This authority increased the moral hazard problem by expanding the scope of potential Federal bailout recipients. This authority played a critical role in bailing out AIG.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 was enacted, in part, to encourage Fannie Mae and Freddie Mac to increase their service to low- and moderate-income families and neighborhoods. These changes, along with others that followed, served to undermine standards of safety and soundness by allowing Fannie and Freddie to receive credit toward its affordable housing goals by purchasing subprime loans from other lenders. This increased the demand for such loans as well as the amount of funds available to finance them.

The 1992 act coincided with a Boston Federal Reserve Bank study on discrimination in mortgage lending. In theory, lenders evaluated the collateral and creditworthiness of those seeking to borrow money. Those applicants who qualify get credit, and those who do not are denied. The Boston Fed study suggested qualified minority applicants were being denied.

In response to growing concerns that traditional underwriting standards had a discriminatory impact on low-income and minority families, many housing advocates began to urge the widespread adoption of risk-based pricing. Unlike traditional underwriting, risk-based pricing assumes everyone can qualify as long as they pay an interest rate, or other fee, that reflects their individual risk. Thus, risk-based pricing was viewed as a way to safely implement the flexible underwriting standards needed to eliminate discrimination and expand homeownership.

In 1993, the Federal Reserve Bank of Boston published a report entitled ''Closing the Gap.'' This report included recommendations on ''best practice'' from lending institutions and consumer groups. It offered lenders a ''comprehensive program'' to ensure all loan applicants are treated fairly and to reach a more diverse customer base.

The report stated:

> While the banking industry is not expected to cure the nation's social and racial ills, lenders do have a specific legal responsibility to ensure that negative perceptions, attitudes, and prejudices do not systematically affect the fair and even-handed distribution of credit in our society. Fair lending must be an integral part of a financial institution's business plan . . . Even the most determined lending institution will have difficulty cultivating business from minority customers if its underwriting standards contain arbitrary or unreasonable measures of creditworthiness. . . . Institutions that sell loans to the secondary market should be fully aware of the efforts of Fannie Mae and Freddie Mac to modify their guidelines to address the needs of borrowers who are lower-income, live in urban areas, or do not have extensive credit histories.

In 1995, the Department of Housing and Urban Development announced a National Homeownership Strategy which stated:

> The inability (either real or perceived) of many younger families to qualify for a mortgage is widely recognized as a very serious barrier to homeownership. [The Strategy] commits both government and the mortgage industry to a number of initiatives designed to: (1) Cut transaction costs through streamlined regulations and technological and procedural efficiencies; (2) Reduce down-payment requirements and interest costs by making terms more flexible, providing subsidies to low- and moderate-income families, and creating incentives to save for homeownership; (3) Increase the availability of alternative financing products in housing markets throughout the country.

Efforts to expand the use of flexible underwriting standards raised obvious concerns about the potential for increased defaults and foreclosures. To address these concerns, numerous groups, both inside and outside government, conducted studies, and proposed new laws and regulations.

In 1996, Freddie Mac issued a report to Congress based on its effort to develop an automated underwriting system. The report concluded that it was possible to replace ''subjective human judgment'' with computers that could accurately assess ''multiple risk factors'' and ''identify which loans would wind up in foreclosure and which would not.'' By fairly and objectively accessing individual credit risk, an automated system could eliminate discrimination and strengthen the underwriting process.

This study was primarily focused on improving the prime mortgage market by identifying applicants who received prime loans, but shouldn't have, and applicants who did not receive prime loans, but should have. However, the ability to identify risk within the prime market led to the conclusion that it was possible to do the same thing in the subprime market as well. In relatively short order, Fannie, Freddie, and almost every other participant in the home mortgage market adopted computerized systems to analyze and securitize home loans. These new procedures were applied to subprime loans.

Of course, risk based pricing also raised concerns that lenders might charge borrowers more than their risk profile would justify. Such overcharges raised the specter of predatory lending.

In response, Congress enacted the Home Ownership and Equity Protection Act of 1994 which required disclosures and imposed restrictions on high-cost loans. This act served to highlight once again the difficulty of promoting flexible underwriting to expand homeownership while at the same time trying to protect consumers from discriminatory lending.

The Taxpayer Relief Act of 1997 exempted from taxation profits on the sale of a personal residence of up to $500,000, couples, or $250,000, singles. This change provided a boost to home prices by increasing the after-tax rate of return on housing.

The Interstate Banking and Branching Efficiency Act of 1994 repealed restrictions on interstate banking. This act was designed to address the lack of diversification and the concentration of risk among smaller local financial institutions that contributed to the S&L crisis.

The Financial Services Modernization Act of 1999—also known as Gramm-Leach-Bliley—repealed part of the Glass-Steagall Act of 1933. The extent to which this repeal contributed to the current crisis is the subject of much debate.

Glass-Steagall prohibited commercial banks from underwriting or dealing in securities. It also prohibited them from having affiliates that were principally or primarily engaged in underwriting or dealing in securities. It is important to understand exactly what this means.

As Peter Wallison of the American Enterprise Institute has explained:

> Underwriting refers to the business of assuming the risk that an issue of securities will be fully sold to investors, while ''dealing'' refers to the business of holding an inventory of securities for trading purposes. Nevertheless, banks are in the business of making investments, and Glass-Steagall did not attempt to interfere with that activity. Thus, although Glass-Steagall prohibited underwriting and dealing, it did not interfere with the ability of banks to ''purchase and sell'' securities they acquired for investment. The difference between ''purchasing and selling'' and ''underwriting and dealing'' is crucially important. A bank may purchase a security—say, a bond—and then decide to sell it when the bank needs cash or believes that the bond is no longer a good investment. This activity is different from buying an inventory of bonds for the purpose of selling them, which would be considered dealing.

The Gramm-Leach-Bliley Act did not repeal the restriction on underwriting or dealing by commercial banks. It only repealed the restriction on affiliates. There is no evidence the activities of any affiliates were large enough to cause the current crisis.

On the other hand, as Mr. Wallison noted, there was a critical exception to the Glass-Steagall prohibition on underwriting or dealing by commercial banks. It did not apply to securities issued by Fannie Mae and Freddie Mac.

The major commercial banks—such as Citibank, Wachovia, Bank of America, JP Morgan Chase, and Wells Fargo—that got into trouble did so by engaging in activities that were never prohibited by Glass-Steagall. These banks suffered heavy losses because they invested in poorly underwritten, overvalued mortgage-backed securities, including those of Fannie and Freddie.

Likewise, the major investment banks—such as Lehman Brothers, Bear Stearns, Merrill Lynch, Morgan Stanley and Goldman Sachs—that got into trouble have always been exempt from Glass-Steagall. As I will discuss later, the demise of these investment banks was due to a new variation on the classic bank run.

The Commodity Futures Modernization Act of 2000 authorized over-the-counter financial derivatives. Although over-the-counter derivatives, like credit default swaps, CDS, are exempt from most regulation, those who buy and sell them are not. For example, the acting director of the Office of Thrift Supervision, OTS, recently testified about the American International Group, AIG, one of the major participants in the CDS market. According to his testimony, ''. . . in hindsight, OTS should have directed the company to stop originating CDS products . . . [and] OTS should also have directed AIG try to divest a portion of this portfolio.''

Although AIG was comprised of more than 220 companies operating in more than 130 countries, its primary line of business was insurance. According to a Government Accountability Office report:

> State insurance regulators are responsible for monitoring the solvency of insurance companies generally, as well as for approving transactions regarding those companies, such as changes in control or significant transactions with the parent company or other subsidiaries . . .

In other words, Federal and State regulators had the authority to monitor the financial institutions which were among the largest buyers and sellers of CDS contracts, and take appropriate action to protect their safety and soundness. Unfortunately, the regulators failed to recognize the inherent dangers created by the bubble in the housing market.

The Federal Deposit Insurance Reform Act of 2005 raised the limit on deposit insurance; merged the various deposit insurance funds; provided credits for banks for prior contributions; and required rebates when the deposit fund goes above 1.5 percent of deposits.

The Credit Agency Reform Act of 2006 required rating agencies to register with the SEC. Despite these requirements, the ratings agency contributed to the most recent crisis as well.

Credit ratings agencies—such as Fitch, Moody's, and Standard & Poor's—have been given privileged status as Nationally Recognized Statistical Rating Organizations, NRSROs, since 1975.

These agencies played a significant role in the recent financial crisis in two different ways. First, they placed their AAA seal of approval on subprime mortgages that were converted into traunches—or tiers—of securitized loans. Second, they contributed to excessive borrowing because of flawed capital standards. According to government regulations, banks needed $1 in capital for every $25 of single-family home loans. But, if those mortgages were converted into AAA securities, the banks could hold $60 in loans for every $1 in capital. Higher leverage entails greater risk to the financial system.

This brief legislative history produces an unmistakable feeling of Deja Vu as one considers where we are today. The current crisis has been summarized along the following lines:

In response to the high-tech, dot-com bust in 2000, the Federal Reserve began a series of interest rate cuts reducing the Fed Funds rate from 6.5 percent to 1.0 percent. As cheap credit flooded the markets, financial institutions adopted reckless lending practices under the political banner of increasing homeownership. These practices included liar loans, no verification of income or assets; no-money down, including seller-financed and other third-party contributions, and wrap-around loans; interest-only loans; negative amortization, missed payments are added to the principal; adjustable-rates; and balloon payments.

As these risky loans were extended to marginal borrowers who could not afford their overpriced homes, the financial wizards on Wall Street devised schemes to theoretically insure themselves against default. These so called credit default swaps allowed investors who purchased mortgage-backed securities to pay fees to underwriters, like AIG, in exchange for a promise to cover any losses. Because regulators and other market participants did not seriously consider the possibility of falling home prices and rising default rates, these CDS contracts were not backed by adequate collateral to cover potential losses.

By allowing those who bought and sold mortgage-backed securities to transfer risk to other market participants, it became more difficult to determine who would suffer the actual losses as home prices began to fall and default rates began to rise. The house of cards collapsed as financial institutions became less willing to lend to each other under the growing cloud of uncertainty.

While there is plenty of blame to go around for getting us into this mess, and there were lots of contributing factors, ultimately this crisis was triggered by a new variation on the classic bank run. Here's how Gary Gordon of Yale University describes what happened:

> In a banking panic, depositors rush en masse to their banks and demand their money back. The banking system cannot possibly honor these demands because they have lent the money out or they are holding long-term bonds [which can only be sold at fire sale prices] . . . the panic in 2007 was not like the previous panics in American history . . . it was not a mass run on banks by individual depositors, but instead was a run by firms and institutional investors on financial firms.

According to Mr. Gordon, this run was caused by the collapse of the repurchase agreement—or repo—market. Before the crisis, trillions of dollars were traded in the repo market. No one knows the exact amount because there are no data on the total size of this market or the identity of all its participants. Estimates suggest it could be as much as $10 trillion, which is roughly equal to the total assets of the entire U.S. banking system.

As tempting as it may be to blame our current crisis on Wall Street greed and irresponsible deregulation, the truth is a bit more complicated, as I think I have tried to show. To understand how we got to where we are today, it is necessary to review some history and some economics.

There have been financial booms and busts throughout recorded history—from tulip mania, the South-Sea bubble, and the Mississippi scheme, to the Mexican peso crisis, the Asian crisis, and the dot-com boom.

Economist Hyman Minsky argued there are five stages of a financial bubble: stage 1, investors get excited about some asset or commodity; stage 2, prices rise as more investors enter the market; stage 3, euphoria occurs as financial markets devise new ways to inflate the bubble; stage 4, investors begin to cash-out of the market; and, stage 5, panic sets in as the bubble pops and everyone tries to get out before it is too late.

There have been alternating cycles of financial fear and euphoria throughout history. While greed and speculation played an important role, there is another essential element that is all too often overlooked. That critical ingredient is money.

The nature of money, the source of its value, and the determination of its supply are topics of extreme importance. Historically, money is believed to have developed from the concept of barter or exchange. Individuals wished to trade one good for another. The most desirable, divisible, and non-perishable goods were designated as money. Cows, wheat, rice, rocks, sea shells, silver, and gold have all served as money throughout history.

The development of money soon led to the introduction of banking. Banks served not only as a place to store money, but also as a means to facilitate commerce by granting various types of loans.

The deposit of money involves two different concepts. First, a demand, or checking, deposit implies a custody arrangement. The bank maintains 100 percent reserves. Thus, the funds are available at all times to meet the needs of the depositor. Second, a loan, or time, deposit implies a temporary transfer of ownership. The bank is authorized to make loans. Thus, the funds are transferred to someone else who is obligated to repay them at some future date.

Initially, most banks recognized and accepted the distinction between these two different kinds of deposits. Moreover, they confined their lending activities within the limits of their total deposits. But they quickly discovered that not everyone sought to withdraw their money at the same time. Thus, they decided they could safely issue as much credit as they desired, as long they retained enough money to meet expected withdrawals. So began the practice of fractional reserve banking.

According to economist Jesus Huerta de Soto, early European bankers often sought to conceal their use of fractional reserves while claiming to maintain 100 percent reserves. Only later upon receiving official government sanction did they openly admit to and defend the practice of fractional reserves.

The most common defense of fractional reserve banking is that it is highly unlikely that most depositors will seek to withdraw their funds simultaneously. Thus, it is said the law of large numbers permits a bank to safely lend out most of its funds. But as Huerta de Soto observes:

> . . . in the field of human action the future is always uncertain, . . . The open, permanent nature of the uncertainty . . . differs radically from the notion of risk applicable within the sphere of physics and natural science.

History shows beyond a doubt that we cannot predict when a bank run will occur. The creation of deposit insurance and the establishment of a central bank as a lender of last resort would not be necessary if we could predict such events with any degree of certainty.

The dangers created by misguided efforts to treat uncertainty of human action as some form of statistical risk is evident in the current crisis. The use of computer models to convert subprime loans into AAA securities ignored the human action of declining underwriting standards and the growing bubble in the housing market.

Some observers may be tempted to conclude this crisis is simply the latest in the cycle of booms and busts that inevitably plague mankind. Others may be tempted to conclude we need a brand new systemic risk regulator—in other words, we need someone to oversee the safety and soundness of our entire financial system. The logic behind this approach is that our current hodgepodge of Federal and State regulatory agencies was too busy looking at the individual institutions within their jurisdiction. No one saw the big picture.

However, the problem is not that we lack a systemic risk regulator. The problem is we already have a system risk creator, namely the Federal Reserve.

Mark Thornton of the Ludwig von Mises Institute describes central banking as a confidence game:

> The Federal Reserve plays a confidence game with us. A confidence game . . . is described as an attempt to defraud a person or group by gaining their confidence. . . . [The] Fed's basic confidence game [is] trying to gain and maintain our confidence in its system and getting us not to take proper precaution against the negative effects of its policies. . . . [The] Fed's mission [is] to instill confidence in us about the economy while simultaneously instilling confidence in us about the abilities of the Fed itself. The first mission is easy to see because Fed officials are almost always publicly bullish and hardly ever publicly bearish about the economy. The economy always looks good, if not great. If there are some problems, don't worry, the Fed will come to the rescue with truckloads of money, lower interest rates, and easy credit. If things were to get worse, which they won't, the Fed would be able to respond with monetary weapons of mass stimulation. All this is consistent with the viewpoint of mainstream economists who see the business cycle as caused by psychological problems and random shocks. In their view, it is your fault for becoming overly speculative and risky and then lapsing into risk aversion and depression. It is your fault!

This may seem like an unfair characterization of the Fed, but consider the following quotes from 2007. Remember, by early 2007 housing prices were falling in many areas.

In January of 2007, Chairman Bernanke described the Fed's superhero-like ability to access information, identify risk, anticipate crisis, and respond to any challenge.

Mr. Barnanke said:

> Many large banking organizations are sophisticated participants in financial markets, including the markets for derivatives and securitized assets. In monitoring and analyzing the activities of these banks, the Fed obtains valuable information about trends and current developments in these markets. Together with the knowledge obtained through its monetary-policy and payments activities, information gained through its supervisory activities gives the Fed an exceptionally broad and deep understanding of developments in financial markets and financial institutions. . . .
>
> In its capacity as a bank supervisor, the Fed can obtain detailed information from these institutions about their operations and risk-management practices and can take action as needed to address risks and deficiencies. The Fed is also either the direct or umbrella supervisor of several large commercial banks that are critical to the payments system through their clearing and settlement activities. . . .
>
> In my view, however, the greatest external benefits of the Fed's supervisory activities are those related to the institution's role in preventing and managing financial crises.
>
> Finally, the wide scope of the Fed's activities in financial markets—including not only bank supervision and its roles in the payments system but also the interaction with primary dealers and the monitoring of capital markets associated with the making of monetary policy—has given the Fed a uniquely broad expertise in evaluating and responding to emerging financial strains.

I could go on at length reading similar quotes from various Fed officials. But to save on time and embarrassment, I will simply put Mr. Thornton's article in the RECORD, and skip to his conclusion. Mr. Thornton says:

> We can see that the Fed is a confidence game. Their public pronouncements, while heavily nuanced and hedged, uniformly present the American people with a rosy scenario of the economy, the future, and the ability of the Fed to manage the market. Ben Bernanke told Congress [in March of 2010] that we are in the early stages of an economic recovery. Of course, he has been saying that since the spring of 2009 (if not earlier). . . . These are the people who said that there was no housing bubble, that there was no danger of financial crisis, and then that a financial crisis would not impact the real economy. These are the same people who said they needed a multi-trillion dollar bailout of the financial industry, or we would get severe trouble in the economy. They got their bailout, and we got the severe trouble anyways. It is time to bring this confidence game to an end.

Mr. President, I ask unanimous consent that Mr. Thornton's article be printed in the RECORD.

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

(See exhibit 2.)

Mr. GRASSLEY. The current financial reform bill will not end the cycle of financial booms and busts. This cycle is not the result of green, or capitalism, or animal spirits, or irrational exuberance. Ultimately, it is caused by our failure to recognize and enforce traditional legal principles, namely, the protection of private property.

According to Huerta de Soto: It is a remarkable fact that three of the most noted monetary theorists of the eighteenth and early nineteenth centuries were bankers: John Law, Richard Cantillon, and Henry Thornton. Their banks all failed.

Law was involved in the infamous Mississippi scheme, and Cantillon was involved in a fraudulent stock trading scheme. Only Thornton escaped controversy because his bank did not fail until after his death. All of these bankers were actively involved in convincing their colleagues and customers of the safety, soundness, and wisdom of violating traditional legal principles.

Once upon a time, common sense as well as the law recognized the difference between a demand deposit and a loan deposit.

According to Huerta de Soto, ancient Roman law made it clear that bankers carried out two different types of operations. On one hand, they accepted demand deposits, which involved no right to interest and obligated the bank to maintain the continuous availability of the money; and the depositor had absolute privilege in the case of bankruptcy. On the other hand, bankers also received loan deposits, which obligated the banker to pay interest on the money; and the depositor lacked all privileges in the case of bankruptcy.

The clear distinction between these two types of deposits began to break down with the unfortunate choice of a penalty for the failure to return a demand deposit. A banker who accepted a demand deposit and later failed to return the money upon demand was obligated to pay a penalty in the form of interest.

According to Huerta de Soto, the ban on usury by the three major monotheistic religions—Judaism, Islam, and Christianity—did much to complicate and obscure medieval financial practices. Historically, usury meant charging any interest on a loan. Today, it means charging excessive interest on a loan.

> Since it was forbidden to pay interest on loans, it is easy to understand how convenient it was in the Middle Ages to disguise a loan as a deposit in order to make the payment of interest legal, legitimate and socially acceptable. For this reason, bankers started to systematically engage in operations in which the parties openly declared they were entering into a deposit contract and not a loan contract.
>
> The method of concealment . . . was a simulated [demand] deposit which . . . was not a true [demand] deposit at all, but rather a loan [deposit]. At the end of the agreed-upon term, the supposed depositor claimed his money. When the [bank] failed to return [the money], [the bank] was forced to pay a "penalty" in the [form] of interest on [its] presumed "delay."
>
> Disguising loans as deposits became an effective way to get around the canonical ban on interest and escape severe sanctions, both secular and spiritual.

It would appear the history of banking consists of a continuous effort to eliminate the distinction between these two types of deposits. I do not mean to criticize modern day bankers. I suspect they are largely unaware of this history. They simply operate under the rules as they exist today. Anyone who studies money and banking in college is taught about fractional reserves, deposit insurance, and the need for a central bank to serve as lender of last resort. This is standard fare that passes for higher education around the world.

As economist John Maynard Keynes once observed, "even the most practical man of affairs is usually in the thrall of the ideas of some long-dead economist."

Having said all this, the question remains: Where do we go from here?

To answer that question let me return to the topic of money. In a world of paper currency—without the backing of any tangible commodity—the supply of money is ultimately determined by the government.

In most countries, the power to create money has been delegated by the government to a central bank. The central bank in turn controls the money supply in a number of ways: buying and selling financial assets—so-called discount window or open-market operations—and requiring banks to keep deposits at the central bank—so-called reserve requirements.

As our Nation's central bank, it is often suggested that the Federal Reserve controls both interest rates and the money supply. However, the only interest rate the Fed controls is the discount rate. That is the rate the Fed charges other banks when they borrow money from the Fed. The Fed generally prefers that banks borrow from each other. So, it usually sets the discount rate higher than the rate banks charge each other. That rate is called the Federal funds rate.

U.S. banks are required to hold reserves as a percentage of their demand deposits, but not their loan deposits. These reserves are designed to cover daily withdrawals. On any given day, some banks may have a reserve shortfall, while others may have excess reserves. Thus, banks borrow from each other on an overnight basis. The Fed sets a target for the interest rate banks charge each other—the Federal funds rate—and then it attempts to achieve its target.

According to the textbook explanation, when the Fed wants to lower the Federal funds rate, it buys financial assets, such as government bonds, from other banks and pays for them by creating additional reserves. This is sometimes referred to as creating money out of thin air. Since the banks now have more reserves, they are generally willing to lend at a lower rate. When the Fed wants to raise the Federal funds rate, it sells financial assets back to the banks and withdraws the additional reserves. Since the banks now have fewer reserves, they will usually require borrowers to pay a higher interest rate.

The Fed can also change the supply of money by changing the reserve requirement. By raising or lowering the reserve requirement, the Fed can control how much money banks must hold in reserve. Higher reserves mean less money is available for banks to lend, and lower reserves mean more money to lend.

Although central banks control the money supply in the long run, in the short run individual banks are largely in control.

As the Federal Reserve Bank of Chicago explained in its publication Modern Money Mechanics:

> In the real world, a bank's lending is not normally constrained by the amount of reserves it has at any given moment. Rather, loans are made, or not made, depending on the bank's credit policies and its expectations about its ability to obtain the funds necessary to pay its customers' checks and maintain required reserves in a timely fashion.

