United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

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

Senate

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

PRAYER

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

The guest Chaplain offered the following prayer:

Let us pray.

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

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

It is in Your precious Name we pray. Amen.

PLEDGE OF ALLEGIANCE

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

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

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

To the Senate:

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

DANIEL K. INOUYE,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

WELCOMING THE GUEST CHAPLAIN

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

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

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

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

RECOGNITION OF THE MAJORITY LEADER

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

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

SCHEDULE

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

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

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

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

MEASURE PLACED ON THE CALENDAR—S. 3588

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

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

The assistant legislative clerk read as follows:

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

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

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

WALL STREET REFORM AND CONSUMER PROTECTION ACT—CONFERENCE REPORT

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

The assistant legislative clerk read as follows:

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

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

The Senator from Hawaii.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

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

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

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

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

Madam President, I yield the floor.

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

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

After the crisis, which cost trillions of dollars and millions of jobs, it was clear that significant reform was necessary. Despite broad agreement on the need for reform, the majority decided it would rather move forward with a partisan bill. The result is the 2,300-page legislative monster before us that expands the scope and the power of ineffective bureaucracies. It creates vast new bureaucracies with little accountability and seriously undermines the competitiveness of the American economy.

Unfortunately, the bill does very little to make our financial system safer. Therefore, I will oppose the Dodd-Frank bill and urge my colleagues to do the same.

This was not a preordained outcome; it is the direct result of decisions made by the Obama administration. Had they sincerely wanted to produce a bipartisan bill, I have no doubt we could have crafted a strong bill that would garner 80 or more votes in the Senate. If the American people haven't noticed by now, that is not how things work under the Democratic rule.

Unfortunately, the partisan manner in which this bill was constructed is not its greatest shortcoming. One would have assumed that the scope of the crisis—trillions of dollars lost and millions of jobs eliminated—would have compelled the Banking Committee to spend the time necessary to thoroughly examine the crisis and develop the best possible legislation in response. Unfortunately, such an assumption would be entirely unfounded. The Banking Committee never produced a single report on or conducted an investigation into any aspect of the financial crisis.

In contrast, during the Great Depression, the Banking Committee set up an entire subcommittee to examine what regulatory reforms were needed. The Pecora Commission, as it came to be known, interviewed, under oath, the big actors on Wall Street and produced a multivolume report.

Unfortunately, this time around, the Democratic-run committee gave Wall Street executives a pass, I believe. There were no investigations, no depositions, and no subpoenas. In fact, Chairman DODD, my friend and colleague, never called on the likes of

Robert Rubin and Lloyd Blankfein to testify before the Banking Committee. Not a single individual from AIG's financial products division was questioned by the committee or its staff. Although Congress did establish the Financial Crisis Inquiry Commission to do the work that the majority party, I believe, refused to do, the Commission's work will not be completed until the end of this year.

Most amazingly, the Banking Committee didn't even hold a single hearing on the final bill before its markup. The committee never took the time to receive public testimony or survey experts about the likely outcomes the legislation would produce. We know the majority heard from Wall Street lobbyists, government regulators, and liberal activists, but they clearly decided they did not want the American people to have a chance to understand and comment on the bill before us today before it was enacted. The question is, Why? The majority knows that this bill is a job killer and will saddle Americans with billions of dollars in hidden taxes and fees. Allowing the public to weigh in on this bill would have spelled the end of the Democratic version of reform. I believe we owed more to those who lost their jobs, their homes, and their life savings. I believe this truly was a missed opportunity.

The difference between what we needed to do, what we could have done, and what the majority has chosen to do is considerable. I will speak on this.

Congress could have focused this legislation on financial stability. It could have utilized the findings of the Financial Crisis Inquiry Commission. Instead, the Democratic majority chose to adopt legislative language penned by Federal regulators in search of expanded turf. They chose to legislate for the political favor of community organizing groups and liberal activists seeking expansive new bureaucracies that they could leverage for their own political advantage. The result is an activist bill that has little to do with the recent or any crisis and a lot to do with expanding the government to satisfy special interests.

Congress could have written a bill to address the problem of too big to fail once and for all. In fact, the Shelby-Dodd amendment began to address this problem right here on the floor. Unfortunately, the Democrats once again overreached at the eleventh hour and undermined the seriousness of our effort by emphasizing social activism over financial stability. Democrats insisted that the overall financial stability mission of the Financial Stability Oversight Council was less important than the political needs of certain preferred constituencies. This dangerous mixing of social activism and financial stability follows the exact same model that led us to the crisis in the first place; that is, private enterprise co-opted through political mandates to achieve social goals. Fannie and Freddie proved this combination can be highly destructive.

Congress could have written legislation to address key issues known to have played a key role in the recent crisis. On the government-sponsored enterprises, Fannie and Freddie, the bill is silent, aside from a mere study. On the triparty repo market, the bill is silent. On runs in money markets, the bill is silent. On the reliance of market participants on short-term commercial paper funding, the bill is silent. On maturity transformations that allowed the shadow banking system to effectively create money out of AAA-rated securities, thereby making the system much more vulnerable, the bill is silent. On the financial system's overall vulnerability to liquidity crises, the bill again is silent. We know with certainty that all of these factors—none of which is addressed in the bill—were integral to the recent financial crisis. While we don't want to write legislation that only deals with the last crisis, we do want to enact a law that addresses what we know were systemic problems. This bill fails to do so.

Congress could have written a bill to streamline regulation and eliminate the gaps that firms exploit in a race to the regulatory bottom. This bill does the opposite by making our financial regulatory system even more complex. We will still have the Fed, FDIC, SEC, CFTC, OCC, and the remainder of the regulatory alphabet soup. In fact, most of the existing regulators that so recently failed us have been given expanded power and scope. This bill will also add new letters to the already-confused soup, such as the CFPB and the OFR. In addition to increased regulatory complexity, there will be new special activist offices within each regulator for almost every imaginable special interest.

Congress could have set up reasonable new research capabilities in its new Stability Oversight Council to complement financial research performed by the Federal Reserve and others. Instead, the Democrats decided to establish the Office of Financial Research with an unconstrained director and a focus on broad information collecting and processing.

I believe this office will not only fail to detect systemic threats in the asset price bubbles in the future, it will threaten civil liberties and the privacy of Americans, waste billions of dollars of taxpayer resources, and lull markets into the false belief that this new government power will protect the financial system from risky trades.

Congress could have been transparent in identifying the bill's fiscal effects and costs. Instead, the majority wrote a bill that hijacks taxpayer resources but hides that fact from public view. Just as the administration refuses to acknowledge trillions of dollars of contingent taxpayer liabilities residing with Fannie and Freddie, this bill refuses to provide Americans with a transparent view of the costs of the new multibillion-dollar consumer protection bureaucracy.

According to the report on the bill offered by the majority, the consumer bureaucracy's budget is ''paid for by the Federal Reserve System.'' Make no mistake, ''paid for by the Fed'' means paid for ultimately by the taxpayers.

Taxpayers will be on the hook for billions of dollars of unchecked, unencumbered, and unappropriated spending financed by the inflationary money printing authority of the Federal Reserve which will be hidden from the American people in the arcane Federal budget.

Congress could have also used this legislative opportunity to begin the process of reforming the failed mortgage giants Fannie and Freddie, whose ever growing bailouts have no upper limit. When it became clear that this was not the intention of the Democrats, Republicans sought to address the current and worsening conditions of the GSEs.

We suggested establishing taxpayer protections, such as portfolio caps, on the mortgage giants. We recommended making the cost of Freddie and Fannie bailouts transparent to the public; that is, to the taxpayer. We offered initial steps toward the inevitable unwinding of these failed institutions. Yet at every turn, the Democratic majority blocked Republican efforts to establish at least a foundation for reform.

The Democratic-preferred approach in this bill to reforming the mortgage giants is a study. Let me repeat that notion. In order to address a bailout that has already cost American taxpayers roughly $150 billion to date, with unlimited future taxpayer exposure, the Democrats propose a study. It does not take a study to determine that $150 billion in unlimited loss exposure needs to be addressed immediately—now.

Congress could have focused on securities market practices that were known to have contributed to systemic risks in our financial system. Instead, Democrats overreached once again.

For example, the bill gives the Securities and Exchange Commission, which has failed to carry out its existing mandates, a new systemic risk mandate to oversee advisers to hedge funds and private equity funds. Yet no one contends private funds were a cause of the recent crisis or that the demise of any private fund during the crisis resulted in a systemwide shock.

Congress could have acted to curtail Wall Street's speculative excesses and enhance Main Street's access to credit. But instead, in this bill large financial firms on Wall Street seem to have benefited, judging by the behavior of the stock prices, while the legislation almost surely will increase uncertainties and costs for Main Street and America's job creators.

The actual provisions in the bill will benefit big Wall Street institutions because they substantially increase the amount and cost of financial regulation. Only large financial institutions will have the resources to navigate all of the new laws and regulations that this legislation will generate. As a result, this bill, disproportionately will hurt small and medium-sized banks which had nothing to do with the crisis.

While the largest financial institutions will get special regulation under this bill, the unintended result will be lower funding costs for these firms. That will benefit the big banks and hurt the small banks. Therefore, this bill will result in higher fees, less choice, and fewer opportunities to responsibly obtain credit for blameless consumers.

Moreover, this bill raises taxes which, as we all know, are ultimately borne by consumers. Make no mistake, when Wall Street writes a check to pay its higher taxes, the ones who end up paying those taxes are American consumers and workers.

Congress could have written legislation for consumer protection that respects both American consumers and the need for safety and soundness in our financial system.

Instead, the Dodd-Frank bill was basically constructed by architects in the Treasury Department who have a certain condescension for American consumers and their choices.

The ultimate goal is to substitute the judgment of a benevolent bureaucrat for that of the American consumer, thereby controlling consumer behavior without regard for the safety and soundness of our banking system.

The American people are being told not to worry, however, because it is all being done for their own good.

While a consumer protection agency might sound like a good idea, the way it is constructed in this bill will slow economic growth and kill jobs by imposing massive new regulatory burdens on businesses, large and small. It will stifle innovation in consumer financial products, and it will reduce small business activity. It will lead to reduced consumer credit and higher costs for available credit.

Less credit at higher price will dampen the very small business engines of job creation that our economy desperately needs right now. That is a price I am not willing to pay.

Congress could have implemented reforms to improve derivatives market activities. Instead, the bill's derivatives title seems to be inspired by a desire to be punitive or to provide short-term political support during an election, or both. Instead of imposing a rational and effective regulatory framework on the OTC derivatives market, the bill runs roughshod over the Main Street businesses that use derivatives to protect themselves every day.

The Dodd-Frank bill will increase companies' costs and limit their access to risk-mitigating derivatives without making our financial system safer in the process. As a result, there will be fewer opportunities for businesses to grow, fewer jobs for the unemployed, and higher prices for consumers.

Congress could have written a bill to put an end to overreliance on credit agencies and underreliance on their own due diligence. Instead, the Dodd-Frank bill sets up new regulations and liability provisions to give the impression that ratings are accurate. It then takes a contradictory direction and instructs regulators to replace references to ratings with other standards of creditworthiness.

To make matters even more confusing, the bill also provides for the establishment of a government-sponsored body that will select a credit rating agency to perform an initial rating of a security issue.

I anticipate the net effect of these conflicting provisions will be a reduction of competition among credit rating agencies. Potential competitors either will be deterred by all of the new regulatory requirements or be destroyed by the liability provisions set up in the bill. The lack of competition led to poor quality ratings in the runup to the crisis. This bill perpetuates and, in fact, worsens that problem.

Congress could have eased regulatory burdens on small and medium-sized businesses not integral to the recent crisis or any crisis. Instead, Main Street corporations will be subject to a panoply of new corporate governance and executive compensation requirements.

These new requirements will be costly and potentially harmful to shareholders because they empower special interests and encourage short-term thinking by managers. These features were included solely for the purpose of appeasing unions and other special interest lobbyists, and there is no demonstrated link between these changes and the enhanced stability of our financial system or improved investor protection.

We are getting toward the end. Congress could have held hearings or analyzed a number of changes this bill makes to the securities laws. Instead, dramatic changes in those laws were written with little discussion and no analysis.

Throughout this process, there has been a lot of talk about the influence of Wall Street over this bill. To be sure, in the early stages of the negotiations, Wall Street and the big banks were very engaged.

I think the American people know, however, that in the end, the real influence peddlers on this bill were not Wall Street lobbyists but rather liberal activists and Washington bureaucrats. Wall Street and the big banks just happen to be the incidental beneficiaries of their success.

When Chairman DODD and I began this process, we agreed that the bureaucratic status quo was unacceptable and that radical change was necessary. With that in mind, we agreed to consolidate all the financial regulators and constrain the Fed to its monetary policy role.

This was not a result the big banks wanted. The last thing a large regulated financial institution wants is a new regulator. After all, they spent years and millions of dollars developing a relationship with our current regulators.

A major regulatory reorganization would seriously upset the status quo and cost them a great deal of money. Neither Chairman DODD nor I were persuaded, however. Change was necessary and change was going to come.

Unfortunately, that vision of reform began to die as the bureaucrats and the liberal left began to exercise their influence over the bill. When it became apparent that I was not willing to embrace the left's expansive consumer bureaucracy, it also became apparent that actual regulatory reform was not what the majority was seeking.

All other serious reform was scuttled by the Democrats in defense of the new consumer bureaucracy. That was the point at which Chairman DODD and I began to seek a new negotiating partner, ultimately to no avail.

As the Fed and the other regulators began to regain their foothold with the Democrats and the administration and the activist left consolidated its support around an expansive new bureaucracy, all the Democrats will succeed in doing, with the help of a few Republicans, is give the failed bureaucracies more power, more money, and a pat on the back with the hope they will do a better job next time.

That is not real reform. That is just more of the same.

We had an opportunity to lead the world by creating a modern, efficient, and competitive regulatory structure that will serve our economy for years to come. Instead, I believe we squandered that opportunity by barely expanding our obsolete, inefficient, and uncompetitive system. To make it even worse, they have added to the bureaucratic morass several more unrestrained and unaccountable agencies.

It became apparent early on to me that the administration and the Democratic majority were not interested in regulatory reform. All they were trying to do is exploit the crisis in order to expand government further and reward special interests.

The Dodd-Frank bill will not enhance systemic stability. It will not prevent future bailouts of politically favored institutions and groups by the government.

The bill serves only to expand the Federal bureaucracy and the government control of the private sector. It will impose large costs on the taxpayers and businesses.

For these reasons, I urge my colleagues to reject this bill.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my colleague from Alabama. Once again—I say this with the respect—I feel as if I am listening to the first speech back in November when I offered the original proposal of this bill and wonder if we have been in the same

Chamber and same city over the last several years.

I am not going to use the time between now and 11 a.m. when we are going to vote on the cloture motion. I will not go through the long list, page after page of amendments that were adopted as part of this bill offered by my good friends on the minority side.

We had 80 hearings held over 2 years, with countless efforts to reach out and bring in people. One can make a lot of accusations about the bill, but this was a very inclusive process. Half the amendments adopted on the floor in this Chamber during consideration of this legislation over 4 weeks were ones offered by the minority and were accepted and bipartisan amendments. There was never an alternative offered. There was never a substitute offered. It was a question of whether people wanted to amend this legislation.

It is not a perfect bill, I will be the first to admit. We do not know ultimately how well the ideas we incorporated will achieve the results we all desire. It will take the next economic crisis—as certainly it will come—to determine whether the provisions of this bill will provide this generation or the next generation of regulators with the tools necessary to minimize the effects of that crisis when it happens. But we believe we have done the best we could under the circumstances to see to it we never have another bailout of another major financial institution at taxpayer expense.

In fact, it was the Shelby-Dodd amendment adopted in this Chamber—it was the second amendment we considered—that actually completed the process of seeing to it there would be bankruptcy or resolution of financial institutions that got themselves into so much trouble that they put the entire system at risk. We set up an oversight council to make sure we could observe what was occurring not only here at home but around the globe—matters such as Greece or Spain that could put our economy at risk. So it isn't just one set of eyes but having those responsible for seeing to it that our economy remains safe and sound have the opportunity to provide the early warning that never occurred.

We didn't need a Pecora Commission to find out what was going wrong. We had mortgages being sold in this country to people who couldn't afford them, marketing them in a way that guaranteed failure, securitizing them so they could be paid and then skipping town in a sense. I didn't need to have hours of hearings to find out what was the cause of it. The question was, How do we try to put a system in place to minimize the future kind of risks our Nation would face. It wasn't just to deal with those who created the problem but, rather, to look ahead—not in a punitive way—and to set up an architecture and structure to allow us to get to that point where we could be confident we were addressing these issues.

Thirdly, of course, we tried to deal with exotic instruments that had caused so much of the difficulty. The derivatives market was a $90 billion market, and it mushroomed in less than a decade to $600 trillion, putting our Nation at risk because of a lack of transparency and accountability to determine what was occurring in those markets. To consider it a radical idea that we might want to have accountability and transparency I find remarkable considering what our country has been through.

Also, we provided a consumer protection bureau. What a radical idea that is—the idea that people who buy mortgages or have a student loan, a credit card, a car loan, might have someplace in this city that watches out for them so their jobs, their homes, their retirement accounts are not lost. So while this bureau is in place in this bill, the idea was at least to see to it that people, when they have the problems they have been through or are going through, someone is watching out for them.

We have a Consumer Product Safety Commission to address the purchase of a faulty product, but what happens when someone abuses or takes advantage, as happens in so many cases in financial areas? People should have a chance to have a redress of their grievance or to at least from the outset have an opportunity to address that before it becomes a broader problem.

So, Madam President, again, we have debated this now for 2 years and countless opportunities. We spent 4 weeks on the floor of this Chamber, amendments were offered, and never once—I guess on one occasion we had a supermajority vote. There was only one tabling motion I know of. I did everything I could to make this as inclusive a process as possible.

I understand some people don't like the bill. It saddens me, in a way, that it has once again become sort of a mindless partisan argument rather than talking about what we need to be doing. This is not the end of all of it, obviously. Oversight will be required, consultation in the coming weeks and months and years, to make this work well. But, Madam President, I can't imagine another process that has been as inclusive.

My colleagues will recall that almost 10 months, going on almost a year ago, I invited both Democrats and Republicans on the Banking Committee to assume responsibility for major sections of this bill, which they did do, by the way, and made a significant contribution to the product. So while I respect those who want to vote against the bill, and that is their right to do so, find some arguments based on the merits rather than arguing about whether there was a process that was inclusive or that allowed people the opportunity to be heard.

Again, we have the right to be heard, but we don't have the right necessarily to have our ideas become the law of the land. That is what a body like this is for.

So this is a major undertaking, one that is historic in its proportions, and it is an attempt to set in place a structure that will allow us to minimize problems in the future. I can't legislate integrity. I can't legislate wisdom. I can't legislate passion or competency. What we can do is to create the tools and the architecture that allow good people to do a good job on behalf of the American public. That is what a bill like this is designed to do.

I regret I can't give jobs back, restore foreclosed homes, or put retirement monies back into accounts. What I can do is to see to it that we never, ever again have to go through what this Nation has been through. That is what this effort has been about over the last several years, to try to create that structure, that architecture. It will be incumbent now on the present administration and those who follow to nominate good people to head up these operations, to attract good public servants who will fill the jobs of these various regulatory bodies to see to it that they do the work we all want them to do.

Again, I can't legislate that. I can merely create the opportunity for that kind of protection to occur—to modernize a financial system, to lead the world, if we can, in harmonizing rules so we don't have the kind of sovereign shopping that was going on with regulatory bodies, where major financial institutions would shop around the world as to the nation of least resistance or the regulator of least resistance.

We need to see to it that we have the unanimity or at least the harmonization of rules that will allow us to have a more orderly system in our globe because, as we have all painfully learned, matters that occur thousands of miles away can affect the economy in our own country.

So for all those reasons, Madam President, I thank my colleagues for their efforts over the last 2 years. I thank the leadership for providing the opportunity and time for us to do this in this Chamber. I thank my colleague in the House, BARNEY FRANK, and his colleagues for the work in which they engaged in order to produce a bill there. We spent 2 weeks, some 70 hours of debating the conference report, where more amendments were adopted—again, offered by my colleagues, Republicans and Democrats—to make this as good a bill as we could in all of this.

So with that, Madam President, I will reserve some comments for later, but as we approach this vote in the next few minutes, I urge my colleagues to invoke cloture, to allow us to then have an up-or-down vote on this bill, and to do what we can to restore some trust and confidence and optimism for the American people. In the midst of the worst economic crisis in the lives of most Americans, this institution—the Senate—rose to the occasion and crafted a bill to address the financial service structure of our Nation to once again give us the hope that we can see wealth created, jobs produced, and an economy that will offer opportunities for the next generation of Americans.

I urge my colleagues to support the cloture motion, and I urge them to support the bill when the vote occurs later today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. Madam President, later today, we will have a decisive vote on the financial regulatory bill that does nothing to reform the government-sponsored enterprises that many people believe to have been at the root of the financial crisis this bill grew out of—a bill that was meant to rein in Wall Street but which is now supported by some of Wall Street's biggest banks and opposed by small community banks in my State; a bill that is meant to help the economy but which is widely expected to stifle growth and kill more jobs in the middle of a deep recession; and a bill that, according to the papers, the vast majority of Americans simply don't think will work.

As it turns out, the American people don't seem to like this government-driven solution to the financial crisis any more than they liked the Democrats government-driven solution to the Nation's health care crisis. They do not think this bill will solve the problems in the financial sector any more than they think the health care bill will lead to lower costs or better care. One survey this week indicates that 7 in 10 Democrats have little confidence the proposals in this bill will avert or lessen the impact of another financial catastrophe, and nearly 70 percent of them doubt it will make their savings more secure.

It is easy to see why. The Wall Street Journal calls this bill's 2,300 pages ''the biggest wave of new Federal financial rulemaking in three generations.'' The chairman of the Banking Committee has famously said last month we would not know how this bill works until it is in place. But here are some initial indicators about its scope according to a study by the U.S. Chamber of Commerce on the new bureaucratic landscape under this bill: 70 new Federal regulations through the new Bureau of Consumer Financial Protection, 54 new Federal regulations through the U.S. Commodity Futures Trading Commission, 11 new Federal regulations through the Federal Deposit Insurance Corporation, 30 new Federal regulations through the Federal Reserve, and 205 new regulations through the Securities and Exchange Commission.

Those are just some of them. All told, this bill would impose 533 new regulations on individuals and small businesses, regulations that will inevitably lead to the kind of confusion and uncertainty that will make it even harder for struggling businesses to dig themselves out of the recession. It is just this kind of uncertainty that will deter lending and freeze up credit as lenders wait to see how they will be affected by the new regulations. It is just this kind of uncertainty that businesses cite time and time again as one of the greatest challenges to our economic recovery.

So here is a bill that fails to address the root causes of the kind of crisis it is meant to prevent, that creates a vast new unaccountable bureaucracy, that—if past experience is any guide—will lead to countless burdensome, unintended consequences for individuals and small businesses; a bill that constricts credit and stifles growth in the middle of the worst economic period in memory; and perhaps most distressing of all, a bill that punishes farmers, florists, doctors, retailers, and countless others across the country and far away from Wall Street who had absolutely nothing to do with the panic of 2008.

In other words, once again, the administration and its Democratic allies in Congress have taken a crisis and used it rather than solving it. How else can you explain the fact a bill that was meant to address the excesses on Wall Street is expected to hit individuals and industries that had nothing to do with the crisis it was meant to prevent?

Did anybody think when this bill was first proposed that it would end up hurting storefront check cashers, city governments, small manufacturers, home buyers, credit bureaus, and farmers in places such as Kansas and Kentucky?

This is precisely the kind of thing Americans are tired of—a government simply out of control. Only in Washington would you create a commission aimed at looking into the causes of a crisis, then put together and pass a 2,300-page bill in response to that crisis before the commission even has a chance to report its findings and issue recommendations. The White House will call this a victory. But as credit tightens, regulations multiply, and job creation slows even further as a result of this bill, they will have a hard time convincing the American people this is a victory for them.

Obviously, I will be opposing this bill, and I would encourage my colleagues to oppose it as well.

Madam President, I yield the floor.

Mr. DODD. Madam President, I suggest the absence of a quorum, and I ask unanimous consent the time during the quorum be equally charged to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, the Wall Street earthquake that sent shock waves around the world has not hit anywhere as hard as it hit Nevada. You can draw a straight line from unchecked greed on Wall Street to the collapse of the housing market on Main Streets throughout my State and around the country. As soon as the big banks went down, foreclosure signs went up.

How did this happen? Let's put it this way: When you go to any of the great casinos across Nevada and put your chips on the table, you are gambling with your own money. If you win, you win, and if you lose, you lose. But Wall Street rigged the game. They put our money on the table. When they won, they won big. The jackpots they took home were in the billions. And when they lost—and, boy, did they lose—they came crying to the taxpayers for help. The winnings were theirs to enjoy but the losses were all of ours, to share and to shoulder.

That is the way the market worked. It worked for a few fortunate ones in the big firms and worked against everyone else. So when I say that is how the market worked, what I mean is that it didn't work at all. It was badly broken and it nearly bankrupted us. It cost 8 million workers their jobs, millions of retirees their savings, and millions of families their homes. It shattered our faith in our financial system.

But there is another problem. We have been talking about this rigged system, this raw deal, in the past tense, but it is not a thing of the past. It is very much in the present. The rules that allowed Nevada's economy to collapse are still the same rules of the road today. That means every new day we do not act we run the risk of it happening all over again. That is a gamble I am not willing to take.

The bill before us makes sure we do not have to take that gamble. The first question was, How did this happen? The next question is, What are we going to do about it?

No. 1, we are saying to those who gamed the system that the game is over. We are cracking down on those who gambled away what so many have worked so hard to put away.