In other words, when banks make loans, they create new deposits, thereby increasing the money supply. In the short run, banks are free to make as many loans as they want based solely on their expectation of future repayment and their ability to meet required reserves and expected withdrawals, plus their capital requirements.

In the long run, central banks control reserve requirements and the cost of borrowing excess reserves. Thus, they can eventually prevent individual banks from endlessly expanding the money supply.

Money can be defined as the thing that all other goods and services are traded for, or as the means to achieve final settlement of all transactions. As the means of final payment, money is uniquely valued above all other assets. It is considered to be the most liquid because it is accepted by everyone and it trades at face value. That is, $1 is always equal to $1.

Because banks have the power to create money—within limits set by the central bank—they are viewed with a high degree of suspicion. But banks are ultimately at the mercy of their customers because they are obligated to convert deposits into cash. When banks lose the confidence of their customers, they are subject to bankruptcy if too many customers try to withdraw their money. Banking panics in the past led to the creation of central banking and deposit insurance. These government safety nets were designed to prevent the collapse of the banking system.

To further limit the risk of a banking failure, the government imposed various standards of safety and soundness. These standards range from underwriting loans to maintaining adequate levels of capital and reserves. While these standards make banking safer, they also make it more expensive. It takes time and effort to evaluate the creditworthiness of borrowers. Likewise, money that is set aside in reserves cannot be used to make a loan and earn a rate of return.

As I have outlined earlier, Congress undermined both underwriting standards and capital requirements in an effort to expand home ownership. However, these actions alone would not have likely caused the crisis.

Another major contributing factor was the fact that all of the limits placed on traditional deposit-based commercial banking led to the expansion of the alternative securities-based investment banking system. This system is sometimes referred to as the ''shadow'' banking system. While both types of banks are arguably clouded by a fog of confusion, the differences are very clear.

Investment banks do not accept or create deposits. Instead, they help businesses and governments raise money by selling their stocks and bonds to investors. To accomplish this goal, they also perform two other important functions. They transform stocks, bonds, or mortgages into securities. This securitization process is designed to diversify the investments and reduce market risk. Many investment banks also serve as market-makers.

Just as a commercial bank must meet a depositor's demand for cash, a market-maker must buy securities for cash. However, there are two important differences. Unlike deposits that must be redeemed $1-for-$1, securities are redeemable at the market-price, which could be more or less than the amount originally paid. The other important difference is that investment banks do not have an established government safety net.

They do not have access to deposit insurance because they do not have deposits. They do not typically have the ability to borrow from the central bank as the lender of last resort, again because they do not have deposits. Nevertheless, when they lose the confidence of their customers, they are subject to the equivalent of a bank run.

That is basically what happened. Investment banks borrowed short term, primarily through repos, and invested long term, primarily in mortgage-backed securities. When it finally became apparent to everyone that mortgage default rates were going up and home prices were going down, the short-term lending came to an end. Without the ability to borrow more short-term money or sell long-term securities at their original price, the investment banks faced insolvency.

This was not our first crisis, and it won't be our last. Increased transparency and accountability are necessary, but they are not sufficient. A sound financial system requires a sound monetary policy. That means a strong and stable dollar.

The history of U.S. monetary policy, indeed the history of monetary policy around the world, reveals an ongoing effort to devalue money through endless inflation.

The reform we need most is to overcome the temptation to purchase prosperity with inflated dollars. Until that goal is achieved, I am afraid the current reform effort will amount to little more than rearranging the deckchairs on the Titanic.

Mr. President, I yield the floor.

EXHIBIT 1

PRESIDENT HARRY S. TRUMAN MESSAGE TO THE CONGRESS ON THE STATE OF THE UNION AND ON THE BUDGET FOR 1947

January 21, 1946

NATIONAL HOUSING PROGRAM

Last September I stated in my message to the Congress that housing was high on the list of matters calling for decisive action.

Since then the housing shortage in countless communities, affecting millions of families, has magnified this call to action.

Today we face both an immediate emergency and a major postwar problem. Since VJ-day the wartime housing shortage has been growing steadily worse and pressure on real estate values has increased. Returning veterans often cannot find a satisfactory place for their families to live, and many who buy have to pay exorbitant prices. Rapid demobilization inevitably means further overcrowding.

A realistic and practical attack on the emergency will require aggressive action by local governments, with Federal aid, to exploit all opportunities and to give the veterans as far as possible first chance at vacancies. It will require continuation of rent control in shortage areas as well as legislation to permit control of sales prices. It will require maximum conversion of temporary war units for veterans' housing and their transportation to communities with the most pressing needs; the Congress has already appropriated funds for this purpose.

The inflation in the price of housing is growing daily.

As a result of the housing shortage, it is inevitable that the present dangers of inflation in home values will continue unless the Congress takes action in the immediate future.

Legislation is now pending in the Congress which would provide for ceiling prices for old and new houses. The authority to fix such ceilings is essential. With such authority, our veterans and other prospective home owners would be protected against a sky-rocketing of home prices. The country would be protected from the extension of the present inflation in home values which, if allowed to continue, will threaten not only the stabilization program but our opportunities for attaining a sustained high level of home construction.

Such measures are necessary stopgaps—but only stopgaps. This emergency action, taken alone, is good—but not enough. The housing shortage did not start with the war or with demobilization; it began years before that and has steadily accumulated. The speed with which the Congress establishes the foundation for a permanent, long-range housing program will determine how effectively we grasp the immense opportunity to achieve our goal of decent housing and to make housing a major instrument of continuing prosperity and full employment in the years ahead. It will determine whether we move forward to a stable and healthy housing enterprise and toward providing a decent home for every American family.

Production is the only fully effective answer. To get the wheels turning, I have appointed an emergency housing expediter. I have approved establishment of priorities designed to assure an ample share of scarce materials to builders of houses for which veterans will have preference. Additional price and wage adjustments will be made where necessary, and other steps will be taken to stimulate greater production of bottleneck items. I recommend consideration of every sound method for expansion in facilities for insurance of privately financed housing by the Federal Housing Administration and resumption of previously authorized low-rent public housing projects suspended during the war.

In order to meet as many demands of the emergency situation as possible, a program of emergency measures is now being formulated for action. These will include steps in addition to those already taken. As quickly as this program can be formulated, announcement will be made. Last September I also outlined to the Congress the basic principles for the kind of decisive, permanent legislation necessary for a long-range housing program.

These principles place paramount the fact that housing construction and financing for the overwhelming majority of our citizens should be done by private enterprise. They contemplate also that we afford governmental encouragement to privately financed house construction for families of moderate income, through extension of the successful system of insurance of housing investment; that research be undertaken to develop better and cheaper methods of building homes; that communities be assisted in appraising their housing needs; that we commence a program of Federal aid, with fair local participation, to stimulate and promote the rebuilding and redevelopment of slums and blighted areas—with maximum use of private capital. It is equally essential that we use public funds to assist families of low income who could not otherwise enjoy adequate housing, and that we quicken our rate of progress in rural housing.

Legislation now under consideration by the Congress provides for a comprehensive attack jointly by private enterprise, State and local authorities, and the Federal Government. This legislation would make permanent the National Housing Agency and give it authority and funds for much needed technical and economic research. It would provide additional stimulus for privately financed housing construction. This stimulus consists of establishing a new system of yield insurance to encourage large-scale investment in rental housing and broadening the insuring powers of the Federal Housing Administration and the lending powers of the Federal savings and loan associations.

Where private industry cannot build, the Government must step in to do the job. The bill would encourage expansion in housing available for the lowest income groups by continuing to provide direct subsidies for low-rent housing and rural housing. It would facilitate land assembly for urban redevelopment by loans and contributions to local public agencies where the localities do their share.

Prompt enactment of permanent housing legislation along these lines will not interfere with the emergency action already under way. On the contrary, it would lift us out of a potentially perpetual state of housing emergency. It would offer the best hope and prospect to millions of veterans and other American families that the American system can offer more to them than temporary makeshifts.

I have said before that the people of the United States can be the best housed people in the world. I repeat that assertion, and I welcome the cooperation of the Congress in achieving that goal.

EXHIBIT 2

[From Mises Daily, Mar. 24, 2010]

THE FEDERAL RESERVE AS A CONFIDENCE GAME: WHAT THEY WERE SAYING IN 2007

(By Mark Thornton)

In February of 2004, I published an article entitled ''Greenspam.'' The general lesson was not to listen to Greenspan's deceptive testimony. Delete it from your mind like spam email messages. Watch what he has done and what he is doing, in order to protect your wealth and capital. Discount anything you read about his testimony, except Congressmen Paul's questions and commentary.

This talk will be a follow up to that article. I will describe central banking as a confidence game. The Federal Reserve plays a confidence game with us. A confidence game (also known as a bunko, con, flimflam, hustle, scam, scheme, or swindle) is defined as an attempt to defraud a person or group by gaining their confidence. The victim is known as the mark, the trickster is called a confidence man, con man, or con artist, and any accomplices are known as shills. Confidence men exploit human characteristics such as greed, vanity, honesty, compassion, credulity, and naiveté. The common factor is that the mark relies on the good faith of the con artist.

Here I will concentrate on the Fed's basic confidence game of trying to gain and maintain our confidence in its system and getting us to not take proper precautions against the negative effects of its policies.

Inflation is surely a scam and part of the confidence game—printing up money and lowering the value of all dollar-denominated assets while simultaneously benefitting political friends and accomplices is surely a fraud that could be classified as a confidence game. This is even more true because when the people finally lose confidence in the Fed system and realize what the Fed has been doing, the game will be up, the dollar will go down, and the Fed will come to an end!

There are some more basic aspects of the fraudulent nature of the Fed that I will not address here, Is the Fed a ''conspiracy''? This is an aspect that is probably addressed most fully by the G. Edward Griffin book, The Creature from Jekyll Island. Or is the Federal Reserve just a cover for a banking cartel? This question has been fully addressed in the works of Murray Rothbard.

We will set aside some other fraudulent issues with the Fed. Issues like, why hasn't the nation's gold supply been audited in decades? Why hasn't the Fed itself been properly audited? And has the Fed been manipulating the gold market or surreptitiously leasing out the nation's gold supply? I suppose all of these issues are related to the basic general con game, but they are not necessary to make our general point here today.

The basic focus here will be on the Fed's mission to instill confidence in us about the economy while simultaneously instilling confidence in us about the abilities of the Fed itself. The first mission is easy to see because Fed officials are almost always publically bullish and hardly ever publically bearish about the economy. The economy always looks good, if not great. If there are some problems, don't worry, the Fed will come to the rescue with truckloads of money, lower interest rates, and easy credit. If things were to get worse, which they won't, the Fed would be able to respond with monetary weapons of mass stimulation.

All this is consistent with the viewpoint of mainstream economists who see the business cycle as caused by psychological problems and random shocks. In their view, it is your fault for becoming overly speculative and risky and then lapsing into risk aversion and depression. It is your fault!

I will also limit my analysis in terms of time. When the subject of this talk was first constructed—so many months ago—the only reason it was limited to 2007 was because that was the period just prior to the onset of the current crisis. The crisis finally revealed itself in 2007. With all the data at their disposal, surely the Fed would have been alerting the people to prepare for what was to come. In fact, we could probably pick any time frame and find the consistently bullish sentiment expressed by the establishment community. I had no particular statements or testimony in mind when the title of the talk was chosen, only the conviction that the ''confidence game'' was a consistent and dependable part of how the Fed operates.

I also limit my analysis to the leading officials of the Federal Reserve. It is, after all, their game. However, we could also extend the investigation and dependably find similar statements and testimony from other government officials from the Treasury Department and White House, as well as the advocates and promoters of malinvestments from Wall Street and the real-estate complex. What I will do here is to cut and paste their words and present the relevant highlights from their speeches. Predictably, their testimony and speeches are highly nuanced and hedged.

BERNANKE

''Central Banking and Bank Supervision in the United States.''—Speech given at the Allied Social Science Association Annual Meeting, Chicago, January 5, 2007.

Let us begin at the beginning of 2007 with the chairman of the Fed, Ben Bernanke. The former economics professor from Princeton gave an address to the annual meeting of the American Economic Association. Bernanke is the first chairman of the Fed from academia since Arthur Burns. It was Burns who helped take us off the gold standard. God only knows where Bernanke is leading us!

In addressing his fellow mainstream academic economists, Bernanke was unusually bold in describing the Fed's access and ability to use information and data concerning financial markets. This knowledge and expertise includes the market for derivatives and securitized assets. He describes the Fed as a type of superhero for financial markets. In discussing the Fed's role as chief regulator of financial markets he makes powerful claims concerning the Fed's ability to identify risks, anticipate financial crises, and effectively respond to any financial challenge.

''Many large banking organizations are sophisticated participants in financial markets, including the markets for derivatives and securitized assets. In monitoring and analyzing the activities of these banks, the Fed obtains valuable information about trends and current developments in these markets. Together with the knowledge obtained through its monetary-policy and payments activities, information gained through its supervisory activities gives the Fed an exceptionally broad and deep understanding of developments in financial markets and financial institutions. . . .

In its capacity as a bank supervisor, the Fed can obtain detailed information from these institutions about their operations and risk-management practices and can take action as needed to address risks and deficiencies. The Fed is also either the direct or umbrella supervisor of several large commercial banks that are critical to the payments system through their clearing and settlement activities.''

In other words, the Fed knows everything about financial markets. But it gets worse:

''In my view, however, the greatest external benefits of the Fed's supervisory activities are those related to the institution's role in preventing and managing financial crises.''

In other words, the Fed can prevent most crises and manage the ones that do occur.

''Finally, the wide scope of the Fed's activities in financial markets—including not only bank supervision and its roles in the payments system but also the interaction with primary dealers and the monitoring of capital markets associated with the making of monetary policy—has given the Fed a uniquely broad expertise in evaluating and responding to emerging financial strains.''

In other words, the Fed is an experienced, forward-looking preventer of financial crises. This is a strong claim given Bernanke's own abysmal record of forecasting near-term events.

Chairman Bernanke is infamous on the internet because of the YouTube video that chronicles his rosy view of the developing crisis from 2005 to 2007. He denied there was a housing bubble in 2005, he denied that housing prices could decrease substantively in 2005 and that it would affect the real economy and employment in 2006, and he tried to calm fears about the subprime-mortgage market. He stated that he expected reasonable growth and strength in the economy in 2007, and that the problem in the subprime market (which had then become apparent) would not impact the overall mortgage market or the market in general. In mid–2007 he declared the global economy strong and predicted a quick return to normal growth in the United States. Remember, Austrians were writing about the housing bubble, its cause, and the probable outcomes as early as 2003. Possibly the worst of Bernanke's statements occurred in 2006, near the zenith of the housing bubble and at a time when all the exotic mortgage manipulations were in their ''prime.'' This was the era of the subprime mortgage, the interest-only mortgage, the no-documentation loan, and the heyday of mortgage-backed securities. The new Fed chairman admitted the possibility of ''slower growth in house prices,'' but confidently declared that if this did happen he would just lower interest rates.

Bernanke also stated in 2006 that he believed that the mortgage market was more stable than in the past. He noted in particular that ''our examiners tell us that lending standards are generally sound and are not comparable to the standards that contributed to broad problems in the banking industry two decades ago. In particular, real estate appraisal practices have improved.''

This, my friends, is what the Fed is all about. Take a $100–billion budget, thousands of economists and statisticians, add in every piece of economic data, including detailed information concerning every major financial firm, and what do you come up with? They produced consistently wrong answers, or answers that were designed to maintain the ''confidence'' of the average citizen.

MISHKIN

''Enterprise Risk Management and Mortgage Lending.''—Speech given at the Forecaster's Club of New York on January 17, 2007.

Less than two weeks after Bernanke's address to the American Economic Association, fellow academic Fred Mishkin, a governor of the Federal Reserve Board, took the stage at the Forecaster's Club of New York. A leading mainstream economist and expert on money and banking, Mishkin addressed the group on the topic of ''Enterprise Risk Management and Mortgage Lending.''

He begins,

''Over the past ten years, we have seen extraordinary run-ups in house prices . . . but . . . it is extremely hard to say whether they are above their fundamental value. . . . Nevertheless, when asset prices increase explosively, concern always arises that a bubble may be developing and that its bursting might lead to a sharp fall in prices that could severely damage the economy. . . .

The issue here is the same one that applies to how central banks should respond to potential bubbles in asset prices in general: Because subsequent collapses of these asset prices might be highly damaging to the economy . . . should the monetary authority try to prick, or at least slow the growth of, developing bubbles? I view the answer as no.''

In others words, if the Fed is not worried, you shouldn't be either.

''There is no question that asset price bubbles have potential negative effects on the economy. The departure of asset prices from fundamentals can lead to inappropriate investments that decrease the efficiency of the economy.''

In other words, there are some theoretical problems with bubbles. But Mishkin has a theory that says there can be no such things as bubbles.

''If the central bank has no informational advantage, and if it knows that a bubble has developed, the market will know this too, and the bubble will burst. Thus, any bubble that could be identified with certainty by the central bank would be unlikely ever to develop much further.''

He then tells his listeners that in the unlikely event of a bubble, it really would not be a problem:

''Asset price crashes can sometimes lead to severe episodes of financial instability. . . . Yet there are several reasons to believe that this concern about burst bubbles may be overstated.

To begin with, the bursting of asset price bubbles often does not lead to financial instability. . . .

There are even stronger reasons to believe that a bursting of a bubble in house prices is unlikely to produce financial instability. House prices are far less volatile than stock prices, outright declines after a run-up are not the norm, and declines that do occur are typically relatively small. . . . Hence, declines in home prices are far less likely to cause losses to financial institutions, default rates on residential mortgages typically are low, and recovery rates on foreclosures are high. Not surprisingly, declines in home prices generally have not led to financial instability. The financial instability that many countries experienced in the 1990s, including Japan, was caused by bad loans that resulted from declines in commercial property prices and not declines in home prices.''

Boy, I bet he would like to take back his words today. Everything he just said turned out to be untrue; and he should have known that all of the assumptions he used to quell fear and instill confidence were simply not true.

''My discussion so far indicates that central banks should not put a special emphasis on prices of houses or other assets in the conduct of monetary policy. This does not mean that central banks should stand by idly when such prices climb steeply. . . .

Large run-ups in prices of assets such as houses present serious challenges to central bankers. I have argued that central banks should not give a special role to house prices in the conduct of monetary policy but should respond to them only to the extent that they have foreseeable effects on inflation and employment. Nevertheless, central banks can take measures to prepare for possible sharp reversals in the prices of homes or other assets to ensure that they will not do serious harm to the economy.''

In other words, the Fed likes bubbles. Mishkin says the Fed is prepared to protect us from the bursting of the bubble, but obviously he was wrong on that point too. Of course the issue of the Fed causing bubbles is never broached, and if it is, Fed officials will chime in to squash any such notion.

KOHN

''Financial Stability: Preventing and Managing Crises.''—Speech given at the Exchequer Club Luncheon, Washington, DC. February 21, 2007.

Fed Vice Chairman Donald L. Kohn downplayed the possibility of a crisis but said,

''In such a world, it would be imprudent to rule out sharp movements in asset prices and deterioration in market liquidity that would test the resiliency of market infrastructure and financial institutions.

While these factors have stimulated interest in both crisis deterrence and crisis management, the development of financial markets has also increased the resiliency of the financial system. Indeed, U.S. financial markets have proved to be notably robust during some significant recent shocks.''

In other words, just thinking about crises makes them less likely.

''The Federal Reserve, in its roles as a central bank, a bank supervisor, and a participant in the payments system, has been working in various ways and with other supervisors to deter financial crises. As the central bank, we strive to foster economic stability. As a bank supervisor, we are working with others to improve risk management and market discipline. And in the payments and settlement area, we have been active in managing our risk and encouraging others to manage theirs.''

In other words, the Fed will deter any crisis.

''The first line of defense against financial crises is to try to prevent them. A number of our current efforts to encourage sound risk-taking practices and to enhance market discipline are a continuation of the response to the banking and thrift institution crises of the 1980s and early 1990s.''

''Encourage sound risk-taking practices''—did I hear that right?

''Identifying risk and encouraging management responses are also at the heart of our efforts to encourage enterprise wide risk-management practices at financial firms. Essential to those practices is the stress testing of portfolios for extreme, or ''tail,'' events. Stress testing per se is not new, but it has become much more important. The evolution of financial markets and instruments and the increased importance of market liquidity for managing risks have made risk managers in both the public and private sectors acutely aware of the need to ensure that financial firms' risk-measurement and management systems are taking sufficient account of stresses that might not have been threatening ten or twenty years ago.''

In other words, the Fed's number one job is to prevent ''extreme'' events—or was that, to cause such events?

''A second core reform that emerged from past crises was the need to limit the moral hazard of the safety net extended to insured depository institutions—a safety net that is required to help maintain financial stability. Moral hazard refers to the heightened incentive to take risk that can be created by an insurance system. Private insurance companies attempt to control moral hazard by, for example, charging risk-based premiums and imposing deductibles. In the public sector, things are often more complicated.''

I guess they are! In other words the Fed must refrain from bailing out markets or it will encourage risk and speculation.

''The systemic-risk exception has never been invoked, and efforts are currently underway to lower the chances that it ever will be.''

Well, I think that record has now been broken—into several trillion pieces.

KROSZNER

''Recent Innovations in Credit Markets.''—Speech given at the Credit Markets Symposium at the Charlotte Branch of the Federal Reserve Bank in North Carolina, March 22, 2007.

Fed Governor Randall S. Kroszner was the Fed's number-one guy in terms of regulation of financial markets. He was the point man in preventing things like systemic risk, but he considered all this financial ''innovation'' and ''engineering'' to be a good thing:

''Credit markets have been evolving very rapidly in recent years. New instruments for transferring credit risk have been introduced and loan markets have become more liquid. . . . Taken together, these changes have transformed the process through which credit demands are met and credit risks are allocated and managed. . . . I believe these developments generally have enhanced the efficiency and the stability of the credit markets and the broader financial system by making credit markets more transparent and liquid, by creating new instruments for unbundling and managing credit risks, and by dispersing credit risks more broadly. . . .

The new instruments, markets, and participants I just described have brought some important benefits to credit markets. I will touch on three of these benefits: enhanced liquidity and transparency, the availability of new tools for managing credit risk, and a greater dispersion of credit risk.''

What he then goes on to discuss are ''recent developments'' such as credit default swaps (CDS) of which the ''fastest growing and most liquid'' are credit-derivative indexes involving such things as packages of subprime residential mortgages. He says that ''Among the more complex credit derivatives, the credit index tranches stand out as an important development.''

He goes on to state that, historically, secondary markets were illiquid and nontransparent (banks held their own loans!). Now liquidity has improved and transparency has improved. This promotes better risk management as risk is measured and priced better because market participants have better tools to manage risk. The result has been a ''wider dispersion of risk.''

''On its face, a wider dispersion of credit risk would seem to enhance the stability of the financial system by reducing the likelihood that credit defaults will weaken any one financial institution or class of financial institutions.''

Yes, there are some concerns, but most of these concerns are ''based on questionable assumptions.'' Yes, there is risk, but it's the risk that has been out there all along; now we can trade this risk among ourselves. There is ''nothing fundamentally new to investors . . . credit derivative indexes simply replicate the sort of credit exposures that have always existed.'' Plus, remember that this risk is greatly diminished because lenders require borrowers to put up collateral.

What Kroszner has failed to realize is that by allowing institutions to disperse their risk, the regulators have encouraged and allowed for a huge increase in the aggregate amount of risk. When banks kept their own loans on their own books, they were careful to make prudent loans, but with nearly free money available from the Fed, they wanted to make more loans, and the only way to do that is to make riskier loans. They didn't want to hold the risky loans so they ''dispersed'' them.

Kroszner told his audience that the market already experienced a surprise in May of 2005, but that since that time much energy has been expended by market participants to improve risk management.

We don't have to worry, Kroszner tells us, because Gerald Corrigan is in charge of making sure nothing goes wrong. Corrigan—a former president of the New York Fed and a managing director in the Office of the Chairman of Goldman Sachs—has been in charge of a private-sector group that controls ''counterparty risk management policy'' for the financial industry.

''Cooperative initiatives, such as [this one led by Corrigan] can contribute greatly to ensuring that those challenges are met successfully by identifying effective risk-management practices and by stimulating collective action when it is necessary. . . . The recent success of such initiatives strengthens my confidence that future innovations in the market will serve to enhance market efficiency and stability, notwithstanding the challenges that inevitably accompany change.''

Checking ahead, we find Kroszner still bullish later that same year.

''Risk Management and the Economic Outlook.''—Speech given at the Conference on Competitive Markets and Effective Regulation, Institute of International Finance, New York. November 16, 2007.

''Looking further ahead, the current stance of monetary policy should help the economy get through the rough patch [yes, he called it a rough patch] during the next year, with growth then likely to return to its longer-run sustainable rate. As conditions in mortgage markets gradually normalize, home sales should pick up, and homebuilders are likely to make progress in reducing their inventory overhang. With the drag from the housing sector waning, the growth of employment and income should pick up and support somewhat larger increases in consumer spending. And as long as demand from domestic consumers and our export partners expand, increases in business investment would be expected to broadly keep pace with the rise in consumption.''

Over the next year, the Dow would lose 6,000 points; we have now doubled the amount of unemployment, adding more than 7 million unemployed. Consumer confidence hit a 27-year low this week, and sales of new homes hit the lowest level in a half a century—the lowest level on record! Kroszner, an economist groomed by the Institute for Humane Studies, has since returned to the University of Chicago and the directorship of the George Stigler Center.

CONCLUSION

We can see that the Fed is a confidence game. Their public pronouncements, while heavily nuanced and hedged, uniformly present the American people with a rosy scenario of the economy, the future, and the ability of the Fed to manage the market. Ben Bernanke told Congress this week that we are in the early stages of an economic recovery. Of course, he has been saying that since the spring of 2009 (if not earlier). These are the people who said that there was no housing bubble, that there was no danger of financial crisis, and then that a financial crisis would not impact the real economy. These are the same people who said they needed a multitrillion dollar bailout of the financial industry, or we would get severe trouble in the economy. They got their bailout, and we got the severe trouble anyways. It is time to bring this game, this confidence game, to an end.

Mr. REID. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

Mr. REID. I ask unanimous consent that the Senate now be in a period of debate only with a 10-minute limitation on speeches, to accommodate the speakers on Wall Street reform or other matters; that there be no amendments or motions in order during this time.

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

Mr. REID. I want to amend my shortcoming. Sorry about that. I would ask that unanimous consent agreement be modified so that Senators DODD and SHELBY, the two managers of this banking bill, be recognized for up to 30 minutes each.

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

The Senator from Louisiana is recognized.

FLOOD INSURANCE

Mr. VITTER. I rise to discuss flood insurance extension and our need to address that now, to get rid of uncertainty in the market and real concern that this will not be done in time, and the vital National Flood Insurance Program may be allowed to lapse yet again, as happened in the recent past.

Obviously, the National Flood Insurance Program is basic; it is necessary. It is necessary for the entire country, for real estate transactions everywhere. But it is certainly necessary in my home State of Louisiana and in a hurricane and flood zone.

As we sit here today, the National Flood Insurance Program will expire in the first few days of June, during the Memorial Day recess. So it is necessary and important that program be extended. I suggest we take up this noncontroversial matter now, do it now. There is no controversy. There is no objection on the substance of the program.

This will accomplish two things. First of all, our taking it up now rather than at the last moment right when we are pushed up against the Memorial Day recess will take care of real uncertainty in the market and give everyone—homeowners, those who need these extensions, those who need these policies, everyone in real estate—the security that this will be extended properly through at least the end of the year.

Secondly, I think it is reasonable to take it out of the context of the extenders package, which is otherwise very controversial. There are a lot of elements of the extenders package which will merit debate. There are a lot of elements of the extenders package which will be controversial and which will garner legitimate ''no'' votes.

This flood insurance extension is not one of them. This flood insurance extension, on its merits, does not have controversy and does not have objection, including because of the fact that it does not cost us anything. It is completely budget neutral, this extension through the end of the year.

This approach, which would erase uncertainty, which would calm the markets, which would remove it from other unrelated more controversial issues, is supported by everyone in the marketplace. In that regard, I ask unanimous consent to have printed in the RECORD this letter from the National Association of REALTORS in strong agreement with this approach and a similar letter from the National Association of Mortgage Brokers in strong agreement with this approach.

The PRESIDING OFFICER (Mr. BURRIS). Is there objection?

Mr. REID. Reserving the right to object, did my friend propound a unanimous consent request?

Mr. VITTER. Simply to make these letters a part of the RECORD.

Mr. REID. No objection.

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

NATIONAL ASSOCIATION OF REALTORS®,
May 13, 2010.

Hon. DAVID VITTER,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR VITTER: the National Association of REALTORS® supports S. 3347, to extend authority for the National Flood Insurance Program (NFIP) until December 31, 2010. The authority should be extended to provide market certainty and give Congress sufficient time to enact meaningful reform.

Most property buyers obtain federally related mortgage loans to purchase property; for property located in a federally designated floodplain, flood insurance is required to obtain such a mortgage. When the NFIP expired earlier this year, thousands of real-estate transactions were delayed, if not cancelled. Extending the program until year's end will provide much needed certainty to a recovering real estate market and the millions of taxpayers nationwide who rely on the program for basic flood protection.

We urge the Senate to pass S. 3347 to extend the NFIP, and look forward to working with you as legislation is developed to reform and reauthorize the program.

Sincerely,

VICKI COX GOLDER, CRB,
*2010 President.*

NATIONAL ASSOCIATION OF MORTGAGE BROKERS,
May 13, 2010.

DEAR SENATOR, on behalf of the members of the National Association of Mortgage Brokers (NAMB), I urge you to support S. 3347, a bill introduced by Senator Vitter (R–LA) to extend the National Flood Insurance Program through December 31, 2010. NAMB applauds Senator Vitter for his diligent work on this necessary bill to ensure continued availability of coverage for homeowners living in areas prone to flooding.

NAMB strongly supports this bill to extend the National Flood Insurance Program to protect the nearly 5 million homeowners living in high flood risk areas from losing their property without being covered. This is particularly significant for those home buyers in high flood risk areas where flood insurance is required by law in order to qualify for mortgage loans from federally regulated lenders. The program has lapsed twice this year, severely hindering borrowers from obtain homeownership in flood areas, and countering any relief to the housing market. This legislation is critical to the housing recovery, but is also equally important to small businesses, which have suffered through the economic decline. An extension to the program will prevent any further disruptions to homeowners, and provide much needed stability to the market.

We urge timely passage of this critical legislation and believe it will provide necessary protections for consumers in high flood risk areas, as well as help in the housing recovery and relieve small businesses.

Sincerely,

JIM PAIR, CMC,
*NAMB President 2009–2010.*

UNANIMOUS-CONSENT REQUEST—S. 3347

Mr. VITTER. Mr. President, with that introduction, I would now propound my underlying unanimous-consent request. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 372, which is the Vitter bill, S. 3347, a bill that extends the National Flood Insurance Program at no cost, deficit neutral, through December 31, 2010; that the bill be read a third time and passed, and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, my friend knows we have an extenders package which we have to complete before we leave for the Memorial Day recess. There are a number of matters in that bill that are extremely important to people throughout this country, vital to people throughout this country.

My friend said his issue is noncontroversial. The controversy is in the eye of the beholder. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. VITTER. Mr. President, reclaiming my time, if I could inquire, through the Chair, what the basis of the objection is, I think that would further the debate.

The PRESIDING OFFICER. Is there objection to the Senator propounding an inquiry to other Senators? There is no right to ask a question of another Senator who does not have the floor.

Mr. VITTER. Well, again, I was inquiring through the Chair. I ask unanimous consent to inquire through the Chair and to propound the question, What is the nature of the objection?

The PRESIDING OFFICER. There is no objection to the request. No Senator is compelled to respond.

Mr. VITTER. I would simply make the request that we have a brief conversation about it, in that case. I realize no one is compelled to respond.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. VITTER. Well, it was a compelling argument. But, again, I am saddened by the fact that we cannot proceed in a straightforward way. There is no objection to the substance of this extension. This is a necessary program. It is a vital program. The extension, which my bill would accomplish through December 31, 2010, would be budget neutral and deficit neutral.

We would take this out of a much more controversial debate. We would settle the issue well before the program would otherwise expire. We would give people confidence. We would settle the markets. We would help people in real estate. We would help people in the economy. I suppose they are all compelling reasons not to travel down that path up here in Washington.

I think that is a shame. I think it is really sad because this should be, and is, on its substance noncontroversial.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. I ask unanimous consent that the speakers on this side be in the following order: Senator CARDIN be recognized for 5 minutes; then the Senator from Oregon, Mr. MERKLEY, be recognized for 10 minutes; then that I be recognize for 10 minutes on this side.

Mr. REID. Mr. President, I ask my friend to modify his request so that if there are Republicans who wish to be recognized, we would do that alternately.

Mr. LEVIN. I thank the Leader. I intended that when I said ''on this side'' there would be alternates.

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

The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I take this time to call to my colleague's attention my pending amendment, amendment No. 4050. This is the amendment that would require the oil companies to disclose the payments that they make to countries for mineral rights.

It is in order to give investors transparency and knowledge about the risks that may be involved in regards to oil companies. This is real if you look at what is happening in Nigeria and other countries.

Investors have a right to know where oil companies are making payments. This amendment would also further good governance. I think most of us are familiar with the mineral curse; that is, countries that have mineral wealth are some of the poorest in the world. It also helps finance corruption because the government leaders are taking these payments for themselves rather than for the people of the country. My amendment would require the SEC to allow for the disclosure of the payments made by oil companies that are regulated by the SEC.

This is mostly foreign companies. These are not U.S. companies by and large. It puts U.S. companies on a level playing field because U.S. companies are prohibited by law from being involved in any part of corruption.

This is a bipartisan amendment. It is cosponsored by Senator LUGAR. He has been one of the true leaders on this issue for many years. My cosponsors include Senators DURBIN, SCHUMER, FEINGOLD, MERKLEY, JOHNSON, and WHITEHOUSE. It comes out of the work of the Helsinki Commission. We have held hearings on this within the Commission. This is one of the priorities we have on basic human rights. It is supported by the Obama administration.

I say all that knowing full well we are now postcloture. It is unlikely we will get a vote on this amendment. I find that disturbing. We have made the technical changes in order to make sure we adhere to the concerns expressed by Members. Quite frankly, I am not aware of any Senator who objects to the substance of this amendment. I hoped perhaps we could move forward and include this, but I am a realist, and I understand the current circumstances.

I want my colleagues to know I will try to work with the chairman and ranking member in conference to see whether we can get some of these provisions included. We do have a similar provision on disclosure related to the Congo. We do have this subject matter that will be before the conferees.

I am hopeful, after conversations with Senators DODD and SHELBY, that we will be able to continue this discussion as this bill moves forward to conference. I will also look for other opportunities to bring this issue back.

I know Senator DODD has voiced his support for the amendment. I have talked to Senator SHELBY. He has indicated to me that he is sympathetic to the amendment. I hope we will be able to find a way to prevent the citizens of Third World countries from being denied a share of the wealth of their own countries and to give investors the information they need in order to make intelligent decisions as to whether they want to invest in a particular company.

I want my colleagues to know that if we don't get a chance to vote on this amendment tonight, it will not be the end. We will look for other opportunities, whether it is in conference or other bills that move forward.

I thank many of my colleagues who have been supportive. I know we will succeed in protecting the mineral wealth of Third World nations for the people of the country rather than to fund corruption and giving investors the information they should have as to whether they want to invest in a mineral company.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, under the current unanimous consent agreement, there will be 10 minutes now for Senator MERKLEY, then to be alternated to the Republican side. Actually, it would go first to the Republican side, then back to Senator MERKLEY. Then, if there is a Republican, it would go back to the Republican and then back to me. That is the current agreement.

Senator ENZI wishes to speak for up to 30 minutes. He has been gracious enough to agree that both Senator MERKLEY and I go with our 10-minute remarks before him. I modify the unanimous consent agreement and ask unanimous consent that Senator MERKLEY be recognized for 10 minutes and then I be recognized for up to 10 minutes and then Senator ENZI be recognized for up to 30 minutes.

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

The Senator from Oregon.

Mr. MERKLEY. Mr. President, we are coming to the end of a long path of consideration of fundamental financial reforms. A key piece of the discussion along that trail has been whether we are going to modify the way securities operate, how high-risk investment pools operate, and how ordinary banking that takes deposits and makes loans operate, so that all three will do better in their role of aggregating capital and allocating capital.

We have some fundamental challenges in our society. One is that inside of a bank holding company, we have both the high-risk investing and the standard process of taking deposits and making loans. These two are both excellent systems, but they don't belong under the same roof. When they are under the same roof, they create two problems. The first problem is the bank that is providing the loans has access to a discount window in insured deposits. All of that is intended to make sure money gets to small businesses and families. But when they are under the same roof, we have the temptation of the resources being directed to high-risk investing rather than getting into the hands of our families and small businesses.

In every corner of Oregon and in every corner of every State, folks are finding it hard to get loans. Lines of credit are being cut in half. Projects to expand and hire additional employees are being thwarted because the local bank says: We can't do any more lending because we have hit our limit on leverage and our capital is such-and-such.

We do not want large banks that have both functions to be diverting their energy and resources from the lending that is so important to Main Street into high-risk investing. They need to be separate for that reason.

The second reason is that when the investing blows up, as it does periodically, then we have a situation where it blows up the lending, sends shock waves through lending. It causes lending to freeze. When that happens, the economy suffers, Main Street suffers, and families suffer. That is where we are right now.

Let's take a look at the facts. We have a situation where over the past couple years we have seen Lehman Brothers, which had high-risk trading losses of over $30 billion, go down. Merrill Lynch had $20 billion of loss, saved by TARP; Morgan Stanley, $10 billion, saved by TARP; JPMorgan Chase, $25 billion from TARP; Goldman Sachs, $10 billion from TARP; Bank of America, over $45 billion in TARP funds. Proprietary trading blew up some of our biggest financial institutions and froze lending to businesses on Main Street across this Nation.

We need to have a firm separation. We need to make sure that if you are buying fireworks for the Fourth of July, you are not storing those in the living room. By that I mean high-risk investing is the fireworks, and you don't store them in your living room where you are doing the lending so important to Main Street.

This is a Wall Street-Main Street battle. My colleague Senator LEVIN and I have been working on this for quite some time. We need to make our financial system work better for America.

Two days ago, we offered to have our amendment voted on, not with a 50-vote standard but with 60 votes. The leadership across the aisle thwarted that unanimous consent request and said: You may not have a vote on your amendment.

Not even at 60 votes?

No, you may not.

Not even with two Democratic Senators off in their home States because they had primary elections?

No, you may not. You may not debate this amendment on the floor.

Quite frankly, that is the result of pressure from Wall Street saying that fundamental financial reform should not be discussed in this Chamber. What is this Chamber? Is this Chamber a puppet to Wall Street or are we a serious gathering of men and women from across the Nation whose responsibility is to build a better financial system?

Another fundamental piece of this amendment is to end the conflict in securities. This is simple. If you design securities and you sell them, you don't take out insurance on them because you think they might fail after you have sold them. That is a fundamental conflict of interest.

That is like somebody who wires your house; you bring them to your house and you say: Please do the wiring or fix the wiring. And they take out a fire policy on your house because they know they did such a bad job, they think your house is going to burn down. You would never hire that electrician. Or it is like a car dealer. The dealer says: I will sell you this car. And after they sell it to you, they take out a life insurance policy on you because they didn't do the brakes right. It would make you pretty nervous. You would not buy a car from an auto dealer who has taken out an insurance policy on your life. That is a simple issue addressed in the securities provision of this bill.

We are hearing word that Republicans are going to go through a parliamentary maneuver, even though our amendment is now in order and pending, to kill debate on the pending Merkley-Levin amendment. We hope that is not true, but we are hearing that in not so many minutes, sometime this evening, there is going to be a process to kill the amendment our amendment is attached to so there will be no debate on this issue.

I cannot believe the Senate of the United States is afraid to have a debate and vote on fundamental financial reforms important to the integrity of our securities and important to Main Street getting loans. But that seems to be where we are headed. I hope I am wrong. I hope my colleagues from across the aisle will come out and say: No, we have reconsidered. We think this body should debate serious issues. You might win, you might lose, but we should hold the debate.

We have asked the Republican leadership to sever the connection between our amendment and the Brownback amendment, which are on different topics. One is on fundamental financial structures, and one is on automobile dealers and whether they are covered by the Consumer Financial Protection Bureau. We said: Sever them. Let each have a separate debate. They have told us no. They will not sever the connection and allow a debate on each topic. That is why, if the primary amendment is withdrawn, ours will go down, too, and the people of the United States will be deprived of having a legislature that debates seriously the structure of reform.

I will wrap it up. I know my colleague is going to expand on these remarks. It has been a pleasure working with him. It has been a pleasure working with the Banking staff.

But before I conclude, I want my colleagues to know that based on the conversations I have had in this body, if we were to have this vote, we would win tonight, based on the comments of folks who say they either support or are strongly leaning toward supporting it. That means we would go to conference with a very strong position, as we should. If this is withdrawn tonight, if we are not able to have this debate and vote, I hope the leadership on both sides of the aisle will say, even though we didn't debate it, we will take this strong position for financial reform to the conference.

The USAA, which is a group that serves our veterans, has commented about this amendment. They said:

Senators Merkley and Levin recognize the value of insurance company investments which already are subject to well-defined state insurance restrictions. . . . In that vein, we urge you to support the amendment and include it in the Restoring American Financial Stability Act that is passed out of the United States Senate.

May 13, 2010.

A person from the Washington Post writes:

Probably the most important amendment comes from Sens. Carl Levin and Jeff Merkley, Democrats from Michigan and Oregon, respectively. It would replace the vague language of the Dodd bill, which gives discretion to regulators as to how much proprietary trading they would allow, with a clear provision banning federally insured banks from such trading respectively (the ''Volcker rule''). If the banks want to turn themselves into casinos, they can—but if Merkley-Levin passes, they would do so without taxpayer support when their bets go sour.

A New York Times editorial:

The Senate bill also imposes needless delays on the enactment of the so-called Volcker rule, which would bar banks from making risky market trades for their own accounts and from owning hedge funds and private equity funds. Senators Carl Levin of Michigan and Jeff Merkley of Oregon, both Democrats, have an amendment to enact the Volcker rule without undue delays or tinkering.

The Independent Community Bankers of America is asking for this to be passed to strengthen our financial system.

The Campaign for America's Future, the former head of Citibank, who watched as the two sides of his bank collided in a spectacular disaster, are supporting this amendment. This amendment should be debated and voted on on the floor of the Senate. To do otherwise would not fulfill our responsibility to the people of the United States of America.

Thank you very much, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 10 minutes.

Mr. LEVIN. Mr. President, first of all, I thank Senator MERKLEY for his extraordinary work on this amendment of ours. We are very hopeful we are going to be able to get to a vote. As it stands right now, we are going to get to a vote because we are the pending amendment. That is where it stands. We are in order. We are germane. It is postcloture but we are germane. The only way we know of where we could be thwarted from getting to a vote is if there were a decision made on the other side to withdraw the underlying amendment. We hope that decision will not be made.

These issues are too important not to be voted on. A parliamentary trick should not be used now to avoid a vote on this critically important amendment, which will strengthen in very significant ways the underlying Dodd bill.

We saw, weeks ago, that the Republican leadership was going to try to deny us the opportunity to even get to this bill, and there was such a public outrage at the Republican filibuster that they had to back off from that. Well, if we do not get to a vote tonight on Merkley-Levin, there is going to be similar outrage from people because they understand what the stakes are. The stakes are whether we are going to take the steps to avoid a repeat of the deep recession we are now in—a recession that was brought about in large measure by the excesses, the extreme greed of Wall Street, taking high-risk mortgages, dubious mortgages, securitizing them, dicing them, slicing them in different ways, enlarging the risk dramatically, selling them to clients and customers, and then, to add insult to injury, betting against them—in the case of Goldman Sachs, making a fortune on those bets; in the case of the banks that bet the other way, ending up being bailed out by the taxpayers on the losing bets.

That is what has happened. While our constituents may not be able to define what a collateralized debt obligation is or what a naked default swap is—and there are very few people in the country who can—they do know they have been had. They know how many houses in their neighborhoods have been vacated, have been foreclosed upon. They know because they themselves or their neighbors have been unable to keep up with mortgage payments because the value of housing has gone down, and they sense that the Wall Street greed was a big part of this.

It is more than the greed. It is the conflicts of interest which accompanied that greed. Our bill addresses some of the major problems that got us here, and some of that is proprietary trading where the Wall Street banks put their own interests ahead of their clients' interests and gambled—gambled, as it ended up—with our taxpayers' money.

So our constituents understand this. What I want to do is spend the few minutes I have left talking about the conflict of interest that existed on Wall Street: betting against themselves. I think yesterday's New York Times perhaps quoted someone who put it best—a man named Cornelius Hurley, director of the Morin Center for Banking and Financial Law at Boston University and former counsel to the Federal Reserve Board. This is what he said:

Their business model—

The business model that now exists at banks such as Goldman—

has completely blurred the difference between executing trades on behalf of customers versus executing trades for themselves. It's a huge problem.

That shift in the business model has to be addressed by us. We have to act to put an end to the conflict of interest which exists when a Goldman Sachs—as we showed at our hearing—is able to sell securities to customers, packaging these mortgage-based debts, these asset-backed securities or these securities which referred to assets—these are the synthetic ones where there is nothing there but a reference to some other security, a bet—and then betting against their own customers.