No. 2, we are saying to the families and taxpayers, never again will you be asked to bail out a big bank when the bank loses its risky bets.

Let me say that again because it is one of the most important parts of this bill: No more bailouts because no bank is too big to fail. We are going to give consumers and investors the strongest protections they have ever had against abusive banks, mortgage companies, credit card companies, and credit rating agencies. We are going to bring derivative markets that operate in the darkness out into the light. We are going to hold Wall Street accountable because we know we are accountable to the American people. This is about our ability to trust our financial system, it is about giving families the peace of mind they deserve, the peace of mind that comes with the knowledge they will be able to keep their homes and their savings will be safe.

We need a free market to thrive and grow and succeed. We acknowledge that. But there also have to be some rules, not to stifle but to safeguard us; rules so that when these firms fail they don't bring us down with them.

When this earthquake hit there was not nearly enough oversight, transparency, or accountability to shield us from the fallout. This law will change that. It will strengthen all three.

We are at the finish line this morning but getting here has not been easy. Wall Street doesn't like this bill. Of course it doesn't. Why would they want us to change the system they rigged, the system that made them all rich? Their cronies in Washington don't like it either. The top Republican in the House very publicly said the plight of millions was as small and insignificant as an ant, an insect; foreclosures, homes underwater, jobs lost—like an ant. The head of the Republican party asked us to simply trust Wall Street to look after itself.

We all know this crisis is enormous and we all know Wall Street is not going to reform itself. Rather than standing up for the taxpayers, those who are about to vote no are standing with the same bankers who gambled away our jobs and homes and our economic security in the first place. Just like their Wall Street friends, it seems our opponents care more about making short-term gains than they do about what is right for the economy in the long run. I think that is a mistake and I think it is a shame.

This is not about dollars and cents only, it is about fairness. It is about justice. It is about making sure there is not a next time. It is about jobs. It is about rescuing our economy.

I know Wall Street reform is complicated. There are not many people who know all the ins and outs of derivative trading and credit default swaps or mortgage-backed securities. But the principle before us is quite simple. It is not complicated at all. You either believe that we need to strengthen the oversight of Wall Street or you don't. You either believe we need to strengthen protections for consumers or you don't.

Our choice today is between learning from the mistakes of the past or dangerously letting them happen all over again.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report to accompany H.R. 4173, the Wall Street Reform and Consumer Protection Act.

Harry Reid, Christopher J. Dodd, Charles E. Schumer, Sheldon Whitehouse, Amy Klobuchar, Thomas R. Carper, Benjamin L. Cardin, Jeff Merkley, Kay R. Hagan, John F. Kerry, Tom Harkin, Jack Reed, Frank R. Lautenberg, Mark Begich, Barbara Boxer, Mark R. Warner, Joseph I. Lieberman.

The ACTING PRESIDENT pro tempore. By unanimous consent the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 4173, Restoring Financial Security Act of 2010, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Idaho (Mr. CRAPO).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 60, nays 38, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet (CO)	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

NAYS—38

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

NOT VOTING—1

Crapo

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 60 and the nays are 38. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. DODD. Madam President, I am about to propose a unanimous-consent request that has been agreed to by the respective leaders.

I ask unanimous consent that the postcloture time be considered expired at 2 p.m., with the time until then equally divided and controlled between Senators DODD and SHELBY or their designees; that during this period, if and when a budget point of order is raised against the conference report, then an applicable waiver of the point of order be considered made; that at 2 p.m., the Senate proceed to vote on the motion to waive the applicable budget point of order; that if the waiver is successful, without further intervening action or debate, the Senate vote on adoption of the conference report.

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

Mr. DODD. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. Madam President, I rise to make a point of order that the Senator from Connecticut alluded to. We have rules around here we have set up to discipline ourselves on spending. Unfortunately, we consistently ignore and waive them. That is one of the reasons we have a $13 trillion debt. That is one of the reasons we will have a $1.4 trillion deficit this year alone. This bill violates those rules. This bill violates one of the sections of those rules which says that in any 10-year period, we shall not have more than a $5 billion effect on the deficit in a negative way; that we need to otherwise pay for what we are doing. Therefore, this bill does violate the Budget Act.

If we are going to have any fiscal discipline around here—and we hear a lot of people talking about that—we should be living by the rules we have to assert fiscal discipline. Therefore, I make a point of order that the pending bill violates section 311(b) of S. Con. Res. 70 of the 110th Congress.

Mr. DODD. Madam President, pursuant to section 904 of the Congressional Budget Act of 1974 and the waiver provisions of applicable budget resolutions, I move to waive all applicable sections of that act and those budget resolutions for purposes of the pending conference report and ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. GREGG. I understand the vote will occur somewhere around 2 o'clock.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. Madam President, I see my colleague from Texas is seeking recognition. I wish to publicly thank her. She made a substantial contribution to this bill on several amendments that were adopted during debate on the floor. I thank her for them. They added to the value of the legislation. I am not sure what her comments will be right now, but I thank her for her contributions.

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

Mrs. HUTCHISON. Madam President, I appreciate the comments of the chairman. He accommodated many of the amendments I had, particularly as it concerns community banks. That was a huge concern in the original draft of the bill. I thank the chairman for accommodating those concerns. It did make it a better bill.

I wish to return to the aftermath of the financial crisis, when Congress was tasked with the responsibility of modernizing our financial regulatory structure so that we would have proper oversight of today's banking system and financial markets. We were called to fill in gaps in regulations which allowed American home buyers to simply sign on the dotted line to purchase a house that was in many instances beyond their means, to let companies hide trillions of dollars in assets from regulators, and ultimately led our government to lose hundreds of billions of taxpayer dollars to bail out financial institutions—Fannie Mae, Freddie Mac, GM, Chrysler, and AIG. Thus, were financial regulatory reform to succeed, we needed to enhance mortgage underwriting standards, bring greater transparency to the derivatives markets, and once and for all end too big to fail. The conference report before us takes steps toward these goals.

The legislation puts in place measures to address too big to fail; however, it falls short in fully addressing the risk of future government bailouts by failing to make changes to the Bankruptcy Code. In this legislation, we have also made strides to strengthen mortgage underwriting standards.

I am concerned that a newly formed Consumer Financial Protection Bureau will take the lead rather than our banking regulators, and this is one of the biggest concerns I have with the bill.

I am pleased that the conference report includes numerous measures for which I fought. I thank Chairman DODD for his willingness to work with me and his constructive approach to making changes to the bill, including a more level playing field for community banks across the country to compete through my amendment to bring parity to FDIC insurance assessments; my amendment, along with Senator KLOBUCHAR, to allow State-chartered banks and small and medium-size bank holding companies to retain Federal Reserve supervision so that our monetary policy truly reflects economic conditions throughout the country, not just on Wall Street; relief for small and medium-size public companies from the burden of rule 404(b) of Sarbanes-Oxley; and assurance that the Volcker rule's proprietary trading restrictions will not extend to the insurance affiliates of insurance companies with depository institutions. These are positive changes for which I give the chairman great credit. However, these positive changes are greatly outweighed by misplaced priorities to create new layers of bureaucracy while failing to address the root causes of the financial crisis—Fannie Mae and Freddie Mac.

Additionally, there are a series of provisions that are troubling to me. No. 1 is this consumer protection bureau. It is using the faults of Wall Street banks and executives to create a cumbersome new bureaucracy which will impose job-killing regulation at the expense of Main Street small businesses and families. The Consumer Financial Protection Bureau, with endless authority over all facets of our economy, is not the answer.

I am particularly concerned about the effect this bureau will have on well-regulated, safe, sound community banks. These banks largely avoided the subprime market, and they didn't engage in the risky speculative trades that contributed to the financial meltdown. However, these community banks are going to have 27 new or expanded types of regulation after this bill is passed. The consumer bureau could ultimately determine what products community banks can offer, on what terms they can offer these products, and under what settings and circumstances. Overall, the consumer bureau will result in fewer products and services for American families and small businesses.

The Texas Bankers Association tells me consumer bureau rules could result in the end of free checking accounts, higher fees on all consumer services, and less opportunity to negotiate on loans. It is not the big banks on Wall Street voicing concerns and opposition to this bill. The opposition is coming from community bankers in Texas who are worried they will be unduly penalized for faults they did not commit.

Small businesses are also against this new consumer bureau. The U.S. Chamber of Commerce and the National Federation of Independent Business are very concerned about this bureau.

We need community banks to continue extending credit to worthy families looking for a home and to small businesses to invest in and create jobs. I cosponsored an amendment during Senate consideration to ensure that safety and soundness regulators would have a say in the rules and regulations imposed on their institutions. That amendment was rejected, leaving community banks subject to this new bureau's unlimited and unchecked rulemaking authority.

I am also concerned with the treatment of derivatives in this legislation. I am concerned that the lack of transparency that needed reform has been exchanged for a regulation I do not think is going to properly regulate derivatives.

However, we must also protect end users such as airlines, utilities, manufacturers, and oil and gas companies. These companies use derivatives as a cost effective strategy to control price and risk. Many structure derivatives contracts are unique to their business, making it difficult to clear and trade on a market. I share concerns from derivatives end users that this mandate to post margins with cash, rather than collateral, will remove capital from investment and job creation.

While Senator DODD and Senator LINCOLN say that this legislation will not impose margin requirements, I worry that there is not a statutory exemption for end users. End users may even choose market volatility instead of risk-controlling derivatives altogether, exposing Americans to higher prices, slower economic growth, and more job losses.

We should seek transparency through greater reporting requirements, but businesses should not be forced to arbitrarily move money to margin accounts.

I am concerned that this legislation will cost more jobs at a particularly harmful time with national unemployment hovering around 10 percent. The Chamber of Commerce reports that the margin requirement on OTC derivatives could cost 100,000 to 120,000 jobs in S&P 500 companies alone.

This legislation does nothing to rein in Fannie Mae and Freddie Mac. Since the government takeover of these two GSEs, taxpayers have paid $145 billion to keep them afloat. The CBO reports that the government's cost to bail out Fannie and Freddie will eventually reach $381 billion.

These costs contributed to a Federal deficit which has topped $1 trillion for the first 9 months of fiscal year 2010. They have helped push our national debt to $13 trillion. A couple of weeks ago, the CBO reported that United States debt will reach 62 percent of GDP by the end of this year, the highest since just after World War II. We cannot continue to this dangerous path and mirror the crisis that currently ravages Europe.

We cannot sustain these debts and deficits. We offered solutions to rein in Fannie Mae and Freddie Mac. During Senate consideration of this legislation, I cosponsored amendments—No. 3839 and No. 4020—which would have reimposed the cap of Federal assistance to the GSEs at $200 billion each. These amendments would have brought Fannie Mae and Freddie Mac onto our budget so that Americans could see their true cost. And they would have brought an end to Fannie and Freddie's government conservatorship in 2 years. Unfortunately, these amendments were rejected. Furthermore, the conference committee would not even permit amendments to be offered on the GSEs. Instead, this legislation calls for a report, punting the plan for Fannie and Freddie that we need to the future. We need reform of Fannie Mae and Freddie Mac now, but this legislation does not even allow for debate of the GSEs.

The American people are frustrated with our government, and this legislation is an example of why. Under the guise of financial regulatory reform, this legislation continues the unprecedented growth in government.

The American people want sensible financial reform. However, this purported financial regulatory reform legislation does not even address the root causes of the crisis: Fannie Mae and Freddie Mac. Instead, it uses the crisis to add layers of Federal bureaucracy, and threatens to slow down our economic recovery, risking job loss and restricting access to credit.

For these reasons, this legislation is not the reform we need, which is why I must oppose the conference report for H.R. 4173.

We need to fully look at some of the concerns in this bill with the hope that when it passes—I cannot support it, but it will pass—these cautions will be looked at going forward to perhaps, when the problems come to light later, make some changes to the law that will better accommodate the needs of consumers and small businesses and community banks in the country.

There are good parts of this bill. I think the chairman deserves a lot of credit for pushing this financial reform, knowing that we needed to do it. I don't think it fully meets the test of doing what we should be doing, but I do think it is a first step, and the chairman is to be commended for his leadership.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, my friend and colleague from Texas serves on the Banking Committee. I thank her and Senator KLOBUCHAR. There was a series of amendments in which Senator HUTCHISON was involved. They added value to this bill, and I thank her for it.

I mentioned yesterday, as a relatively junior member of the Banking Committee, there was no Member of this Chamber who added as much to the bill as the Senator from Virginia. There are not words nor time for me to adequately express my gratitude for his involvement. Literally almost on an hourly basis, he was involved, along with Senator CORKER of Tennessee. They spent hours on their own talking with other people about how to fashion two of the most critical titles of this bill. Let me express my gratitude once again to Senator MARK WARNER of Virginia and thank him immensely for his contribution. He did a great job.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Madam President, I thank the chairman for those kind remarks. It is a good feeling for all of us who have labored on this legislation—Members and staff—that we are finally coming to a successful conclusion on the Dodd-Frank Wall Street Reform and Consumer Protection Act and it is going to be enacted into law.

As those equally controversial pieces of legislation in the 1930s stood the test of time for decades, I think this bill will stand the test of time for decades as well in terms of creating a new set of rules of the road for not just America's financial sector but, in a sense, the world's financial sector for decades to come.

While not perfect—no piece of legislation is—one of the things that gives me some confidence that the right balance has been struck is that this bill has been criticized by both the left and the right. Some on the left, some on the Democratic side, have said the bill has not gone far enough in putting more requirements and restrictions on our financial institutions. Some of my colleagues on the Republican side, on the right, have said this bill goes too far.

The fact that it is getting perhaps that left-and-right criticism puts us maybe in that right-in-the-middle section, which is the appropriate balance we tried to strike since the chairman started this effort well over 2 years ago.

I think it is important at times we remember why we are here. Two years ago, the markets were in chaos. President Bush and Secretary Paulson had created TARP with a $700 billion unprecedented bailout to shore up our financial system. President Obama was in crisis mode with our economy still in free-fall from day one. The Dow was at 6,500, and there was a lot of talk of nationalizing banks.

Well, close to a year and a half to 2 years later, we have seen stimuluses and stress tests. We have seen a DOW that now has touched 11,000. While the economy is not creating jobs at the rate any of us would like to see, the talk of financial Armageddon or complete collapse has disappeared.

I think we went into this process with three goals: First, the taxpayers must never again hear that a company is too big to fail. Second, we had to fix our regulatory system to make sure the huge gaps that existed that allowed systemic regulatory arbitrage could no longer take place. And, finally, consumers and investors had to have confidence that our markets were fair, transparent, and that there would be an officer on the beat to make sure some of the excesses that took place in 2005, 2006, and 2007—where folks were being put into homes they could never afford to pay for or having financial instruments that were being created under the guise of lowering the cost of risk that were more about simply creating fee income—would never again prey on unweary investors or on homeowners who got themselves into trouble.

I think one of the most interesting critiques that some still make of the bill is that we have not addressed too big to fail. Well, candidly, with the United States moving first on this legislation, and the rest of the world waiting for the United States to move, we hear from our European colleagues that the framework we have set up, actually, they hope to emulate. We have created a new regulatory structure so the regulators can get out of their silos—depository institutions on one side, security institutions on another, derivatives trading on a third—and make sure we have a full systemic risk council so we can measure risk wherever it exists, regardless of the charter of the organization.

While some said we ought to go ahead and limit the asset size of some of our institutions, just on size alone, I think the chairman wisely decided as we went through a year and a half of hearings, what often precipitated the greatest risks to our system was not size alone—America has only 4 of the 50 largest banks in the world—but it was the interconnectedness, their leverage, their failure to have appropriate risk management plans in place.

This new systemic risk council is specifically charged with making sure our large, more complex institutions have more stringent capital requirements, leverage ratios, liquidity requirements, and risk management tools. We even created two whole new categories, that while not fully tested—both of these categories actually came from colleagues on the other side of the aisle—they could be important new steps to prevent these large institutions from failing.

One is contingent debt that large institutions would have to have that if they get themselves even close to trouble, that debt would convert into equity, consequently diluting existing shareholders and management and keeping pressure on the board to make sure management would not take that risk.

Finally, a tool that, again, if implemented correctly, will be tremendously powerful; that is, to ensure that all these large, complex institutions provide a plan about how they will be able to unwind in an orderly fashion through traditional bankruptcy provisions. Our goal is to always have bankruptcy be the appropriate response. If that liquidation plan or if that debt plan is not blessed by the council of regulators, the council of regulators can dismember, break up, or put other restrictions on these large institutions.

I think Senator DODD made the decision to task my good friend, Senator CORKER of Tennessee, and I with this issue: If those processes still do not work, how do we make sure we have an orderly liquidation process? Our goal was twofold: One, taxpayers should never have to bear the risk; and, two, if an entity goes into liquidation, it will not come out. Liquidation or resolution is not an attempt to stand up an institution. But we wanted to make clear to shareholders, to management, if you go into resolution, you are toast, as my colleague, Senator CORKER, often said.

We think we have reached that goal, and I am particularly proud of titles I and II of this bill. Actually, when Chairman DODD and Senator SHELBY put some amendments to it, it was endorsed by 95 of our colleagues. It is the broadest bipartisan section of this legislation. This bill addresses a number of other vital areas as well. It allows a single depository place to get the appropriate day-to-day information on our financial institutions—that still did not exist until we created the Financial Services Oversight Council—and having the ability to get on a daily basis the level of interconnectiveness of a future AIG.

It puts in place a consumer protection bureau to make sure, for example, mortgages are regulated in a way that consumers can understand, regardless of the charter of the organization. We often found banks had a fairly good ability to regulate some of their mortgages; whereas, mortgage lenders and others, who were unregulated, had no such restrictions. Now we have an even playing field.

It finally puts in place—there is some debate on this issue—an appropriate process to regulate derivatives and to bring these critical but potentially dangerous instruments out of the shadows, and the vast majority of these instruments will now be traded in a more transparent way on exchanges.

There is more to be done. Domestic and international implementation is vitally important. As I mentioned at the outset, the United States—and this is one of the things that is kind of remarkable, when I hear from some of my colleagues we have moved too quickly or this bill does too much—candidly, the whole rest of the world has been waiting on America to act to set the template for broad-based financial reform. Now that we have acted, I think particularly Europe and Asia will follow our stead. But making sure we do this with appropriate international implementation is terribly important—the Basel circumstances—but also making sure we have the regulatory approach across the world correct so there is not an international ability to arbitrage with these large financial institutions.

I know some of my colleagues on the other side of the aisle have also raised the question that this bill does not fully address the GSEs. They are right. But I think it was the right and conscious decision of the chairman and others that to disrupt an already still fragile housing market at this moment in time in a piece of legislation that has already been accused by some as being too broad and covering too many items was not the appropriate choice.

We will have to come back and deal with GSEs. We have to make sure, as we deal with GSEs, international implementation, we stay vigilant. We have given the regulators the tools. How they use these tools will be up to us in Congress to make sure they are implemented correctly with appropriate oversight.

I am, in certain ways, disappointed this bill is not being passed with broader bipartisan legislation. But we have only gotten here because there is bipartisan support.

I want to close acknowledging again—the chairman was very kind in his remarks—I cannot think, in my short tenure in the Senate, of any other Senator who has worked harder on a piece of legislation, who has been more relentless, who has had more twists and turns, who has had more ''we are there; but, oh, my gosh, we may not be there,'' who has had probably more 10 o'clock, 2 o'clock in the morning, 4 o'clock in the morning, I believe at one point, telephone calls and meetings with other Members.

As the Senator from Texas mentioned earlier, even though the Senator from Texas could not support the overall bill, our chairman has worked with all Members regardless of party to try to accommodate their interests. I commend the Senator from Texas for pointing out, for example, the community-based and independent banks come out of this legislation as one of the real winners in terms of their ability to have more fair competition with the larger institutions.

So I commend the chairman, and I commend all of my colleagues on both sides of the aisle, even those who perhaps will not vote for the final product but were a part of building the product, where their ideas were implemented.

When we think about the Glass-Steagalls, and when we think about the bills that created the SEC, when we think about the legislation in the 1930s, in the moment of crisis, that created the financial framework for 20th-century American capitalism, what this bill has done—there will be work done to improve and fully implement it, but what this bill has done has set a framework for 21st-century American capitalism and, in a certain way, a framework for 21st-century capitalism across the world in a way that America can remain the center for financial markets but at the same time making sure both consumers and the investing public are protected in this new and very challenging world.

With that, I yield the floor. I again extend my compliments to the chairman and all who have been involved in this legislation.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Madam President, I, too, would like to speak to the conference report on financial regulatory reform, which we will presumably vote on in a couple of hours. I think we all agree that the purpose of financial regulatory reform should have been to tackle the problems that led to the financial crisis in the first place. That means serious reform must, at the very least, end too-big-to-fail financial institutions and rein in two government-sponsored enterprises, the GSEs, Fannie Mae and Freddie Mac.

But despite its size and the hype behind it, the bill before us fails in those two key respects. Moreover, even though Main Street did not cause the problem, the bill is so pervasive in its regulatory reach that it creates new burdens for Main Street businesses. I am not sure that is what the bill's supporters want or its authors intend, but that will be the result.

For example, a July 4 Wall Street Journal news article entitled ''Finance Overall Casts Long Shadow on the Plains'' explains how new derivatives rules will harm America's livestock farmers.

There are other problems with the bill. The biggest new problem it causes is the harm to the availability of credit, something our colleague, Senator GREGG from New Hampshire, has talked a lot about. It implements one-size-fits-all capital standards and uses flawed funding mechanisms. It also perpetuates bailouts, and burdens small businesses with new regulations, which I will speak about in a moment.

Let me address a few of these problems in more detail: First, the cost and offsets of the bill; second, the failure to address the GSEs, Fannie Mae and Freddie Mac; and, third, the job-killing Consumer Financial Protection Bureau that will reduce available credit for American businesses and thus reduce job creation.

First, the cost and offsets. The Congressional Budget Office has put the 10-year cost of the conference report bill at approximately $19 billion. That is the cost of this alleged new reform. Democrats initially tried to fund this obligation with a new tax imposed on large financial institutions. When that could not be sustained, they decided on a new funding mechanism that, as National Review recently editorialized, ''were a corporation to try it, would get its accountants sent to prison for fraud.''

Here is how it works. The bill would now ''cancel'' the Troubled Asset Relief Program, or TARP, a few months early, thus ''saving,'' theoretically, the government around $11 billion, even though it is highly unlikely that money would ever have been used to make additional TARP loans. That $11 billion would then be used to partially offset the cost of the bill.

Remember, that is money that has to be borrowed. So instead of simply borrowing 11 billion fewer dollars, we are going to pretend as though we already have that money and that we can save it by not spending it on TARP, so we will spend it on this legislation. It is a double counting that National Review is right about: It would have put a private business CEO or CFO in jail if he had tried to do an accounting trick such as that.

The TARP law moreover states that any money rescinded from TARP shall not be counted for the purpose of budget enforcement. But to avoid violating the so-called pay-go rule in the House, the conference report nevertheless uses this alleged savings to pay for the financial reform provisions, thereby violating both the letter and the spirit of the TARP law. And, as I said, taking these funds to pay for something else rather than rescinding them simply pushes our Nation deeper into debt.

So with regard to the cost of the bill—$19 billion—and the offset, much of which is not a true offset but simple double accounting with money we don't own or have anyway, but have to borrow, is a bad way to do business, to say the least, especially on something that is called a financial reform bill.

Now, I guess, fortunately, we have changed the name to reflect the authors of the bill. It is no longer the financial reform bill; it is now the Dodd-

Frank bill. I appreciate the naming of the bill for my good friend, the Senator from Connecticut, but it is supposed to be about financial reform, and it isn't financial reform when you take money you don't have, spend it for something you are not legally able to spend it for, and call that an offset for the cost of the bill.

Nevertheless, problem No. 2: Fannie and Freddie. It is just unconscionable that this bill doesn't attempt to reform in any way the two biggest causes of the problem: Fannie Mae and Freddie Mac. It was their reckless behavior that was a major cause of the financial crisis. It is not for lack of trying on Republicans' part. Our Democratic friends say: Well, we will do that later, maybe next year. I suggest doing that is highly improbable. The way things work around here is, when you do a comprehensive bill such as this, there are a lot of tradeoffs, a lot of different interests involved. If you can't include all of the elements in one bill, it is very difficult to find the political will to tackle the biggest problem of all—Fannie and Freddie—next year without the leverage of the other provisions of the bill to deal with.

The behavior of these two institutions—these GSEs that have come to epitomize too big to fail—has surged through the entire commercial banking sector and our economy as a whole and has turned out to be one of the most expensive aftereffects of the financial crisis. For years, Fannie and Freddie made mortgages available to too many people who could not afford them. Smaller companies were crushed while the two GSEs and their shareholders reaped enormous profits, recklessly taking advantage of the government's implicit guarantee to purchase trillions of dollars worth of bad mortgages, including those made to risky, so-called subprime borrowers. It was a textbook example of moral hazard on a massive scale.

I was reminded of what I am speaking of this morning driving in and hearing an ad on the radio which said that through Fannie Mae, you could get a mortgage for 105 percent of the value of your home. Now that means that immediately you are so-called underwater; that is to say, you owe more than your home is worth.

Why are we immediately making the same mistake with Fannie Mae that got us into the problem in the first place, where the mortgages exceeded the value of the homes? I don't understand it.

The easy credit that was provided before is what helped to fuel the rising home prices that created the inflated housing bubble, especially in the subprime mortgage market. As prices rose, so too did the demand for even larger mortgages, so Fannie and Freddie looked for ways to make even more credit available to borrowers. But, of course, when the market collapsed, the two GSEs were left with billions of dollars of bad debt.

By 2008 they held nearly $5 trillion in mortgages and mortgage-backed securities. They were overleveraged but, unfortunately, deemed too big to fail.