This was one of the most dramatic findings of our subcommittee. Our subcommittee investigated this matter for about a year and a half. We had four hearings. We had millions of pages of documents. We started with a bank in the State of Washington which took dubious mortgages—fraudulent mortgages, in many cases, in a large percentage of the cases—based on liar loans, where the mortgage companies would fill in the amount of people's income and then securitize them. Because they saw—and we had the evidence in their e-mails, where the mortgage companies saw—there was a high default rate in these mortgages, they decided they better get them off their books quick because there were high defaults coming down the river.

So what happened? They securitized them, shipped these to a very welcoming Wall Street that would then resecuritize them, slice them in a different way, sell them to their customers, and then bet against them. The added insult was when, inside the same bank, the salespeople knew they were selling junk and said so in e-mails in words that are even worse than ''junk''—treating customers that way, putting their own interests at Goldman Sachs ahead of the interests of their customers.

That is what happened. We have to end this conflict, and we have to give the Securities and Exchange Commission the running orders to end the conflict. That is what our amendment does. We do it in a very thoughtful way, a very careful way. We set forth the requirement that the conflict of interest be ended, but we assign the Securities and Exchange Commission the responsibility to end it, to implement the conflict of interest prohibition we have in our bill.

As Senator MERKLEY said, we have heard there is a possibility that the Republicans are going to withdraw the underlying amendment. That would be an incredible signal of the power of Wall Street that the underlying amendment, which has the support of so many people on both sides of the aisle—and probably majority support in this body relative to the treatment of car loans—that that amendment might be withdrawn in order to kill Merkley-Levin. That is the rumor we keep hearing this afternoon. It is the only way they can stop this amendment from coming to a vote that we know of.

We believe, as Senator MERKLEY said, there should be a vote on both amendments; that these two matters should be split. The only way we could get a vote on Merkley-Levin—this incredibly important strengthening amendment to the underlying Dodd bill—was by offering it as a second-degree amendment to the Brownback amendment. We are perfectly happy to have separate votes.

That is the best way to do it. We cannot do that without unanimous consent. But rather than agreeing to separate votes, so both matters could be voted on and disposed of by the Senate, what we keep hearing is they may withdraw the underlying amendment and bring down the pending Merkley-Levin amendment with it.

If you needed any additional evidence of the power of Wall Street around this body, that would be it. If that happened—to withdraw an amendment which is so important to a majority, probably, of the body—to make it impossible for us to vote on Merkley-Levin would be some of the most powerful evidence—and there has been plenty of it—of the power of Wall Street, the long arm of Wall Street reaching into this body.

I hope it is not true. But being honest with our colleagues, this is what we hear is possibly in the wings. It would be a disservice to the people of the United States not to have a vote on Merkley-Levin.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 30 minutes.

Mr. ENZI. Mr. President, there was a request made to me by the Senator from Delaware if he could have 1 minute to add his name to this discussion that has just been held. I ask unanimous consent that it not be taken out of my time, but that 1 minute be given to the Senator from Delaware.

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

The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I thank my neighbor across the hall from Wyoming. He is a gentleman, as always, and I appreciate it.

I just want to stand and say, from the beginning I have talked about one of the most important parts of this bill is that we make sure we separate commercial banking activities from investment banking activities. It is very important we have commercial banks that are safe, with deposits supported by the FDIC, but that they not be in risky business.

I just want to say, I agree with the Senator from Michigan and the Senator from Oregon that it is absolutely essential we have a vote on Merkley-Levin and find the will of the Senate on the fact that we should not have banks involved in proprietary betting, and that we go with what the President and former Fed Chairman Volcker said, and go with a bill that separates these and does not allow banks to be involved in proprietary trading. It is absolutely essential.

Again, I thank the Senator from Wyoming, a gentleman, as always.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 30 minutes.

Mr. ENZI. Mr. President, I want to make it clear that the amendment that has just been talked about is not the only one that is not getting a vote that is absolutely essential to making this bill work—the amendments the American people expect.

There was some comment about the Brownback amendment. That is one to allow automobile dealers to still sell automobiles, which they may not be able to do under this bill the way it is written. Another concern, of course, comes from anybody else who sells something on installment. That would include dentists and realtors and a whole range of people who sell things that way, and they are not going to be allowed to get a fix under this bill.

So I want you to understand how wide-ranging this bill is. This is going to get into everybody's pockets. I am not talking about businesses; I am talking about individuals. The dadgum government is going to be in everybody's pockets with this bill. This gives the government permission to look at your records. In fact, it requires your bank to keep them and send them to the Federal Government—to this new bureau we are creating.

This little 1,408-page bill, which with amendments I think is now over 1,500 pages, probably should have been three bills. It probably should have been three bills. We could have worked it properly, and maybe people would have read it.

The Republicans did stop cloture twice, and they did it so they could amend the too big to fail. Too big to fail was actually a bailout—a perpetual bailout—for big banks. That is why Goldman Sachs, at a hearing here, said: Well, we can live with that. That is why Citi said they could live with it. The big banks did not have any problem with it. But it has been revised now because it was held up, and we were finally able to get some amendments on the first section.

There is another section in here. It is called derivatives. We talk about ''derivatives'' because we know America will not understand that, so they, again, will not understand how we are getting into their pockets. But that is a section that needed changes. I think the Senator from Connecticut, the chairman, Mr. DODD, realized that and drew up some. But it is my understanding he was not allowed to put those in here, even though I read in the paper one morning, joyously, that he had some amendments that were going to make some corrections. But he was forced not to put them in.

So that is one-third of the bill that, obviously, has some faults in it yet. But that is not even the part I am really concerned about. I am concerned about this last third of the bill. It is 268 pages. Of course, there are another 100 pages that follow that of other acts that are going to be affected by it.

This is a brandnew bureau. We don't have enough government? We are going to start a whole new bureau, and we are going to turn everything financial over to that bureau. But don't worry about it. We are going to stick it into the Federal Reserve, which we don't have any control over, and we are telling the Federal Reserve: You don't have any control over this new bureau, but you have to give up to 12 percent of your money to operate this bureau. That is why we put it under there; it will be off budget so it will not show up right away in the deficits, but it does. It is going to cost us 12 percent of the operating revenue of the Federal Reserve. Does anybody know how much that is? Well, they are going to get 12 percent of it. What fascinates me is that following that, there is a paragraph that says it will be adjusted for inflation. Wow. Let's see. If I get 12 percent of something, it is probably an expanding amount from year to year anyway, but if it doesn't expand one year, this bureau is still going to get the money as though the economy had expanded.

I get worked up over it because I had an amendment that I think might have solved things for people—it certainly would have calmed me down a little bit—and that is one that would have provided for personal, individual privacy. I wasn't allowed to bring that up. I wasn't allowed to make it pending, in which case it would have been germane now and in which case we would have been able to vote on it now. I was kept from doing that. That is because somebody intends to give this bureau unlimited power to snoop. It is going to be devoted to snooping into personal records. My amendment very simply would have prevented Big Brother from looking over your shoulder at your personal financial records unless you give permission.

Part of what we want to do is, if you are having a problem with your credit card company, we are hoping there is some way to fix it. Sometimes that happens in your State, but it doesn't always happen in the State. So the way this was sold is if you are having a problem with your credit card and you get ahold of this bureau, by golly, they will straighten it out. They will be looking at your records whether you have a problem or not. Maybe they are going to decide whether you have a problem or not. There is no real jurisdiction in here. There are 268 pages, but it doesn't say exactly what this outfit is going to do and they get to write their own rules and nobody gets to oversee the rules. Then they enforce those rules, and there isn't any real limit on that except for the amount of fines they can charge, which they mention, and they are pretty drastic anyway.

So your bank is going to have to keep your records for 3 years, and they are going to have to send them to this bureaucracy. I will point out some other things they are going to require with your personal accounts. It should have been in there.

When I was talking about this, I picked up several people on the other side of the aisle. It would have been a bipartisan amendment that I am sure would have passed, but it created a little concern over there, so they came out with their own version of the privacy amendment. Mine was a mere couple sentences long; theirs was considerably longer than that. But mine did something, theirs didn't. So I proposed an amendment to protect consumer privacy to give each of us a choice in how little or how much financial data the Federal Government and this bureau would be able to access and if we wanted their help. My amendment very simply prevented Big Brother from looking over your shoulder on a daily basis at your personal financial records.

Rather than fixing the problem, I mentioned this side-by-side amendment, No. 4082, that makes the government intrusion even worse. Under that privacy amendment, it didn't do anything to stop the so-called Consumer Financial Protection Bureau—I think it ought to be called the Consumer Financial Control Bureau—from snooping wherever they want. In fact, your bank, as I mentioned, would have to send them records.

I wish to be a little bit more specific. I will explain why the Dodd amendment is worse than the underlying bill because it tries to trick the people with the promise of privacy and, at the same time, uses weasel words to comb through your personal lives anyway. I will lay out how the Federal Government will be watching over your shoulders with freedoms just slipping away a little at a time.

The underlying bill and the Dodd amendment both use slippery sleight of words, but this isn't some magic trick that will suddenly disappear. No, my friends, this would be one of the sickest jokes you can imagine.

I stand before you to educate the people of America about the fallacies in this underlying bill. I stood before my colleagues a few days ago saying that I recognize some consumers out there may want the government in their lives monitoring their transactions. I still do not claim to understand that desire, but my amendment would not take away their choice in the matter. In fact, my amendment would allow me as a consumer—if I get into credit card trouble and want the bureau's help, all I have to do is contact the bureau and give them permission to look at my financial documents. People who are having problems with the Federal Government get ahold of our staff people in our State all the time so we can work on straightening out that problem with the Federal Government. But you know what. You better have them sign a privacy release or you could be in big trouble. This bureau isn't going to have to get a privacy release. My amendment would give consumers the ability and the personal option. As long as the bureau has written permission from a consumer, they can look at the financial past, present, and future. Without my amendment, they can look at your financial past, present, and future without your permission.

I am adamantly opposed to this privacy amendment that was drafted by the other side. It paves the way for a radical shift away from your right to privacy. I hope you will take a few seconds necessary to read the two-page amendment, No. 4083, the side-by-side to my privacy amendment. If you do, you will instantly notice the weasel words in this amendment. That amendment and the underlying bill promote yet another government takeover of another portion of our lives. They want to take over how we spend our money.

Think of all the takeovers there have been in the last year and a half. This one is the big one—your finances. The American people have had enough government takeovers already, and I don't think they will stand for the Federal Government accessing one more facet of our lives. Although I respect my colleague from Connecticut and the other people on the other side of the aisle, this version of sham privacy would actually encourage a takeover of your finances behind your back or merely in the name of protecting us from ourselves. As I mentioned, one-third of this bill is devoted to snooping into records. This bill was supposed to be about regulating Wall Street. Instead, it is creating a Google Earth of your every financial transaction. That is right. The government will be able to see every detail from the 50,000-foot perspective or they can look right down into the tiny details to the time and place where you pulled cash out of an ATM. The real kicker is, despite claiming the Dodd amendment creates privacy protection, it doesn't do anything to stop this snooping into individuals' lives.

Yesterday, I read an article in the Philadelphia Enquirer from former Senator Rick Santorum, who is a former colleague of mine from Pennsylvania. In this article, he talks about the lack of reform of the housing markets and more specifically how the greatest contributors to the collapse of the housing market—the GSEs, Fannie Mae, and Freddie Mac—have gone untouched and unreformed in this bill. We had a discussion on that in the Budget Committee. We had a little amendment that would have made sure the liabilities of Fannie Mae and Freddie Mac would show up on the Federal financial statement because the Federal Government is liable for them. The answer was: Well, we can't take it off their balance sheet and put it on ours because that would make them look good. I said: Oh, no, no. You wouldn't take it off theirs. It would be a consolidated statement. It would show up on both of them. But what the Federal Government owes ought to be clear—not that we do good governmental accounting around here.

This bill even leaves their $800 billion spending ability intact for Fannie Mae and Freddie Mac.

So then Senator Santorum asked if Fannie and Freddie had gone untouched and this entire bill was meant to rein in Wall Street—''What is the 1,565-page''—looking at the printed copy on our desks—''financial reform bill that's up for a vote this week in the Senate?''

He says:

> My favorite among the bill's assaults on free enterprise—and, more important, individual liberty—is the proposed Consumer Financial Protection Bureau. This latest concept to come from the Obama administration's ivory tower types is not your run-of-the-mill bureaucracy. The theory behind it is behavioral regulation.
>
> Let's talk about that a little more. Behavioral regulation is studying human behavior interactions and habits such as how we spend our money, go about our daily lives, so humans can be better governed, ruled, or controlled. You can pick your verb, but no matter what, this ''behavioral regulation'' sets up the government to interject and use its strong arm in our daily financial transactions.

To continue with the Senator's article, he says:

> The academic-turned-bureaucrat who came up with the bureau is Assistant Treasury Secretary Michael Barr, who has penned such articles as ''Behaviorally Informed Financial Services Regulation.'' Wonder what might be in store? Think czar for checking accounts and credit cards. According to Barr himself, '' . . . regulatory choice ought to be analyzed according to the market's stance towards human fallibility.'' That's right: He thinks our market-based economy is composed of businesses designed to bilk people by exploiting their flaws. I assume his research shows that government bureaucrats don't share that human fallibility.

Let me say that again. He talks about business trying to bilk people, but evidently his research doesn't show that government bureaucrats would have that same potential flaw.

Continuing:

> How would the Consumer Financial Protection Bureau come to know you and what financial products are best for you? It would be given the power to collect information on businesses and individuals. It would even be able to require you—

Now listen carefully to this—

> It would even be able to require you to answer questions under oath about your personal finances.
>
> Barr and his nanny-state administration colleagues are working to require that some banks ''geo-code'' deposits to allow tracking of their origins and provide other information about their accounts. Think Google Earth for all our personal financial transactions. I hope the data are more secure than the Department of Veterans Affairs.
>
> While the President has deceptively characterized this debate as being about Wall Street vs. Main Street, congressional Democrats have refused to police their side of the street—Fannie and Freddie. Instead, they continue to deny public opinion and push a bill that will further expand government, invade our privacy, and assume even more control over our lives.

That is the end of the quote from former Senator Santorum.

Think about this: The Federal Government would now be allowed to collect all kinds of financial data about consumers, not just about potentially deceptive practices or even shady Wall Street actions but, more specifically, monitoring how we as consumers do our banking, how and why we purchase products, where and when we pull $20 out of the ATM. I ask you: How does this snooping into our daily personal lives protect consumers? This bill was sold to the public as a way to rein in Wall Street, but near as I can tell, this one section that we haven't talked much about is the perfect excuse for Big Brother to worm his way even further into our lives and our privacy.

I now wish to read two paragraphs in the underlying bill. These paragraphs are from the misnamed ''Consumer Protection'' title X. On page 1,239, section 1022(c)(4)(b)—isn't that fascinating—it says:

The Bureau may: (B) require persons to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe, by rule or order, annual or special reports, or answers in writing to specific questions, furnishing such information as the Bureau may require.

The reference on that was section 1022(c)(4)(b), which in the printed copy is on a different page than the page I stated. It is closer to the beginning of the section.

So the paragraph I just read says the bureau can gather and comb through your financial information ''as the Bureau may require.''

Remember, I said they get to set their own rules. Nobody approves their rules. They do the enforcement. Nobody is over them in enforcement.

So continuing on to the following paragraph (c), which is on page 1,240 if you are looking on the computer:

The Bureau may: Make public such information obtained by the Bureau under this section, as is in the public interest in reports or otherwise in the manner best suited for public information and use.

In case you missed the implications of this, I will spell it out further. Not only does the bureau have the power under this bill to make consumers testify under oath, the bureau could then publish any or all information they have gathered about consumers and publish or use this information as they see fit.

In reality, this bill encourages consumers to rely on government to protect us from ourselves, from bad decisions we make, instead of empowering personal due diligence. We have the inherent freedom in this country to make choices and even the freedom to make bad choices. In America, that is the way it works, and that is how it is supposed to work.

I went to an honor flight yesterday for Wyomingites who fought in World War II, to visit their memorial—it was very late in happening—and all of them are over 80 years old. They are paying more attention than they ever have in my lifetime to what is going on in the Federal Government. They had questions about what is going on here. They said: You know, we didn't fight for that. We fought for freedom.

This bureau may create some much needed protections for consumers, but it goes too far. Without my amendment, the bureau will be required to collect daily transactional financial services information on every consumer. The government would see every time you need money or buy anything online, if they want to.

I offer another choice to my colleagues and the people of the United States. This choice allows consumers to let the bureau into their personal lives if they so choose. I am hoping that before this comes back from conference committee, they build privacy into section 10. They really need to. If there was going to be a managers' amendment, it wasn't going to have the privacy piece. But there is not going to be a managers' amendment now because we are limiting amendments because this is taking so long. There are 1,408 pages, and it ought to take a while to talk about this.

I had a visit from the economic adviser of the President, Mr. Summers. I just talked about this section. He said: No, no, no, this will work like the FDA and OSHA.

I know people aren't too pleased about OSHA, but I couldn't buy that argument because I am ranking member on the HELP Committee. OSHA is under us and FDA is under us. We know about oversight and who has control and who writes the regulations and who gets to oversee the regulations and, just as important, where they get their budget, the appropriations, the money to operate.

Remember, I said this one is going to get 12 percent of the operating revenues of the Federal Reserve. That won't show up in the score because the Federal Reserve is over on the side. The amendment we had to have an audit of the Federal Reserve—which is probably long overdue—will show that. But it won't show up in the score because they are spending it before it comes into the Federal Government's budget. But it will reduce the amount of money that comes to the Federal Government. So it will add to the debt and the deficit.

I think we ought to require this new bureau—new bureau? How many people do you think they will hire? In the health bill, we gave permission and I guess it is for IRS agents to look at who is buying insurance and who is not and whether they are buying the mandatory insurance, the mandatory minimum we put on there—we hired 16,000 IRS agents. That is where the growth is in the job market. It is still stagnant, but we are adding a lot of government employees—16,000 IRS agents—to see if you are buying the right kind of insurance or paying a fee if you don't.

Well, that is minor in light of this one. We didn't even say how big this bureau could be. We didn't limit their money. We didn't say we would ever look at anything they do. I am sure we are going to have to because we are going to have people from all over this country yelling and screaming about somebody getting into their pockets.

I urge my colleagues to consider the amendment I have offered when they get to conference committee. I am certain they are going to make a conference committee or I hope they have a conference. There are still problems in every single section, and maybe they can solve some of them.

The way we do it now is we lay down a bill and say: This is the way it is going to be. If you want to make a little tweak, OK, but don't count on making any major changes.

When Senator Kennedy and I worked on bills, we went through the committee process, and we looked at every amendment that came in, recognizing there was this seed of an idea there that maybe needed to be included in the bill. The whole thing might not work, but there ought to at least be a seed there because somebody thought of a way the bill ought to be improved.

We have eliminated that this year. Now we are going to take it to the floor, and if you want to try to make an amendment, you can. But remember, we have the majority of the votes, and we will put a 60-vote threshold on it, which means neither side will be able to do many amendments, and that has been shown here. Immediately, we will complain about how much time has been taken to debate this bill. Let me tell you, a whole lot more time should have been taken to debate this bill, and more amendments should have been looked at with this bill. We might have made a unanimous consent that they all had to be relevant, but we should have considered the relevant ones and not gone off into different areas.

A lot of people are complaining about this. They have looked at their part of the bill, and they know it is going to damage their business. That is why there was the amendment to fix things for the auto dealers. That is just one small part of people who do things on a series of payments. An orthodontist talked to us, and they do dental work over a period of time and take payments. I don't know if that will be possible anymore. We are not going to exempt anybody; we are not going to exempt any individual. They are all going to be required to pony up and show what they have, no matter how personal their finances are to them.

I ask my colleagues and all Americans to think about what this amendment and underlying bill will do to their privacy. To my colleagues especially, your constituents will not stand for this invasion of privacy or these sham attempts at privacy. Do them a favor: let them make their own choices about who can get in their bank accounts and who can't.

I don't very often get upset. But I am upset. I think I am just a reflection of the average person out there—the average person who might have looked through a little bit of this, and they can do that on the computer now—and they expect us to read it, and I expect a lot of people have not read title X. If they did, I think they would be just as upset as I am—all 268 pages of it. A brandnew bureau, new bureaucracy, total autonomy, funded by the Federal Reserve, as I mentioned—12 percent of their operating revenues. Does anybody know how much that is? Again, they do that so it is off budget. The Federal Reserve will not have any control over this outfit. It is just under there for the purpose of the money.

Here is another thing that fascinates me. If they have revenue left over at the end of the year, they get to invest it. It doesn't say we can look and see how much they have and how much they are investing and how much autonomy they have because of the money they banked. It doesn't say that if they have excess money one year, the amount they will get will be less the next year. No, they are guaranteed 12 percent the next year, plus inflation. I don't know how we write bills like that.

They have the exclusive enforcement authority. They can coordinate examinations with other regulators, but they are the primary enforcement authority, not anybody who might have some oversight. They are the primary authority, and you will find that on page 1103 of the hard copy.

Let's see. At first, when you are reading this section, you think this is just going to cover banks that have over $10 billion. That is page 1101. Then you think, I don't have very many banks over $10 billion, and I am for small business anyway. So my community banks and credit unions are going to be OK. Then you get to page 1110, which says the rules cover everybody under $10 billion. Let's see. If it covers everybody over $10 billion and everybody under $10 billion, with my math, that is everybody. Everybody is going to be controlled by this new consumer protection bureau. It really ought to be called a consumer control bureau.

Well, let's move to page 1139, the mortgage loan disclosure document. You are going to get another disclosure document now when you buy a house. We get to oversee the director, but that is the last oversight we get. He gets to hire anybody he wants. Then he gets—if he gets around to it—to write rules and regulations and make up a new mortgage loan disclosure document. You don't have any obligation to maintain personal records—1141. They are going to look at them, and you are going to want to answer when they do that.

Page 1145 is going to provide a private education loan ombudsman. Normally, that sounds good. This would be somebody who straightens things out, I guess, with your loan operator or maybe even with the consumer protection bureau that will have all this control over you. Page 1146 says the ombudsman evaluates his own effectiveness annually. How zealous is he going to be?

I have a whole list of things here I won't go into. My time is up. I should have asked for my whole hour under postcloture. Look at this bill, and you will be just as upset as I am.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I rise to talk about a bipartisan amendment I have spent many weeks working on with Senator BROWN of Massachusetts. It is an amendment dealing with a very crucial issue—a major gap in our system of financial regulation. It has been approved by Senator SHELBY, the distinguished ranking Republican, and also by Senator DODD. In fact, I think it is fair to say that if we can get a vote on it tonight, it would have enormous bipartisan support in the Senate.

I am concerned that we won't get a vote on amendment No. 3982, and as a result it is very likely this bill will pass.

After all the problems the country has seen with these large banks and large financial institutions, it still will be possible for a bank to sell a product to an institution or a consumer, bet against that product, and it will not be disclosed to the buyer. That is not right.

What Senator BROWN and I have been able to do, working with Senator SHELBY's very capable staff and Senator DODD's very capable staff, is we have been able to put together a bipartisan amendment—the new Senator from Massachusetts and myself—that would close this loophole, that would ensure there is at least simple, garden-variety, basic disclosure so that someone purchasing one of these financial products would know that the seller is actually betting against the product that is being sold to the consumer.

If I were to sell you a financial product and without your knowledge placed a separate bet that the product would decline in value, there is no question in my mind that the distinguished Presiding Officer, the Senator from Illinois, would feel wronged by that transaction and everyone would say: Rightly so. If I stood to gain by convincing my clients to buy something that I knew would fail, they would have every reason to feel betrayed, to feel swindled, to feel they had been had.

The fact is, some of these major financial institutions invented and sold incredibly complicated financial products that they actually were hoping would fail, and they hid their positions behind a wall of omission and complexity.

I think it would surprise most Americans to learn that somehow this kind of mischievous—actually devious—business behavior was actually legal. The tragedy, of course, is it may be legal but it is certainly not right.

At present, under current law and if this bill clears the Senate tonight in its current form, the major financial institutions, these Wall Street banks, would not be required to disclose an absolutely essential piece of information to a client, what, in my view, would be a material conflict of interest.

From everything I have heard, the folks on Wall Street see these transactions in which a bank constructs and invests in a financial product that is designed to fail and then markets this product to those with an interest in its success as an honest transaction. Boy, I do not know of anybody at home in Oregon who sees something like this as honest or, in light of the recent hearings, fabulous.

Senator BROWN of Massachusetts and I said: We are going to get together on a bipartisan basis and do something about it. We put together an amendment, which I wish to point out to colleagues tonight is acceptable to Senator SHELBY, is acceptable to Chairman DODD. We are getting ready to vote on an amendment where we have bipartisan Senate sponsorship, we have the very constructive and very valuable input of Senator SHELBY's staff, and we have Chairman DODD's involvement. If we got it before a vote, we would have an overwhelming, bipartisan vote for a simple proposition that everybody can understand on the streets of Illinois, Oregon, or anywhere else, and that is, you ought to disclose when, in fact, you are selling a product that you are betting against.

The disclosure of conflicts amendment I am describing, coauthored by Senator BROWN of Massachusetts, would direct the new financial stability oversight council, which is established in the underlying bill, to put forward rules requiring banks to disclose to their clients whether they have a material conflict of interest with respect to a financial product they are selling. It comes down to a simple proposition: If these firms are willing to create and sell these products, they ought to stand behind them and be honest with their clients. It is a very short amendment.

On Main Street, all across the country, everybody would understand what the bipartisan amendment that Senator BROWN and I are offering—disclosure. We are not saying we are going to ban all of these sales. Colleagues made a very compelling case, by the way, on going further than we do. But certainly there ought to be disclosure. We want to bring greater honesty and transparency to the relationship between buyers and sellers of complicated financial products.

It is fair to say—and I surely consider myself a market-oriented Democrat. That is what I tried to do on health care and what I continued to try to do in a bipartisan proposal with Senator GREGG to fix our tax system—you cannot have functioning markets without honesty and transparency. Without it, we end up with a game that is rigged against the typical American investor and taxpayer.

I also wish to express my appreciation to my new colleague from Massachusetts for working with me to advance this simple and straightforward proposition. As I stated, I am very appreciative of Chairman DODD and Senator SHELBY and their counsel with respect to our bipartisan idea.

I also want to make it clear that I do not see a problem with financial firms taking steps to manage their risks. In fact, I encourage it. If firms had done so in the early part of this decade, our economy might not have suffered in the meltdown we have seen in financial services.

My concern—and I see the chairman of the full committee, Senator DODD, in the Chamber—my concern from the very beginning, as Chairman DODD has done his very good work on this legislation, is the opaque nature of these transactions. The fact is, it is so hard for the American people and the purchaser to understand what these transactions are all about, and certainly they ought to be given information when the person selling it is taking a very different financial position than the person who is buying.

We ought to turn this curtain back on the current financial model and show it to the rest of the country. Let's pull the curtain back on the Wall Street business model and show it to the rest of the country.

I have wracked my brain to try and find another industry that would bet against their own product while selling it to the American people. Does the person selling me a toy for the Wyden twins stand to make additional money if the toy breaks? Obviously not.

Mr. President, I ask unanimous consent for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator still has 30 seconds left on his original time.

Mr. WYDEN. Mr. President, it is obvious that in no other part of the American economy do we have people betting against their own product while selling it to the American people. You do not see Apple creating the iPod in the hope that sales will be far below expectations and then going out and betting some of its own money on the failure. No industry—none—thinks of betting against their own product while selling it to the American people. I do not even think that owners of racehorses bet against their own ponies.

The kind of disclosure that Senator BROWN and I have called for is fundamental for investment confidence in the integrity of the U.S. financial system. If financial firms can market products they are betting will fail without disclosing that to their clients, the conditions that caused the current financial crisis, in my view, will be recreated with Wall Street firms packaging up toxic assets and marketing them as securities to unsuspecting buyers. ''Buyer beware'' will again become ''taxpayer beware.'' That should not be acceptable to any Senator.

I know colleagues are waiting to speak. I repeat, amendment No. 3982, authored by Senator BROWN of Massachusetts and myself, will fill a loophole in this bill that is going to be passed tonight that, in my view, is a glaring omission that does not meet the test of the consumer protection the American people deserve.

This bill is clearing the Senate tonight without even minimal consumer protection, without even disclosure of financial institutions betting against products they are going to sell. That is not right. I hope we will return to this subject as soon as possible.

I see Chairman DODD on the floor. I thank him for the time he has given me in the course of this legislation. I commend him for all his efforts on this bill.

I also thank Senator SHELBY and his very able staff director, Mr. Duhnke, whom we know from our Intelligence work, for their support in putting together this amendment. I surely hope it will come out of conference because the American people deserve this kind of consumer protection and this kind of disclosure.

I yield the floor.

EXEMPTIONS

Mr. DODD. Mr. President, it is my understanding that one of the reasons for providing the Federal Reserve Board, and, eventually, the bureau, with authority to provide exemptions under paragraph (7) of this new section 129(l) of the Truth in Lending Act, is to allow the regulator to make adjustments to the points and fees cap with respect to smaller loans. I further understand that it is not the intent of the new section 129(l) to cover a streamline refinancing as provided by government programs such as FHA, and that the Board/bureau will establish appropriate guidelines for exemption. Is this view correct?

Ms. SNOWE. Mr. President, I want to associate myself with the words of Chairman DODD. There are a number of lenders in Maine that make smaller size loans. Because the points and fees cap in the Merkley-Klobuchar amendment, which I supported, is based on a percentage of the principal amount of the loan, the points and fees cap established in the amendment may limit the ability of some lenders to make smaller-size loans. As a result, like Senator DODD, I assume that it is the Senator's intention that the regulator use the authority to make adjustments to the standards in the case of these smaller loans. Is this correct?

Mr. MERKLEY. Mr. President, the points made by my colleagues from Maine and Connecticut are correct. The purpose of the amendment is to ensure that consumers are sold loans that they are able to repay. The authority granted to the agency to prescribe rules establishing other criteria—and to ''revise, add to, or subtract from'' the existing criteria—relating to the presumption of compliance is intended to allow the agency to craft criteria that would permit lenders who extend low-dollar loans to meet the presumption of compliance, while promoting fair pricing and sustainable lending. This is particularly important in rural areas and other areas where home values are lower.

Mr. President, the gentleman is also correct in regard to streamline refinancing under rules of the FHA, the VA, and other government agencies. It is intended that the Federal Reserve Board, or the bureau, will exempt such loans under the exemption authority of paragraph (7)(A).

Mr. DODD. I thank the Senator very much. I agree with the Senator.

Mr. KOHL. Mr. President, I understand that it is not the intent of paragraph (6)(C) of this new section 129(l) of the Truth in Lending Act to include regular periodic mortgage insurance premiums that are paid after the closing date in meaning of ''points and fees payable in connection with the loan.''

Mr. MERKLEY. The gentleman is correct that we would expect the Federal Reserve Board, and, in time, the bureau, to exempt any mortgage insurance premiums that are required to be paid after closing that might otherwise be covered, consistent with the exemption authority under paragraph (7)(A). Post-closing mortgage insurance premiums are distinct from points and fees charged at the time the loan is obtained, and those post-closing premiums are not contemplated to be covered under this section.

Mr. KOHL. I thank the Senator very much. I agree with the Senator.

SC ACCREDITED INVESTORS

Mr. BEGICH. Would the distinguished chairman of the Banking Committee yield for a question on provisions of the bill relating to SEC rules on ''accredited investors.''

Mr. DODD. I would be happy to yield for a question.

Mr. BEGICH. Section 412 of the legislation requires the Securities and Exchange Commission to conduct a rulemaking to implement changes to the definition of ''accredited investor'' in regulation D, and other sections of the legislation will require the SEC to conduct other rulemaking to implement the new law. It is my understanding, and I believe the understanding of my colleague from Alaska, that the SEC has authority under existing law to amend the definitions of ''accredited investor'' in Regulation D and related SEC rules and ''qualified institutional buyer'' in rule 144A under the Securities Act of 1933, to expressly include Federal, State and local government bodies within those definitions. In fact, the SEC proposed to do so in 2007 but has not completed that rulemaking. Does the Senator from Connecticut concur that the SEC already has the authority to amend these definitions?

Mr. DODD. The Senator from Alaska is correct. The SEC certainly has existing authority to add State and local governments to the definitions of ''accredited investor'' and ''qualified institutional buyer'' under its Securities Act rules.

Ms. MURKOWSKI. Would the Senator from Connecticut yield for another question?

Mr. DODD. I would be happy to yield for a question.

Ms. MURKOWSKI. Our State—the great State of Alaska—believes that it would be appropriate and in the public interest and, in the interests of State and local governments across the Nation, for the SEC to add governmental entities to the definitions of ''accredited investor'' and ''qualified institutional buyer'' when it promulgates rules pursuant to this legislation. The reasons for including governmental entities in these definitions are as sound today as they were 3 years ago. In particular, governments are large and sophisticated investors with professional treasury management staffs that manage large amounts of the government's own money and seek to invest in bonds and other securities investments in order to prudently diversify their investment portfolios and obtain a favorable return. Many of the most attractive investments are offered only in private placements to institutional investors conducted under regulation D or rule 144A. Without access to these investments, the government earns a lower return and has less diversification in its investments than would be optimal. Does the chairman agree with us that when the SEC promulgates its rules under this legislation, it should address, while taking care to ensure appropriate minimum asset protections are in place, the inclusion of State and local governments in the definitions of accredited investor and qualified institutional buyer?

Mr. DODD. I believe it would be appropriate for the SEC to take the opportunity presented by the rulemakings under this legislation, to consider whether to include State and local government bodies within those definitions.

CREDIT SALES

Ms. SNOWE. During the Senate's consideration of this legislation, I authored an amendment approved by voice vote to confirm that small business merchants and retailers would not be subject to regulation by the Consumer Financial Protection Bureau, CFPB, when they engage in credit sales. This amendment was supported by a number of key small business stakeholders, including the National Federation of Independent Business, IBNF, and the U.S. Chamber of Commerce. The amendment included a three-prong test that excludes such entities from the CFPB when they (1) only extend credit for the sale of nonfinancial goods and services; (2) retain the credit they have extended on their books; and (3) meet the relevant industry size threshold to be a small business, based on annual receipts, pursuant to the Small Business Act. It is my understanding that wholesale merchants and distributors and manufacturers would not generally need to avail themselves of that exclusion because their sales of nonfinancial goods and any related financing they may provide, are not to consumers in the first instance. Is this view correct?

Mr. DODD. I believe point of the Senator from Maine is well taken. Wholesalers and manufacturers do not provide any products to consumers for their personal, family, or household use, let alone consumer financial products or services. Thus, wholesalers' and manufacturers' sales of nonfinancial goods to other businesses would be outside the bureau's jurisdiction.

Mr. LEVIN. Mr. President, I would support the Feinstein amendment No. 4113 to close the London loophole. Senator FEINSTEIN and I and other colleagues have been working together for years to put a cop back on the beat in U.S. commodity markets, and it is a pleasure to be here today at the verge of Senate approval of a bill that has so many strong disclosure and regulatory provisions for commodity markets. The prices paid for energy commodities like oil, natural gas, jet fuel, diesel fuel, not to mention food commodities like wheat, corn and soybeans have a profound impact on our economy, our markets, and our way of life. They matter to consumers, business, and governments. For too long, our commodity markets have been out of control, with undisclosed trades in unregulated markets, wildly gyrating prices unconnected to market forces, and unconscionable profits for commodity traders operating outside the real economy. This bill will go a long way toward rectifying those problems, and I commend Senators DODD, REED, LINCOLN, and so many others for their hard work.

The amendment introduced by Senator FEINSTEIN focuses on an area that has long concerned me and other observers of the commodity markets—the way that commodity traders living right here in the United States are using terminals located here to trade U.S. produced goods on foreign markets outside of U.S. regulatory control. I am talking, for example, about U.S. West Texas Intermediate crude oil traded on the ICE exchange in London. That oil is produced and used right here—it never leaves our shores—but U.S. traders are trading its oil futures in London—in part to duck U.S. position limits and other regulatory controls. Other countries are trying to set up similar exchanges and win permission for U.S. traders to trade on their foreign exchanges, affecting U.S. commodity prices, without those commodity traders ever leaving our soil.

The bill as currently drafted takes a number of steps to get foreign boards of trade to enforce the same rules for U.S. commodities that we have here at home. But the bill fails to take one critical step that is essential to U.S. enforcement authority—it doesn't require foreign boards of trade to formally register with the Commodity Futures Trading Commission or CFTC, our watchdog agency for commodity markets, in order to obtain approval for their trading terminals to be physically located here in the United States. Most of the CFTC's enforcement authority applies only to entities that are registered with the Commission. Right now, foreign boards of trade don't have to register here before installing trading terminals here. That constituted regulatory evasion and defies common sense.

I know my colleagues want a cop on the beat in all commodity markets where U.S. commodities are traded. And they want a cop that can enforce the law to prevent excessive speculation and market manipulation. That means we need to require foreign boards of trade seeking to locate trading terminals here in the United States to register with the CFTC. It is straightforward, it is simple, and it is essential. The CFTC has asked for this registration requirement, and I commend Senator FEINSTEIN for her determination to get this done. I urge my colleagues to vote for this amendment to ensure U.S commodities are traded on fair and open commodity markets free of excessive speculation, manipulation, and deception.

Mr. FEINGOLD. Mr. President, there were two amendments I supported during debate on the financial reform bill that would take steps to improve our Nation's housing policy. Unfortunately, only one of these amendments was adopted by the Senate. Senator MCCAIN offered an amendment, that I supported, that would have required the Federal Government to end its conservatorship of Fannie Mae and Freddie Mac 2 years after the financial reform bill was signed into law. While the amendment was not perfect, I supported it because neither the current structure of Fannie and Freddie nor the billions of taxpayer dollars that the Federal Government is using to prop up Fannie and Freddie are sustainable. Federal taxpayer support of Fannie and Freddie needs to end, and the McCain amendment would have provided a timetable for bringing that Federal support to an end.

I was pleased that the Senate did adopt an amendment I supported, offered by Senator MERKLEY, to curb predatory lending practices throughout the Nation. These unconscionable predatory lending practices contributed to the subprime housing mess, and the Merkley amendment included commonsense provisions to address some of these practices. Too often, loan originators received higher compensation if they steered borrowers into subprime loans than if they had placed those borrowers into qualifying prime loans. The Merkley amendment would address this perverse financial incentive to put borrowers into predatory loan products by preventing loan originators from receiving payments based on the terms of loans. The amendment, which also includes stronger underwriting standards, provides sensible protections to Wisconsin's borrowers.

Mr. KAUFMAN. Mr. President, I rise today, as I have many times this Congress, to talk about the role of fraud at the heart of the financial crisis.

I have previously discussed the urgent need for law enforcement to give high priority to the investigation and prosecution of financial fraud, and for Congress to provide law enforcement with the tools it needs to do so, including increased funding and stiffer sentences.

I was proud to work with Senator LEAHY last year on the Fraud Enforcement and Recovery Act. I was proud to work again with Senator LEAHY, as well as Senator BAUCUS, the leader, and many others to include key antifraud provisions in the health care legislation signed into law in March.

Last month, I, along with the other members of the Permanent Subcommittee on Investigations, my Senate colleagues, and Americans watching at home, were treated to a truly revelatory series of hearings chaired by Senator LEVIN.

Chairman LEVIN and his staff deserve high praise for their tenacity and diligence: Beginning in the fall of 2008 and culminating this spring, the chairman and his staff reviewed millions of pages of documents, conducted over 100 interviews, and consulted with dozens of experts.

Thanks to the Levin hearings, we now have a thorough accounting of what happened—and what went wrong.

Mortgage origination practices were rife with fraud, and bank management and bank regulators failed miserably in their oversight.

The practice of mortgage securitization allowed everyone in the financial industry to earn lucrative fees and commissions, even though banks knew that these securitized mortgages were filled with liar's loans and other fraudulent products that practically guaranteed their eventual collapse.

At all levels of the industry, compensation structures favored the riskiest loans and the most minimal oversight. As a result, underwriting standards were laughable. Banks didn't care that they were writing bad loans because they did not believe those loans would stay on their books.

The regulators and ratings agencies were totally captured by the banks, due in part to their absolute dependence on the banks for revenue. The Office of Thrift Supervision relied on Washington Mutual for 12–15 percent of its operating budget.

The credit ratings agencies gamed by investment banks, which had reverse engineered their models—bent over backwards to stamp AAA and other investment grade ratings on what was actually junk because they needed the fees.

Investment banks marketed synthetic CDOs, which they had permitted the ''big shorts'' to design so that they were most likely to fail, in some cases without disclosing that material information to their customers and despite their own inherent conflict of interest.

As long as the music played, there was plenty of money to go around. But when the music stopped, banks were bailed out and the American taxpayers were left without a chair.

Fixing the system requires an all out effort by the bank regulators, the FBI, the SEC, and the Justice Department. And Congress should not rest until in its oversight capacity we are convinced that a systemic, strategic and foundational approach to targeting and prosecuting fraud is well funded and well underway.

Bank regulators, especially, must execute a 180-degree cultural turn, assisting the FBI by providing roadmaps to the fraud that has occurred.

But we still need to do far more than just add more cops to the beat and ensure that they're looking in all the right places. We also need to realign incentives so that banks are encouraged to make sound loans, so that credit ratings agencies can dispense untainted evaluations of creditworthiness, and so regulators aren't beholden to those they regulate.

That is why I am proud to support Senator LEVIN's package of amendments. Each of the eight proposals in the package grows directly out of lessons learned through the Levin hearings.

The Levin-Kafuman package will restore regulatory independence by instituting a cooling off period for regulators—putting a stop to the revolving door between industry and regulator. The amendment will also guarantee that the FDIC as secondary regulator can never again be shut out of an examination by the primary regulator.

To realign bankers' incentives, the Levin-Kaufman package will require that anybody who securitizes a pool of loans must maintain at least a 5-percent stake in a representative sampling of those securities. Other risky lending practices would be banned outright, such as synthetic asset-backed securities, which have no purpose other than speculation.

Finally, the package will improve oversight and operation of the credit ratings agencies by prohibiting them from relying on faulty due diligence and by permitting the SEC to monitor and regulate the methodologies that the ratings agencies employ.

The Levin hearings also set in stark relief the untenable conflicts that rest at the heart of our financial system.

The Levin hearings focused on the residential housing market. But conflicts of interest permeate almost every corner of our capital markets, whether in the context of asset backed securities, or proprietary trading, or a broker selling private order flow into a private dark pool, or the prioritization of trades by a broker ahead of its clients.

We simply cannot leave it to the banks and the brokers to manage conflicts of interest in any way they see fit. If we can learn one thing from the financial crisis, surely, it is that.

Under current law, broker-dealers are not required to disclose conflicts of interest to their clients. They are not required to resolve conflicts in favor of their clients. They are not required to act in the best interests of their clients.

In fact, they are permitted to knowingly fleece their clients, provided the client is ''sophisticated'' enough and provided the broker has disclosed the requisite information about the product.

This must change. We can't expect a full economic recovery without restoring the public's trust in markets. This is why I support, and have cosponsored, two amendments that would impose a fiduciary duty on the part of broker-dealers to their customers, one sponsored by Senator SPECTER and the other by Senator AKAKA.

Imposing such a duty would protect investors and improve the level of integrity in our capital markets. No longer would brokers like Goldman Sachs be able to withhold critical information about its conduct from clients and conceal fraud under the cover of caveat emptor.

Just as important, it would help address the widespread and understandable mistrust of the securitization process, which in turn makes capital more expensive and hinders recovery.

I also support Senator SPECTER's aiding and abetting amendment, which would reinstate an important deterrent to the sorts of fraud that contributed to our current financial crisis.

On March 15, 2010, I came to the Senate floor to discuss the Bankruptcy Examiner's report on Lehman Brothers and said—as many of us have suspected all along—that there was fraud at the heart of the financial crisis.

Lehman Brothers could not have accomplished this apparent fraud—the use of so-called Repo 105 transactions to ''window dress'' its balance sheet and mislead investors—without the help of its accounting firm.

And that is true of many sophisticated fraud schemes, where the advice or analysis of third parties enables or facilitates the fraud.

Those third parties were answerable to their victims in court, and therefore faced a real deterrent, at least until 1994. That year, in Central Bank of Denver v. First Interstate Bank of Denver, a divided Supreme Court rejected years of settled precedent and limited Federal law in this area to so-called ''primary violators.'' The Central Bank decision, like many others since, reflected the Court's probusiness bias. It also left the SEC alone to bring civil suits against aiders and abettors, and too often left victims holding the bag.

Regulators will fail. When they do, however, we must depend on professionals such as accountants and lawyers to acquit their roles as gatekeepers against accounting fraud, not to materially aid that fraud. One way to make sure they learn their lesson this time around is to reinstitute the ability of victims to seek compensation from these fraud facilitators.

Senator SPECTER and I have worked hard to make sure that this amendment is narrowly drawn, ensuring that only truly culpable third parties are subject to liability.

The amendment allows suits only against those who have actual knowledge that their conduct is assisting another person to violate the Federal securities laws.

Until those who facilitate the fraud of others understand that they will be held accountable, whether criminally or civilly, we can't hope to change their behavior.

Finally, I want to mention a bipartisan package of antifraud measures that I have worked on with Chairman LEAHY and Senators GRASSLEY and SPECTER.