So what do we have today? Fannie and Freddie hold a combined $8.1 trillion of outstanding debt. Think of that: $8.1 trillion. In total, taxpayers have lost already $145 billion bailing them out. When Secretary of the Treasury Geithner lifted the bailout cap last December, it put the taxpayers on the hook for the remainder of these losses, for unlimited losses at these two institutions.

So let's be clear. Every day that Fannie and Freddie remain in their current form is a day that U.S. taxpayers are subsidizing the failed policies of the past. I think it is very doubtful we are going to get meaningful reform of Fannie and Freddie when it couldn't be done in the bill that is supposed to deal with all of the underlying problems that created the recession we are in now.

The third problem: Harming small business through ''consumer protection.'' It harms far more than small business; it harms everyone who is attempting to get credit. As our friend and colleague, Senator GREGG, has said many times on this floor, perhaps the biggest problem with this legislation is the fact that it is going to make credit much more expensive for everyone. But let's start with small businesses.

In my home State of Arizona and across the country, these are the entities that hire. They are supposed to be the first ones that hire coming out of a recession. The way they do that is to have access to credit. Well, they are obviously very wary of the intrusive new bureaucracy that masquerades as consumer protection in this bill, but which would compound the problem of credit availability.

All of us here support the concept of consumer protection, so let's don't get off on a tangent of being for or against consumer protection. We all support that. The question is, How do you do it? Safeguards can be strengthened without creating a new regulatory bureaucracy with the powers that exist in this bill and all of the untoward ramifications that result. Unfortunately, the conference report maintains, with very little change, the flawed Consumer Financial Protection Bureau from the bill that was passed in the Senate, the so-called CFPB. It is housed in and funded by the Federal Reserve but theoretically would operate as an independent agency with an enormous budget and with rule-writing ability and enforcement authority that I think will, in fact, create independence from the Fed.

The CFPB could significantly reduce credit access for small businesses and thereby jeopardize America's economic recovery. Without available credit, companies cannot grow and consequently will not hire additional American workers. Obviously, that is not what the bill's authors intended, but it is the inevitable result.

The new bureau will have a say in almost every aspect of American business. In an attempt to ensure—and I am quoting now—''ensure the fair, equitable and nondiscriminatory access to credit for individuals and communities''—the wording in the law—the new bureau will have latitude to impose its will, with few checks and balances, on American credit providers, all of which will result in more expense, more regulation, higher costs for consumers, and less availability of credit.

The CFPB also exposes companies to very costly compliance and extensive enforcement proceedings, including potentially frivolous lawsuits, by eliminating national preemption and other means.

In my view, the potentially serious costs of this bureau do not justify its purported benefits. Consumer protection could have been accomplished in much less intrusive and fairer ways. We all want to shield consumers from abuses and exploitation, but this is obviously not the right way to do it.

So we should ask ourselves one question: Why is it that the CEOs of some of the largest companies on Wall Street, some of the largest financial institutions, actually favor this bill? Well, it is no skin off their backs. They have the money, and they have the resources and the personnel to deal with its complexity and to put the money up front and then charge the consumers on down the line. It would entrench their privileged status, as they have the resources to maneuver around its provisions, as I said, and would certainly institutionalize the idea that certain big financial firms deserve preferential treatment by Federal regulators.

So for all of the reasons I have discussed, as well as others, and despite my strong desire to enact prudent financial reforms, I think this legislation is misguided. I can't support it, and I urge my colleagues to vote against it.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Connecticut.

Mr. DODD. Madam President, I recognize my friend and colleague from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Madam President, I rise today to speak on the Dodd-Frank bill. I must start by expressing my awe—that old expression from Iraq, ''shock and awe''—at what Chairman DODD has been able to do during this session of the Congress. I have been around this place since 1973, and I genuinely cannot think of an example where an individual Senator ever participated in passing three bills in one Congress of the magnitude of the health care bill, the credit card reform bill, and now the Dodd-Frank bill. If there is a legislative hall of fame, there is a spot for CHRIS DODD in that hall of fame.

I am going to speak today about areas where I don't agree with this bill. Anyone who has followed my speeches on the floor would recognize that I have a difference of opinion on a number of issues. However, I wish to make it clear from the beginning—and I will raise it again in my speech—to the extent this bill doesn't reach where I want it to reach, the responsibility lies on my friends—and I truly mean my friends—and colleagues on the other side of the aisle.

Time and again, vote after vote, they voted as a block to block meaningful reform on many issues. We can talk about the Brown-Kaufman amendment to break up the banks or we can talk about the maneuvers that were done on the Brownback bill so we never got a vote, and on Levin-Merkley. So as I give this speech today, the reason we didn't get the things I wanted in this bill is because 41 Republicans, time and time and time again—when there was a vote up they could have changed the way we do things; they could have instituted the kinds of reforms I wanted in this bill—voted against it.

So Chairman DODD was left with the problem of, How do we get the votes together to pass the bill? It is essential that we pass a bill, and a good bill, and we did, and I am voting for it. But it could have been, in my opinion, a better bill if several votes had gone the other way.

After months of careful consideration, landmark financial reform legislation moves toward final passage. While this bill is a vast improvement over the existing regulatory structure, I believe it should go further with respect to erecting statutory rules that address the fundamental problem of too big to fail.

Anyone who has heard my speeches on the Senate floor starting 4 or 5 months ago will understand my position on that. I made it abundantly clear. I will support the conference report, but I do so with reservations about a missed opportunity to enact meaningful reforms that would prevent another financial crisis. But as I said before, ultimately, given the makeup of the Senate and the requirement for 60 votes and the intransigence on the other side of the aisle, this was the best bill that could pass.

For those who wish the bill were stronger, let there be no confusion about where the blame lies. It is because almost every Senator on the other side of the aisle did everything they could to stall, delay, and oppose Wall Street reform.

To be sure, the bill that has come out of conference includes some extremely important reforms. It establishes an independent Consumer Financial Protection Bureau with strong and autonomous rulemaking authority and the ability to enforce those rules for large banks and nonbank entities such as payday lenders and mortgage finance companies. In addition, it requires electronic trading and centralized clearing of standardized over-the-counter derivatives contracts, as well as more robust collateral margin requirements. The bill's inclusion of the Kanjorski provision will give regulators the explicit authority to break up megabanks that pose a ''grave threat'' to financial stability.

I was pleased that the bill includes a provision I helped develop to give regulators enhanced tools and powers to pursue financial fraud. Through the Collins provision, the bill also establishes minimum leverage and risk-based capital requirements for bank holding companies and systemically risky nonbank institutions that are at least as stringent as those that apply to insured depository institutions, an important reform in this bill.

In light of the failures of past international capital accords, this requirement will set a much-needed floor on how low capital can drop in the upcoming Basel III negotiations on capital requirements. It will also ensure that the capital base of megabanks is not adulterated with debt that masquerades as equity capital.

That being said, unfortunately, I believe the bill suffers from two major problems. First, the bill delegates too much authority to the regulators. I have been around the Senate for 37 years. As I said on the Senate floor on February 4 of this year and in several speeches since then, I know that many times laws are not written with hard and clear lines. Laws are a product of legislative compromise, which often means they are vague and ambiguous. We often justify our vagueness by saying the regulators to whom we grant statutory authority are in a better position than we are to write the rules—and then to apply those regulatory rules on a case-by-case basis. But, as I have said, this was not one of those times. This was a time for Congress to draw hard lines that get directly at the structural problems that afflict Wall Street and our largest banks.

Despite repeated urging from me and others to pass laws that would help regulators to succeed, Congress largely has decided instead to punt decisions to the regulators, saddling them with a mountain of rulemakings and studies. The law firm Davis Polk has estimated that the SEC alone must undertake close to 100 rulemakings and more than a dozen studies. Indeed, Congress has so choked the agencies with rulemakings and studies, the totality of the burden threatens to undermine the very ability of the agencies to accomplish their ongoing everyday mission. I for one urge the agencies carefully to triage these required rulemakings and studies, establish a hierarchy of priorities, and ensure that the agencies do not shift all resources to new rules meant to address old problems to such a degree that they fail to stay on top of current and growing problems. I will have more to say on this subject in a future speech.

Second, the legislation does not go far enough in addressing the fundamental problem of ''too big to fail.'' Instead of erecting enduring statutory walls as we did in the 1930s, the bill invests the same regulators who failed to prevent the financial crisis with additional discretion and relies upon a resolution regime to successfully unwind complex and interconnected megabanks engaged across the globe. I am also disappointed that key reform provisions like the Volcker Rule and the Lincoln swaps dealers spin-off provision were scaled back in conference.

The bill mainly places its faith and trust in regulatory discretion and on international agreements on bank capital requirements and supervision. After decades of deregulation and industry self-regulation, it is incumbent upon the regulators now to reassert themselves and establish rulemaking and supervisory frameworks that not only correct their glaring mistakes of the past, but also anticipate future problems, particularly risks to financial stability. Unfortunately, the early indications we are seeing out of the G–20 and so-called Basel III discussions are not encouraging, as critical reforms are already being watered down and pushed back in part because some foreign regulators carelessly refuse to heed the risks posed by their megabanks.

The legislation also puts in place a resolution authority to deal with these institutions when they inevitably get into trouble. While such authority is absolutely necessary, it is not sufficient. That is because no matter how well Congress crafts a resolution mechanism, there can never be an orderly wind-down of a $2-trillion financial institution that has hundreds of billions of dollars of off-balance-sheet assets, relies heavily on wholesale funding, and has more than a toehold in over 100 countries. Of course, since financial crises are macro events that will undoubtedly affect multiple megabanks simultaneously, resolution of these institutions will be enormously expensive. And until there is international agreement on resolution authority, it is probably unworkable.

Given the history of financial regulatory failures and the enormous burden of rulemakings and studies with which the regulators are being tasked, Congress has a critical oversight responsibility. Congress first must ensure that the regulators have enough staff and resources at their disposal to follow through on their serious obligations. Just as important, Congress must monitor the regulatory phase of this bill's implementation closely to ensure that the regulators don't return to ''business as usual'' when the experience of the most recent financial crisis fades into memory.

How quickly we forget. Time and again, I have heard people speak as if there was no big financial crisis, saying: I have a bank in my hometown that is going to have a problem with this legislation. So we should let all the banks be free to do whatever they want to do. We had a crisis here that practically destroyed the country, the world, and these people are bringing up anecdotal evidence to give these banks more responsibility and not go after the root cause.

For example, in addition to granting great discretion to regulators on how they interpret the ban on proprietary trading at banks, the scaled-back Volcker Rule contains a large loophole that allows megabanks to continue to own, control and manage hedge funds and private equity funds under certain conditions. Most notably, it includes a de minimis exception that permits banks to invest up to three percent of Tier 1 capital in hedge funds and private equity funds so long as their investments don't constitute more than three percent ownership in the individual funds.

The impact of a supposedly small three percent de minimis exception for investments in hedge funds and private equity firms has the potential to be massive. For example, a $2 trillion bank that has $100 billion in Tier 1 capital would be able to invest $3 billion into hedge funds. Since that $3 billion could only constitute three percent ownership, it would need to be invested alongside at least $97 billion of funds from outside investors. The bank would therefore be able to manage $100 billion in hedge fund assets, a massive amount equal to the current size of the largest hedge funds in the world combined. What's more, that $100 billion in assets can be leveraged several times over through the use of borrowed funds and derivatives into overall exposures that could exceed a trillion dollars. And given the ambiguity of the legislative language, unless clarified by a rulemaking, some commentators have indicated that megabanks could potentially provide prime brokerage loans to hedge funds they partially own and run.

Fortunately, the final bill does place costs on banks' de minimis investments in hedge funds and private equity funds. Specifically, the legislation requires a 100 percent capital charge on these proprietary investments, making them expensive for banks to hold. While this may be a helpful deterrent, I am concerned that it will not be enough of one, particularly when considering how lucrative and risky an activity it is for banks to run hedge funds and private equity funds.

The overarching problem is that banks will continue to be able to offer and run—never mind, partially own—risky investment funds. Even though the scaled-back Volcker Rule includes a ''no bailout'' provision, I have concerns about the credibility of that edict. Under any circumstance, the failure of a massive hedge fund run by a megabank would pose serious reputational and financial risks to that institution.

Just look at what happened when the structured investment vehicles, or SIVs, of Citigroup and other megabanks began to falter. Because of the reputational consequences of liquidating these funds and allowing them to default on their funding obligations, they were bailed out by the megabanks that spawned them even though the SIVs themselves were generally separate, off-balance-sheet entities with no official backing from the banks.

Finally, the strength of the core part of the Volcker Rule—the ban on proprietary trading—will depend greatly on the interpretation of the regulators. They will ultimately be the arbiter of whether broad statutory exceptions for ''market making'' or ''risk-mitigating hedging'' or ''purchases'' or ''sales'' of securities on ''behalf of customers'' are allowed to swallow the putative prohibition. I therefore urge the regulators to construe narrowly those activities that constitute exceptions to proprietary trading to ensure that the Volcker Rule has some teeth in it.

Senator LINCOLN's original swap dealer spin-off provision would have prohibited banks with swap dealers from receiving emergency assistance from the Federal Reserve or FDIC. By essentially forcing megabanks to spin off their swap dealers into an affiliate or separate company, this section would have helped restore the wall between the government-guaranteed part of the financial system and those financial entities that remain free to take on greater risk. It would also have forced derivatives dealers to be adequately capitalized.

While the final bill includes the Lincoln provision, it limits its application to derivatives that reference assets that are permissible for banks to hold and invest in under the National Bank Act. Since that exception covers interest rates, foreign exchange and other swaps, it ultimately exempts close to 90 percent of the over-the-counter derivatives market. Regulators must therefore reduce counterparty exposures by requiring the vast majority of derivatives contracts to be cleared and calibrate carefully the amount of capital that bank derivatives dealers must maintain. Only then can we be sure we never again face a meltdown caused by excessively leveraged derivatives exposure that no regulator helps to keep in check.

The financial reform bill places enormous responsibilities and discretion into the hands of the regulators. Its ultimate success or failure will depend on the actions and follow-through of these regulators for many years to come.

One of my main concerns is, if we elected another President who believed we should not have regulators and regulation, they would again have the ability to do what they did to cause a meltdown.

It is estimated that various Federal agencies will be charged with writing over 200 rulemakings and dozens of studies. Many of the same regulators who failed in the run-up to the last crisis will once again be given the solemn task of safeguarding our financial stability. Like many others, I am concerned whether they have the capacity and wherewithal to succeed in this endeavor.

I repeat again, Congress has an important role to play in overseeing the enormous regulatory process that will ensue following the bill's enactment. The American people, for that matter, must stay focused on these issues, if just to help ensure that Congress indeed will fulfill its oversight duty and its duty to intervene if the regulators fail. Likewise, although I will be leaving the Senate in November, I will be watching closely to see how the regulators follow through on the enormous responsibilities they are being handed.

Let us not forget why reform is so necessary and important. After years of Wall Street malfeasance and the systematic dismantling of our regulatory structure, our financial system went into cardiac arrest and our economy nearly fell into the abyss. Wall Street, which had grown out of control on leverage and financial gimmickry, blew up. More than 8 million jobs were wiped out; millions more have lost their homes. We spent trillions of dollars in monetary easing and emergency measures to avert the wholesale failure of many of our megabanks. Not surprisingly, we continue to feel the aftershocks of the worst financial crisis since the Great Depression.

Every single thing you look at, almost without exception, when you read our newspapers, is related to our present economic situation, which was caused by lack of regulatory action on Wall Street.

The banks are not lending. Fed Chairman Bernanke just days ago urged them to do more for small businesses. Companies and consumers alike remain shaken in their confidence. And despite dramatic stimulus measures, the economic recovery has been slow and tentative. Many of the opponents of Wall Street reform would like to make the dubious claim that the recovery is being held back by uncertainty about future regulations and taxes. Can you believe that? In reality, it is being held back by the financial shock and the fact that we are still in a period of financial instability and undergoing an excruciating process of deleveraging. Even now it is unclear whether a European banking crisis based on their holdings of sovereign debt will continue to impede that recovery.

It is also being caused by the fact that Americans are losing faith in the credibility of our markets. Who wouldn't, after what has happened?

I think it has been an important factor in our present hiccup—hopefully, it was a hiccup and not a double dip.

It is, therefore, imperative that we build a financial system on a firmer foundation. The American economy cannot succeed—cannot succeed—unless we restore and maintain financial stability—not only restore and maintain financial stability but maintain the credibility of our financial system. We simply cannot afford another financial crisis or continued financial instability if the American economy is to succeed in the coming decades. Getting financial regulation right and maintaining it for years to come should be one of this Nation's highest priorities because the price of failure is far too high.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my colleague from Delaware. He highlighted the difficulty in passing legislation. There are those who think it goes too far and those who think it does not go far enough. We do not write a bill on our own. There are 100 of us in this Chamber and 435 in the other. There are stakeholders, the administration—all sorts of people we deal with on these matters. What we try to do is fashion the best proposal we can that moves us forward and addresses the underlying causes, as we tried to with this bill.

I appreciate the Senator's points that were raised during the debate and discussion. We tried to accommodate them where we could in fashioning legislation. It is always a difficult process. You do not get to write your own bill. You can write your own bill and introduce it, but ultimately, for it to become law requires cooperation. We had that cooperation. I appreciate his involvement very much.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Madam President, I just laid it out. I taught a course on Congress in law school for 20 years. I say this in all sincerity: Houdini could not have gotten through this process. Really and truly, when one looks at it, Houdini could not have gotten through this process with a bill.

I try very hard to be bipartisan in everything I do, and I try to speak well of my colleagues because I really do like every one of my colleagues on the other side. That is not hyperbole. But when we start out with 41 Senators bound and determined to slow down, delay, stop, and block, it makes the job the Senator from Connecticut has done even more incredible. And then we have to get 60 votes on anything of substance. Then we have to go over to the House side. And God bless our friends on the House side. When I talk with them, they just look over here and cannot believe we ever get anything done.

Getting this bill done, getting it through the Senate, dealing with all the stakeholders, dealing with the administration, dealing with the folks on the House side, and, with all due respect, doing it three times in one Congress, is definitely a Hall of Fame performance.

I thank the Senator again.

Mr. DODD. Madam President, my colleague talked about 41. There are a number of Republicans who played a very critical and supportive role on this bill. I do not want the record to persist in suggesting that was not the case. Even people on the other side who ended up not voting for the bill—at least have not so far—added substantially to the value of this bill. In some cases, they might not want to acknowledge that, but they did.

In the case of our two colleagues from Maine and our colleague from Massachusetts, they have taken an awful lot of abuse in the last number of weeks because they worked with us on the bill and made significant contributions. While they do not agree with every dotted ''i'' and crossed ''t,'' as I do not with this bill, they decided our country would be better off with the passage of this legislation than not.

I do not want the record to be uncorrected when it comes to the number of people, including those three in particular, who will, I presume, continue to take some abuse from others because they did not toe the party line, nor have they on repeated occasions. They have acted as U.S. Senators, which is our first responsibility. I know what that feels like. I have been there on numerous occasions in my 30 years. Several times, I was the only Democrat to vote with Republicans on substantive matters. It is a lonely moment. I can tell my colleague what happens. It is painful, and you get those long looks from your colleagues. It is uncomfortable, to put it mildly. I will also tell my colleague that some of the proudest moments a colleague will have when they serve here is when they make those decisions and do so for the right reasons.

While I am deeply grateful to my Democratic colleagues, many of whom had concerns about the bill, as my friend from Delaware did, and have been supportive all the way through, I guess there is a bit of the prodigal son—prodigal daughter in the case of our colleagues from Maine and prodigal son in the case of our colleague from Massachusetts—when they decided to stand up and help us get a bill done despite the criticism they have received. Everyone who has been supportive and helpful deserves credit, but I think those who were willing to take an awful lot of abuse in the process of doing so deserve commendation.

I did not want to let that number stand—41—because it implies somehow there were people on the other side who were not helpful, and they were, including people who did not vote for the bill who were helpful as well.

Mr. KAUFMAN. Madam President, I totally agree with the Senator. It is oversimple. I know the Senator from Connecticut received a lot of support from the Republican side. I know how difficult it is to be the person standing in your caucus when everyone in your caucus wants to vote another way. I appreciate that.

What is amazing to me is what passed was what the three of them would sign on to or others would sign on to. The idea that the Senator came with a bill—every one of my concerns I raised today, if we had gotten some help from the other side might have gone another way. But they were not going to go another way with the group we had.

I could not agree with Senator DODD more. I think it is easy to stand up in our caucus and be for this bill. I think what they did was truly courageous. But I also think that on every major issue, to have to figure out how we get 60 votes is a special, difficult problem. It is not like a swan dive. It is not, like they do in the Olympics, a double summersault. Putting all those things together is a triple summersault in the pike position. That is the point I want to make—the difficulty of getting a bill when we need to get 60 votes on every issue and there is a constant pressure on the other side for all to vote together one way.

Mr. DODD. Madam President, I see our colleague from New Hampshire is here. I will save this for a later debate, but I know there is talk about changing the rules of the Senate because of the frustration Senators feel. I will make, in my waning hours here, as strong a plea as I can to not succumb to the temptation to change the institution because of the current frustrations people feel. There is a reason this institution exists and has the rules it does. All of us one day are in the minority or majority. The fact that some may abuse the rules, as has happened here without any question, ought not to be a justification for fundamentally changing them. There are ways to deal with the problem without losing the essence of the Senate. He is no longer with us, but my seatmate, Robert C. Byrd, would speak for hours on end about the importance of not letting the vagaries of the moment dictate the long-term interests of the institution.

I will leave that for another day, but I appreciate it.

My colleague from New Hampshire is here.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, I am pleased to join my colleague from Connecticut, Senator CHRIS DODD, and be here on the floor this afternoon to talk about the financial regulatory reform bill that is pending.

Before I begin my remarks, I wish to recognize Senator DODD for his leadership and hard work in getting this conference report to the floor so that we can hopefully adopt it this afternoon. It is important because of what has happened in this country and what has happened in my State of New Hampshire.

Over the past 2 years, people in New Hampshire and across the country have suffered the consequences of Wall Street's gambles. While we are seeing our economy in New Hampshire begin to rebound, which is thanks in no small part to the job creation that was spurred by the Recovery Act, it is critical that we act to prevent Wall

Street's risky, reckless behavior from ever again bringing our economy to its knees.

We need to put in place reforms to stop Wall Street firms from growing so big and so interconnected that they can threaten our entire economy. We need to protect consumers from abusive practices and empower them to make sound financial decisions for their families. We need more transparency and regulation in the now shadowy markets where Wall Street executives and investment banks have made gambles. In those shadowy markets, the Wall Street firms got all the upside and American families got all the downside. We need to do everything we can to ensure that a financial crisis, such as the one we experienced in late 2008, never happens again. We need to ensure that taxpayers will not be asked to bail out Wall Street. In short, we need to pass the strong Wall Street reform bill that is before us today.

It is also important to note that while this bill requires Wall Street banks to be held more accountable, it does not unfairly burden community banks. Community banks did not cause the financial crisis, and they should not have to pay for Wall Street's reckless behavior. That is particularly important to us in New Hampshire, where community banks make a huge difference for our cities and towns. That is why I joined with Senator SNOWE on her amendment to eliminate the unnecessary, burdensome requirement that community banks and credit unions collect and report on various data about their depositors.

I also sponsored another bipartisan amendment, one to make large, riskier banks pay their fair share of FDIC premiums and lower assessments for community banks. Community bank lending is really the lifeblood of New Hampshire's economy. Every dollar community banks have to pay for Wall Street's mistakes is a dollar that could be going to extend credit to small businesses and to home and consumer loans to families.

I also joined Senator COLLINS on her amendment to require Wall Street banks to follow the same capital and risk standards small depository banks must follow. This amendment will make the risky banks that led us into this financial crisis—banks such as Bear Stearns and Lehman Brothers—follow the same standards that already apply to small depository banks.

This bill requires the big Wall Street banks to have adequate capital to prevent taxpayers from having to bail them out again.

I am very pleased that those bipartisan amendments, which have strengthened the bill by protecting community banks, have been adopted. It speaks to the conversation Senator DODD was having with Senator KAUFMAN earlier that this is a bill that has gotten broad support in this body and a lot of input that has made it better.

I am glad we have been able to work in this bipartisan manner to craft a strong bill that reins in the reckless Wall Street conduct that brought us to the edge of financial disaster. It keeps community banks strong, and it protects consumers and taxpayers.

I look forward to voting ''aye'' this afternoon when we get to the vote on the conference report.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, briefly, I thank my colleague from New Hampshire. I see my other colleague from New Hampshire as well. It is a New Hampshire moment. I thank Senator SHAHEEN and our colleague from Maine, Senator SNOWE, for working as they did on the community bank issues.

I was pleased, as I noted yesterday, that the Independent Community Bankers Association, while not endorsing the entire bill but specifically on their issues involving community banks expressed strong support for this bill and how much stronger these banks are today as a result of our efforts than would be the case if we were to defeat the legislation. Their ability to compete with these larger banks has been enhanced tremendously by what we have done in this bill. If these provisions were not adopted, they would be back in a situation where there would be significant disadvantages for them under the current law.

I am very grateful to Senator SHAHEEN and Senator SNOWE and others who supported their efforts to strengthen the role of our community banks that play such a critical role. As the Senator from New Hampshire pointed out, they were never a source of the problems in the residential mortgage market at all. That deserves to be repeated over and over.

I thank the Senator for her comments.

Mr. JOHNSON. Madam President, Congress is now on the brink of passing a landmark deal on legislation to reform Wall Street and prevent another financial crisis like the one we faced nearly 2 years ago. This legislation is an important and long overdue measure that will help to safeguard the long-term stability of our economy.

In the closing months of the Bush administration, our Nation faced an economic situation so dire that many feared our financial system was on the verge of collapse. Though we were able to avert such a collapse, the impact of the crisis spread across America, leaving few untouched.