These measures will deter schemes that damage the economy and hurt hard-working Americans by increasing sentences for securities fraud and bank fraud. They will give prosecutors new tools to investigate and prosecute fraud cases and will foster vital cooperation between regulators and prosecutors. And they will extend important whistleblower protections.

Whistleblowers provide a vital early warning system to detect and expose fraud in the financial system. With the right protections, whistleblowers can help root out the kinds of massive Wall Street fraud that contributed to the current financial crisis.

As I have said before, this is ultimately a test of whether we have one justice system in this country or two. For our citizens to have faith in the rule of law, we must treat fraud on Wall Street like we treat fraud on Main Street. And for our economy to work for all Americans, investors must have faith in the honest and open functioning of our financial markets.

The amendments I have discussed today will promote both the rule of law and faith in the markets two cornerstones of our democracy.

I urge my colleagues to support these amendments.

Mr. President, today I will support the Wall Street Reform Act.

I applaud Chairman CHRIS DODD and my colleagues for having crafted a bill that includes many provisions that I support, in particular the establishment of a consumer finance protection division and urgently needed reforms of the over-the-counter derivatives markets. These are legislative achievements that will significantly improve our financial system. I am also pleased that the bill bans stated income loans, which were a major source of fraud at the root of the crisis. I will be watching carefully to ensure the bill is not weakened in conference.

I remain deeply concerned, however, that when it comes to the stability and health of the U.S. financial markets and its institutions, much unfinished business remains. We must never rest in our efforts to prevent another financial crisis like that which occurred in 2007–08, which shattered the American economy and deeply harmed the lives of millions of our fellow Americans. Indeed, much work remains to be done so that we can restore the credibility of our financial markets and the rule of law on Wall Street, both of which are badly in need of repair.

Some of my concerns are rooted in shortcomings of the bill; others neither fell within the scope of the bill's ambitions nor were a part of the Senate debate; and still others fall legitimately on the shoulders of our regulatory and law enforcement agencies.

As for the bill, for the past 4 months I have addressed at length what I believe to be the central issue to preventing future financial crises: Passing laws that will stand for generations to ensure financial stability by separating speculative risky activities from the government-guaranteed portion of our financial industry, as well as by mandating limits on the size and leverage of our shadow banks.

Instead, the bill reshuffles existing regulatory powers that banking regulators already possessed—and failed to exercise in ways that would have prevented the financial crisis. It relies on regulatory discretion to decide limits on the size, leverage and activities of dangerously concentrated financial institutions. Rather than statutorily limit the size and risk of megabanks through limits on unstable nondeposit liabilities, rather than statutorily impose specific and higher leverage requirements on our largest banks, the bill simply hands the responsibility for regulating ''too big to fail'' banks back to the regulators. Moreover, it vests the hopes of the American taxpayers—who should never again be forced to step into the breach in a banking crisis—in a resolution authority limited by U.S. law, which I fear cannot possibly work to resolve large global institutions. I remain deeply concerned that it does not represent lasting and effective reform of our largest financial institutions, which I have said repeatedly have become too big to manage, too big to regulate and too big to fail.

In the next few years, chastened U.S. regulators may try their best to insist that U.S. megabanks not gorge themselves again on highly leveraged risky investments. But one need only look to Europe today to understand that, without additional preventive measures, bailouts lie in our future, too.

I predict Congress will one day revisit these issues, unfortunately in the wake of a future crisis in which average Americans again will be forced to come to Wall Street's rescue to fend off a possible depression. When that day arrives, Congress I expect will pass needed structural reforms, including a version of the Brown-Kaufman amendment preemptively to address the problem of dangerous financial concentration—and also a restoration of the Glass-Steagall separation of commercial and investment banking activities, the repeal of which in 1999 was one of this country's costliest mistakes.

There are other issues that this debate never addressed.

Naked Short Selling—We still have not restored the uptick rule, which worked for 70 years as a systemic check on predatory bear raids. We still have an unenforceable rule that fails to prevent naked short selling of stocks. I remain concerned that until we impose a pre-trade ''hard locate'' requirement, bank stocks in particular will remain vulnerable to predatory bear raids.

Market Structure issues—High frequency trading has echoes of the derivatives market: I have said repeatedly that whenever you have a lot of money pouring into a financial activity, markets that are changing dramatically, no transparency in those dark markets, and therefore no effective regulation, that is a prescription for disaster. That was the case in the over-the-counter derivatives market. And I believe the so-called flash crash of May 6 in our stock market revealed the fault lines that have long concerned me about the structure of our equity markets and how it has come to be dominated by high frequency traders. Congress cannot simply look backward at the last financial crisis; Congress and regulators alike must instead try also to look over the horizon and identify systemic risks before they occur.

As I wrote to the SEC on August 21, 2009, ''The current market structure appears to be a consequence of regulatory structures designed to increase efficiency and thereby provide the greatest benefits to the highest volume traders. The implications of the current system for buy-and-hold investors have not been the subject of a thorough analysis.'' Nine months later, our stock markets failed for 20 minutes to meet their essential function: discover the prices of securities by balancing buyers and sellers. Two weeks later, the SEC and CFTC still cannot say why, but the answer is no doubt wrapped up in the fact that in the past few years technology developments have moved us rapidly from an investor's to a trader's market. Our fragmented market of more than 50 market centers have become dominated by black-box algorithmic and high-frequency traders, and they are too opaque for our regulators to understand or to police.

Fannie Mae and Freddie Mac—My Republican colleagues are correct in pointing out that we must deal with the problems of Fannie Mae and Freddie Mac, which continue to siphon off billions in taxpayer funds. It is wrong and irresponsible to offer rash and unwise solutions, however. Almost all mortgage originations currently receive government support, whether from Fannie Mae or Freddie Mac or from the FHA. Lest there be any confusion, without this government backstop, our housing system and economy could have collapsed. Solving these problems and developing a new mortgage finance system will take a great deal of thoughtful consideration, and I urge the Congress to begin this important work.

Finally, and perhaps of most concern, we simply must concentrate the needed resources and effort that will return the rule of law to Wall Street. The hearings of the Permanent Subcommittee on Investigations, chaired by Senator CARL LEVIN and in which I was proud to participate, revealed that the U.S. real estate boom was fueled in part by pervasive fraud within the mortgage-securitization-derivatives complex effectively at the heart of Wall Street. Congress in its oversight capacity must ensure that bank regulators, the Federal Bureau of Investigation, the Securities and Exchange Commission and the Justice Department are working together in a foundational, strategic, and coordinated fashion to ensure that every last perpetrator of fraud—from the smallest mortgage broker to the senior-most executives of our most powerful Wall Street institutions—is thoroughly investigated and, where appropriate, brought to justice.

Mr. KERRY. Mr. President, in order to protect the economic health of our Nation and the security of the financial system on which it depends, I will support the financial reform legislation before the Senate today. I want to thank Majority Leader REID and Senate Banking Committee Chairman DODD for their efforts to bring to the floor legislation that is so critical to our Nation's prosperity.

Over the past decade, the greed on Wall Street has destroyed millions of jobs and wiped out the life savings of too many Americans. That greed turned our Nation's financial markets into a casino where fairness and full disclosure were lost in complexity of riskier and more lucrative new financial products. Unfortunately, even those running the casino didn't understand the dangerous hand they were dealing to unsuspecting consumers.

As a result, American taxpayers had to bail out the big financial companies that made the mess. It didn't seem fair and nobody liked it, except those getting the bail out. But it had to be done in order to stop the economy from going over the cliff not just ours but the whole global economy.

It all started in 2008 with the Federal Government stepping in to prevent financial institutions, investment banks, mortgage providers, and insurance companies from going under. Even though these steps were necessary, they certainly reinforced the view of many Americans that bad behavior was being rewarded with taxpayer bailouts.

The experience made it clear that Congress needs to update our outdated financial regulatory scheme and reestablish transparency, fairness and long-term stability to our financial system.

We have an obligation to restore responsibility and accountability to our financial system to insure this never happens again. We have got no choice. Strong medicine is needed to avoid a future economic catastrophe.

I believe this critical legislation will reign in Wall Street, create jobs on Main Street, and protect consumers from fraud and abuse. It also will help restore confidence in our capital markets and our financial institutions.

We have to make sure that taxpayers never again pick up this tab. And this bill does just that.

Under this legislation, firms that are supposedly ''too big to fail'' can be shut down and liquidated before their systemic failure endangers our financial markets. No more taxpayer bailouts that increase our Federal debt.

The Financial Reform Act creates the Federal Stability Oversight Council to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the economy. It also imposes new capital and leverage requirements that make it more difficult for financial companies to become ''too big to fail''. It will require such companies to periodically submit so called ''funeral plans'' for their rapid and orderly shutdown should they fail. And those who fail to submit acceptable plans will be subject to higher capital requirements as well as restrictions on growth and activity.

A critical part of this legislation deals with the costs of future bank failures. There is no rationale for banks to continue gambling with taxpayer-backed funds in the stock market or anywhere else. I am pleased the bill includes a recommendation from the Obama administration, called ''the Volcker rule'' after the former Federal Reserve Bank Chair and current National Economic Recovery Advisory Board Chairman, Paul Volcker. The Volcker rule will stop financial institutions from using their assets to invest in the stock market or engage in privately owned trading operations, unrelated to serving customers for its own profit. Banks can once again focus on lending, especially to small businesses, which is why they receive special access to the Federal Reserve in the first place.

Some of the things that have happened on Wall Street are unbelievable. For example, the Securities and Exchange Commission alleges that that Goldman Sachs worked with a third party, Paulsen and Company, to select pools of subprime mortgages sold the securities to investors without telling them they were designed to fail. Then both Goldman Sachs and Paulsen bet against those securities. How can that be fair?

Over the past decade, irresponsible lending, irresponsible borrowing and a lack of basic oversight and effective regulation put millions of families in homes they could not afford. Too many Americans took unreasonable risks to buy a home when markets were booming. Too many financial institutions lowered their lending standards but didn't plan appropriately for increased risk. At the same time, some borrowers inflated their incomes and misrepresented themselves in order to buy expensive homes that they could not afford.

The damage has been staggering. Millions of homeowners are facing foreclosure. The loans financing these homes are now frozen on the balance sheets of banks and other financial institutions, preventing them from providing new loans. Today we are living with the consequences: an economy teetering on the edge.

One of the most importation provisions of this legislation sets up a new independent Consumer Financial Protection Bureau to protect consumers from unfair, deceptive and abusive financial products and practices. The goal of the new bureau is to insure that when families apply for a mortgage, a bank loan or other complicated financial products, they will also receive clear information that they need to make the best decision possible. With a watchdog in place, families will be less likely to enter into mortgages they don't understand or be a victim of unfair and deceptive loan practices. It will increase fairness and help reduce the casino atmosphere of too many financial products.

Another crucial ingredient in today's crisis is the use of complex financial derivatives. Warren Buffett has called them '' financial weapons of mass destruction, carrying dangers that, while now latent, are potentially lethal.''

These complex financial maneuvers hidden from the view of most Americans have quietly become a crucial part of managing risk in our economy. In May, the Bank for International Settlements estimated that the total value of derivative contracts was approximately $600 trillion. To put this speculation in context—that's 200 times larger than the Federal budget.

Derivatives are essentially bets on future economic behavior: financial contracts which can gain or lose value as the price of some underlying commodity, financial indicator or other variable changes. Unfortunately their rise to prominence in our economy was not matched with an increase in regulation or transparency.

The legislation gives the SEC and CFTC the authority to regulate over-the-counter derivatives to stop irresponsible practices and excessive risk-taking. It requires central clearing and exchange trading for derivatives that can be cleared. It requires margin for uncleared trades in order to offset the greater risk they pose to the financial system and encourage more trading to take place in transparent, regulated markets. It increases data collection and publication through clearing houses or swap repositories to improve market transparency and provide regulators important tools for monitoring and responding to risks.

When you add it all up, the financial crisis is a result of failures over the past generation to provide appropriate regulation and supervision of the financial services industry. During the Bush administration, however, what was effectively a trend toward deregulation turned into a stampede.

We have an obligation to prevent another stampede. We have an obligation to restore responsibility and accountability to our financial system. We have an obligation to make sure America's taxpayers are not left with the casino's bill.

So I urge my colleagues to support this financial reform legislation because it will protect the continued health of our economy. It will revamp our regulatory practices, fix the derivatives market, and provide liquidity for small businesses and families looking to buy a home. More importantly, it will rebuild the trust that the American people have lost in our financial system.

Mr. LEAHY. Mr. President, I strongly support the reform bill before us, S. 3217, the Restoring American Financial Stability Act of 2010.

I commend Banking Committee Chairman CHRISTOPHER DODD and Majority Leader HARRY REID for shepherding this significant piece of legislation through the Senate. Getting to this point was no small feat given the near-unanimous opposition to Wall Street reform that this effort has encountered from the other side of the aisle. But Senators DODD and REID persevered because they know that fixing our troubled financial system is absolutely, unequivocally in the best interests of our country and its citizens.

The recent financial crisis revealed 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 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 bill we are voting on today goes directly at 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, and this legislation finally will allow regulators to go after the fraud, manipulation, and excessive speculation on Wall Street.

As chairman of the Senate Judiciary Committee, I am particularly pleased that the bill includes provisions I authored to ensure law enforcement and federal agencies have the necessary tools to investigate and uncover financial crimes; to protect whistleblowers who help uncover these crimes; and to introduce true transparency and sunshine into the complex operations of large financial institutions and the federal agencies that regulate them.

Another major step forward is the derivatives section of the bill, which was authored by the Agriculture Committee on which I serve. These reforms 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, 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 bill also includes an amendment by Senator DICK DURBIN that I supported to protect our small businesses from complicated predatory rules that big credit card companies impose on Vermont grocers and convenience stores. The Durbin 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.

I am also pleased that the bill includes an amendment I cosponsored with Senator BERNIE SANDERS to shine more sunshine on the bailout transactions made by the Federal Reserve. Under the Sanders amendment, the Government Accountability Office will conduct a one-time audit of all of the emergency actions the Federal Reserve has taken 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.

The Senate has before it today a bill that will reign in Wall Street abuses, end government bailouts, and give everyday Americans the consumer protection they deserve and expect. I believe that cleaning up these Wall Street abuses will help build confidence in our economy and continue our progress toward economic recovery.

Mr. AKAKA. Mr. President, I strongly support the Wall Street reform bill. The chairman of the Banking Committee, my friend from Connecticut, has done such tremendous work on this historic legislation. Senator DODD has worked with me and other members to create a bill that will better educate, protect, and empower consumers and investors. I am extremely proud of this legislation and appreciate the willingness of the chairman to work to address so many issues important to working families.

Education is a primary component of financial literacy. In this bill, we create an Office of Financial Literacy within the Consumer Financial Protection Bureau. The Office will develop and implement initiatives to educate and empower consumers. A strategy to improve the 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 legislation also requires a financial literacy study to 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.

This legislation provides essential consumer and investor protections for working families. It establishes a regulatory structure that will have a greater emphasis on investor and consumer protections. 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 914 will strengthen the ability of the SEC 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 organizations, 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 SEC's existing Office of Investor Education and Advocacy provides a variety of services and tools to address the problems and questions that confront investors. The Office posts information to warn people about scams, compiles complaints, and provides help for people seeking to recover funds.

The proposed Office of the Investor Advocate will be a very different office. 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.

Organizations in support of section 914 include the Consumer Federation of America, CFP Board of Standards, Inc., Consumer Action, Consumer Assistance Council, Consumers for Auto Reliability and Safety, Community Reinvestment Association of North Carolina, Financial Planning Association, Fund Democracy, International Brotherhood of Teamsters, Massachusetts Consumers' Council, National Association of Consumer Advocates, National Consumers League, New Jersey Citizen Action, North American Securities Administrators Association, Oregon Consumer League, Sargent Shriver Center on Poverty Law, and Virginia Citizens Consumer Council.

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.

This legislation also includes important 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 bill will modify the Electronic Fund Transfer Act to establish consumer protections. 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.

This legislation also includes essential economic empowerment opportunities for working families. Title XII is the most important economic empowerment provision in the bill. I appreciate the efforts of 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 appreciated the work done by Chairman DODD to include this amendment at the committee mark up.

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 non-traditional 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 am proud of the work we have done on this legislation. However, there is one issue that still has not been resolved. There is one provision in the legislation that needs to be changed. Section 913, contains a study and rulemaking regarding obligations of brokers, dealers, and investment advisers. This study is unnecessary. The section does not provide the authority needed by the Securities and Exchange Commission to effectively protect investors. The decisions that the heads of households make with their investment choices determine their future financial condition. Investment professionals that provide personalized advice can significantly influence investor decisions.

Imposing a fiduciary duty on brokers, when giving personalized investment advice 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.

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. In the wake of the Permanent Subcommittee on Investigations hearing highlighting the activities of Goldman Sachs that appeared to put firm profits before the interest of their clients, this issue becomes even more important to include in the bill.

We must act to ensure that brokers have an obligation to do what is best for their clients and not allow brokers to push higher commission products that may be inappropriate for a particular client. The imposition of a fiduciary duty on brokers has extensive support.

There are brokers that are supportive of doing what is in the best interest of their clients. I greatly admire the recent bold statements made by Ms. Sallie Krawcheck, president of Bank of America Global Wealth and Investment Management. Ms. Krawcheck said that brokers should ''do right by our clients by embracing our fiduciary responsibilities for them . . . embracing reform will enable us to champion what is indisputably right for clients.''

There is widespread support for imposing a fiduciary duty on brokers. AARP, the Consumer Federation of America, the North American Securities Administrators Association, the National Association of Secretaries of State, the National Governors Association, Americans for Financial Reform, the Investment Advisers Association, the National Association of Personal Financial Advisers, the Council of Institutional Investors, and the Financial Planning Association are several examples of organizations that support this important investor protection.

There are not many that continue to oppose imposition of a fiduciary duty. Insurance agents and the insurance industry remain among the few that oppose this investor protection. Some within the industry have even chosen to misrepresent our efforts as ending the commission-based model. If they were to merely read the proposed legislative language, they would know that this is not true.

I thank my friend from New Jersey, Senator MENENDEZ, and his staff, for working with me on this issue. I also want to acknowledge all of the tremendous work done to advance this vital consumer protection by House Financial Services Chairman BARNEY FRANK. I will continue to work to ensure that that this obligation is included in the final version of the legislation that is enacted.

I also 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.

Also, I appreciate 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. I will continue to work to bring about enactment of this legislation that will educate, protect, and empower consumers and investors.

Mr. CHAMBLISS. Mr. President, I rise to express my disappointment at the posture of the massive legislative overhaul of our financial markets that appears set to pass this body.

I am disappointed at what this bill, as written, means for businesses on Main Street and for the livelihoods of Americans who had nothing to do with the financial meltdown.

I am also disheartened at how this body has made a bad bill even worse. For all the times the other side of the aisle has accused the minority of being obstructionists, for all the claims of partisanship, the process by which this bill has become the government powergrab it is today illustrates how the majority has served as its own ''party of no''.

After repeated efforts by Republicans in the past 18 months to reach a middle ground on necessary reforms for America's financial regulatory structure, reasonable compromises we presented were rejected at every turn.

And two years after the jolt of the economic crisis, and with no hope in sight for cooperation from the White House, a 1,400-page, one-sided piece of legislation was brought to the Senate floor.

Now with more than 400 amendments filed, and just 10 percent of those considered, this administration is again set to sign into law another mammoth piece of legislation—one with enormous and long-lasting repercussions for this country—with little to no Republican input.

The consequences of actions we take here in the coming days will be drastic in their reach into American businesses of all sizes.

Make no mistake: This bill will not punish Wall Street. In fact, the CEOs of Wall Street firms are supportive of this bill as written.

After all, it is difficult to say this bill goes after Wall Street when the CEO of one of its largest financial institutions says ''. . . the biggest beneficiaries of reform will be Wall Street itself.'' Lloyd Blankfein, CEO, Goldman Sachs, Homeland Security & Government Affairs hearing, 4/27/10.

No, the real targets will be businesses across America, not just big firms on Wall Street but auto dealers in suburbs or appliance stores on small-town Main Streets. Everywhere a small business allows its customers to pay with lines of credit, the Federal Government will be there.

One of the biggest problems with this legislation is that it does not address one of the root causes of America's economic crisis: Fannie Mae and Freddie Mac.

These entities—effectively deemed by the White House and others as ''too big to legislate''—continue to perpetuate a sickness on the American economy.

As structured, these ''bailout behemoths'' continue to rely on taxpayer money to maintain their fiscal imprudence—to the tune of $145 billion. But nothing in this bill attempts to stop that drain on taxpayers' wallets.

Another glaring example of government intrusion in this bill is the creation of a Consumer Financial Protection Bureau empowered to collect any information it chooses from private businesses and consumers, including personal and financial information.

This new agency will have the authority to share that information with the very financial firms it is attempting to regulate. In other words, taxpayers will be paying for Wall Street's market research.

As for Title VII—the derivatives title—it is simply a debacle.

As ranking member of the Agriculture Committee, I have spent a great deal of time examining how derivatives have played a role in the market meltdown, and not surprisingly, we have found that there are a number of regulatory improvements we need to make relative to the oversight of swap market participants.

However the language we are considering today is, quite frankly, another power grab by the administration and the regulators for provisions in law that had absolutely nothing to do with the crisis we experienced in the market place 2 years ago.

This administration, along with the majority in this body, want to regulate Ford Motor Credit the same as they regulate large banks such as JP MorganChase and Goldman Sachs. Guess who is going to end up paying the price for that change in regulation? My Georgia constituents who want to buy cars. They will be paying more in the form of interest because if this bill is enacted into law, Ford will be forced to pay more to hedge its interest-rate risk.

The majority wants to make it more difficult for clearinghouses to approve swaps for listing, which is senseless, as they also require mandated clearing.

The majority claims that by forcing more swaps into a clearinghouse it will lessen systemic risk. Why, then, are we making the clearinghouses jump through more hoops to clear these contracts?

As I understand it, the current system where clearinghouses have the discretion to list contracts for clearing have experienced no problems. And as we know, the clearinghouses certainly aren't responsible for the financial crisis.

The majority is also requiring major swap participants to hold more capital in reserve. I can understand the need for requiring those who hold large swaps positions to margin, or collateralize, their positions. But why are we also going to make them set aside capital? Again, we are treating them like banks and they are not banks.

If we make manufacturers set aside capital, it will only tie up money they would otherwise have available to hire workers, pay benefits and run their companies. With unemployment approaching 10 percent, we should not make it more difficult for employers to hire. We should not apply a banking model to market participants that are not banks.

As for market participants that need swaps to manage risk and have negotiated individualized arrangements where they pledge noncash collateral: How are they going to pledge collateral to a clearinghouse? Last time I checked, the Chicago Mercantile Exchange, CME, and International Continental Exchange, ICE, did not accept natural-gas leases as margin.

This bill will now require theses customers to post cash collateral to the clearinghouse, thereby tying up resources they would otherwise be investing in locating more natural gas or petroleum. This is not a very smart plan when we so desperately need to become less dependent on foreign sources of energy.