Virtually all of us have been impacted by the economic meltdown in some way: businesses shed jobs, workers' hours were cut, some folks had great difficulty making their mortgage payments when their pay was cut, small businesses lost customers and revenue in the downturn. South Dakota homeowners, regardless of whether they had a mortgage or owned their home outright, saw their equity drop, and most folks with investments for retirement or other long-term goals suffered losses either through the stock market plunge, bond market turbulence, or passbook savings interest rates that hovered near zero percent. Lending at our Nation's banks contracted, spending fell, and overall consumer confidence plummeted.

Americans were rightly angry that while they were losing their homes, jobs, and long-term savings, they were also expected to foot the bill for the irresponsible actions of Wall Street CEOs. Their outrage only grew when these same CEOs continued collecting unprecedented bonuses—presumably for their work in recklessly taking our Nation to the brink of collapse. Frankly, I share that anger.

It is clear that our economy has not yet fully recovered, but in the last year and a half, Congress has dedicated itself to turning our economy around. We are now on the verge of passing historic legislation that creates better accountability and transparency for Wall Street and the financial sector.

As a senior member of the Banking Committee, and a member of the conference committee, I have worked hard to identify the causes of the crisis and find the right solutions to address these causes. I have talked at length with South Dakotans of all backgrounds and political stripes to gain their perspective, and there are some things that get mentioned time and again: there were many causes for the meltdown, but gaps in regulation contributed to the problem; rules that applied to some financial companies but not all opened loopholes that bad actors could exploit; the lack of a system to monitor risks across the banking sector left taxpayers vulnerable; regulators were not very focused on looking out for consumers; and large Wall Street firms operated with little or no accountability to either their shareholders or their customers. In addition, it became clear we needed a system to unwind big financial firms like AIG, Lehman Brothers, and Bear Stearns in an orderly fashion and without taxpayer bailouts. Doing nothing is not an option, and I do not think anyone can say with a straight face that our current system of financial regulation works for America.

While not perfect, the Wall Street reform measure does a great deal to address many of these problems. It creates a mechanism to monitor systemic risk in the financial sector, as well as regulating risky derivatives, credit default swaps and other complicated financial products that were not transparent and had previously gone unregulated. It affords consumers better rules governing the products they use and better information about those products by creating a consumer watchdog agency. Importantly, it also creates a way to unwind large financial firms without having to bail them out.

Specifically, I want to mention two provisions. First, I am pleased that the conference committee accepted the

Carper-Bayh-Warner-Johnson amendment, which I strongly supported, regarding the preemption standard for State consumer financial laws. This amendment received strong bipartisan support on the Senate floor and passed by a vote of 80 to 18. One change made by the conference committee was to restate the preemption standard in a slightly different way, but it is clear that this legislation is codifying the preemption standard expressed by the U.S. Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, 517 U.S. 25 (1996) case. This will provide certainty to consumers and those that offer consumers financial products.

Also, section 913 of the conference report reflects a compromise between the House and Senate provisions on the standard of care for brokers, dealers, and investment advisers. It includes the original study provisions passed by the Senate, together with additional areas of study requested by the House—a total of 13 separate considerations and a number of subparts, where we expect the SEC to thoroughly, objectively and without bias evaluate legal and regulatory standards, gaps, shortcomings and overlaps. We expect the SEC to conduct the study without prejudging its findings, conclusions, and recommendations and to solicit and consider public comment, as the statute requires. As Chairman FRANK described the compromise when he presented it to the committee, section 913 does not immediately impose any new duties on brokers, dealers and investment advisers nor does it mandate any particular duty or outcome, but it gives the SEC, subsequent to the conclusion of the study, the authority to conduct a rulemaking on the standard of care, including the authority to impose a fiduciary duty. I think this is a strong compromise between the House and Senate positions.

This bill gives financial institutions, regulators and consumers the right tools to make good decisions, and it also provides the right tools to prevent another crisis like the one we recently experienced. Many of the bill's provisions, including those mentioned previously, have bipartisan support; in fact, many of the core ideas incorporated into the bill originated from my Republican colleagues.

Critics of this legislation have said that it tackles the wrong problems, hurts small banks and businesses, and burdens struggling financial institutions. I appreciate those points of view, but feel very confident in saying we have taken specific steps to ensure that small banks and businesses are not negatively affected, to make it more difficult for firms to take dangerous risks, and to strike the right balance between regulation and flexibility. But the bottom line is this: the kind of free-wheeling, self-regulating, anything goes environment that we had before the crisis is simply not an option.

There are certainly provisions in this bill that I would have written differently as any of my colleagues would if we wrote this legislation ourselves. But that is not how the Senate and our legislative system works, and overall I think this conference report is very strong legislation. I look forward to its passage.

There is no doubt that after the President signs this bill into law, there will be an important focus on implementing this legislation correctly, as well as continued oversight by Congress of the agencies and covered financial institutions, and efforts at international coordination with our counterparts in other countries. It is also likely that there may need to be corrections and adjustments to the bill in the future. That said, passage of this bill is important to our nation's economic recovery, and we must get it to the President's desk.

Mrs. HAGAN. Madam President, I rise today to discuss the conference agreement on financial services regulatory reform and specifically an issue in section 619 of title VI, known as the Volcker rule. The section's limitations on financial organizations that own a depository institution from investing or sponsoring in hedge funds or investments in private equity to 3 percent of an organization's assets, in the aggregate, references ''tier 1 capital.''

The term ''tier 1 capital'' is a concept currently applied strictly to banks and bank holding companies and consists of core capital, which includes equity capital and disclosed reserves. However, there are financial organizations subject to the Volcker rule's investment constraints that do not have a principal regulator that utilizes tier 1 capital measurements to determine an entity's financial strength. In order to ensure a level playing field with traditional banks, I would hope the appropriate regulators would determine a suitable equivalent of tier 1 capital to determine the investment limit, while still satisfying the intent of the Volcker rule.

I ask the regulators to make certain that these types of financial organizations will be subject to the Volcker rule in a manner that takes into account their unique structure.

In addition, I am pleased that as part of the conference report that the Volcker language was modified to permit a banking entity to engage in a certain level of traditional asset management business, including the ability to sponsor and offer hedge and private equity funds. With that in mind, I wanted to clarify certain details around this authority.

First, I was pleased to see that the Volcker Rule, as modified, will permit banking entities several years to bring their full range of activities into conformance with the new rule. In particular, section 619(c)(2) ensures that the new investment restrictions under section 619(d)(1)(G)(iii) and section 619(d)(4)—including the numerical limitations under section 619(d)(4)(B)(ii)—will only apply to a banking entity at the end of the period that is 2 years after the section's effective date. This date for the regulators to begin applying the new rules can also be extended into the future for up to three 1-year periods under section 619(c)(2) and can also separately be extended for illiquid funds with contractual commitments as of May 1, 2010, under section 619(c)(3), on a one-time basis for up to 5 years. Only after all of these time periods and extensions have run will any of the limitations under section 619(d)(1)(G) and section 619(d)(4) be applied by regulators.

Second, as an added protection, section 619(f) applies sections 23A and 23B of the Federal Reserve Act to transactions between all of a banking entity's affiliates and hedge or private equity funds where the banking entity organizes, offers, serves as an investment manager, investment adviser, or sponsor of such funds under section 619(d). These restrictions are also applied to transactions between a banking entity's affiliates and other funds that are ''controlled'' by a hedge or private equity fund permitted for the banking entity under 619(d). Importantly, these 23A and 23B restrictions do not apply to funds not ''controlled'' by funds permitted for the banking entity under section 619(d), and it should also be clear that under section 619 there are no new restrictions or limitations of any type placed on the portfolio investments of any hedge or private equity fund permitted for a banking entity under section 619.

Third, as a condition of sponsorship, section 619(d)(1)(G)(v) requires that a banking entity does not, directly or indirectly, guarantee or assume or otherwise insure the obligations or performance of any sponsored hedge or private equity fund or of any other hedge or private equity fund in which the sponsored fund invests. While this restricts guarantees by the banking entity as well as the insuring of obligation or performance, it does not limit other normal banking relations with funds merely due to a noncontrol investment by a fund sponsored by the banking entity. As described above, section 619(f) limits transactions under 23A and 23B of the Federal Reserve Act with a fund ''controlled'' by the banking entity or a fund sponsored by the banking entity. However, 619(f) does not limit in any manner transactions and normal banking relationships with a fund not ''controlled'' by the banking entity or a fund sponsored by the banking entity.

Finally, section 619(d)(4)(I) permits certain banking entities to operate hedge and private equity funds outside of the United States provided that no ownership interest in any hedge or private equity fund is offered for sale or sold to a U.S. resident. For consistency's sake, I would expect that, apart from the U.S. marketing restrictions, these provisions will be applied by the regulators in conformity with and incorporating the Federal Reserve's current precedents, rulings, positions, and practices under sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act so as to provide greater certainty and utilize the established legal framework for funds operated by bank holding companies outside of the United States.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Madam President, let me begin by thanking the Senator from Connecticut and congratulating him. He has been pretty effective in his last year in the Senate. He got a lot of stuff moving and a lot of stuff through. And I have not agreed with all of it, by the way. Most importantly, he has done it in a fair and balanced way, always with a sense of humor and an openness and willingness to listen to those with whom he may not agree entirely and allow us to participate at the table in discussions about the problems at the very beginning of the process in a very substantial way. So I thank him for his courtesy and for the way he runs the committee and the way he ran the HELP Committee when he succeeded to that leadership on the unfortunate passing of Senator Kennedy. It has been a pleasure to serve with him on this bill and on some very significant issues as we tried to work through them.

I have reservations about this bill—they are more than reservations. I, obviously, believe the bill doesn't get us to where we need to go. When we started on this effort, our purpose was, in the beginning, twofold: First, we wanted to make sure we could do everything we could to build into the system of regulatory atmosphere and the marketplace the brakes and the ability to avoid another systemic meltdown of the type we had in late 2008, which was a traumatic event.

Nobody should underestimate how significant the events of late 2008 were. If action had not been taken under the TARP proposal, and under the leadership of President Bush, Secretary Paulson, and then President Obama and Secretary Geithner, this country would have gone into a much more severe economic situation—probably a depression. Secretary Paulson once estimated the unemployment rate would have gone to 25 percent. The simple fact is the entire banking system would have probably imploded—most likely imploded—and certainly Main Street America would have been put in dire straits.

But action was taken. It was difficult action. We are still hearing about the ramifications of it, but it was the right action, and it has led to a stabilization of the financial industry. But we never want to have to see that happen again. We never want to have to go through that type of trauma again as a nation, where our entire financial community is teetering. So the purpose of this bill should be to put in place a series of initiatives which will hopefully mute that type of potential for another event of a systemic meltdown.

The second purpose of this bill—and it is an equally important purpose—is that we not do something that harms one of the unique strengths and characteristics of our Nation, where if you are an entrepreneur and have an idea and are willing to take a risk and try to create jobs, you can get credit and capital reasonably easily compared to the rest of the world. That has been the engine of the economic prosperity of our Nation—the availability of credit and capital, reasonably priced and reasonably available to entrepreneurs in our Nation.

Those should have been our two goals. If we match this bill to those goals, does it meet the test of meeting those goals? Unfortunately, I don't think it does. There are some very positive things in the bill. The resolution authority is a good product in this bill, and it will, in my opinion—though I know there is a lot of discussion about this—pretty much bring an end to the concept of too big to fail.

If an institution gets overleveraged to a point where it is no longer sustainable, and it is a systemic risk institution, it is going to be collapsed. The stockholders will be wiped out, the unsecured bond holders will be wiped out, and the institution will be resolved under this bill.

That is positive because we do not want to send to the markets a signal that the American taxpayer is going to stand behind institutions which are simply large. That perverts capital in the markets, and it perverts flow of economic activity in the markets when people think there is that sort of guarantee standing behind certain institutions in this country. And I think progress is made in this bill on the issue of resolution.

But, unfortunately, in a number of other areas, the opportunity to do something constructive was not accomplished. In fact, in my opinion, there will be results from this bill which will cause us to see a negative effect from this bill. The most negative effects I think will occur from this bill lie in two areas. First, in the area of the formation of credit.

It is very obvious that under this bill there is going to be a very significant contraction of credit in this country as we head into the next year, 2 years, maybe even 3 years. We are in a tough fiscal time right now. It is still very difficult on Main Street America to get credit. The economy is slow. We should not be passing a bill which is going to significantly dampen down credit, but it will. This bill will. It will for three reasons:

First, the derivatives language in this bill is not well thought out. It just isn't. Most people don't understand what derivatives are, but let's describe them as the grease that gets credit going in this country and everywhere. It is basically insurance products that allow people to do business and make sure they can insure over the risks that they have in a business. This bill creates a new regime for how we handle derivatives in this country.

Our goal should have been to make derivatives more transparent and sounder. That could have been done easily by making sure most derivatives were on over-the-counter exchanges—went through clearinghouses I mean, and had adequate margins behind them, adequate liquidity behind them, and were reported immediately to the credit reporting agencies as to what they were doing. It didn't involve a lot of complications, just changing the rules of the road. Instead of doing that, we have changed the entire process. In changing the entire process, we are basically going to contract significantly the availability of these products to basically fund and to be the engine or the grease or the lubricant for the ability of a lot of American businesses to do business.

End users in this country who use derivatives are going to find it very hard to have an exemption. They are basically going to have to put up capital, put up margin—something they do not do today on commercial derivative products—and that is going to cause them to contract their business. They will have to contract their business or they are going to have to go overseas. Believe me, there is a vibrant market in derivatives overseas. They will go to London, and this business will end up offshore.

Then we have this push to put everything on an exchange. Well, there are a lot of derivatives that obviously should go through clearinghouses but are too customized to go on exchanges, and we are going to end up inevitably with a contraction in the derivatives market as a result.

Then we have the swap desk initiative, which was simply a punitive exercise, in my opinion. It is going to accomplish virtually nothing in the area of making the system sounder or more stable. But what it will do is move a large section of derivative activity—especially the CDS markets—offshore. They will go offshore because they will not be done here any longer. Banks and financial houses which historically have written these instruments are not going to put up the capital to write them because they don't get a return that makes it worth it to them.

I guarantee we are going to see a massive contraction in a number of derivatives markets as a result of this swap desk initiative, which was more a political initiative than a substantive initiative, and which is counterproductive. It is a ''cut off your nose to spite your face'' initiative, and it will move overseas a lot of the products we do here and make it harder for Americans to be competitive—especially for financial services industries to be competitive—in the United States. So that will cause a contraction and a fairly big one.

The estimates are that the contraction may be as high as $¾ trillion. That is a lot of credit taken out of the system. On top of that, there is the issue of the new capital rules in this bill.

It isn't constructive for the Congress to set arbitrary capital rules. That should be left to the regulators. But this bill pretty much does that. As a result, a lot of the regional banks, the middle-sized banks—the larger banks would not be affected too much—will find they are under tremendous pressure as their tier I capital has to be restructured relative to trust preferred stock.

This is not a good idea because, as a practical matter, we will again cause a contraction in the market of capital—of credit. As banks grow their capital, they will have to contract credit. When a bank has to get money back in order to build its capital position up, it doesn't go to its bad loans because the bad loans aren't performing. It goes to its good loans, and it doesn't lend to them. Or it says: We are going to draw down your line of credit, because that is where they can get capital. That is what will happen, and we will see capital contract there.

On top of that, we have the Volcker rule. The concept is a very good idea. We should never have banks using insured deposits to do their proprietary activity. But straightening out what this Volcker rule means will take a while. It may be a year or two before anybody can sort out what it means and before the regulations come down that define it. So there will be a period of uncertainty, and that uncertainty means less credit available.

Of course, this is another situation where the international banks are the winners and the domestic banks are the losers because the international banks will be able to go and do the same business—the proprietary trade—in London, if they are based in London or in Singapore, if they are based in Singapore or Tokyo, if they are based in Tokyo. But the American banks they compete with aren't going to be able to do it. So that makes no sense at all.

But as a practical matter, that is what this bill does. So we will end up again with a tentativeness in the markets as to what they are supposed to be doing and what they can do in the area relative to the Volcker rule, and this will end up creating further credit contractions.

So my guess is, when we add it all together, this bill will lead to a credit contraction of probably $1 trillion or more in our economy. What does that translate into? It translates into fewer jobs and less economic activity. It didn't have to happen this way. This could have been done in a way that would have been clearer, where the clarity would have been greater, and where we would not have had to take arbitrary action which was more political than substantive to address what problems in the industry did exist and should have been addressed.

Another area of concern, of course, is this consumer agency. Consumer protection is critical. We all agree to that. What we proposed on our side of the aisle was that we link consumer protection and safety and soundness at the same level of responsibility and the same level of authority within the entire bank regulatory system so that the prudential regulator—whether it is the Fed or the Office of the Comptroller—when they go out to regulate a bank and check on it for safety and soundness—or the FDIC—they, at the same time, have the same standard of importance placed on making sure that the consumer is being protected in the way that bank deals with the consumers. That is the way it should be done. The two should be linked because the regulator that regulates the bank for safety and soundness is the logical regulator to regulate the bank to make sure it is complying with consumers' needs.

But this bill sets up this brandnew agency, which it calls consumer protection, but it will not be at all, in my opinion. It will be the agency for political correctness or correcting political justice or issues of political justice that somebody is concerned about. It is totally independent of everybody else. It doesn't answer to anyone except on a very limited and narrow way to the systemic risk council. It is a single person with an $850 million unoversighted revenue stream with no appropriations. Basically, the person just gets the money and can go off and do whatever they want. There is no relationship between this person and the prudential regulator. So what we will have is an individual who may get on a cause of social justice and say that XYZ group isn't getting enough loans, and they go out to the banks and say: You have to send XYZ group more loans.

We might have the bank regulator over here saying to the local banks, the regional banks: You can't lend to XYZ group because we know they are not going to pay you back or they will not pay you back at a rate that is reasonable. So we are going to have this inherent conflict.

Now, what will be the result of that? The banks will probably have to lend to the XYZ group, which means the people borrowing from that bank who pay their loans back will have to pay more because the bank will have to make up for the loss of revenues. As a result, the cost of credit will go up, especially for individuals who are responsible and paying down their debts and paying for their credit—paying back their loans. We are going to end up with layers and layers of conflicting regulation which will cost the banking community money—a significant amount of unnecessary money.

Who pays for that? Well, the consumer pays for it. Clearly, that gets passed through. This is one of those Rube Goldberg ideas that can only come out of a government entity. They used to say: You know, the government produces a camel when it is supposed to be producing a horse.

There is just a disconnect between the reality of what we are supposed to be doing in the area of producing effective regulation relative to protecting consumers and what this bill ends up finally doing.

I would not be here to oversee it or participate in it. In fact, nobody gets to oversee it, by the way. This consumer protection agency is not responsible to the Banking Committee of the Senate or the Banking Committee of the House. It is not responsible to the Fed. This person is a true czar.

The term ''czar'' is thrown around here a lot, but this person is a true czar in the area of consumer activity. I suspect we will see that this agency becomes a very controversial agency, with a very political social justice type agenda, not an agenda which is aimed at primarily protecting consumers.

So that is a big problem with this bill, and there are a lot of other issues with this bill. At the margin, the issue of how we restructure the regulatory regimes is of some concern, the whole question of how stockholders' rights in this bill—and probably not relevant to the banking issue so much—could have been improved on. The bill overall could have been a much better product. But the primary concern I have goes back to this issue of what was the original purpose—to protect systemic risk in the outyears and make sure we continue to have a strong and vibrant credit market for Americans who want to take risks and create jobs.

Two major issues were totally ignored in the bill which would address that question: What drove the event of this meltdown? What caused this financial downturn? It was the real estate market and the way it was being lent into. Two things were the basic engines of that problem, that were government controlled. There were a lot of things which caused it, but the two things which the government controlled were, No. 1, underwriting standards. Basically we divorced underwriting standards from the issue of whether a person got a loan, so loans were being made on assets which could not cover the cost of the loan. It was presumed the asset was going to appreciate, a home was always going to appreciate in these communities and therefore they could loan at 100 percent of the value of the home or 105 percent of the value and still have a safe loan. That was a foolish assumption, to say the least.

Second, we didn't look at whether the person could pay the loans back when these loans were made at zero interest for a year or 2 years. But then they reset, these loans reset at a fairly reasonable or sometimes very unreasonable interest rate and nobody looked at whether the person could pay them back.

These loans were being made not for the purposes of actually recovering the loans. That was not the reason these loans were being made. These subprime loans were being made because there were fees on the loans and the people making the loans were getting the fees. There was a whole cottage industry of people down in Miami who had just gotten out of prison who figured this out while they were in prison and they developed an entire cottage industry of former prisoners who had been released, legally, and actually went back into the loan business and were making these loans and getting the fees.

Then what aggravated it—first what aggravated it was the underwriting standards, but then it was that these loans got securitized. They got picked up by Freddie Mac and Fannie Mae, with the understanding—it was implicit but it was obvious, as we found out—that Fannie Mae and Freddie Mac would essentially insure these loans. So if you bought one of these securitized loans, Fannie Mae and Freddie Mac would be standing behind it even though the loans were not viable.

This bill ignores both those issues. It has very marginal language on the issue of underwriting. It doesn't get us back to standards which would basically protect us from overly aggressive underwriting.

People say Canada did not have a problem, Australia didn't have a problem. Why didn't they have a problem? They didn't have a problem because they required people who were borrowing to put money down and they required that people who were borrowing actually be able to pay the money back. It seems like a perfectly reasonable thing to require, but this bill ignores it.

Second, this bill does nothing about Fannie or Freddie—nothing. Talk about ignoring the elephant in the room, this is the whole herd of elephants in the room. The American taxpayer today is on the hook for something like $500 billion to $1 trillion. The estimates vary. Some people say it is even higher than that—the American taxpayer, for bad loans, securitized by Fannie and Freddie. This bill says nothing. It is as if this problem doesn't exist. It is as if this problem doesn't exist. Not only was it one of the primary drivers of the financial meltdown but it is one of the biggest problems we have going forward. The administration says we will do it next year. Well, if you do a financial reform bill without Fannie and Freddie, you essentially are not doing a financial reform bill at all. I apply the same to the issue of underwriting.

In my opinion, this bill has some pluses. I know this was worked very hard and I admire the efforts of the Senator from Connecticut and actually the chairman in the House, Congressman FRANK from Massachusetts. But the negatives of this bill unfortunately are too significant to ignore, especially in the area of the short-term credit contraction that is going to occur, the poorly structured derivatives language, the Consumer Protection Agency—which I think is going to end up being counterproductive to consumers—and the failure to take up the Freddie and Fannie issue, and the failure to do stronger underwriting standards.

For that reason, I remain opposed to this bill. I understand it is going to pass. I hope some of my concerns do not come to fruition because, if they do, unfortunately this economy is going to be slowed and our Nation will be less viable economically. But I am afraid they will come to fruition.

I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Connecticut is recognized

Mr. DODD. I see my other colleagues here, including Senator SPECTER who wants to be heard, but I want to address my colleague from New Hampshire because we are both going to be walking out of this Chamber in about 5 months. I thank him for his work going back to 20-some-odd months ago when we were involved in the critical weeks and days in September and October. JUDD GREGG was invaluable putting together a moment here while, not terribly popular, I think saved the economy and the country. I will not address all his concerns here. We have a different point of view on the issues he raised. They are not illegitimate issues. We think we addressed them properly. He has a different view, and I respect that. I appreciate his work and that of his staff on this bill. He made a significant contribution to this effort and I thank him for it.

I see my colleague from Pennsylvania here and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, at the outset I wish to ascertain with precision that I have 20 minutes, as had been arranged with the floor monitors. I had looked for 30 but I ask consent I may speak for up to 20 minutes now.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object, I want to be clear so my colleague will understand this. I had a sheet of paper in front of me—I do not have it in front of me now—with the order of those who sought time. I want to be careful, as my colleague from Pennsylvania will understand. We are going to vote at 2 o'clock. I want to be sure I can accommodate my colleagues.

The PRESIDING OFFICER. Twenty-three minutes remains to the majority.

Mr. DODD. I know Senator CONRAD, chairman of the Budget Committee, has to be heard and it is critical to me he be heard on the budget point of order.

Could you make it a little less than 20?

Mr. SPECTER. I really cannot. I had started at 30 and 20 is tough. How early might I return for my 30 minutes?

Mr. DODD. After 2 o'clock? Any point after——

Mr. SPECTER. I ask unanimous consent I may have 30 minutes when the two votes which are scheduled for 2 o'clock conclude.

Mr. DODD. Certainly I would have no objection to that whatsoever. Take some time at this juncture too, if you wish.

Mr. SPECTER. I will do it all at once. I don't want to truncate it.

I ask unanimous consent that I may have the floor for 30 minutes at the conclusion of the two votes scheduled for 2 o'clock.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Again, let me reserve the right to object. I see the minority wants to check on such a request. I have no objection myself but obviously that is a matter—in fairness to the minority, we want to let them know of such a request. Here we are eating up time right now. I see my friend from North Dakota here as well. I am deeply grateful to the chairman of the Budget Committee.

Go ahead with that request. I am told it is OK.

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

Mr. SPECTER. I thank the Chair and my colleague and the unknown persons in the cloakroom.

Mr. DODD. I thank my colleague from Pennsylvania and the unknown persons in the cloakroom. Let the record show they acknowledged the Senator's request.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I come to the floor to discuss the budget point of order that has been raised against the financial reform conference report. I will be voting to waive this point of order. As Budget Committee chairman, I do not take this step lightly. In fact, the point of order that has been offered is a point of order that I created in the 2008 budget, so it is something I feel strongly about as a general matter. But its applicability here is false in the face of the importance of the legislation we need to consider.

The legislation before us is critical to our economic strength. I think we all understand that financial reform is long overdue. It has been almost 2 years since the financial sector collapse brought our economy to the brink of global financial collapse. I was in the room and Senator DODD was in the room when we were informed by the Chairman of the Federal Reserve and the Secretary of the Treasury in the previous administration that if we failed to act at that dire moment, we could face a global financial collapse. That is how serious it was.

Now that the economy has stabilized, it is easy to forget the crisis that swept through the financial markets and threw us into the worst downturn since the Great Depression—in fact, which risked a second great depression. But we cannot afford to forget. We need to remember that the problems on Wall

Street and in our financial sector have a direct impact on Main Street and the lives of every American. We need to ensure that taxpayers are never again asked to bail out Wall Street.

This financial reform legislation will prevent another financial sector collapse, or at least will help prevent it. I do not think any of us can say this will prevent any future collapse, but it is critically important to helping us prevent another collapse. It will allow the government to shut down firms that threaten to crater our economy and ensure that the financial industry, not taxpayers, is on the hook for any costs. It will rein in risky derivatives and other risky trading practices that undermined some of our largest financial institutions. It will help level the playing field for smaller banks and credit unions by cracking down on the risky practices of Wall Street and nonbank financial institutions that caused the financial crisis.

I am grateful to Senator DODD, the Banking Committee, and members of the conference for working with me to make certain that the final bill recognizes the special circumstances of community banks and credit unions in rural States such as mine. In particular, I appreciate the committee's modification to the lending limit standards. This is very important to farming communities across the country.

The final bill also provides added flexibility for rural lenders in the new mortgage standards as well as provisions to improve interchange reform for smaller financial institutions. Finally, I am pleased the committee included a risk-focused deposit insurance fund assessment formula and modified risk retention requirements for high quality loans.

Especially I thank Senator DODD for his extraordinary leadership. What a final year in the Senate. What a remarkable legacy he is leaving. I think the annals of the Senate will show very few Senators have had a record of accomplishment that matches what Senator DODD will have done in this year.

With respect to the budget point of order that has been raised against the conference report, let me make a couple of general points. First, this budget violation is not significant enough to merit derailing this important legislation. Second, we must bear in mind the risks of failing to act. If we fail to protect against a future collapse and create an orderly process for dealing with giant insolvent financial institutions, it is inevitable that taxpayers will again at some future point be asked to bail out the financial sector and prevent a catastrophic financial collapse. If one measures on any scale the differences between the technical violation in this budget point of order against what would happen if this legislation fails, they cannot even be compared. I mean, it is a gnat against an elephant. So let's keep things in mind here.

Second, we must bear in mind the risk of failing to act because that would burden taxpayers in a way far beyond anything we see with this budget point of order. None of us wants that. This bill is an insurance policy against an expensive future taxpayer bailout.

The point of order that has been raised is the long-term deficit point of order, a point of order I established in the budget resolution of 2008. This point of order prohibits legislation that worsens the deficit by more than $5 billion in any of the four 10-year periods following 2019.

CBO has determined that at least in one of those four 10-year periods, the conference report would exceed this threshold. But this is really just a timing issue caused by the new bipartisan resolution authority created by the bill. This is the new authority given to the government to wind down failing financial firms. Under the resolution authority, if a financial firm is about to collapse, the government will use the firm's assets to wind it down and put it out of business. If the firm's assets are insufficient, the government will temporarily borrow funds from the Treasury. The financial industry will then reimburse the government and the taxpayers for 100 percent of the cost. Again, 100 percent of the money will be paid back by the banks. So the net impact on the deficit is zero.

Overall, the bill saves $3.2 billion over the first 10 years, according to the Congressional Budget Office. So while technically this budget point of order lies, if you pierce the veil and look at what really happens, this bill reduces the deficit, according to the Congressional Budget Office, which is the nonpartisan scorekeeper here in the Senate. Because there is a lag time for the government to collect this money from the financial industry, CBO scores the bill as increasing the deficit in some of the later decades. But all of that money will be paid back in ensuing years, and that is what matters most in this case.

So although this bill does technically violate the long-term deficit point of order, it is insignificant. The fact is, this bill reduces the deficit, according to the Congressional Budget Office. So I urge my colleagues to waive the point of order, to support passage of this financial reform legislation, which is clearly a significant step in the right direction in preventing the kind of risk to our Nation's economy that is so apparent with the current structure.

Again, I thank the chairman for his extraordinary work not only on this bill but throughout the year and, I think all of us know, throughout his career.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut

Mr. DODD. Mr. President, before my friend, the chairman of the Budget Committee, leaves, let me thank him immensely for his analysis of this issue. He has it, as we saw as well, exactly right. In fact, it is not only repaying 100 percent but with interest. There is an interest requirement, that if we borrow from the taxpayers in order to wind down substantially risky firms, then not only do you get paid back, but the interest on the cost of that money is also part of the deal. So it is 100 percent-plus coming back to the Treasury.

But his analysis and that of his committee—and there is no one who has been more disciplined or guarded about the budgetary process over the years we have served together, and so I appreciate the Senator's analysis of this particular point on the long-term deficit.

I commend the Senator for including the provisions he has and trying to build some discipline into the process of how we expend taxpayer moneys, collect taxes in the first place to pay for the needed expenditures of our government. So I thank the Senator for that.

I thank him for his comments as well about the bill and his support and also the substantive contributions the Senator from North Dakota has made, because one of the things we tried to be very careful about—JON TESTER of Montana, who sits on the committee with me, has been very careful and been tremendously active in seeing to it that rural America is going to be well served by this legislation. And there are differences. It is not all Wall Street, New York, and major financial centers. The importance of the availability of credit in rural communities is critical, as my colleague from North Dakota has informed me over the years we have served together. That ability of a local farmer to borrow that money in the spring, to be able to pay back in the fall, at harvest time, has been essential, and knowing how difficult it has been throughout the country to have access to credit is essential.

So his contributions to the legislation make sure that what we do here is going to enhance the capability of rural America to not only come out of this crisis we are in but to prosper in the years ahead with this legislation. So beyond the budgetary considerations and the points of order before us, I thank him for his contributions to the substance of the bill, which has made it a far better bill to begin with.

I see my colleague from Oregon is here. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. MERKLEY. Mr. President, I thank Chairman DODD for yielding to me and for his leadership on financial reform.

I yield to Senator LEVIN.

Mr. LEVIN. Mr. President, Senator MERKLEY and I, as the principal authors of sections 619, 620, and 621 of the Dodd-Frank Act, thought it might be helpful to explain in some detail those sections, which are based on our bill, S. 3098, called the Protect Our Recovery

Through Oversight of Proprietary, PROP, Trading Act of 2010, and the subsequently filed Merkley-Levin Amendment, No. 4101, to the Dodd-Lincoln substitute, which was the basis of the provision adopted by the Conference Committee.

I yield the floor to my colleague, Senator MERKLEY.

Mr. MERKLEY. I thank Senator LEVIN and will be setting forth here our joint explanation of the Merkley-Levin provisions of the Dodd-Frank Act. Sections 619, 620 and 621 do three things: prohibit high-risk proprietary trading at banks, limit the systemic risk of such activities at systemically significant nonbank financial companies, and prohibit material conflicts of interest in asset-backed securitizations.

Sections 619 and 620 amend the Bank Holding Company Act of 1956 to broadly prohibit proprietary trading, while nevertheless permitting certain activities that may technically fall within the definition of proprietary trading but which are, in fact, safer, client-oriented financial services. To account for the additional risk of proprietary trading among systemically critical financial firms that are not banks, bank holding companies, or the like, the sections require nonbank financial companies supervised by the Federal Reserve Board, the ''Board'', to keep additional capital for their proprietary trading activities and subject them to quantitative limits on those activities. In addition, given the unique control that firms who package and sell asset-backed securities (including synthetic asset-backed securities) have over transactions involving those securities, section 621 protects purchasers by prohibiting those firms from engaging in transactions that involve or result in material conflicts of interest.

First, it is important to remind our colleagues how the financial crisis of the past several years came to pass. Beginning in the 1980's, new financial products and significant amounts of deregulation undermined the Glass-Steagall Act's separation of commercial banking from securities brokerage or ''investment banking'' that had kept our banking system relatively safe since 1933.

Over time, commercial and investment banks increasingly relied on precarious short term funding sources, while at the same time significantly increasing their leverage. It was as if our banks and securities firms, in competing against one another, were race car drivers taking the curves ever more tightly and at ever faster speeds. Meanwhile, to match their short-term funding sources, commercial and investment banks drove into increasingly risky, short-term, and sometimes theoretically hedged, proprietary trading. When markets took unexpected turns, such as when Russia defaulted on its debt and when the U.S. mortgage-backed securities market collapsed, liquidity evaporated, and financial firms became insolvent very rapidly. No amount of capital could provide a sufficient buffer in such situations.

In the face of the worst financial crisis in 60 years, the January 2009 report by the Group of 30, an international group of financial experts, placed blame squarely on proprietary trading. This report, largely authored by former Federal Reserve System Chairman Paul Volcker, recommended prohibiting systemically critical banking institutions from trading in securities and other products for their own accounts. In January 2010, President Barack Obama gave his full support to common-sense restrictions on proprietary trading and fund investing, which he coined the ''Volcker Rule.''

The ''Volcker Rule,'' which Senator LEVIN and I drafted and have championed in the Senate, and which is embodied in section 619, embraces the spirit of the Glass-Steagall Act's separation of ''commercial'' from ''investment'' banking by restoring a protective barrier around our critical financial infrastructure. It covers not simply securities, but also derivatives and other financial products. It applies not only to banks, but also to nonbank financial firms whose size and function render them systemically significant.

While the intent of section 619 is to restore the purpose of the Glass-Steagall barrier between commercial and investment banks, we also update that barrier to reflect the modern financial world and permit a broad array of low-risk, client-oriented financial services. As a result, the barrier constructed in section 619 will not restrict most financial firms.

Section 619 is intended to limit proprietary trading by banking entities and systemically significant nonbank financial companies. Properly implemented, section 619's limits will tamp down on the risk to the system arising from firms competing to obtain greater and greater returns by increasing the size, leverage, and riskiness of their trades. This is a critical part of ending too big to fail financial firms. In addition, section 619 seeks to reorient the U.S. banking system away from leveraged, short-term speculation and instead towards the safe and sound provision of long-term credit to families and business enterprises.

We recognize that regulators are essential partners in the legislative process. Because regulatory interpretation is so critical to the success of the rule, we will now set forth, as the principal authors of Sections 619 to 621, our explanations of how these provisions work.

Section 619's prohibitions and restrictions on proprietary trading are set forth in a new section 13 to the Bank Holding Company Act of 1956, and subsection (a), paragraph (1) establishes the basic principle clearly: a banking entity shall not ''engage in proprietary trading'' or ''acquire or retain . . . ownership interest[s] in or sponsor a hedge fund or private equity fund'', unless otherwise provided in the section. Paragraph (2) establishes the principle for nonbank financial companies supervised by the Board by subjecting their proprietary trading activities to quantitative restrictions and additional capital charges. Such quantitative limits and capital charges are to be set by the regulators to address risks similar to those which lead to the flat prohibition for banking entities.

Subsection (h), paragraph (1) defines ''banking entity'' to be any insured depository institution (as otherwise defined under the Bank Holding Company Act), any entity that controls an insured depository institution, any entity that is treated as a bank holding company under section 8 of the International Banking Act of 1978, and any affiliates or subsidiaries of such entities. We and the Congress specifically rejected proposals to exclude the affiliates and subsidiaries of bank holding companies and insured depository institutions, because it was obvious that restricting a bank, but not its affiliates and subsidiaries, would ultimately be ineffective in restraining the type of high-risk proprietary trading that can undermine an insured depository institution.

The provision recognizes the modern reality that it is difficult to separate the fate of a bank and its bank holding company, and that for the bank holding company to be a source of strength to the bank, its activities, and those of its other subsidiaries and affiliates, cannot be at such great risk as to imperil the bank. We also note that not all banks pose the same risks. Accordingly, the paragraph provides a narrow exception for insured depository institutions that function principally for trust purposes and do not hold public depositor money, make loans, or access Federal Reserve lending or payment services. These specialized entities that offer very limited trust services are elsewhere carved out of the definition of ''bank,'' so we do not treat them as banks for the purposes of the restriction on proprietary trading. However, such institutions are covered by the restriction if they qualify under the provisions covering systemically important nonbank financial companies.

Subsection (h), paragraph (3) defines nonbank financial companies supervised by the Board to be those financial companies whose size, interconnectedness, or core functions are of sufficiently systemic significance as to warrant additional supervision, as directed by the Financial Stability Oversight Council pursuant to Title I of the Dodd-Frank Act. Given the varied nature of such nonbank financial companies, for some of which proprietary trading is effectively their business, an outright statutory prohibition on such trading was not warranted. Instead, the risks posed by their proprietary trading is addressed through robust capital charges and quantitative limits that increase with the size, interconnectedness, and systemic importance of the business functions of the nonbank financial firm. These restrictions should become stricter as size, leverage, and other factors increase. As with banking entities, these restrictions should also help reduce the size and risk of these financial firms.

Naturally, the definition of ''proprietary trading'' is critical to the provision. For the purposes of section 13, proprietary trading means ''engaging as a principal for the trading account'' in transactions to ''purchase or sell, or otherwise acquire or dispose of'' a wide range of traded financial products, including securities, derivatives, futures, and options. There are essentially three key elements to the definition: (1) the firm must be acting ''as a principal,'' (2) the trading must be in its ''trading account'' or another similar account, and (3) the restrictions apply to the full range of its financial instruments.

Purchasing or selling ''as a principal'' refers to when the firm purchases or sells the relevant financial instrument for its own account. The prohibition on proprietary trading does not cover trading engaged with exclusively client funds.

The term ''trading account'' is intended to cover an account used by a firm to make profits from relatively short-term trading positions, as opposed to long-term, multi-year investments. The administration's proposed Volcker Rule focused on short-term trading, using the phrase ''trading book'' to capture that concept. That phrase, which is currently used by some bank regulators was rejected, however, and the ultimate conference report language uses the term ''trading account'' rather than ''trading book'' to ensure that all types of accounts used for proprietary trading are covered by the section.

To ensure broad coverage of the prohibition on proprietary trading, paragraph (3) of subsection (h) defines ''trading account'' as any account used ''principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements)'' and such other accounts as the regulators determine are properly covered by the provision to fulfill the purposes of the section. In designing this definition, we were aware of bank regulatory capital rules that distinguish between short-term trading and long-term investments, and our overall focus was to restrict high-risk proprietary trading. For banking entity subsidiaries that do not maintain a distinction between a trading account and an investment account, all accounts should be presumed to be trading accounts and covered by the restriction.

Linking the prohibition on proprietary trading to trading accounts permits banking entities to hold debt securities and other financial instruments in long-term investment portfolios. Such investments should be maintained with the appropriate capital charges and held for longer periods.

The definition of proprietary trading in paragraph (4) covers a wide range of financial instruments, including securities, commodities, futures, options, derivatives, and any similar financial instruments. Pursuant to the rule of construction in subsection (g), paragraph (2), the definition should not generally include loans sold in the process of securitizing; however, it could include such loans if such loans become financial instruments traded to capture the change in their market value.

Limiting the definition of proprietary trading to near-term holdings has the advantage of permitting banking entities to continue to deploy credit via long-term capital market debt instruments. However, it has the disadvantage of failing to prevent the problems created by longer-term holdings in riskier financial instruments, for example, highly complex collateralized debt obligations and other opaque instruments that are not readily marketable. To address the risks to the banking system arising from those longer-term instruments and related trading, section 620 directs Federal banking regulators to sift through the assets, trading strategies, and other investments of banking entities to identify assets or activities that pose unacceptable risks to banks, even when held in longer-term accounts. Regulators are expected to apply the lessons of that analysis to tighten the range of investments and activities permissible for banking entities, whether they are at the insured depository institution or at an affiliate or subsidiary, and whether they are short or long term in nature.

The new Bank Holding Company Act section 13 also restricts investing in or sponsoring hedge funds and private equity funds. Clearly, if a financial firm were able to structure its proprietary positions simply as an investment in a hedge fund or private equity fund, the prohibition on proprietary trading would be easily avoided, and the risks to the firm and its subsidiaries and affiliates would continue. A financial institution that sponsors or manages a hedge fund or private equity fund also incurs significant risk even when it does not invest in the fund it manages or sponsors. Although piercing the corporate veil between a fund and its sponsoring entity may be difficult, recent history demonstrates that a financial firm will often feel compelled by reputational demands and relationship preservation concerns to bail out clients in a failed fund that it managed or sponsored, rather than risk litigation or lost business. Knowledge of such concerns creates a moral hazard among clients, attracting investment into managed or sponsored funds on the assumption that the sponsoring bank or systemically significant firm will rescue them if markets turn south, as was done by a number of firms during the 2008 crisis. That is why setting limits on involvement in hedge funds and private equity funds is critical to protecting against risks arising from asset management services.

Subsection (h), paragraph (2) sets forth a broad definition of hedge fund and private equity fund, not distinguishing between the two. The definition includes any company that would be an investment company under the Investment Company Act of 1940, but is excluded from such coverage by the provisions of sections 3(c)(1) or 3(c)(7). Although market practice in many cases distinguishes between hedge funds, which tend to be trading vehicles, and private equity funds, which tend to own entire companies, both types of funds can engage in high risk activities and it is exceedingly difficult to limit those risks by focusing on only one type of entity.

Despite the broad prohibition on proprietary trading set forth in subsection (a), the legislation recognizes that there are a number of low-risk proprietary activities that do not pose unreasonable risks and explicitly permits those activities to occur. Those low-risk proprietary trading activities are identified in subsection (d), paragraph (1), subject to certain limitations set forth in paragraph (2), and additional capital charges required in paragraph (3).

While paragraph (1) authorizes several permitted activities, it simultaneously grants regulators broad authority to set further restrictions on any of those activities and to supplement the additional capital charges provided for by paragraph (3).

Subparagraph (d)(1)(A) authorizes the purchase or sale of government obligations, including government-sponsored enterprise, GSE, obligations, on the grounds that such products are used as low-risk, short-term liquidity positions and as low-risk collateral in a wide range of transactions, and so are appropriately retained in a trading account. Allowing trading in a broad range of GSE obligations is also meant to recognize a market reality that removing the use of these securities as liquidity and collateral positions would have significant market implications, including negative implications for the housing and farm credit markets. By authorizing trading in GSE obligations, the language is not meant to imply a view as to GSE operations or structure over the long-term, and permits regulators to add restrictions on this permitted activity as necessary to prevent high-risk proprietary trading activities under paragraph (2). When GSE reform occurs, we expect these provisions to be adjusted accordingly. Moreover, as is the case with all permitted activities under paragraph (1), regulators are expected to apply additional capital restrictions under paragraph (3) as necessary to account for the risks of the trading activities.

Subparagraph (d)(1)(B) permits underwriting and market-making-related transactions that are technically trading for the account of the firm but, in fact, facilitate the provision of near-term client-oriented financial services. Market-making is a customer service whereby a firm assists its customers by providing two-sided markets for speedy acquisition or disposition of certain financial instruments. Done properly, it is not a speculative enterprise, and revenues for the firm should largely arise from the provision of credit provided, and not from the capital gain earned on the change in the price of instruments held in the firm's accounts. Academic literature sets out the distinctions between making markets for customers and holding speculative positions in assets, but in general, the two types of trading are distinguishable by the volume of trading, the size of the positions, the length of time that positions remains open, and the volatility of profits and losses, among other factors. Regulations implementing this permitted activity should focus on these types of factors to assist regulators in distinguishing between financial firms assisting their clients versus those engaged in proprietary trading. Vigorous and robust regulatory oversight of this issue will be essential to the prevent ''market-making'' from being used as a loophole in the ban on proprietary trading.

The administration's draft language, the original section 619 contemplated by the Senate Banking Committee, and amendment 4101 each included the term ''in facilitation of customer relations'' as a permitted activity. The term was removed in the final version of the Dodd-Frank Act out of concern that this phrase was too subjective, ambiguous, and susceptible to abuse. At the same time, we recognize that the term was previously included to permit certain legitimate client-oriented services, such pre-market-making accumulation of small positions that might not rise to the level of fully ''market-making'' in a security or financial instrument, but are intended to nonetheless meet expected near-term client liquidity needs. Accordingly, while previous versions of the legislation referenced ''market-making'', the final version references ''market-making-related'' to provide the regulators with limited additional flexibility to incorporate those types of transactions to meet client needs, without unduly warping the common understanding of market-making.

We note, however, that ''market-making-related'' is not a term whose definition is without limits. It does not implicitly cover every time a firm buys an existing financial instrument with the intent to later sell it, nor does it cover situations in which a firm creates or underwrites a new security with the intent to market it to a client. Testimony by Goldman Sachs Chairman Lloyd Blankfein and other Goldman executives during a hearing before the Permanent Subcommittee on Investigations seemed to suggest that any time the firm created a new mortgage related security and began soliciting clients to buy it, the firm was ''making a market'' for the security. But one-sided marketing or selling securities is not equivalent to providing a two-sided market for clients buying and selling existing securities. The reality was that Goldman Sachs was creating new securities for sale to clients and building large speculative positions in high-risk instruments, including credit default swaps. Such speculative activities are the essence of proprietary trading and cannot be properly considered within the coverage of the terms ''market-making'' or ''market-making-related.''

The subparagraph also specifically limits such underwriting and market-making-related activities to ''reasonably expected near term demands of clients, customers, and counterparties.'' Essentially, the subparagraph creates two restrictions, one on the expected holding period and one on the intent of the holding. These two restrictions greatly limit the types of risks and returns for market-makers. Generally, the revenues for market-making by the covered firms should be made from the fees charged for providing a ready, two-sided market for financial instruments, and not from the changes in prices acquired and sold by the financial institution. The ''near term'' requirement connects to the provision in the definition of trading account whereby the account is defined as trading assets that are acquired ''principally for the purpose of selling in the near term.'' The intent is to focus firms on genuinely making markets for clients, and not taking speculative positions with the firm's capital. Put simply, a firm will not satisfy this requirement by acquiring a position on the hope that the position will be able to be sold at some unknown future date for a trading profit.

Subparagraph (d)(1)(C) permits a banking entity to engage in ''risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of the banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.'' This activity is permitted because its sole purpose is to lower risk.

While this subparagraph is intended to permit banking entities to utilize their trading accounts to hedge, the phrase ''in connection with and related to individual or aggregated positions . . .'' was added between amendment 4101 and the final version in the conference report in order to ensure that the hedge applied to specific, identifiable assets, whether it be on an individual or aggregate basis. Moreover, hedges must be to reduce ''specific risks'' to the banking entity arising from these positions. This formulation is meant to focus banking entities on traditional hedges and prevent proprietary speculation under the guise of general ''hedging.'' For example, for a bank with a significant set of loans to a foreign country, a foreign exchange swap may be an appropriate hedging strategy. On the other hand, purchasing commodity futures to ''hedge'' inflation risks that may generally impact the banking entity may be nothing more than proprietary trading under another name. Distinguishing between true hedges and covert proprietary trades may be one of the more challenging areas for regulators, and will require clear identification by financial firms of the specific assets and risks being hedged, research and analysis of market best practices, and reasonable regulatory judgment calls. Vigorous and robust regulatory oversight of this issue will be essential to the prevent ''hedging'' from being used as a loophole in the ban on proprietary trading.

Subparagraph (d)(1)(D) permits the acquisition of the securities and other affected financial instruments ''on behalf of customers.'' This permitted activity is intended to allow financial firms to use firm funds to purchase assets on behalf of their clients, rather than on behalf of themselves. This subparagraph is intended, in particular, to provide reassurance that trading in ''street name'' for customers or in trust for customers is permitted.

In general, subparagraph (d)(1)(E) provides exceptions to the prohibition on investing in hedge funds or private equity funds, if such investments advance a ''public welfare'' purpose. It permits investments in small business investment companies, which are a form of regulated venture capital fund in which banks have a long history of successful participation. The subparagraph also permits investments ''of the type'' permitted under the paragraph of the National Bank Act enabling banks to invest in a range of low-income community development and other projects. The subparagraph also specifically mentions tax credits for historical building rehabilitation administered by the National Park Service, but is flexible enough to permit the regulators to include other similar low-risk investments with a public welfare purpose.

Subparagraph (d)(1)(F) is meant to accommodate the normal business of insurance at regulated insurance companies that are affiliated with banks. The Volcker Rule was never meant to affect the ordinary business of insurance: the collection and investment of premiums, which are then used to satisfy claims of the insured. These activities, while definitionally proprietary trading, are heavily regulated by State insurance regulators, and in most cases do not pose the same level of risk as other proprietary trading.

However, to prevent abuse, firms seeking to rely on this insurance-related exception must meet two essential qualifications. First, only trading for the general account of the insurance firm would qualify. Second, the trading must be subject to adequate State-level insurance regulation. Trading by insurance companies or their affiliates that is not subject to insurance company investment regulations will not qualify for protection here.

Further, where State laws and regulations do not exist or otherwise fail to appropriately connect the insurance company investments to the actual business of insurance or are found to inadequately protect the firm, the subparagraph's conditions will not be met.

Subparagraph (d)(1)(G) permits firms to organize and offer hedge funds or private equity funds as an asset management service to clients. It is important to remember that nothing in section 619 otherwise prohibits a bank from serving as an investment adviser to an independent hedge fund or private equity fund. Yet, to serve in that capacity, a number of criteria must be met.

First, the firm must be doing so pursuant to its provision of bona fide trust, fiduciary, or investment advisory services to customers. Given the fiduciary obligations that come with such services, these requirements ensure that banking entities are properly engaged in responsible forms of asset management, which should tamp down on the risks taken by the relevant fund.