Rather than focusing on perfecting what actually could help lessen risk within the derivatives system, we have a clear case of what I believe the administration and some in this body see as an opportunity to regulate simply for the sake of regulating.

The financial crisis and its causes seem to have become afterthoughts. The objective has shifted from regulating Wall Street to regulating manufacturers, energy producers, food producers, hospitals and anyone else who might seek to enter into a contract to manage their risk.

Meanwhile, consumers will pay the price. Why? Because the White House and the majority in Congress lost sight of the problem that should be fixed and seized the opportunity to insert government into every industry, financial and otherwise.

Mr. President, our side came to the table in good faith with ideas on necessary reforms to America's financial markets.

We presented our thoughts on how best to prevent another meltdown. We negotiated, we compromised, and we tried to work across the aisle toward a common goal.

Ultimately, these efforts were fruitless. The other side stonewalled, and our ideas were opposed.

Now this bill—which will have a similar economic impact as the health care bill, yet which has only been debated for a fraction of the time—will soon be law. And our economy and the livelihoods of Americans who work in large and small businesses will be worse for it.

I yield the floor.

Mr. McCAIN. Mr. President, it is with regret that I come to the floor to announce my opposition to this piece of legislation. I express regret not because this is somehow a good bill with a few flaws serious enough to warrant a no vote—I express regret because this bill is an abysmal failure and serves as yet another example of Congress' inability to tackle tough problems and institute real, meaningful and comprehensive reform.

In the past 2 years America has faced her greatest fiscal challenges since the Great Depression. When the financial markets collapsed it was the American taxpayer who came to the rescue of the banks and big Wall Street firms—but who has come to the rescue of the American taxpayer? Certainly not Congress. So what has Congress done? By enacting policies that can only be described as inexplicable generational theft—we've saddled future generations with literally trillions of dollars of debt. Since January of 2009 we have been on a spending binge the likes of which this nation has never seen. In that time our debt has grown by $2 trillion. We passed a $1.1 trillion ''stimulus'' bill. We spent $83 billion to bail out the domestic auto industry. We passed a $2.5 trillion health care bill. The President submitted a budget for next year totaling $3.8 trillion. We now have a deficit of over $1.4 trillion and a debt of over $12.9 trillion. Unemployment remains at almost 10 percent. And, according to Forbes.com, a record 2.8 million American households were threatened with foreclosure last year, and that number is expected to rise to well over 3 million homes this year. And how has the Senate responded to this crisis of staggering debt, catastrophic job loss and unimaginable foreclosure rates? Did the majority take on the special interests? Did they seize the opportunity to develop a bill that goes right to the heart of the problem and make serious, meaningful and comprehensive reforms? Nope. They punted. Out of pure political expediency, they shrugged their shoulders and kicked the can down the road and left the tough decisions for an unluckier group of Americans.

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 the government-sponsored enterprises—GSEs—Fannie Mae and Freddie Mac. The events of the past two 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'.

A May 6th editorial in the Wall Street Journal stated:

Fan and Fred owned or guaranteed $5 trillion in mortgages and mortgage-backed securities when they collapsed in September 2008. Reforming the financial system without fixing Fannie and Freddie is like declaring a war on terror and ignoring al Qaeda.

Unreformed, they are sure to kill taxpayers again. Only yesterday, Freddie said it lost $8 billion in the first quarter, requested another $10.6 billion from Uncle Sam, and warned that it would need more in the future. This comes on top of the $126.9 billion that Fan and Fred had already lost through the end of 2009. The duo are by far the biggest losers of the entire financial panic—bigger than AIG, Citigroup and the rest.

From the 2008 meltdown through 2020, the toxic twins will cost taxpayers close to $380 billion, according to the Congressional Budget Office's cautious estimate. The Obama Administration won't even put the companies on budget for fear of the deficit impact, but it realizes the problem because last Christmas Eve it raised the $400 billion cap on their potential taxpayer losses to . . . infinity.

Moreover, these taxpayer losses understate the financial destruction wrought by Fan and Fred. By concealing how much they were gambling on risky subprime and Alt-A mortgages, the companies sent bogus signals on the size of these markets and distorted decision-making throughout the system. Their implicit government guarantee also let them sell mortgage-backed securities around the world, attracting capital to U.S. housing and thus turbocharging the mania.

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 bill before us now completely ignores the elephant in the room—because no other entities' failure would be as disastrous to our economy as Fannie Mae's and Freddie Mac's. Yet the majority chose not to address them at all in the bill before us.

There have been numerous warnings about the mismanagement of both Fannie and Freddie over the years. In May of 2006, after a 27 month investigation into the corrupt corporate culture and accounting practices at Fannie Mae, the Office of Federal Housing Enterprise Oversight—OFHEO—the Federal regulator charged with overseeing Fannie Mae—issued a blistering, 348-page report which highlighted the culture of corruption which was rampant at Fannie Mae. The report stated things such as:

Fannie Mae senior management promoted an image of the Enterprise as one of the lowest-risk financial institutions in the world and as ''best in class'' in terms of risk management, financial reporting, internal control, and corporate governance. The findings in this report show that risks at Fannie Mae were greatly understated and that the image was false.

During the period covered by this report—1998 to mid-2004—Fannie Mae reported extremely smooth profit growth and hit announced targets for earnings per share precisely each quarter. Those achievements were illusions deliberately and systematically created by the Enterprise's senior management with the aid of inappropriate accounting and improper earnings management.

A large number of Fannie Mae's accounting policies and practices did not comply with Generally Accepted Accounting Principles (GAAP). The Enterprise also had serious problems of internal control, financial reporting, and corporate governance. Those errors resulted in Fannie Mae overstating reported income and capital by a currently estimated $10.6 billion.

By deliberately and intentionally manipulating accounting to hit earnings targets, senior management maximized the bonuses and other executive compensation they received, at the expense of shareholders. Earnings management made a significant contribution to the compensation of Fannie Mae Chairman and CEO Franklin Raines, which totaled over $90 million from 1998 through 2003. Of that total, over $52 million was directly tied to achieving earnings per share targets.

Fannie Mae consistently took a significant amount of interest rate risk and, when interest rates fell in 2002, incurred billions of dollars in economic losses. The Enterprise also had large operational and reputational risk exposures.

Fannie Mae's Board of Directors contributed to those problems by failing to be sufficiently informed and to act independently of its chairman, Franklin Raines, and other senior executives; by failing to exercise the requisite oversight over the Enterprise's operations; and by failing to discover or ensure the correction of a wide variety of unsafe and unsound practices.

Fannie Mae senior management sought to interfere with OFHEO's special examination by directing the Enterprise's lobbyists to use their ties to Congressional staff to (1) generate a Congressional request for the Inspector General of the Department of Housing and Urban Development (HUD) to investigate OFHEO's conduct of that examination and (2) insert into an appropriations bill language that would reduce the agency's appropriations until the Director of OFHEO was replaced.

So what steps were taken by the Congress to punish Fannie Mae for such deliberate manipulation and outright corruption at that time? Basically: none. And nothing is done to rein them in under this bill either.

Just this morning the Heritage Foundation wrote the following:

There is still nothing in this bill that addresses the perverse incentives and moral hazard that is created when the federal government sticks its nose into the housing market. Last year, the two financed or backed about 70 percent of single-family mortgage loans. They hold about $5 trillion in their investment portfolios. Both are losing money fast, with those losses being covered by the U.S. taxpayer. Last month, Freddie announced it had lost $8 billion in the first quarter of 2010 and would be asking for another $10.6 billion in taxpayer help. Not to be outdone, Fannie announced an $11.5 billion loss and asked for another $8.4 billion from taxpayers. That's atop the nearly $145 billion of your dollars that Fannie and Freddie have already received. Fannie and Freddie alone prove this bill does nothing to end ''too big to fail.'' Fannie and Freddie should be partly wound down, the rest broken up and sold off—not replaced, reformed, or rejuvenated. The Dodd bill does none of that.

As my colleagues know, 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 six months. Wow! Instead of dealing head-on with the two enterprises that brought our entire economy to its knees—entities which have already cost taxpayers over $145 billion in bailouts—the Democrats want to study them for 6 more months. It is no wonder the American people view us with such contempt.

Additionally, I cosponsored an amendment with my colleague from Washington, Senator CANTWELL, to ensure that we never again stick the American taxpayer with another $700 billion-plus tab to bailout the financial industry. If big Wall Street institutions want to take part in risky transactions—fine. But we should not allow them to do so with federally insured deposits.

Paul Volcker, a top economist in the Obama administration and former Federal Reserve Chairman, wants the nation's banks to be prohibited from owning and trading risky securities, the very practice that got the biggest ones into deep trouble in 2008. Mr. Volcker argues that regulation by itself will not work. Sooner or later, the giants, in pursuit of profits, will get into trouble. Congress and the administration should accept this and shield commercial banking from Wall Street's wild ways. ''The banks are there to serve the public,'' Mr. Volcker said, ''and that is what they should concentrate on. These other activities create conflicts of interest. They create risks, and if you try to control the risks with supervision, that just creates friction and difficulties'' and ultimately fails.

The amendment we offered precluded any member bank of the Federal Reserve System from being affiliated with any entity or organization that is engaged principally in the issue, flotation, underwriting, public sale or distribution of stocks, bonds or other securities. Essentially, commercial banks may no longer inter-mingle their business activities with investment banks. It is that simple.

Since the repeal of the Glass-Steagall Act in 1999, this country has seen a new culture emerge in the financial industry: one of dangerous greed and excessive risk-taking. Commercial banks traditionally used people's deposits for the constructive purpose of main street loans. They did not engage in high risk ventures. Investment banks, however, managed rich people's money—those who can afford to take bigger risks in order to get a bigger return, and who bore their own losses. When these two worlds collided, the investment bank culture prevailed, cutting off the credit lifeblood of Main Street firms, demanding greater returns that were achievable only through high leverage and huge risk taking, and leaving taxpayers with the fallout.

When the glass wall dividing banks and securities firms was shattered, common sense and caution went out the door. The new mantra of ''bigger is better'' took over—and the path forward focused on short-term gains rather than long-term planning. Banks became overleveraged in their haste to keep up in the race. The more they lent, the more they made. Aggressive mortgages were underwritten for unqualified individuals who became homeowners saddled with loans they couldn't afford. Banks turned right around and bought portfolios of these shaky loans.

Sub-prime loans made up only 5 percent of all mortgage lending in 1998, but by the time the financial crisis peaked in late 2008, they were approaching 30 percent. Since January 2008, we have seen 264 state and national banks fail. In my home State of Arizona, eight banks have shut their doors, leaving small businesses scrambling to find credit from other banks that may have already been overleveraged.

Banks sold sub-prime mortgages to their affiliates and other securities firms for securitization, while other financial institutions made risky bets on these and other assets for which they had no financial interest. As the market grew bigger, its foundation became shakier. It was like a house of cards waiting to fall. And fall it did.

In October 2008, the financial system was on the brink of collapse when Congress was forced to risk $700 billion of taxpayer dollars to bailout the industry. These financial institutions had become too big to fail. In fact, the special inspector general of Troubled Asset Relief Program—TARP—testified before Congress last year that ''total potential Federal Government support could reach $23.7 trillion'' to stabilize and support the financial system. Ironically, some of these ''too big to fail'' institutions have now become even bigger. A recent editorial from the New York Times stated:

The truth is that the taxpayers are still very much on the hook for a banking system that is shaping up to be much riskier than the one that led to disaster.

Big bank profits, for instance, still come mostly courtesy of taxpayers. Their trading earnings are financed by more than a trillion dollars' worth of cheap loans from the Federal Reserve, for which some of their most noxious assets are collateral. They benefit from immense federal loan guarantees, but they are not lending much. Lending to business, notably, is very tight.

What profits the banks make come mostly from trading. Many big banks are happy to depend on the lifeline from the Fed and hang onto their toxic assets hoping for a rebound in prices. And the whole system has grown more concentrated. Bank of America was considered too big to fail before the meltdown. Since then, it has acquired Merrill Lynch. Wells Fargo took over Wachovia. And JPMorgan Chase gobbled up Bear Stearns.

If the goal is to reduce the number of huge banks that taxpayers must rescue at any cost, the nation is moving in the wrong direction. The growth of the biggest banks ensures that the next bailout will have to be even bigger. These banks will be more likely to take on excessive risk because they have the implicit assurance of rescue.

The Federal Government has set a dangerous precedent here. We sent the wrong message to the financial industry: you engage in bad, risky business practices, and when 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.

The consolidation of the banking world was also riddled with conflicts of interest, despite the purported firewalls that were put into place. If an investment bank had underwritten shares for a company that was now in financial trouble, the investment bank's commercial arm would feel pressure to lend the company money, despite the lack of merits to do so. This amendment would have eliminated some of these conflicts.

It is time to put a stop to the taxpayer financed excesses of Wall Street. No single financial institution should be so big that its failure would bring ruin to our economy and destroy millions of American jobs. This country would be better served if we limit the activities of these financial institutions. Banks should accept consumer deposits and invest conservatively, while investment banks engage in underwriting and sales of securities.

In an op-ed titled ''Bring Back Glass-Steagall,'' Wall Street Journal columnist Thomas Frank summed up the situation very nicely recently when he wrote:

One of these days, we will finally dispel the 'New Economy' mysticism that beclouds this issue and begin to think seriously about how to re-regulate the financial sector. And when we do, we may find the answer involves some version of the idea behind Glass-Steagall—drawing a line between banks that the government effectively guarantees and banks that behave like big hedge funds, experimenting with the latest financial toxins. Hopefully, that day will come before Wall Street decides to take another headlong run at some attractive cliff.

Unfortunately, our amendment was defeated by a procedural motion and was not even brought up for a vote.

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.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, tonight we are nearing the end of the Senate's consideration of a historic piece of legislation. In response to the most significant financial crisis this country has seen in a generation, we have been engaged in a debate about the future of our financial system.

Two years ago, our economy came to a grinding halt. Credit markets shut down, business activity basically stopped in some areas, and world trade virtually collapsed. Millions of Americans lost their jobs and their homes, and they saw trillions in savings wiped out.

As a witness to the near collapse of our financial system and the economic devastation it has wrought, I am fully aware of the fundamental importance of the legislative effort we will soon complete. Because the financial system serves as the heart of our economy, this legislation will have a profound effect on the economic future of this country. The decisions we have made will have an impact on the lives of Americans for decades to come. Furthermore, the impact of this legislation will extend far beyond our shores.

For these reasons, I believe we must get it right. In the end, we will be judged by whether we have created a more stable, durable, and competitive financial system. That judgment will not be rendered by self-congratulatory press releases, but, rather, by the marketplace. And the marketplace does not give credit for good intentions.

Knowing that millions of Americans suffered greatly because of the financial crisis and that generations of future Americans are relying on us to get this right, how did we go about this proceeding that brought us to where we are tonight? I am going to pose a number of questions.

Did we conduct a thorough review of every facet of the crisis?

Did we look at the structure of our markets, examine the role of the regulators, and determine how the existing regulations drove certain market actions?

Did we investigate the GSEs, examine their capital and leverage, address the inherent weaknesses in their dual and conflicting objectives of maximizing returns for private owners while serving as a public housing mission?

Did we explain Bear Stearns and the causes of its collapse, along with the SEC regulatory program entrusted at that time with its oversight?

Did we collect and analyze data regarding the areas hardest hit by foreclosures?

Did we determine whether there were any specific loan types, however characterized, that led to the foreclosures?

Did we take time to learn lessons from the debacle of the AIG financial products division or securities lending operations or of overheated tri-party repo activity?

Did we analyze how maturity transformation allowed the shadow banking system to, in effect, create money out of AAA rated securities?

Did we analyze how activities in the shadow banking system led to an increased concentration of inherently runnable activities?

Did we analyze liquidity buffers at broker dealers?

And did we wait for the Financial Crisis Inquiring Commission, a creation of this Congress, to deliver lessons that it learned about the financial crisis so as to inform our deliberations even more?

The answer to all of these questions I posed is no, we did not. In my view, this represents a fundamental failure of this body to do its own due diligence before we even attempt such a significant undertaking as we are about to tonight.

Millions of people lost their jobs, their homes, and trillions of dollars of wealth. The American people expect more and certainly deserve more, I believe, from us.

Nonetheless, it certainly did not take much investigation to know that the heart of the crisis was massive failures in our mortgage underwriting and securitization systems. Therefore, the most incredulous shortcoming of this bill, in my judgment, is the lack of any serious attention by the Senate being paid to the government-sponsored enterprises that we know as Fannie Mae and Freddie Mac.

Yesterday, one of my colleagues on the other side of the aisle said we were not dealing with the GSEs in this bill because it is too hard. I have to say we certainly have come a long way in the wrong direction.

There was a time not long ago when we did things because they are hard and because they are worth doing. What a difference a few years makes. It is simply a failure of will that nothing is being done to reform the GSEs or, at the very least, cap the allowable losses.

This bill has 12 titles totaling well over 1,500 pages. It has been amended dozens of times. Yet the bill does nothing to affect the ongoing, unlimited bailouts of Fannie Mae and Freddie Mac that to date have cost the American taxpayers at least $146 billion, one of the largest bailouts in history, and it is growing. Our distinguished chairman, the Senator from Connecticut, has expressed his outrage on a number of occasions that consumers paid around $40 billion in overdraft fees in 2009, and he is right. The GSEs now have cost the American taxpayers over 3½ times that amount and counting. To quote my old friend and former majority leader, Bob Dole: Where is the outrage here?

Perhaps what is most disappointing about the lack of attention to Fannie and Freddie is the fact that there is no end in sight. Losses continue to mount and the taxpayer exposure is unlimited. For example, in a recent SEC filing, Fannie Mae reported a need for another $8½ billion from the taxpayers. Hardworking Americans in my State of Alabama and throughout the Nation will be asked to pony up again and again until we do something to stop it. When will it stop? According to my Democratic friends, not yet. The best they can do for the American people in this bill is a study. That is simply incredible.

The GSEs should have been our primary focus. Instead, they were ignored and further enabled by the administration when they raised the cap on losses in December of last year. In an attempt to do something about the GSEs, Senators MCCAIN, GREGG, and I, joined by several of our Republican colleagues, introduced an amendment to this bill that would have ended these bailouts. However, just as they presented action to rein in Fannie and Freddie in the past, Democrats once again embraced the status quo and blocked the road to real GSE reform.

Once our amendment failed, several of my Republican colleagues and I, led by Senator CRAPO of Idaho, decided that if we could not end these unlimited bailouts, we would try to cap the losses and provide for a true accounting of the costs. Our amendment would have capped these bailouts at $400 billion, which is a lot of money. Yet even at nearly $½ trillion, the Democrats could not bring themselves to stop the hemorrhaging of Fannie and Freddie and voted against the amendment.

How much will the GSEs have to lose before my Democratic friends will say enough is enough? Will $½ trillion be enough? Will Democrats allow reform of Fannie and Freddie before it costs the taxpayers $1 trillion? How much is too much?

The supporters of this bill have argued that it will stabilize our financial sector—the bill itself. I am not sure, however, it can stabilize anything when it does nothing—nothing—to address the two largest destabilizing forces of the crisis, Fannie Mae and Freddie Mac. The fact that it is costing taxpayers nearly $7 billion every month should be enough to convince anyone that something needs to be done and done now. Unfortunately, my Democratic friends, led by the President, are telling the American people they are going to have to pony up and wait again.

The failure to address the GSEs is the most glaring omission in this legislation. There are, however, many things that are in this bill that raise similar concerns for the future of our economy, and I will go through some of them.

A major component of the bill deals with the creation of a massive new consumer bureaucracy, along with a separate title 12, which is a liberal activist's dream come true. Provisions in this title will compel financial institutions to provide free services to selected community groups. This is the exact same model that led us to the crisis in the first place, except for one distinct difference. The government bailout is built in from the beginning through the use of taxpayer guarantees.

The American people are being misled. The authors of this bill are telling them this legislation has been drafted to address the recent financial crisis and that it will tame Wall Street. I am afraid they are going to be disappointed. By the Democrats' own admission, the most important facet of this legislation is the creation of a massive new consumer bureaucracy. It has been described by my Democratic friends as the ''third rail'' of this bill.

During our negotiations on the consumer bureaucracy, my Democratic friends were not focused on the mortgage market. Their sights were set on the rest of the economy. Make no mistake, behind the veil of anti-Wall Street rhetoric is an unrelenting desire to manage every facet of commerce under the guise of consumer protection. They may be interested in protecting consumers, but they are more interested in managing them. All one has to do is read the academic writings of the authors of this new bureaucracy and it becomes very clear what their goals are.

The Democrats' new bureaucracy is an enormous reach across virtually every segment of our economy and a massive expansion of government influence in our daily financial lives. The people of America have been clear: They do not want a massively intrusive, continuously growing, and overly expansive government. They do not want a continuation of our unsustainable government promises, government spending, government deficits, and government debt. They saw what happened in Greece when it overpromised and overspent, and Americans do not want to leave European fiscal legacy to their children.

Yet this bill does not listen to the American people. It promises massive government overreach into even routine daily financial transactions of ordinary Americans and businesses, large and small. Why does the Federal Government need information on ''pertinent characteristics''—whatever that might mean—of persons covered by the new consumer bureaucracy?

This new consumer bureaucracy will become massive, populated with thousands of bureaucrats who will create, within the new bureau, what administration officials have referred to as a correct ''culture'' of consumerism. What is that? The new consumer protection bureaucracy is funded by over $½ billion per year, funded through an Argentina-style raid on our central bank. Of course, this opens the door for unlimited Federal taxpayer funds for community organizers and groups such as ACORN.

I favor consumer protection. I believe all of us do. This new bureau, however, promises to be more abusive than protective. By abuse, I mean that the bureau will lower the living standards of Americans. This new consumer bureaucracy is intended, by its architects in the Treasury, to begin the process of financial regulation with the intent of changing the behaviors of the American people.

I have faith in the American people and their ability to make good choices. Granted, we do not always choose well, but that is the human condition. I believe a poor choice freely made is far superior to a good choice that is made for me. I am afraid the architects of this bill do not share this sentiment, nor do they share my faith in the American people.

They view us as victims in need of their guidance. They view us as fallible and in need of government bureaucrats to protect us from ourselves. It is a bit ironic, however, that the sponsors of this new bureaucracy seem to believe regulators do not share the same fallibility of ordinary Americans. Tell that to the hundreds of Bernie Madoff victims.

This is the world view that is driving this bill, and it should concern every American. It seems, increasingly, that the view of the Democrats toward virtually all American business is a cynical view that Americans are out to take advantage of one another. I don't share that view either. My presumption is Americans are honest and hardworking and history has shown that to be true.