Second, subparagraph (d)(1)(G) provides strong protections against a firm bailing out its funds. Clause (iv) prohibits banking entities, as provided under paragraph (1) and (2) of subsection (f), from entering into lending or similar transactions with related funds, and clause (v) prohibits banking entities from ''directly or indirectly, guarantee[ing], assum[ing], or otherwise insur[ing] the obligations or performance of the hedge fund or private equity fund.'' To prevent banking entities from engaging in backdoor bailouts of their invested funds, clause (v) extends to the hedge funds and private equity funds in which such subparagraph (G) hedge funds and private equity funds invest.

Third, to prevent a banking entity from having an incentive to bailout its funds and also to limit conflicts of interest, clause (vii) of subparagraph (G) restricts directors and employees of a banking entity from being invested in hedge funds and private equity funds organized and offered by the banking entity, except for directors or employees ''directly engaged'' in offering investment advisory or other services to the hedge fund or private equity fund. Fund managers can have ''skin in the game'' for the hedge fund or private equity fund they run, but to prevent the bank from running its general employee compensation through the hedge fund or private equity fund, other management and employees may not.

Fourth, by stating that a firm may not organize and offer a hedge fund or private equity fund with the firm's name on it, clause (vi) of subparagraph (G) further restores market discipline and supports the restriction on firms bailing out funds on the grounds of reputational risk. Similarly, clause (viii) ensures that investors recognize that the funds are subject to market discipline by requiring that funds provide prominent disclosure that any losses of a hedge fund or private equity fund are borne by investors and not by the firm, and the firm must also comply with any other restrictions to ensure that investors do not rely on the firm, including any of its affiliates or subsidiaries, for a bailout.

Fifth, the firm or its affiliates cannot make or maintain an investment interest in the fund, except in compliance with the limited fund seeding and alignment of interest provisions provided in paragraph (4) of subsection (d). This paragraph allows a firm, for the limited purpose of maintaining an investment management business, to seed a new fund or make and maintain a ''de minimis'' co-investment in a hedge fund or private equity fund to align the interests of the fund managers and the clients, subject to several conditions. As a general rule, firms taking advantage of this provision should maintain only small seed funds, likely to be $5 to $10 million or less. Large funds or funds that are not effectively marketed to investors would be evasions of the restrictions of this section. Similarly, co-investments designed to align the firm with its clients must not be excessive, and should not allow for firms to evade the intent of the restrictions of this section.

These ''de minimis'' investments are to be greatly disfavored, and subject to several significant restrictions. First, a firm may only have, in the aggregate, an immaterial amount of capital in such funds, but in no circumstance may such positions aggregate to more than 3 percent of the firm's Tier 1 capital. Second, by one year after the date of establishment for any fund, the firm must have not more than a 3 percent ownership interest. Third, investments in hedge funds and private equity funds shall be deducted on, at a minimum, a one-to-one basis from capital. As the leverage of a fund increases, the capital charges shall be increased to reflect the greater risk of loss. This is specifically intended to discourage these high-risk investments, and should be used to limit these investments to the size only necessary to facilitate asset management businesses for clients.

Subparagraphs (H) and (I) recognize rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States to engage in activities permitted under relevant foreign law. However, these subparagraphs are not intended to permit a U.S. banking entity to avoid the restrictions on proprietary trading simply by setting up an offshore subsidiary or reincorporating offshore, and regulators should enforce them accordingly. In addition, the subparagraphs seek to maintain a level playing field by prohibiting a foreign bank from improperly offering its hedge fund and private equity fund services to U.S. persons when such offering could not be made in the United States.

Subparagraph (J) permits the regulators to add additional exceptions as necessary to ''promote and protect the safety and soundness of the banking entity and the financial stability of the United States.'' This general exception power is intended to ensure that some unforeseen, low-risk activity is not inadvertently swept in by the prohibition on proprietary trading. However, the subparagraph sets an extremely high bar: the activity must be necessary to promote and protect the safety and soundness of the banking entity and the financial stability of the United States, and not simply pose a competitive disadvantage or a threat to firms' profitability.

Paragraph (2) of section (d) adds explicit statutory limits to the permitted activities under paragraph (1). Specifically, it prevents an activity from qualifying as a permitted activity if it would ''involve or result in a material conflict of interest,'' ''result directly or indirectly in a material exposure . . . to high-risk assets or high-risk trading strategies'' or otherwise pose a threat to the safety and soundness of the firm or the financial stability of the United States. Regulators are directed to define the key terms in the paragraph and implement the restrictions as part of the rulemaking process. Regulators should pay particular attention to the hedge funds and private equity funds organized and offered under subparagraph (G) to ensure that such activities have sufficient distance from other parts of the firm, especially those with windows into the trading flow of other clients. Hedging activities should also be particularly scrutinized to ensure that information about client trading is not improperly utilized.

The limitation on proprietary trading activities that ''involve or result in a material conflict of interest'' is a companion to the conflicts of interest prohibition in section 621, but applies to all types of activities rather than just asset-backed securitizations.

With respect to the definition of high-risk assets and high-risk trading strategies, regulators should pay close attention to the characteristics of assets and trading strategies that have contributed to substantial financial loss, bank failures, bankruptcies, or the collapse of financial firms or financial markets in the past, including but not limited to the crisis of 2008 and the financial crisis of 1998. In assessing high-risk assets and high-risk trading strategies, particular attention should be paid to the transparency of the markets, the availability of consistent pricing information, the depth of the markets, and the risk characteristics of the assets and strategies themselves, including any embedded leverage. Further, these characteristics should be evaluated in times of extreme market stress, such as those experienced recently. With respect to trading strategies, attention should be paid to the role that certain types of trading strategies play in times of relative market calm, as well as times of extreme market stress. While investment advisors may freely deploy high-risk strategies for their clients, attention should be paid to ensure that firms do not utilize them for their own proprietary activities. Barring high risk strategies may be particularly critical when policing market-making-related and hedging activities, as well as trading otherwise permitted under subparagraph (d)(1)(A). In this context, however, it is irrelevant whether or not a firm provides market liquidity: high-risk assets and high-risk trading strategies are never permitted.

Subsection (d), paragraph (3) directs the regulators to set appropriate additional capital charges and quantitative limits for permitted activities. These restrictions apply to both banking entities and nonbank financial companies supervised by the Board. It is left to regulators to determine if those restrictions should apply equally to both, or whether there may appropriately be a distinction between banking entities and non-bank financial companies supervised by the Board. The paragraph also mandates diversification requirements where appropriate, for example, to ensure that banking entities do not deploy their entire permitted amount of de minimis investments into a small number of hedge funds or private equity funds, or that they dangerously over-concentrate in specific products or types of financial products.

Subsection (e) provides vigorous anti-evasion authority, including record-keeping requirements. This authority is designed to allow regulators to appropriately assess the trading of firms, and aggressively enforce the text and intent of section 619.

The restrictions on proprietary trading and relationships with private funds seek to break the internal connection between a bank's balance sheet and taking risk in the markets, with a view towards reestablishing market discipline and refocusing the bank on its credit extension function and client services. In the recent financial crisis, when funds advised by banks suffered significant losses, those off-balance sheet funds came back onto the banks' balance sheets. At times, the banks bailed out the funds because the investors in the funds had other important business with the banks. In some cases, the investors were also key personnel at the banks. Regardless of the motivations, in far too many cases, the banks that bailed out their funds ultimately relied on taxpayers to bail them out. It is precisely for this reason that the permitted activities under subparagraph (d)(1)(G) are so narrowly defined.

Indeed, a large part of protecting firms from bailing out their affiliated funds is by limiting the lending, asset purchases and sales, derivatives trading, and other relationships that a banking entity or nonbank financial company supervised by the Board may maintain with the hedge funds and private equity funds it advises. The relationships that a banking entity maintains with and services it furnishes to its advised funds can provide reasons why and the means through which a firm will bail out an advised fund, be it through a direct loan, an asset acquisition, or through writing a derivative. Further, providing advisory services to a hedge fund or private equity fund creates a conflict of interest and risk because when a banking entity is itself determining the investment strategy of a fund, it no longer can make a fully independent credit evaluation of the hedge fund or private equity fund borrower. These bailout protections will significantly benefit independent hedge funds and private equity funds, and also improve U.S. financial stability.

Accordingly, subsection (f), paragraph (1) sets forth the broad prohibition on a banking entity entering into any ''covered transactions'' as such term is defined in the Federal Reserve Act's section 23A, as if such banking entity were a member bank and the fund were an affiliate thereof. ''Covered transactions'' under section 23A includes loans, asset purchases, and, following the Dodd-Frank bill adoption, derivatives between the member bank and the affiliate. In general, section 23A sets limits on the extension of credit between such entities, but paragraph (1) of subsection (f) prohibits all such transactions. It also prohibits transactions with funds that are controlled by the advised or sponsored fund. In short, if a banking entity organizes and offers a hedge fund or private equity fund or serves as investment advisor, manager, or sponsor of a fund, the fund must seek credit, including from asset purchases and derivatives, from an independent third party.

Subsection (f), paragraph (2) applies section 23B of the Federal Reserve Act to a banking entity and its advised or sponsored hedge fund or private equity fund. This provides, inter alia, that transactions between a banking entity and its fund be conducted at arms length. The fact that section 23B also includes the provision of covered transactions under section 23A as part of its arms-length requirement should not be interpreted to undermine the strict prohibition on such transactions in paragraph (1).

Subsection (f), paragraph (3) permits the Board to allow a very limited exception to paragraph (1) for the provision of certain limited services under the rubric of ''prime brokerage'' between the banking entity and a third-party-advised fund in which the fund managed, sponsored, or advised by the banking entity has taken an ownership interest. Essentially, it was argued that a banking entity should not be prohibited, under proper restrictions, from providing limited services to unaffiliated funds, but in which its own advised fund may invest. Accordingly, paragraph (3) is intended to only cover third-party funds, and should not be used as a means of evading the general prohibition provided in paragraph (1). Put simply, a firm may not create tiered structures and rely upon paragraph (3) to provide these types of services to funds for which it serves as investment advisor.

Further, in recognition of the risks that are created by allowing for these services to unaffiliated funds, several additional criteria must also be met for the banking entity to take advantage of this exception. Most notably, on top of the flat prohibitions on bailouts, the statute requires the chief executive officer of firms taking advantage of this paragraph to also certify that these services are not used directly or indirectly to bail out a fund advised by the firm.

Subsection (f), paragraph (4) requires the regulatory agencies to apply additional capital charges and other restrictions to systemically significant nonbank financial institutions to account for the risks and conflicts of interest that are addressed by the prohibitions for banking entities. Such capital charges and other restrictions should be sufficiently rigorous to account for the significant amount of risks associated with these activities.

To give markets and firms an opportunity to adjust, implementation of section 620 will proceed over a period of several years. First, pursuant to subsection (b), paragraph (1), the Financial Stability Oversight Council will conduct a study to examine the most effective means of implementing the rule. Then, under paragraph (b)(2), the Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall each engage in rulemakings for their regulated entities, with the rulemaking coordinated for consistency through the Financial Stability Oversight Council. In coordinating the rulemaking, the Council should strive to avoid a ''lowest common denominator'' framework, and instead apply the best, most rigorous practice from each regulatory agency.

Pursuant to subsection (c), paragraph (1), most provisions of section 619 become effective 12 months after the issuance of final rules pursuant to subsection (b), but in no case later than 2 years after the enactment of the Dodd-Frank Act. Paragraph (c)(2) provides a 2-year period following effective date of the provision during which entities must bring their activities into conformity with the law, which may be extended for up to 3 more years. Special illiquid funds may, if necessary, receive one 5-year extension and may also continue to honor certain contractual commitments during the transition period. The purpose of this extended wind-down period is to minimize market disruption while still steadily moving firms away from the risks of the restricted activities.

The definition of ''illiquid funds'' set forth in subsection (h) paragraph (7) is meant to cover, in general, very illiquid private equity funds that have deployed capital to illiquid assets such as portfolio companies and real estate with a projected investment holding period of several years. The Board, in consultation with the SEC, should therefore adopt rules to define the contours of an illiquid fund as appropriate to capture the intent of the provision. To facilitate certainty in the market with respect to divestiture, the Board is to conduct a special expedited rulemaking regarding these conformance and wind-down periods. The Board is also to set capital rules and any additional restrictions to protect the banking entities and the U.S. financial system during this wind-down period.

We noted above that the purpose of section 620 is to review the long-term investments and other activities of banks. The concerns reflected in this section arise out of losses that have appeared in the long-term investment portfolios in traditional depository institutions.

Over time, various banking regulators have displayed expansive views and conflicting judgments about permissible investments for banking entities. Some of these activities, including particular trading strategies and investment assets, pose significant risks. While section 619 provides numerous restrictions to proprietary trading and relationships to hedge funds and private equity funds, it does not seek to significantly alter the traditional business of banking.

Section 620 is an attempt to reevaluate banking assets and strategies and see what types of restrictions are most appropriate. The Federal banking agencies should closely review the risks contained in the types of assets retained in the investment portfolio of depository institutions, as well as risks in affiliates' activities such as merchant banking. The review should dovetail with the determination of what constitutes ''high-risk assets'' and ''high risk trading strategies'' under paragraph (d)(2).

At this point, I yield to Senator LEVIN to discuss an issue that is of particular interest to him involving section 621's conflict of interest provisions.

Mr. LEVIN. I thank my colleague for the detailed explanation he has provided of sections 619 and 620, and fully concur in it. I would like to add our joint explanation of section 621, which addresses the blatant conflicts of interest in the underwriting of asset-backed securities highlighted in a hearing with Goldman Sachs before the Permanent Subcommittee on Investigations, which I chair.

The intent of section 621 is to prohibit underwriters, sponsors, and others who assemble asset-backed securities, from packaging and selling those securities and profiting from the securities' failures. This practice has been likened to selling someone a car with no brakes and then taking out a life insurance policy on the purchaser. In the asset-backed securities context, the sponsors and underwriters of the asset-backed securities are the parties who select and understand the underlying assets, and who are best positioned to design a security to succeed or fail. They, like the mechanic servicing a car, would know if the vehicle has been designed to fail. And so they must be prevented from securing handsome rewards for designing and selling malfunctioning vehicles that undermine the asset-backed securities markets. It is for that reason that we prohibit those entities from engaging in transactions that would involve or result in material conflicts of interest with the purchasers of their products.

Section 621 is not intended to limit the ability of an underwriter to support the value of a security in the aftermarket by providing liquidity and a ready two-sided market for it. Nor does it restrict a firm from creating a synthetic asset-backed security, which inherently contains both long and short positions with respect to securities it previously created, so long as the firm does not take the short position. But a firm that underwrites an asset-backed security would run afoul of the provision if it also takes the short position in a synthetic asset-backed security that references the same assets it created. In such an instance, even a disclosure to the purchaser of the underlying asset-backed security that the underwriter has or might in the future bet against the security will not cure the material conflict of interest.

We believe that the Securities and Exchange Commission has sufficient authority to define the contours of the rule in such a way as to remove the vast majority of conflicts of interest from these transactions, while also protecting the healthy functioning of our capital markets.

In conclusion, we would like to acknowledge all our supporters, co-sponsors, and advisers who assisted us greatly in bringing this legislation to fruition. From the time President Obama announced his support for the Volcker Rule, a diverse and collaborative effort has emerged, uniting community bankers to old school financiers to reformers. Senator MERKLEY and I further extend special thanks to the original cosponsors of the PROP Trading Act, Senators TED KAUFMAN, SHERROD BROWN, and JEANNE SHAHEEN, who have been with us since the beginning.

Senator JACK REED and his staff did yeoman's work in advancing this cause. We further tip our hat to our tireless and vocal colleague, Senator BYRON DORGAN, who opposed the repeal of Glass-Steagall and has been speaking about the risks from proprietary trading for a number of years. Above all, we pay tribute to the tremendous labors of Chairman CHRIS DODD and his entire team and staff on the Senate Banking Committee, as well as the support of Chairman BARNEY FRANK and Representative PAUL KANJORSKI. We extend our deep gratitude to our staffs, including the entire team and staff at the Permanent Subcommittee on Investigations, for their outstanding work. And last but not least, we highlight the visionary leadership of Paul Volcker and his staff. Without the support of all of them and many others, the Merkley-Levin language would not have been included in the Conference Report.

We believe this provision will stand the test of time. We hope that our regulators have learned with Congress that tearing down regulatory walls without erecting new ones undermines our financial stability and threatens economic growth. We have legislated to the best of our ability. It is now up to our regulators to fully and faithfully implement these strong provisions.

I yield the floor to Senator MERKLEY.

Mr. MERKLEY. I thank my colleague for his remarks and concur in all respects.

Mr. DODD. Mr. President, I said so yesterday, and I will say it again: I thank Senator MERKLEY. I guess there are four new Members of the Senate serving on the Banking Committee. Senator MERKLEY, Senator WARNER, Senator TESTER, and Senator BENNET are all new Members of the Senate from their respective States of Oregon, Virginia, Montana, and Colorado. To be thrown into what has been the largest undertaking of the Banking Committee, certainly in my three decades here—and many have argued going back almost 100 years—was certainly an awful lot to ask.

I have already pointed out the contribution Senator WARNER has made to this bill. But I must say as well that Senator BENNET of Colorado has been invaluable in his contributions. I just mentioned Senator TESTER a moment ago for his contribution on talking about rural America and the importance of those issues. And Senator MERKLEY, as a member of the committee, on matters we included here dealing particularly with the mortgage reforms, the underwriting standards, the protections people have to go through, and credit cards as well—we passed the credit card bill—again, it was Senator JEFF MERKLEY of Oregon who played a critical role in that whole debate not to mention, of course, working with CARL LEVIN, one of the more senior Members here, having served for many years in the Senate. But the Merkley-Levin, Levin-Merkley provisions in this bill have added substantial contributions to this effort. So I thank him for his contribution.

I see my colleague from North Dakota is here. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided among both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DODD. Mr. President, we listened to Senator CONRAD, the chairman of the Budget Committee, address the budget point of order. I urge my colleagues to waive the point of order.

We came up with an alternative offset in the conference committee, much at the insistence—and I thanked him for that—of Senator BROWN of Massachusetts, looking for a better offset than the ones which were originally in the conference report. I know my colleague from Maine as well had reservations about what we originally included.

The offset here ends TARP, which I presume most people would welcome with open arms, saving us $11 billion by terminating it early, as well as then complying with the request by the chairperson of the Federal Deposit Insurance Corporation, Sheila Bair, to provide for additional assessments to meet the obligations of the FDIC and the insurance fund. Both of those items provide the necessary offsets to the cost of this bill.

The long-term deficit point of order is caused by the orderly liquidation authority for systemically significant financial institutions.

Let me note that this critically important aspect of the legislation was developed in very close cooperation with Senator SHELBY in the Shelby-Dodd amendment. It also reflects the bipartisan cooperation of Senators CORKER and WARNER. The Shelby-Dodd amendment passed this body overwhelmingly with over 90 votes.

Even though the liquidation authority is the source of long-term budget costs, it is still 100 percent paid for. The Shelby-Dodd amendment and the Boxer amendment made sure that this would be the case. Let me repeat, the liquidation authority, which is the dominant source of the budget cost in the bill, is 100 percent paid for over time.

The only reason that the liquidation authority scores at all is because of timing. The FDIC may initially have to borrow funds from the Treasury in order to wind down the failed company and put it out of business. Because it will take time to liquidate a large, interconnected financial company, there is a lag between when the funds are borrowed and when they are repaid by the sale of the failed companies' assets, its creditors and assessments on the industry if necessary.

One more important point on budget scoring and the liquidation authority. CBO cannot factor in the costs to our nation of a failure to address the possibility of future bailouts. We have lived through that nightmare and it has cost our country dearly.

Now I would like to discuss the way in which we address the budget consequences of the legislation. In particular, I would like to respond to some comments that have been made about the provisions increasing the long-term minimum target for the FDIC and thereby strengthening the Deposit Insurance Fund, a goal that no one can credibly argue with in light of the recent crisis.

In fact, this provision is supported by FDIC Chairman Sheila Bair, and she has sent us a letter expressing her support. I will submit that for the RECORD at the end of this statement.

Some of my colleagues on the other side of the aisle have claimed that the use of the FDIC in this way is unprecedented and questioned how this could count as budget savings or offsets and at the same time preserve the funds for bank failures.

Let us clear up the misinformation. First, no FDIC funds are being spent on, or transferred to, other programs. Premiums paid by banks remain, as they have for over 75 years, in the FDIC fund solely to protect insured deposits.

And counting FDIC premiums as budget savings in legislation absolutely does have precedent. We have to look no further than relatively recent actions of Republican Congresses to find them.

Budget reconciliation legislation enacted in February 2006 and sponsored by my colleague from New Hampshire, who was then the Chairman of the Budget Committee, included FDIC reforms authored by my colleague from Alabama, who was then Chairman of the Banking Committee. Those provisions resulted in higher FDIC premiums, which CBO said yielded almost $2 billion in budget savings over 10 years.

So, my colleagues from New Hampshire and Alabama in fact relied on reforms to the Deposit Insurance Fund to obtain savings that CBO favorably scored.

And 10 years earlier, Congress attached to an omnibus spending bill enacted in September 1996 a provision calling for a special premium on thrifts to capitalize the FDIC's thrift insurance fund.

The appropriators in that earlier Republican Congress justified higher discretionary spending based partly on the budget savings scored by CBO for the FDIC assessment.

I would also like to respond to some comments that have been made about the treatment of TARP in this legislation.

We end TARP in the conference report. With the comprehensive financial reform put in place under this bill, we think it is the right time to bring TARP to a close, ending it earlier than had been planned. I think that is something everyone should be happy about. And ending TARP saves the government money. That is not just my conclusion. It is the conclusion of the Congressional Budget Office, $11 billion in savings.

It is true that the original TARP legislation passed as an emergency, its costs were declared an emergency when it passed, so rescinding those funds or ending the program now is ending spending that is considered ''emergency'' spending.

But the savings are no less real because of that. Interestingly, my Republican colleague who has raised the point of order offered an amendment in conference that would have rescinded stimulus funding to pay for this bill. Why is that relevant? Because the stimulus money was also designated as an emergency, so it would have received the same accounting treatment here in the Senate as TARP. Both were emergencies.

Both ending TARP early and rescinding stimulus funding would reduce the deficit, but the burden of cuts in stimulus funding would fall disproportionately on families and small businesses who have been victims of the economic fallout from the Wall Street crisis. Cutting such spending would be exactly the wrong thing to do as we try to get the economy back on track and people back to work.

The fact is that overall this bill does not do damage to our budgetary outlook.

It does make vital changes to make our financial system stronger and more stable and should be passed as soon as possible.

So I urge my colleagues to support a motion to waive the long-term deficit point of order.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, June 29, 2010.

Hon. CHRIS DODD,
Chairman, Committee on Banking, U.S. Senate, Washington, DC.

Hon. RICHARD SHELBY,
Ranking Minority Member, Committee on Banking, U.S. Senate, Washington, DC.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.

Hon. SPENCER BACHUS,
Ranking Minority Member, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR CHAIRMEN DODD AND FRANK AND RANKING MEMBERS SHELBY AND BACHUS: Thank you for your interest in our views regarding increasing the Deposit Insurance Fund (DIF) ratio to 1.35.

Federal deposit insurance promotes public confidence in our nation's banking system by providing a safe place for consumers' funds. Deposit insurance has provided much needed stability throughout this crisis. Moreover, insured deposits provide banks with a stable and cost-effective source of funds for lending in their communities. Importantly, the DIF is funded by the insured banking industry.

A key measure of the strength of the insurance fund is the reserve ratio, which is the amount in the DIF as a percentage of the industry's estimated insured deposits. Current law requires us to maintain a reserve ratio of at least 1.15 percent. One of the lessons learned from the current crisis is that a minimum reserve ratio of 1.15 is insufficient to avoid the need for pro-cyclical assessments in times of stress. One of my first priorities when I assumed the Chairmanship of the FDIC in June of 2006 was to begin building our reserves. Regrettably, there was insufficient time before the crisis hit. Indeed, we started this crisis with a DIF reserve ratio of 1.22 percent (as of December 31, 2007). Beginning in mid–2008, as bank failures increased and the insurance fund incurred losses, the Fund balance and reserve ratio dropped precipitously. The reserve ratio became negative in the third quarter of 2009 and hit a low of negative 0.39 percent as of December 31, 2009. To date, we have collected more than $65 billion in assessments, and are projected to collect another $80 billion by 2016 to restore the fund.

Given this experience, we believe it is clear that as the economy strengthens and the banking system heals, the reserve ratio needs to be increased. In fact, our Board has acted through regulation to target the reserve ratio at 1.25 percent, and a further increase to 1.35 percent is consistent with our view that the Fund should build up in good economic times and be allowed to fall in poor economic times, while maintaining relatively steady premiums throughout the economic cycle, thereby reducing the procyclicality of the assessment system.

Please let me know if you have any questions or would like to discuss further.

Sincerely,

SHEILA C. BAIR.

I again urge my colleagues to vote to waive the budget point of order, and, of course, I urge them as well to support the legislation when that vote occurs.

INTENT BEHIND SECTIONS 691–621

Mr. MERKLEY. Mr. President, I rise to engage my colleagues, Senators DODD and LEVIN, in a colloquy regarding some key aspects of our legislative intent behind sections 619 through 621, the Merkley-Levin rule on proprietary trading and conflicts of interest as included in the conference report.

First, I would like to clarify several issues surrounding the ''de minimis'' investment provisions in subsection (d)(4). These provisions complement subsection (d)(1)(G), which permits firms to offer hedge funds and private equity funds to clients. ''De minimis'' investments under paragraph (4) are intended to facilitate these offerings principally by allowing a firm to start new funds and to maintain coinvestments in funds, which help the firm align its interests with those of its clients. During the initial start-up period, during which time firms may maintain 100 percent ownership, the fund should be relatively small, but sufficient to effectively implement the investment strategy. After the start up period, a firm may keep an ongoing ''alignment of interest'' coinvestment at 3 percent of a fund. Our intent is not to allow for large, revolving ''seed'' funds to evade the strong restrictions on proprietary trading of this section, and regulators will need to be vigilant against such evasion. The aggregate of all seed and coinvestments should be immaterial to the banking entity, and never exceed 3 percent of a firm's Tier 1 capital.

Second, I would like to clarify the intent of subsection (f)'s provisions to prohibit banking entities from bailing out funds they manage, sponsor, or advise, as well as funds in which those funds invest. The ''permitted services'' provisions outlined in subsection (f) are intended to permit banks to maintain certain limited ''prime brokerage'' service relationships with unaffiliated funds in which a fund-of-funds that they manage invests, but are not intended to permit fund-of-fund structures to be used to weaken or undermine the prohibition on bailouts. Given the risk that a banking entity may want to bail out a failing fund directly or its investors, the ''permitted services'' exception must be implemented in a narrow, well-defined, and arms-length manner and regulators are not empowered to create loopholes allowing high-risk activities like leveraged securities lending or repurchase agreements. While we implement a number of legal restrictions designed to ensure that prime brokerage activities are not used to bail out a fund, we expect the regulators will nevertheless need to be vigilant.

Before I yield the floor to Senator LEVIN to discuss several additional items, let me say a word of thanks to my good friend, Chairman DODD, for taking the time to join me in clarifying these provisions. I also honor him for his extraordinary leadership on the entire financial reform package. As a fellow member of the Banking Committee, it has been a privilege to work with him on the entire bill, and not just these critical provisions. I also would like to recognize Senator LEVIN, whose determined efforts with his Permanent Subcommittee on Investigations helped highlight the causes of the recent crisis, as well as the need for reform. It has been a privilege working with him on this provision.

Mr. LEVIN. I thank the Senator, and I concur with his detailed explanations. His tireless efforts in putting these commonsense restrictions into law will help protect American families from reckless risk-taking that endangers our financial system and our economy.

The conflicts of interest provision under section 621 arises directly from the hearings and findings of our Permanent Subcommittee on Investigations, which dramatically showed how some firms were creating financial products, selling those products to their customers, and betting against those same products. This practice has been likened to selling someone a car with no brakes and then taking out a life insurance policy on the purchaser. In the asset-backed securities context, the sponsors and underwriters of the asset-backed securities are the parties who select and understand the underlying assets, and who are best positioned to design a security to succeed or fail. They, like the mechanic servicing a car, would know if the vehicle has been designed to fail. And so they must be prevented from securing handsome rewards for designing and selling malfunctioning vehicles that undermine the asset-backed securities markets. It is for that reason that we prohibit those entities from engaging in transactions that would involve or result in material conflicts of interest with the purchasers of their products.

First, I would like to address certain areas which we exclude from coverage. While a strong prohibition on material conflicts of interest is central to section 621, we recognize that underwriters are often asked to support issuances of asset-backed securities in the aftermarket by providing liquidity to the initial purchasers, which may mean buying and selling the securities for some time. That activity is consistent with the goal of supporting the offering, is not likely to pose a material conflict, and accordingly we are comfortable excluding it from the general prohibition. Similarly, market conditions change over time and may lead an underwriter to wish to sell the securities it holds. That is also not likely to pose a conflict. But regulators must act diligently to ensure that an underwriter is not making bets against the very financial products that it assembled and sold.

Second, I would like to address the role of disclosures in relations to conflicts of interest. In our view, disclosures alone may not cure these types of conflicts in all cases. Indeed, while a meaningful disclosure may alleviate the appearance of a material conflict of interest in some circumstances, in others, such as if the disclosures cannot be made to the appropriate party or because the disclosure is not sufficiently meaningful, disclosures are likely insufficient. Our intent is to provide the regulators with the authority and strong directive to stop the egregious practices, and not to allow for regulators to enable them to continue behind the fig leaf of vague, technically worded, fine print disclosures.

These provisions shall be interpreted strictly, and regulators are directed to use their authority to act decisively to protect our critical financial infrastructure from the risks and conflicts inherent in allowing banking entities and other large financial firms to engage in high risk proprietary trading and investing in hedge funds and private equity funds.

Mr. President, I would like to thank Chairman DODD for his extraordinary dedication in shepherding this massive financial regulatory reform package through the Senate and the conference committee. This has been a long process, and he and his staff have been very able and supportive partners in this effort.

Mr. DODD. I thank the Senator, and I strongly concur with the intentions and interpretations set forth by the principal authors of these provisions, Senators MERKLEY and LEVIN, as reflecting the legislative intent of the conference committee. I thank Senators MERKLEY and LEVIN for their leadership, which was so essential in achieving the conference report provisions governing proprietary trading and prohibiting conflicts of interest.

ASSESSING INDIVIDUAL ENTITIES

Mr. KOHL. Mr. President, I thank the Chairman for his continued work to ensure that appropriate resources are available to protect the economy from a future failure of a systemically risky financial institution and to help pay back taxpayers for the recent failures we experienced.

With regard to assessments under the orderly liquidation authority of the bill, the bill requires that a risk-based matrix of factors be established by the FDIC, taking into account the recommendations of the Financial Stability Oversight Council, to be used in connection with assessing any individual entity. One of the factors listed in the bill's risk matrix provision would take into account the activities of financial entities and their affiliates. Is it the intent of that language that a consideration of such factors should specifically include the impact of potential assessments on the ability of an institution that is a tax-exempt, not-for-profit organization to carry out their legally required charitable and educational activities?

As the Senator knows, many Members of the Senate—like me—feel strongly that we must ensure that our constituents and communities continue to have access to these vital resources, and any potential assessment on tax-exempt groups which are charitable and/or educational by mission could severely hamper these groups' ability to fulfill their obligations to carry out their legally required activities.

Mr. DODD. Yes, that is correct. The language is not intended to reduce such charitable and educational activities that are legally required for tax-exempt, not-for-profit organizations that are so important to communities across the country. I thank the Senator for his continued help on these efforts.

SECTION 603 TRUST COMPANIES

Ms. COLLINS. Mr. President, I ask the chairman of the Senate Banking Committee, my colleague from Connecticut, Senator DODD, to clarify the types of trust companies that fall within the scope of section 603(a), a provision that prohibits the Federal Deposit Insurance Corporation from approving an application for deposit insurance for certain companies, including certain trust companies, until 3 years after the date of enactment of this act.

Mr. DODD. I would be glad to clarify the nature of trust companies subject to the moratorium under section 603(a). The moratorium applies to an institution that is directly or indirectly owned or controlled by a commercial firm that functions solely in a trust or fiduciary capacity and is exempt from the definition of a bank in the Bank Holding Company Act. It does not apply to a nondepository trust company that does not have FDIC insurance and that does not offer demand deposit accounts or other deposits that may be withdrawn by check or similar means for payment to third parties.

Ms. COLLINS. I thank my colleague for his clarification.

NONBANK FINANCIAL COMPANIES

Ms. COLLINS. Mr. President, as we move to final passage of this historic legislation, I would like to thank Senator DODD again for his leadership and strong support for my amendment to ensure that all insured depository institutions and depository institution holding companies regardless of size, as well as nonbank financial companies supervised by the Federal Reserve, meet statutory minimum capital standards and thus have adequate capital throughout the economic cycle. Those standards required under section 171 serve as the starting point for the development of more stringent standards as required under section 165 of the bill.

I did, however, have questions about the designation of certain nonbank financial companies under section 113 for Federal Reserve supervision and the significance of such a designation in light of the minimum capital standards established by section 171. While I can envision circumstances where a company engaged in the business of insurance could be designated under section 113, I would not ordinarily expect insurance companies engaged in traditional insurance company activities to be designated by the council based on those activities alone. Rather, in considering a designation, I would expect the council to specifically take into account, among other risk factors, how the nature of insurance differs from that of other financial products, including how traditional insurance products differ from various off-balance-sheet and derivative contract exposures and how that different nature is reflected in the structure of traditional insurance companies. I would also expect the council to consider whether the designation of an insurance company is appropriate given the existence of State-based guaranty funds to pay claims and protect policyholders. Am I correct in that understanding?

Mr. DODD. The Senator is correct. The council must consider a number of factors, including, for example, the extent of leverage, the extent and nature of off-balance-sheet exposures, and the nature, scope, size, scale, concentration, interconnectedness, and mix of the company's activities. Where a company is engaged only in traditional insurance activities, the council should also take into account the matters you raised.

Ms. COLLINS. Would the Senator agree that the council should not base designations simply on the size of the financial companies?

Mr. DODD. Yes. The size of a financial company should not by itself be determinative.

Ms. COLLINS. As the Senator knows, insurance companies are already heavily regulated by State regulators who impose their own, very different regulatory and capital requirements. The fact that those capital requirements are not the same as those imposed by section 171 should not increase the likelihood that the council will designate an insurer. Does the Senator agree?

Mr. DODD. Yes, I do not believe that the council should decide to designate an insurer simply based on whether the insurer would meet bank capital requirements.

PREEMPTION STANDARD

Mr. CARPER. Mr. President, I am very pleased to see that the conference committee on the Dodd-Frank Wall Street Reform and Consumer Protection Act retained my amendment regarding the preemption standard for State consumer financial laws with only minor modifications. I very much appreciate the effort of Chairman DODD in fighting to retain the amendment in conference.

Mr. DODD. I thank the Senator. As the Senator knows, his amendment received strong bipartisan support on the Senate floor and passed by a vote of 80 to 18. It was therefore a Senate priority to retain his provision in our negotiations with the House of Representatives.

Mr. CARPER. One change made by the conference committee was to restate the preemption standard in a slightly different way, but my reading of the language indicates that the conference report still maintains the Barnett standard for determining when a State law is preempted.

Mr. DODD. The Senator is correct. That is why the conference report specifically cites the Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, 517 U.S. 25(1996) case. There should be no doubt that the legislation codifies the preemption standard stated by the U.S. Supreme Court in that case.

Mr. CARPER. I again thank the Senator. This will provide certainty to everyone—those who offer consumers financial products and to consumer themselves.

NONBANK FINANCIAL COMPANIES

Mr. KERRY. Mr. President, the conference report to accompany H.R. 4173, the Dodd-Frank Wall Street reform bill, creates a mechanism through which the Financial Stability Oversight Council may determine that material financial distress at a U.S. nonbank financial company could pose such a threat to the financial stability of the United States that the company should be supervised by the Board of Governors of the Federal Reserve System and should be subject to heightened prudential standards. It is my understanding that in making such a determination, the Congress intends that the council should focus on risk factors that contributed to the recent financial crisis, such as the use of excessive leverage and major off-balance-sheet exposure. The fact that a company is large or is significantly involved in financial services does not mean that it poses significant risks to the financial stability of the United States. There are large companies providing financial services that are in fact traditionally low-risk businesses, such as mutual funds and mutual fund advisers. We do not envision nonbank financial companies that pose little risk to the stability of the financial system to be supervised by the Federal Reserve. Does the chairman of the Banking Committee share my understanding of this provision?

Mr. DODD. The Senator from Massachusetts is correct. Size and involvement in providing credit or liquidity alone should not be determining factors. The Banking Committee intends that only a limited number of high-risk, nonbank financial companies would join large bank holding companies in being regulated and supervised by the Federal Reserve.

CAPITAL REQUIREMENTS

Ms. COLLINS. Mr. President, I understand that it is the intent of paragraph 7 of section 171(b) of this legislation to require the Federal banking agencies, subject to the recommendations of the council, to develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that are engaged in activities that are subject to heightened standards under section 120. It is well understood that minimum capital requirements can help to shield various public and private stakeholders from risks posed by material distress that could arise at these entities from engaging in these activities. It is also understood and recognized that minimum capital requirements may not be an appropriate tool to apply under all circumstances and that by prescribing section 171 capital requirements as the correct tool with respect to companies covered by paragraph 7, it should not be inferred that capital requirements should be required for any other companies not covered by paragraph 7.

Mrs. SHAHEEN. I also understand that the intent of this section is not to create any inference that minimum capital requirements are the appropriate standard or safeguard for the council to recommend to be applied to any nonbank financial company that is not subject to supervision by the Federal Reserve under title I of this legislation, with respect to any activity subject to section 120. Rather, the council should have full discretion not to recommend the application of capital requirements to any such nonbank financial company engaged in any such activity.

Mr. DODD. I concur with Senator COLLINS and Senator SHAHEEN. Section 171 of this legislation came from an amendment that Senator COLLINS offered on the Senate floor, and I truly appreciate the constructive contribution she has made to this legislative process. My understanding also is that the capital requirements under paragraph 7 are intended to apply only to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. I thank my friends from Maine and New Hampshire for this clarification.

INSURANCE COMPANY DEFINITION

Mr. NELSON of Nebraska. Mr. President, first, I would like to commend Chairman DODD for his hard work on the Wall Street reform bill and for maintaining an open and transparent process while developing this legislation. With regard to the orderly liquidation authority under title II of the bill, an ''insurance company'' is defined in section 201 as any entity that is engaged in the business of insurance, subject to regulation by a State insurance regulator, and covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company. Is it the intent of this definition that a mutual insurance holding company organized and operating under State insurance laws should be considered an insurance company for the purpose of this title?

Mr. DODD. Yes, that is correct. It is intended that a mutual insurance holding company organized and operating under State insurance laws should be considered an insurance company for the purpose of title II of this legislation. I thank the Senator from Nebraska for this clarification.

INDEPENDENT REPRESENTATIVES

Mrs. LINCOLN. Mr. President, as chairman of the Agriculture, Nutrition, and Forestry Committee, I became acutely aware that our pension plans, governmental investors, and charitable endowments were falling victim to swap dealers marketing swaps and security-based swaps that they knew or should have known to be inappropriate or unsuitable for their clients. Jefferson County, AL, is probably the most infamous example, but there are many others in Pennsylvania and across the country. That is why I worked with Senator HARKIN and our colleagues in the House to include protections for pension funds, governmental entities, and charitable endowments in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Those protections—set forth in section 731 and section 764 of the conference report—place certain duties and obligations on swap dealers and security-based swap dealers when they deal with special entities. One of those obligations is that a swap dealer or the security-based swap dealer entering into a swap or security-based swap with a special entity must have a reasonable basis for believing that the special entity has an independent representative evaluating the transaction. Our intention in imposing the independent representative requirement was to ensure that there was always someone independent of the swap dealer or the security-based swap dealer reviewing and approving swap or security-based swap transactions. However, we did not intend to require that the special entity hire an investment manager independent of the special entity. Is that your understanding, Senator HARKIN?

Mr. HARKIN. Yes, that is correct. We certainly understand that many special entities have internal managers that may meet the independent representative requirement. For example, many public electric and gas systems have employees whose job is to handle the day-to-day hedging operations of the system, and we intended to allow them to continue to rely on those in-house managers to evaluate and approve swap and security-based swap transactions, provided that the manager remained independent of the swap dealer or the security-based swap dealer and met the other conditions of the provision. Similarly, the named fiduciary or in-house asset manager—INHAM—for a pension plan may continue to approve swap and security-based swap transactions.

FOREIGN BANKS

Mrs. LINCOLN. Mr. President, I wish to engage my colleague, Senator DODD, in a brief colloquy related to the section 716, the bank swap desk provision.

In the rush to complete the conference, there was a significant oversight made in finalizing section 716 as it relates to the treatment of uninsured U.S. branches and agencies of foreign banks. Under the U.S. policy of national treatment, which has been part of U.S. law since the International Banking Act of 1978, uninsured U.S. branches and agencies of foreign banks are authorized to engage in the same activities as insured depository institutions. While these U.S. branches and agencies of foreign banks do not have deposits insured by the FDIC, they are registered and regulated by a Federal banking regulator, they have access to the Federal Reserve discount window, and other Federal Reserve credit facilities.

It is my understanding that a number of these U.S. branches and agencies of foreign banks will be swap entities under section 716 and title VII of Dodd-Frank. Due to the fact that the section 716 safe harbor only applies to ''insured depository institutions'' it means that U.S. branches and agencies of foreign banks will be forced to push out all their swaps activities. This result was not intended. U.S. branches and agencies of foreign banks should be subject to the same swap desk push out requirements as insured depository institutions under section 716. Under section 716, insured depository institutions must push out all swaps and security-based swaps activities except for specifically enumerated activities, such as hedging and other similar risk mitigating activities directly related to the insured depository institution's activities, acting as a swaps entity for swaps or security-based swaps that are permissible for investment, and acting as a swaps entity for cleared credit default swaps. U.S. branches and agencies of foreign banks should, and are willing to, meet the push out requirements of section 716 as if they were insured depository institutions.

This oversight on our part is unfortunate and clearly unintended. Does my colleague agree with me about the need to include uninsured U.S. branches and agencies of foreign banks in the safe harbor of section 716?

Mr. DODD. Mr. President, I agree completely with Senator LINCOLN's analysis and with the need to address this issue to ensure that uninsured U.S. branches and agencies of foreign banks are treated the same as insured depository institutions under the provisions of section 716, including the safe harbor language.

END USERS

Mrs. LINCOLN. Mr. President, I will ask unanimous consent to have printed in the RECORD a letter that Chairman DODD and I wrote to Chairmen FRANK and PETERSON during House consideration of this Conference Report regarding the derivatives title. The letter emphasizes congressional intent regarding commercial end users who enter into swaps contracts.

As we point out, it is clear in this legislation that the regulators only have the authority to set capital and margin requirements on swap dealers and major swap participants for uncleared swaps, not on end users who qualify for the exemption from mandatory clearing.

As the letter also makes clear, it is our intent that the any margin required by the regulators will be risk-based, keeping with the standards we have put into the bill regarding capital. It is in the interest of the financial system and end user counterparties that swap dealers and major swap participants are sufficiently capitalized. At the same time, Congress did not mandate that regulators set a specific margin level. Instead, we granted a broad authority to the regulators to set margin. Again, margin and capital standards must be risk-based and not be punitive.

It is also important to note that few end users will be major swap participants, as we have excluded ''positions held for hedging or mitigating commercial risk'' from being considered as a ''substantial position'' under that definition. I would ask Chairman DODD whether he concurs with my view of the bill.

Mr. DODD. I agree with the Chairman's assessment. There is no authority to set margin on end users, only major swap participants and swap dealers. It is also the intent of this bill to distinguish between commercial end users hedging their risk and larger, riskier market participants. Regulators should distinguish between these types of companies when implementing new regulatory requirements.

Mrs. LINCOLN. Mr. President, I ask unanimous consent to have printed in the RECORD the letter that Chairman DODD and I wrote to Chairmen FRANK and PETERSON to which I referred.

INVESTMENT ADVISER

Mrs. LINCOLN. Mr. President, I rise to discuss section 409 of the Dodd-Frank bill, which excludes family offices from the definition of investment adviser under the Investment Advisers Act. In section 409, the SEC is directed to define the term family offices and to provide exemptions that recognize the range of organizational, management, and employment structures and arrangement employed by family offices, and I thought it would be worthwhile to provide guidance on this provision.

For many decades, family offices have managed money for members of individual families, and they do not pose systemic risk or any other regulatory issues. The SEC has provided exemptive relief to some family offices in the past, but many family offices have simply relied on the ''under 15 clients'' exception to the Investment Advisers Act, and when Congress eliminated this exception, it was not our intent to include family offices in the bill.

The bill provides specific direction for the SEC in its rulemaking to recognize that most family offices often have officers, directors, and employees who may not be family members, and who are employed by the family office itself or affiliated entities owned, directly or indirectly, by the family members. Often, such persons co-invest with family members, which enable those persons to share in the profits of investments they oversee and better align the interests of those persons with those of the family members served by the family office. In addition, family offices may have a small number of co-investors such as persons who help identify investment opportunities, provide professional advice, or manage portfolio companies. However, the value of investments by such other persons should not exceed a de minimis percentage of the total value of the assets managed by the family office. Accordingly, section 409 directs the SEC not to exclude a family office from the definition by reason of its providing investment advice to these persons.

Mr. DODD. I thank the Senator. Pursuant to negotiations during the conference committee, it was my desire that the SEC write rules to exempt certain family offices already in operation from the definition of investment adviser, regardless of whether they had previously received an SEC exemptive order. It was my intent that the rule would: exempt family offices, provided that they operated in a manner consistent with the previous exemptive policy of the Commission as reflected in exemptive orders for family offices in effect on the date of enactment of the Dodd-Frank Act; reflect a recognition of the range of organizational, management and employment structures and arrangements employed by family offices; and not exclude any person who was not registered or required to be registered under the Advisers Act from the definition of the term ''family office'' solely because such person provides investment advice to natural persons who, at the time of their applicable investment, are officers, directors or employees of the family office who have previously invested with the family office and are accredited investors, any company owned exclusively by such officers, directors or employees or their successors-in-interest and controlled by the family office, or any other natural persons who identify investment opportunities to the family office and invest in such transactions on substantially the same terms as the family office invests, but do not invest in other funds advised by the family office, and whose assets to which the family office provides investment advice represent, in the aggregate, not more than 5 percent of the total assets as to which the family office provides investment advice.

Mrs. LINCOLN. I appreciate the Senator's explanation and ask that the Senator work with me to make this point in a technical corrections bill.

Mr. DODD. I agree that this position should be raised in a corrections bill and I look forward to working with the Senator towards this goal on this point.

Mrs. LINCOLN. I thank the Senator for his leadership and his assistance and cooperation in ensuring the passage of this important bill.

VOLCKER RULE

Mrs. BOXER. Mr. President, I wish to ask my good friend, the Senator from Connecticut and the chairman of the Banking Committee, to engage in a brief discussion relating to the final Volcker rule and the role of venture capital in creating jobs and growing companies.

I strongly support the Dodd-Frank Wall Street Reform and Consumer Protection Act, including a strong and effective Volcker rule, which is found in section 619 of the legislation.

I know the chairman recognizes, as we all do, the crucial and unique role that venture capital plays in spurring innovation, creating jobs and growing companies. I also know the authors of this bill do not intend the Volcker rule to cut off sources of capital for America's technology startups, particularly in this difficult economy. Section 619 explicitly exempts small business investment companies from the rule, and because these companies often provide venture capital investment, I believe the intent of the rule is not to harm venture capital investment.

Is my understanding correct?

Mr. DODD. Mr. President, I thank my friend, the Senator from California, for her support and for all the work we have done together on this important issue. Her understanding is correct.

The purpose of the Volcker rule is to eliminate excessive risk taking activities by banks and their affiliates while at the same time preserving safe, sound investment activities that serve the public interest. It prohibits proprietary trading and limits bank investment in hedge funds and private equity for that reason. But properly conducted venture capital investment will not cause the harms at which the Volcker rule is directed. In the event that properly conducted venture capital investment is excessively restricted by the provisions of section 619, I would expect the appropriate Federal regulators to exempt it using their authority under section 619(J).

CAPTIVE FINANCE

Ms. STABENOW. Mr. President, I would like to discuss the derivatives title of the Wall Street reform legislation with chairman of the Senate Agriculture, Nutrition, and Forestry Committee, Senator LINCOLN.

I would like to first commend the Senator and her staff's hard work on this critically important bill, which brings accountability, transparency, and oversight to the opaque derivatives market.

For too long the over-the-counter derivatives market has been unregulated, transferring risk between firms and creating a web of fragility in a system where entities became too interconnected to fail.

It is clear that unregulated derivative markets contributed to the financial crisis that crippled middle-class families. Small businesses and our manufacturers couldn't get the credit they needed to keep the lights on, and many had to close their doors permanently. People who had saved money and played by the rules lost $1.6 trillion from their retirement accounts. More than 6 million families lost their homes to foreclosure. And before the recession was over, more than 7 million Americans had lost their jobs.

The status quo is clearly not an option.

The conference between the Senate and the House produced a strong bill that will make sure these markets are accountable and fair and that the consumers are back in control.

I particularly want to thank the Senator for her efforts to protect manufacturers that use derivatives to manage risks associated with their operations. Whether it is hedging the risks related to fluctuating oil prices or foreign currency revenues, the ability to provide financial certainty to companies' balance sheets is critical to their viability and global competitiveness.

I am glad that the conference recognizes the distinction between entities that are using the derivatives market to engage in speculative trading and our manufacturers and businesses that are not speculating. Instead, they use this market responsibly to hedge legitimate business risk in order to reduce volatility and protect their plans to make investments and create jobs.

Is it the Senator's understanding that manufacturers and companies that are using derivatives to hedge legitimate business risk and do not engage in speculative behavior will not be subjected to the capital or margin requirements in the bill?

Mrs. LINCOLN. I thank the Senator for her efforts to protect manufacturers. I share the Senator's concerns, which is why our language preserves the ability of manufacturers and businesses to use derivatives to hedge legitimate business risk.

Working closely with the Senator, I believe the legislation reflects our intent by providing a clear and narrow end-user exemption from clearing and margin requirements for derivatives held by companies that are not major swap participants and do not engage in speculation but use these products solely as a risk-management tool to hedge or mitigate commercial risks.

Ms. STABENOW. Again, I appreciate the Senator's efforts to work with me on language that ensures manufacturers are not forced to unnecessarily divert working capital from core business activities, such as investing in new equipment and creating more jobs. As you know, large manufacturers of high-cost products often establish wholly owned captive finance affiliates to support the sales of its products by providing financing to customers and dealers.

Captive finance affiliates of manufacturing companies play an integral role in keeping the parent company's plants running and new products moving. This role is even more important during downturns and in times of limited market liquidity. As an example, Ford's captive finance affiliate, Ford Credit, continued to consistently support over 3,000 of Ford's dealers and Ford Credit's portfolio of more than 3 million retail customers during the recent financial crisis—at a time when banks had almost completely withdrawn from auto lending.

Many finance arms securitize their loans through wholly owned affiliate entities, thereby raising the funds they need to keep lending. Derivatives are integral to the securitization funding process and consequently facilitating the necessary financing for the purchase of the manufacturer's products.