This bill promises to slow economic growth and kill jobs because it will place onerous regulatory burdens on businesses large and small. This bill will stifle innovation in consumer financial products and reduce small business activity. It will lead to reduced consumer credit and higher costs for available credit. Less credit at a higher price will dampen the very small business engines of job creation so desperately needed right now, when unemployment hovers near double digits nationally and is at 11 percent in my home State of Alabama. I cannot support legislation that threatens business conditions and the potential for job creation, especially at a time when we are crawling out of a severe recession.

Aside from onerous new consumer regulations, another avenue through which the bill will slow economic activity is in the treatment of derivatives. This bill will chase risky financial trades overseas and further into the unregulated shadow banking system, thereby magnifying, not reducing, unmonitored systemic risks.

This bill demonstrates an imprudent disregard for the economic effects of a severely misguided approach to derivatives. Given the treatment of derivatives in this bill, end users—that is everyone from candy bar makers to beer brewers—who rely on these financial instruments to manage their risks will face massive increases in costs. Because risk management will now be significantly more expensive, we can expect lower business investment, which, again, means fewer jobs.

Why are we increasing costs to ordinary end users of derivatives, such as your home heating provider or makers of candy bars? There seems to be an irrational desire to make all financial products of certain types standard, whether that can or should be done. Once again, the attitude seems to be: We are government and we know best. That attitude will almost surely lead to massive concentrations of risks in central derivatives clearinghouses. It will also, ironically, chase derivatives activities overseas and into the unregulated shadow banking system. Who will back up these clearinghouses at the end of the day should market stresses prove to be severe? The Federal Government and the Federal Reserve will back them up, promising even more bailouts in the future—this time possibly for clearinghouses.

The approach to hedge fund oversight in this bill is symptomatic of an overall careless approach to assigning regulatory responsibility. Hedge funds have not been identified as a cause of the financial crisis, but hedge funds have been identified as a potential source of systemic risk.

However, rather than subjecting hedge funds to a systemic risk oversight regime, hedge fund advisers will be subject to a registration regime and the investor-protection oriented requirements that go along with it.

On its face, registration sounds reasonable.

The SEC, however, is not a systemic risk regulator, and when it tried to be one through the Consolidated Supervised Entity—''CSE''—program, it failed. Yet, now, we are doubling down on the SEC, the very agency that failed us to begin with.

An unfortunate consequence of the treatment of hedge funds in the bill is that investors will likely treat SEC registration as an SEC seal of approval. Fraudulent hedge fund advisors will be virtually invited to use registration as a marketing tool.

Investor protection is an important job for the SEC, but its resources are not endless, and the SEC has been notoriously unable to inspect advisors on a regular basis.

Limited SEC resources should not be diverted from regulated public investment companies, such as mutual funds, to the monitoring of hedge fund advisors, as the reported bill proposes to do.

If the SEC is spending its resources in this manner, it will not be long before investors that do not meet the accredited investor threshold start demanding to be allowed to invest in hedge funds.

It will be hard to counter the argument that they should have access to such investments when the SEC is on the case.

Mr. President, there are dozens of problems with the Lincoln-Dodd over-the-counter—OTC—derivatives title, which I would be more than happy to document. In the interest of brevity, however, I will point out just a few of the most egregious examples:

The Lincoln-Dodd derivatives title does not provide regulators with access to the information they need to do their job.

The title is unworkable. In a 6-month marathon rulemaking session, regulators are to make massive changes in a huge market without the usual notice-and-comment that allows for broad public input.

Neither the SEC nor the CFTC has the staff that it needs to write the rules, let alone implement them. Companies, including Main Street businesses, all across the United States will also face operational, legal, and financial challenges as they strive to come into compliance with record keeping, reporting, capital, margin, clearing, and business conduct requirements.

Key provisions in the Lincoln-Dodd derivatives title directly contradict key provisions in other titles and current law. Section 716, for example, would preclude a clearinghouse—even one that does not clear swaps—from receiving access to the discount window. This is directly contrary to title 8, which empowers the Federal Reserve to grant discount window access to clearinghouses.

The proposed regulatory framework in the Lincoln-Dodd derivatives title poses new risks to the system. For-profit clearinghouses will have an incentive to clear as many swaps as possible.

If they do not properly assess and collect margin for risks associated with these products or do not have sufficient operational capacity, an unanticipated event in the market could topple a clearinghouse and send shock waves throughout the rest of the system.

The Lincoln-Dodd derivatives title will benefit big dealers who can shift their swaps business overseas over small dealers who cannot.

The so-called end user exemption contained in the Lincoln-Dodd derivatives title is illusory. Main Street businesses will not be able to continue hedging their business risks as they now do.

Many end users will find themselves subject to clearing mandates, bank-like capital requirements, and extensive dealer-like business conduct requirements. As a result, Main Street businesses will face higher costs that will ultimately be borne by consumers.

Consumers will be paying more for everything from electricity to candy bars. The Lincoln-Dodd derivatives title will work as an antistimulus plan that will pull resources out of the economy, hurt growth, and slow job creation. The derivatives title has real world consequences that cannot be wished away with a few technical fixes at the margins.

Those are but a few of nearly one hundred flaws in the derivatives title. Yet there is another title—title 8—which has received less attention than derivatives, but is equally troublesome.

Title 8 would give a stability Council broad power to identify financial market utilities, payment, clearing, or settlement activities that it deems to be now, or likely to become, systemically important. Those entities and activities would then be subject to risk regulation by the Federal Reserve Board of Governors.

This title is another example of an inappropriate delegation of an congressional responsibility to decide who should be regulated and by which regulator. The extent of delegation is left uncomfortably open, as it depends on open-ended language in which key terms are undefined.

The definition of ''payment, clearing, and settlement activities,'' for example, include any ''activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions.'' With definitions like this one guiding the Council, it could decide to assign any aspect of the financial market to the Fed.

Lack of regulatory accountability contributed to the recent financial crisis. Title 8 exacerbates the problem by allowing the Council to bring the Fed into significant sectors of the financial system as a back-up regulator. If a problem arises, both the Fed and the relevant supervisory agency will have someone else to blame. And both will be able to blame Congress for its careless delegation of its own responsibilities.

Yet another troublesome title is title 9, which could appropriately be labeled the ''Grab-Bag'' title, since it is a grab-bag of items on the years-old wish lists of special-interest groups.

These items are not designed to respond to problems identified in the last crisis or likely in any crisis, and have not been considered in hearings.

The grab bag includes puzzling items, like a provision that would create a redundant office at the SEC and another provision that requires disclosure of the ratio of the median employee's compensation to the chief executive officer's compensation.

It looks to me like the way is being paved to achieve so-called ''social justice'' in income distribution. This is another disturbing example of the government getting its nose under the private sector's tent.

The grab bag also includes anti-investor provisions. The proxy access provision, for example, enables special interest groups to push their agendas at the expense of the rest of the shareholders.

It also includes a surprising self-funding provision that will give the SEC complete control over the size and allocation of its budget. Let me repeat that. The Democrats are going to give the SEC virtual budget autonomy from congressional oversight after the SEC dropped the ball in the Madoff and Stanford frauds, and in the wake of the SEC's pornography scandal.

When the ''grab bag'' title does attempt to address issues related to the crisis, it takes the wrong approach.

With respect to credit rating agencies, for example, the effort to pull ratings out of the statutes and regulations is lost in a complicated new regulatory framework that only the big credit rating agencies will be able to navigate. This will stifle competition—the very thing we need to be encouraging. The failure of the ratings agencies was central to the crisis and this bill represents half measures at best.

The heightened liability standards, corporate governance requirements, and qualification standards for credit rating analysts will lull investors into greater apathy and discourage competition.

With respect to securitization, rather than focus on the root cause of the housing bubble by establishing clear, tough, and fair underwriting standards, this title imposes a 5 percent risk-retention requirement across-the-board for securitizations.

In combination with changes in accounting and bank capital rules, a risk retention requirement could force an entire securitization to be retained on a bank's balance sheet for accounting and capital purposes. Securitization activity would then become economically unviable.

This approach to securitization is a risky gamble to take at a time when our securitization markets are just starting to recover and show some signs of life.

The whistleblower provisions are well-intentioned attempts to address the SEC's failure during the Madoff scandal.

However, the guaranteed massive minimum payouts and limited SEC flexibility ensure that a line of claimants will form at the SEC's door hoping for some of the hundreds of millions in the whistleblower pot. The SEC will spend limited resources sorting through these claims that would have been better spent bringing enforcement cases.

Title 9 devotes 250 pages to provisions that either have nothing to do with the crisis or purport to provide solutions that will not actually solve problems but, rather, promise to give rise to many new problems.

This bill has been largely outsourced to Treasury officials and to regulators who have written key provisions to bolster their own power and authority.

This bill reflects a series of deals made, not by lobbyists, but by the executive branch along with the existing financial regulators who failed to do their jobs during the last crisis.

In negotiating key features of the bill, delays were the norm as responses to my offers or inquiries had to pass through a long and winding road of approval from Treasury, the Fed, the FDIC and on and on.

Unfortunately, we have outsourced the writing of this legislation to the Fed, Treasury, OCC, SEC, CFTC, among other government bureaucracies.

Let me give an example. Consider the derivatives title in the bill. This title was largely authored by the CFTC. We see this manifested in numerous provisions that give the CFTC broad new authority, sometimes to the exclusion of other regulators.

The CFTC used this bill as an opportunity to grab jurisdiction from the SEC, which was purposely excluded from the negotiating room during critical meetings.

As a result, the derivatives title gives the CFTC regulatory authority over a wide swath of Wall Street and Main Street companies.

The CFTC, in addition to its traditional role of overseeing the commodity futures markets, will be charged with protecting retail investors, assessing systemic risk, imposing capital requirements on manufacturing companies, regulating banks, and assessing the regulatory capability of the Securities and Exchange Commission.

This is the sort of result you get when you hand the legislative pen to the regulators.

My Democrat colleagues like to talk about the influence of Wall Street lobbyists, but the real influence in this process has been exerted by the bureaucracies. I thought that one of the main objectives of this legislation was to plug regulatory gaps and streamline our financial regulatory structure?

We still have the Fed, the FDIC, the SEC, the CFTC, and the OCC. We have also added some new letters to the alphabet soup, as with the CFPB and the OFR.

We have also seen a complete about face with respect to the Federal Reserve.

The process seemed to have begun with a commitment to rein in their bailout powers and take away their consumer protection authority, given the Fed's failures. By contrast, this legislation actually expands the Fed's powers.

Americans see developments in Europe, where a monetary union faces a severe test and market participants are running away from the debts of profligate governments. Americans are increasingly worried that the out-of-control spending here in the U.S. and the massive expansion of government will very soon test American fiscal viability.

An appropriate response would be to rein in the costs and breadth of runaway government spending and bureaucratic expansion. The wrong response would be the financial regulation bill before us.

From legislative process to the final bill language, this bill is flawed. This bill promises more government, more costs, slower economic growth, and fewer jobs. It threatens privacy rights and fails to address crucial elements of the recent crisis.

I urge my colleagues to vote against this bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

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

Mr. REID. Mr. President, on behalf of the Republican leader, and I and the managers of the bill and a number of others who worked long and hard on this consent agreement, I now ask unanimous consent that all postcloture time be yielded back; except for 5 minutes for the Republican leader or his designee to raise a budget point of order against the Dodd-Lincoln substitute amendment No. 3739; Senator DODD or his designee be recognized to waive the applicable point of order; that the Senate then vote on the motion to waive the budget point of order without further intervening action or debate; that if the waiver is successful, then all pending amendments be withdrawn; the substitute amendment, as amended, be agreed to; the bill, as amended, be read a third time; and the Banking Committee then be discharged of H.R. 4173, the House companion; that the Senate then proceed to its consideration; that the text of the Senate bill, as read a third time, be inserted in lieu thereof, the bill be advanced to a third reading and the Senate then proceed to vote on passage of the bill; that upon passage, the Senate insist on its amendments, request a conference with the House on the disagreeing votes of the two Houses; further, that on Monday, May 24, it be in order for Senator BROWNBACK to be recognized for a period not to exceed 10 minutes, and Senator DODD for the same period; prior to Senator BROWNBACK offering a motion to instruct the conferees with respect to H.R. 4173 on the subject of auto dealers; that after the motion is made, the Senate then proceed to vote on the motion to instruct; upon disposition of the motion to instruct, Senator HUTCHISON or her designee be recognized for a period of up to 10 minutes to make a motion to instruct with respect to proprietary trading, and Senator DODD also be recognized for the same period of time; that upon the use or yielding back of the time, the Senate then proceed to vote on the Hutchison motion to instruct; that upon disposition of the above-referenced motions to instruct, no further motions be in order, and that the Chair be authorized to appoint conferees on the part of the Senate with a ratio of 7–5; that the Senate bill then be returned to the Calendar; provided further that if the waiver is not agreed to, then this agreement be null and void; and the cloture motion on the bill be withdrawn; provided further, no amendments or motions be in order to the motion to instruct; and the title amendment, which is at the desk, be agreed to.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

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

Mr. SESSIONS. Mr. President, I am here to raise a budget point of order. The substitute and the underlying bill came to the floor spending money the Banking Committee did not have in its 302(a) budget allocation. It has exceeded the budget allocation. How much direct spending is in the Dodd-Lincoln substitute as amended? About $21 billion, partially offset by raising revenues resulting in an increase to the deficit by $10.6 billion over the 5-year timeframe—that is the timeframe we are using for budget enforcement—and over the 10-year period, reflected in the baseline, it would increase the deficit by $19.7 billion.

So our 10-year deficit outlook—the Obama administration policies will contribute to the debt by running massive deficits for the next 10 years, averaging nearly $1 trillion a year from 2011 through 2020. The projected deficit of 8.9 percent of GDP for 2011 will come at a time when the administration is predicting a return to prerecession economic growth. The total public debt stands at over $13 trillion, with fiscal year 2009's $1.4 trillion deficit having contributed significantly to our Nation's credit card bill. With unsustainable levels like this, the Senate must knowingly, consciously, and with full awareness decide each time a bill comes to the floor to increase our debt burden further.

I object and therefore raise a budget point of order under section 302(f) of the Congressional Budget Act, which prohibits consideration of legislation that exceeds an authorizing committee's 302(a) allocation. The substitute, as amended, provides for net increases in direct spending of $21 billion and, if adopted, would cause the underlying bill to exceed the allocation to the Banking Committee over the 2010–2014 period.

Mr. DODD. Reserving the right to object, I want to be heard on the matter.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. First of all, the Budget Committee, like all authorizing committees, has the option, at the outset, when the budget resolution is considered, to set aside a reserve fund in anticipation of some piece of legislation coming along that may cost more. We did not do that. We did not know what that would be. That is what we are talking about.

If we had spent $1, since we had zero in terms of a budget allocation for our committee, $1 over it would have provoked a potential budget point of order. So the fact that the committee has spent money in this bill on a major restructuring of our financial structures of the Nation should not come as any great surprise. But, secondly, it is somewhat ironic the only reason we find ourselves at the point of $19.7 billion over is because—at the request, I might point out, of my good friends on the minority side—we eliminated the upfront prepayment cost of the $50 billion we had in the bill.

Many believed the optics of that just did not look good so we took that money out, as you recall, in the Shelby-Dodd amendment, one of the first amendments we considered.

Had that money stayed in, of course we would not be talking about any deficit at all in this bill. The fact is, of course, that post payments coming out of creditors, coming out of the industry itself, and the fact the bankrupt company does not have the assets, then it will be paid for.

I say to my colleagues respectfully here, it is a very technical amendment dealing primarily with 302. It has to do with the allocations given to committees. Had we been $1 over, we would have been subjected to this point of order. But we have not. But on that basis, theoretically we ought to be waiving.

Pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. The point of order must first be raised.

Mr. DODD. Was a point of order made?

Mr. SESSIONS. I raise a point of order under section 302(f) of the Congressional Budget Act, which prohibits the consideration of legislation that exceeds an authorizing committee's 302(a) allocation. The substitute, as amended, provides for net increases in direct spending of $21 billion, and if adopted it would cause the underlying bill to exceed the allocation of the Banking Committee over the 2010–2014 period.

Mr. DODD. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Pennsylvania (Mr. SPECTER) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 60, nays 39, as follows:

[Rollcall Vote No. 161 Leg.]

YEAS—60

| | | |
|---|---|---|
| Akaka | Feinstein | Mikulski |
| Baucus | Franken | Murray |
| Bayh | Gillibrand | Nelson (NE) |
| Begich | Hagan | Nelson (FL) |
| Bennet | Harkin | Pryor |
| Bingaman | Inouye | Reed |
| Boxer | Johnson | Reid |
| Brown (MA) | Kaufman | Rockefeller |
| Brown (OH) | Kerry | Sanders |
| Burris | Klobuchar | Schumer |
| Byrd | Kohl | Shaheen |
| Cantwell | Landrieu | Snowe |
| Cardin | Lautenberg | Stabenow |
| Carper | Leahy | Tester |
| Casey | Levin | Udall (CO) |
| Collins | Lieberman | Udall (NM) |
| Conrad | Lincoln | Warner |
| Dodd | McCaskill | Webb |
| Dorgan | Menendez | Whitehouse |
| Durbin | Merkley | 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 |

NOT VOTING—1

Specter

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.

Mrs. MURRAY. Mr. President, I move to reconsider the vote.

Mr. DODD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, all postcloture time is yielded back. All pending amendments are withdrawn, and the substitute amendment, as amended, is agreed to.

The amendment (No. 3739), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill, as amended, was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, H.R. 4173 is discharged and the Senate will proceed to consideration of the bill, which the clerk will report.

The legislative clerk read as follows:

A bill (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 PRESIDING OFFICER. Under the previous order, the text of the Senate bill, as amended, is inserted in lieu of the text of H.R. 4173.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is on passage of H.R. 4173, as amended.

Mr. DURBIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 39, as follows:

[Rollcall Vote No. 162 Leg.]

YEAS—59

| | | |
|---|---|---|
| Akaka | Gillibrand | Murray |
| Baucus | Grassley | 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 |
| Cardin | Landrieu | Snowe |
| Carper | Lautenberg | Stabenow |
| Casey | Leahy | Tester |
| Collins | Levin | Udall (CO) |
| Conrad | Lieberman | Udall (NM) |
| Dodd | Lincoln | Warner |
| Dorgan | McCaskill | Webb |
| Durbin | Menendez | Whitehouse |
| Feinstein | Merkley | Wyden |
| Franken | Mikulski | |

NAYS—39

| | | |
|---|---|---|
| Alexander | Crapo | LeMieux |
| Barrasso | DeMint | Lugar |
| Bennett | Ensign | McCain |
| Bond | Enzi | McConnell |
| Brownback | Feingold | Murkowski |
| Bunning | Graham | Risch |
| Burr | Gregg | Roberts |
| Cantwell | Hatch | Sessions |
| Chambliss | Hutchison | Shelby |
| Coburn | Inhofe | Thune |
| Cochran | Isakson | Vitter |
| Corker | Johanns | Voinovich |
| Cornyn | Kyl | Wicker |

NOT VOTING—2

| | |
|---|---|
| Byrd | Specter |

The bill (H.R. 4173), as amended, was passed.

Mr. DODD. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the title amendment which is at the desk, is agreed to.

The amendment (No. 4172) is as follows:

Amend the title so as to read:

"A bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."

The bill (H.R. 4173), as amended, will be printed in a future edition of the RECORD.

The PRESIDING OFFICER. The Senate insists on its amendments and requests a conference with the House of Representatives on the disagreeing votes of the two Houses.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The 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. Without objection, it is so ordered.

## MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes.

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

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

## CUBAN INDEPENDENCE DAY

Mr. NELSON of Florida. Mr. President, I rise to commemorate the 108th anniversary of Cuba's independence. On May 20, 1902, after a long and bitter struggle, the people of Cuba established a democratic Republic. Today, the Cuban people are again fighting for democratic change and independence in their homeland.

On this day, we honor Orlando Zapata Tamayo, who died this year after a prolonged hunger strike while protesting his inhumane treatment at the hands of the Cuban prison authorities. We stand in solidarity with the Ladies in White, including Zapata Tamayo's mother Reina Luisa Tamayo, who through their quiet dignity, continue to call the world's attention to the arrests of their fathers, husbands, and brothers for exercising free speech and daring to challenge the regime. We also recognize the contributions of Cuba's journalists, bloggers, and activists, who undertake great personal risk to tell the world about the realities of life in Cuba.

The legacy of Cuban independence endures with these heroes past and present, who fight against the forces of repression and totalitarianism for the promise of a free and democratic society. Now more than ever, the U.S. and the international community must press the Cuban regime to free all political prisoners. On behalf of the people of Florida and all Americans, we stand in solidarity with the Cuban people in their struggle in the hope that one day freedom of expression and basic liberty are possible in Cuba without the fear of persecution.

## U.S.-JAPAN COOPERATION ON NUCLEAR POWER

Mr. ALEXANDER. Mr. President, as the U.S. Ambassador to Japan Mike Mansfield once said, "the U.S.-Japan relationship is the most important bilateral relationship in the world, bar none."

About a month ago, China Daily ran an article in which they compared the United States' nuclear program to Rip Van Winkle, the legendary American folk hero who fell asleep for 20 years after a night of carousing with Henry Hudson's men in the Catskill Mountains. "A thunder from China has woken up Uncle Sam, like Rip Van Winkle, from a 20-year nap, to a different world," boasted the China Daily article. "This world is in the midst of a Green Revolution. It is the biggest sea change since the Industrial Revolution, and Uncle Sam has slept too long to take the lead in this new movement."

I am not sure that this is really the case, but the point in well taken. Out of fear and mistrust, and after a few bad accidents, the U.S. 30 years ago decided to put aside construction of new nuclear powerplants. Our domestic nuclear industry still kept plodding along, learning to operate the plants we had more efficiently and trying to sell new plants abroad. But overall we atrophied. Our nuclear construction capabilities withered while other countries' capabilities flourished. And so here we are, 30 years later, with a much smaller nuclear industry that is missing critical parts, like the ability to manufacture the largest components.

Meanwhile the rest of the world kept moving forward. And recently, we have started seeing something new—the entrance into the nuclear market by countries that are considered low-cost manufacturers, like China and South Korea.

When China recently bought Westinghouse AP1000 reactors from Toshiba, they insisted on getting all the engineering specifications as well. It is no secret what they are planning. They are going to reverse-engineer the reactor and come up with their own design. In another 5 years, don't be surprised to see the Chinese marketing their own reactors around the world. Also look what Korea has accomplished. Before 1996 they only built imported reactors in Korea, from companies like Westinghouse and Areva. Then they took an old design from Combustion Engineering, an American company, and came up with the APR1400. Last year the Koreans shocked the world by beating out Areva and Westinghouse for a $20 billion contract to build four new reactors in the United Arab Emirates. What is going to happen when China enters this market? I suspect in 20 years the Chinese will be selling nuclear reactors in Wal-Mart.

Now there are two ways of looking at this. One is to say this is a world of cutthroat competition and that if