If captive finance affiliates of manufacturing companies are forced to post margin to a clearinghouse it will divert a significant amount of capital out of the U.S. manufacturing sector and could endanger the recovery of credit markets on which manufacturers and their captive finance affiliates depend.

Is it the Senator's understanding that this legislation recognizes the unique role that captive finance companies play in supporting manufacturers by exempting transactions entered into by such companies and their affiliate entities from clearing and margin so long as they are engaged in financing that facilitates the purchase or lease of their commercial end user parents products and these swaps contracts are used for non-speculative hedging?

Mrs. LINCOLN. Yes, this legislation recognizes that captive finance companies support the jobs and investments of their parent company. It would ensure that clearing and margin requirements would not be applied to captive finance or affiliate company transactions that are used for legitimate, nonspeculative hedging of commercial risk arising from supporting their parent company's operations. All swap trades, even those which are not cleared, would still be reported to regulators, a swap data repository, and subject to the public reporting requirements under the legislation.

This bill also ensures that these exemptions are tailored and narrow to ensure that financial institutions do not alter behavior to exploit these legitimate exemptions.

Based on the Senator's hard work and interest in captive finance entities of manufacturing companies, I would like to discuss briefly the two captive finance provisions in the legislation and how they work together. The first captive finance provision is found in section 2(h)(7) of the CEA, the ''treatment of affiliates'' provision in the end-user clearing exemption and is entitled ''transition rule for affiliates.'' This provision is available to captive finance entities which are predominantly engaged in financing the purchase of products made by its parent or an affiliate. The provision permits the captive finance entity to use the clearing exemption for not less than two years after the date of enactment. The exact transition period for this provision will be subject to rulemaking. The second captive finance provision differs in two important ways from the first provision. The second captive finance provision does not expire after 2 years. The second provision is a permanent exclusion from the definition of ''financial entity'' for those captive finance entities who use derivatives to hedge commercial risks 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company. It is also limited to the captive finance entity's use of interest rate swaps and foreign exchange swaps. The second captive finance provision is also found in Section 2(h)(7) of the CEA at the end of the definition of ''financial entity.'' Together, these 2 provisions provide the captive finance entities of manufacturing companies with significant relief which will assist in job creation and investment by our manufacturing companies.

Ms. STABENOW. I agree that the integrity of these exemptions is critical to the reforms enacted in this bill and to the safety of our financial system. That is why I support the strong anti-abuse provisions included in the bill.

Would you please explain the safeguards included in this bill to prevent abuse?

Mrs. LINCOLN. It is also critical to ensure that we only exempt those transactions that are used to hedge by manufacturers, commercial entities and a limited number of financial entities. We were surgical in our approach to a clearing exemption, making it as narrow as possible and excluding speculators.

In addition to a narrow end-user exemption, this bill empowers regulators to take action against manipulation. Also, the Commodity Futures Trading Commission and the Securities Exchange Commission will have a broad authority to write and enforce rules to prevent abuse and to go after anyone that attempts to circumvent regulation.

America's consumers and businesses deserve strong derivatives reform that will ensure that the country's financial oversight system promotes and fosters the most honest, open and reliable financial markets in the world.

Ms. STABENOW. I thank the Chairman for this opportunity to clarify some of the provisions in this bill. I appreciate the Senator's help to ensure that this bill recognizes that manufacturers and commercial entities were victims of this financial crisis, not the cause, and that it does not unfairly penalize them for using these products as part of a risk-mitigation strategy.

It is time we shine a light on derivatives trading and bring transparency and fairness to this market, not just for the families and businesses that were taken advantage of but also for the long-term health of our economy and particularly our manufacturers.

STABLE VALUE FUNDS

Mr. HARKIN. Mr. President, as chairman of the Health, Education, Labor, and Pensions Committee, the pensions community approached me about a possible unintended consequence of the derivatives title of the Dodd-Frank Wall Street Reform and Consumer Protection Act. They were concerned that the provisions regulating swaps might also apply to stable value funds.

Stable value funds are a popular, conservative investment choice for many employee benefit plans because they provide a guaranteed rate of return. As I understand it, there are about $640 billion invested in stable value funds, and retirees and those approaching retirement often favor those funds to minimize their exposure to market fluctuations. When the derivatives title was put together, I do not think anyone had stable value funds or stable value wrap contracts—some of which could be viewed as swaps—specifically in mind, and I do not think it is clear to any of us what effect this legislation would have on them.

Therefore, I worked with Chairman LINCOLN, Senator LEAHY, and Senator CASEY to develop a proposal to direct the SEC and CFTC to conduct a study—in consultation with DOL, Treasury, and State insurance regulators—to determine whether it is in the public interest to treat stable value funds and wrap contracts like swaps. This provision is intended to apply to all stable value fund and wrap contracts held by employee benefit plans—defined contribution, defined benefit, health, or welfare—subject to any degree of direction provided directly by participants, including benefit payment elections, or by persons who are legally required to act solely in the interest of participants such as trustees.

If the SEC and CFTC determine that it is in the public interest to regulate stable value fund and wrap contracts as swaps, then they would have the power to do so. I think this achieves the policy goals underlying the derivatives title while still making sure that we don't cause unintended harm to people's pension plans.

Mrs. LINCOLN. Mr. President, I share Chairman HARKIN's concern about possible unintended consequences the Dodd-Frank Wall Street Reform and Consumer Protection Act could have on pension and welfare plans which provide their participant with stable value fund options. These stable value fund options and their contract wrappers could be viewed as being a swap or a security-based swap. As Chairman HARKIN has stated, there is a significant amount of retirement savings in stable value funds, $640 billion, which represents the retirement funds of millions of hardworking Americans. One of my major goals in this legislation was to protect Main Street. We should try to avoid doing any harm to pension plan beneficiaries. When the stable value fund issue was brought to my attention, I knew it was something we had to address. That is why I worked with Chairman HARKIN and Senators LEAHY and CASEY to craft a provision that would give the CFTC and the SEC time to study the issue of whether the stable value fund options and/or the contract wrappers for these stable value funds are "swaps" or some other type of financial instrument such as an insurance contract. I think subjecting this issue to further study will provide a measure of stability to participants and beneficiaries in employee benefit plans—including those participants in defined benefit pension plans, 401(k) plans, annuity plans, supplemental retirement plans, 457 plans, 403(b) plans, and voluntary employee beneficiary associations—while allowing the CFTC and SEC to make an informed decision about what the stable value fund options and their contract wrappers are and whether they should be regulated as swaps or security-based swaps. It is a commonsense solution, and I am proud we were able to address this important issue which could affect the retirement funds of millions of pension beneficiaries.

VOLCKER RULE

Mr. BAYH. I thank the Chairman. With respect to the Volcker Rule, the conference report states that banking entities are not prohibited from purchasing and disposing of securities and other instruments in connection with underwriting or market making activities, provided that activity does not exceed the reasonably expected near term demands of clients, customers, or counterparties. I want to clarify this language would allow banks to maintain an appropriate dealer inventory and residual risk positions, which are essential parts of the market making function. Without that flexibility, market makers would not be able to provide liquidity to markets.

Mr. DODD. The gentleman is correct in his description of the language.

EVENT CONTRACTS

Mrs. FEINSTEIN. I thank Chairman LINCOLN and Chairman DODD for maintaining section 745 in the conference report accompanying the Dodd-Frank Wall Street Reform and Consumer Protection Act, which gives authority to the Commodity Futures Trading Commission to prevent the trading of futures and swaps contracts that are contrary to the public interest.

Mrs. LINCOLN. Chairman DODD and I maintained this provision in the conference report to assure that the Commission has the power to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets. I thank the Senator from California for encouraging Chairman DODD and me to include it. I agree that this provision will strengthen the government's ability to protect the public interest from gaming contracts and other events contracts.

Mrs. FEINSTEIN. It is very important to restore CFTC's authority to prevent trading that is contrary to the public interest. As you know, the Commodity Exchange Act required CFTC to prevent trading in futures contracts that were "contrary to the public interest" from 1974 to 2000. But the Commodity Futures Modernization Act of 2000 stripped the CFTC of this authority, at the urging of industry. Since 2000, derivatives traders have bet billions of dollars on derivatives contracts that served no commercial purpose at all and often threaten the public interest.

I am glad the Senator is restoring this authority to the CFTC. I hope it was the Senator's intent, as the author of this provision, to define "public interest" broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest. Will CFTC have the power to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use?

Mrs. LINCOLN. That is our intent. The Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed ''event contracts.'' It would be quite easy to construct an ''event contract'' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.

Mrs. FEINSTEIN. And does the Senator agree that this provision will also empower the Commission to prevent trading in contracts that may serve a limited commercial function but threaten the public good by allowing some to profit from events that threaten our national security?

Mrs. LINCOLN. I do. National security threats, such as a terrorist attack, war, or hijacking pose a real commercial risk to many businesses in America, but a futures contract that allowed people to hedge that risk would also involve betting on the likelihood of events that threaten our national security. That would be contrary to the public interest.

Mrs. FEINSTEIN. I thank the Senator for including this provision. No one should profit by speculating on the likelihood of a terrorist attack. Firms facing financial risk posed by threats to our national security may take out insurance, but they should not buy a derivative. A futures market is for hedging. It is not an insurance market.

COLLATERALIZED INVESTMENTS

Mrs. HAGAN. Mr. President, I would like to engage Senator LINCOLN, chairman of the Agriculture, Nutrition and Forestry Committee, in a colloquy.

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which Chairman LINCOLN was the primary architect of, creates a new regulatory framework for the over-the-counter derivatives market. It will require a significant portion of derivatives trades to be cleared through a centralized clearinghouse and traded on an exchange, and it will also increase reporting and capital and margin requirements on significant players in the market. The new regulatory framework will help improve transparency and disclosure within the derivatives market for the benefit of all investors.

Under the bill, the Commodity Futures Trading Commission, CFTC, and the Securities and Exchange Commission, SEC, are instructed to further define the terms ''major swap participant'' and ''major security-based swap participant.'' The definitions of major swap participant and major security-based swap participant included in the bill require the CFTC and the SEC to determine whether a person dealing in swaps maintains a ''substantial position'' in swaps, as well as whether such outstanding swaps create ''substantial counterparty exposure'' that could have ''serious adverse effects on the financial stability of the United States banking system or financial markets.'' The definition also encompasses ''financial entities'' that are highly leveraged relative to the amount of capital it holds, are not already subject to capital requirements set by a Federal banking regulator, and maintain a substantial position in outstanding swaps.

I understand when the CFTC and SEC are making the determination as to whether a person dealing in swaps is a major swap participant or major security-based swap participant, it is the intent of the conference committee that both the CFTC and the SEC focus on risk factors that contributed to the recent financial crisis, such as excessive leverage, under-collateralization of swap positions, and a lack of information about the aggregate size of positions. Is this correct?

Mrs. LINCOLN. Yes. My good friend from North Carolina is correct. We made some important changes during the conference with respect to the ''major swap participant'' and ''major security-based swap participant'' definitions. When determining whether a person has a ''substantial position,'' the CFTC and the SEC should consider the person's relative position in cleared versus the uncleared swaps and may take into account the value and quality of the collateral held against counterparty exposures. The committee wanted to make it clear that the regulators should distinguish between cleared and uncleared swap positions when defining what a ''substantial position'' would be. Similarly where a person has uncleared swaps, the regulators should consider the value and quality of such collateral when defining ''substantial position.'' Bilateral collateralization and proper segregation substantially reduces the potential for adverse effects on the stability of the market. Entities that are not excessively leveraged and have taken the necessary steps to segregate and fully collateralize swap positions on a bilateral basis with their counterparties should be viewed differently.

In addition, it may be appropriate for the CFTC and the SEC to consider the nature and current regulation of the entity when designating an entity a major swap participant or a major security-based swap participant. For instance, entities such as registered investment companies and employee benefit plans are already subject to extensive regulation relating to their usage of swaps under other titles of the U.S. Code. They typically post collateral, are not overly leveraged, and may not pose the same types of risks as unregulated major swap participants.

Mrs. HAGAN. I thank the Senator. If I may, I have one additional question. When considering whether an entity maintains a substantial position in swaps, should the CFTC and the SEC look at the aggregate positions of funds managed by asset managers or at the individual fund level?

Mrs. LINCOLN. As a general rule, the CFTC and the SEC should look at each entity on an individual basis when determining its status as a major swap participant.

SWAP DEALER PROVISIONS

Ms. COLLINS. Mr. President, I rise today as a supporter of the Wall Street Transparency and Accountability Act, but also as one who has concerns over how the derivatives title of the bill will be implemented. I applaud the chairman of the Senate Banking Committee for his work on the underlying bill. At the same time, I am concerned that some of the provisions in the derivatives title will harm U.S. businesses unnecessarily.

I would like to engage the chairman of the Senate Banking Committee in a colloquy that addresses an important issue. The Wall Street Transparency and Accountability Act will regulate ''swap dealers'' for the first time by subjecting them to new clearing, capital and margin requirements. ''Swap dealers'' are banks and other financial institutions that hold themselves out to the derivatives market and are known as dealers or market makers in swaps. The definition of a swap dealer in the bill includes an entity that ''regularly enters into swaps with counterparties as an ordinary course of business for its own account.'' It is possible the definition could be read broadly and include end users that execute swaps through an affiliate. I want to make clear that it is not Congress' intention to capture as swap dealers end users that primarily enter into swaps to manage their business risks, including risks among affiliates.

I would ask the distinguished chairman whether he agrees that end users that execute swaps through an affiliate should not be deemed to be ''swap dealers'' under the bill just because they hedge their risks through affiliates.

Mr. DODD. I do agree and thank my colleague for raising another important point of clarification. I believe the bill is clear that an end user does not become a swap dealer by virtue of using an affiliate to hedge its own commercial risk. Senator COLLINS has been a champion for end users and it is a pleasure working with her.

Mr. MCCAIN. Mr. President, we are poised to pass what some have termed a ''sweeping overhaul'' of our Nation's financial regulatory system. Unfortunately, this legislation does little, if anything—to tackle the tough problems facing the financial sector, nor does it institute real, meaningful and comprehensive reform. This bill is simply an abysmal failure and serves as yet another example of Congress's inability to make the choices necessary to bring our country back into economic prosperity.

What this bill does represent is a guarantee of future bailouts. In a recent Wall Street Journal op-ed titled ''The Dodd-Frank Financial Fiasco,'' John Taylor—a professor of economics at Stanford and a senior fellow at the Hoover Institution—wrote:

The sheer complexity of the 2,319-page Dodd-Frank financial reform bill is certainly a threat to future economic growth. But if you sift through the many sections and subsections, you find much more than complexity to worry about.

The main problem with the bill is that it is based on a misdiagnosis of the causes of the financial crisis, which is not surprising since the bill was rolled out before the congressionally mandated Financial Crisis Inquiry Commission finished its diagnosis.

The biggest misdiagnosis is the presumption that the government did not have enough power to avoid the crisis. But the Federal Reserve had the power to avoid the monetary excesses that accelerated the housing boom that went bust in 2007. The New York Fed had the power to stop Citigroup's questionable lending and trading decisions and, with hundreds of regulators on the premises of such large banks, should have had the information to do so. The Securities and Exchange Commission (SEC) could have insisted on reasonable liquidity rules to prevent investment banks from relying so much on short-term borrowing through repurchase agreements to fund long-term investments. And the Treasury working with the Fed had the power to intervene with troubled financial firms, and in fact used this power in a highly discretionary way to create an on-again off-again bailout policy that spooked the markets and led to the panic in the fall of 2008.

But instead of trying to make implementation of existing government regulations more effective, the bill vastly increases the power of government in ways that are unrelated to the recent crisis and may even encourage future crises.

Mr. Taylor then goes on to highlight the many ''false remedies'' contained in this legislation including the ''orderly liquidation'' authority given to the FDIC—which effectively institutionalizes the bailout process. Other examples are the new Bureau of Consumer Financial Protection, the new Office of Financial Research, and a new regulation for nonfinancial firms that use financial instruments to reduce risks of interest-rate or exchange-rate volatility.

In addition to the ''false remedies,'' the huge expansion of government, and the outright power-grab by the Federal Government contained in this so-called reform measure—recent press reports note that this bill has also become the vehicle for imposing racial and gender quotas on the financial industry. Section 342 of this bill establishes Offices of Minority and Women Inclusion in at least 20 Federal financial services agencies. These offices will be tasked with implementing ''standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.''

This ''fair inclusion'' policy will apply to ''financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants and providers of legal services.''

The provision goes on to assert that the government will terminate contracts with institutions they deem have ''failed to make a good faith effort to include minorities and women in their workforce.''

Diana Furchtgott-Roth, former chief economist at the U.S. Department of Labor and senior fellow at the Hudson Institute, spotlighted the controversial section in an article on Real Clear Markets on July 8th. She wrote:

This is a radical shift in employment legislation. The law effectively changes the standard by which institutions are evaluated from anti-discrimination regulations to quotas. In order to be in compliance with the law these businesses will have to show that they have a certain percentage of women and a certain percentage of minorities.

This provision was never considered or debated in the Senate. I do not think it is unreasonable to expect that such a major change in government policy—indeed a complete shift from anti-discrimination regulations to a system of quotas for the financial industry—be fully aired and debated by both Chambers before it is enacted.

Finally, let me return to Mr. Taylor's piece from the Wall Street Journal. Mr. Taylor added:

By far the most significant error of omission in the bill is the failure to reform Fannie Mae and Freddie Mac, the government sponsored enterprises that encouraged the origination of risky mortgages in the first place by purchasing them with the support of many in Congress. Some excuse this omission by saying that it can be handled later. But the purpose of ''comprehensive reform'' is to balance competing political interests and reach compromise; that will be much harder to do if the Frank-Dodd bill becomes law.

I could not agree more. It is clear to any rational observer that the housing market has been the catalyst of our current economic turmoil. And it is impossible to ignore the significant role played by Fannie Mae and Freddie Mac. The events of the past 2 years have made it clear that never again can we allow the taxpayer to be responsible for poorly managed financial entities who gambled away billions of dollars. Fannie Mae and Freddie Mac are synonymous with mismanagement and waste and have become the face of ''too big to fail.''

During the debate on this financial ''reform'' bill, we heard much about how the U.S. Government will never again allow a financial institution to become ''too big to fail.'' We heard countless calls for more regulation to ensure that taxpayers are never again placed at such tremendous risk. Sadly, the conference report before us now completely ignores the elephant in the room—because no other entity's failure would be as disastrous to our economy as Fannie Mae's and Freddie Mac's.

As my colleagues know, during Senate consideration of this bill, I offered a good, common-sense amendment designed to end the taxpayer-backed conservatorship of Fannie Mae and Freddie Mac by putting in place an orderly transition period and eventually requiring them to operate—without government subsidies—on a level playing field with their private sector competitors. Unfortunately that amendment was defeated by a near-party-line vote.

The majority, however, did offer an alternative proposal to my amendment. Was it a good, well thought out, comprehensive plan to end the taxpayer-backed free ride of Fannie and Freddie and require them to operate on a level playing field with their private sector competitors? Nope. It was a study. The majority included language in this bill to study the problem of Fannie and Freddie for 6 months. Wow! Instead of dealing head-on with the two enterprises that brought our entire economy to its knees—the majority wants to study them for 6 more months.

According to a recent article published by the Associated Press, these two entities have already cost taxpayers over $145 billion in bailouts and—according to CBO—those losses could balloon to $400 billion. And if housing prices fall further, some experts caution, the cost to the taxpayer could hit as much as $1 trillion. And all the majority is willing to do is study them for 6 months. It is no wonder the American people view us with such contempt.

The Federal Government has set a dangerous precedent here. We sent the wrong message to the financial industry: when you engage in bad, risky business practices, and you get into trouble, the government will be there to save your hide. It amounts to nothing more than a taxpayer-funded subsidy for risky behavior and this bill does nothing to prevent it from happening all over again.

Again, I regret that I have to vote against this bill. I assure my colleagues, and the American people, that if this were truly a bill that instituted real, serious and effective reforms—I would be the first in line to cast a vote in its favor. But it is not. It serves as evidence of a dereliction of our duty and a missed opportunity to provide the American people with the protections necessary to avert yet another financial disaster. They deserve better from us.

Mr. GRASSLEY. Mr. President, I have long worked for the continued viability of rural low-volume hospitals so that Medicare beneficiaries living in rural areas in Iowa and elsewhere in the country will continue to have needed access to care.

Today, I want to discuss another concern, one regarding low-volume dialysis clinics in rural areas and the kidney dialysis patients they serve.

Congress enacted a new end-stage renal dialysis, ESRD, bundled payment system in the Medicare Improvements for Patients and Providers Act of 2008 that takes effect next year.

I support the establishment of a fully bundled payment system for renal dialysis services.

It is intended to improve payments for ESRD services and to ensure access to critical renal dialysis services, including those in rural areas.

It will also improve the quality of care for dialysis patients by requiring ESRD providers to meet certain standards through a new quality incentive program that is established for ESRD providers.

It establishes a permanent annual update for ESRD providers.

It also provides for payment adjustments in certain circumstances, such as payments for low-volume facilities and for dialysis facilities and providers in rural areas that need additional resources.

Last fall, the Centers for Medicare and Medicaid Services, CMS, issued a proposed rule to implement the new ESRD bundled payment system. That rule will be finalized later this year.

I am concerned that overall some of the proposed adjustments that reduce payments for dialysis treatment may be unduly low.

But today I want to focus on one issue in particular—the adjustment that CMS has proposed for low-volume facilities.

The legislation that established this new bundled payment system specifically requires CMS to adopt a payment adjustment of not less than 10 percent for low-volume facilities to ensure their continued viability with other facilities.

The Secretary was given the discretion to define low-volume facilities.

Unfortunately, CMS has proposed a very restrictive definition and set of criteria to qualify as a low-volume facility so the payment adjustment would only apply to facilities that furnish fewer than 3,000 treatments a year.

According to CMS, ''the low-volume adjustment should encourage small ESRD facilities to continue to provide access to care to an ESRD patient population where providing that care would otherwise be problematic.''

CMS also notes that low-volume facilities have substantially higher treatment costs.

Previously, CMS considered an ESRD facility with less than 5,000 treatments a year to be small.

But now CMS is proposing to limit eligible ESRD facilities to those with less than 3,000 treatments a year and requiring this limit to be met for 3 years preceding the payment year, along with certain ownership restrictions.

CMS has not proposed any geographic restriction that would limit the low-volume payment adjustment to dialysis facilities in rural areas.

Medicare reimbursement is already problematic for small dialysis organizations because they operate on very low Medicare margins.

According to the March 2010 report of the Medicare Payment Advisory Commission, MedPAC, large dialysis organizations have Medicare margins of 4.0 percent compared to other dialysis facilities with Medicare margins of only 1.6 percent.

MedPAC also found that rural dialysis providers have Medicare margins that average -0.3 percent compared to urban providers with positive margins of 3.9 percent, and they expressed concern that the gap in rural and urban margins has widened.

They project that Medicare margins will fall from an aggregate 3.2 percent margin in 2008 to an aggregate 2.5 percent in 2010.

If corresponding declines are seen in rural areas, negative margins for rural facilities will increase, and low-volume rural facilities will be hit even harder.

And this projection does not take into account any of the additional reductions that CMS has proposed as part of the new bundled payment system even though these reductions would have a significant adverse impact on small dialysis facilities.

Should the proposed restrictions on low-volume facilities be finalized, the continued viability of these small dialysis facilities will be questionable.

This will be especially true in rural areas, and beneficiary access to these critical dialysis services will be severely jeopardized.

Small rural dialysis clinics provide beneficiaries with end-stage-renal disease access to critically-needed dialysis services in medically underserved areas.

In some rural areas, a single clinic may be the only facility that furnishes this life-sustaining care.

Should the unduly restrictive treatment limit for low-volume facilities be finalized as proposed, small rural facilities with slightly higher treatment volumes will lose these essential low-volume payments.

Since rural dialysis facilities already face negative Medicare margins, many are likely to close, further limiting access to crucial dialysis services that these kidney patients depend upon to survive.

New facilities would not be eligible for low-volume payments until their fourth year of operation under the proposed rule, making it unlikely that other facilities would take the place of those that had closed.

The prospect of Medicare beneficiaries' losing access to these life-sustaining services is simply unacceptable.

I, therefore, urge CMS to modify the proposed restrictions for low-volume adjustments by raising the treatment limit to the existing 5,000 treatment definition for small rural dialysis facilities.

One of my constituents, Laura Beyer, RN, BSN, is the manager of dialysis at Pella Regional Health Center, a critical access hospital in rural Iowa. She has written an editorial about this problem and the financial crises that small outpatient dialysis facilities, such as Pella Regional Health Center, are facing. Her editorial will be appearing in Nephrology News in July.

I ask unanimous consent to have printed in the RECORD this editorial.

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

WILL THE NEW ESRD BUNDLE CAUSE THE DEATH OF RURAL HOSPITAL-BASED DIALYSIS UNITS?

The new End Stage Renal Disease (ESRD) Bundled payment system scheduled to begin in January, 2011 is expected to create a financial loss for dialysis clinics across the United States. According to the CMS Office of Public Affairs (2009) ''MIPPA [Medicare Improvements for Patients and Providers Act] specifically requires that the new system trim two percent of the estimated payments that would have been made in 2011 under the previous payment system'' (¶3). Although this is of concern to all dialysis clinics, it is particularly alarming to non-profit hospital based dialysis units which are already operating at a loss.

These small hospital-owned dialysis clinics are simply trying to provide a service to an underserved rural area. Patients would have no option but to let ESRD claim their lives because the resources are not available for them to drive the extended distances to urban areas where dialysis services are more available. Pella Regional Health Center (PRHC), a Critical Access Hospital (CAH) in rural Iowa, offers outpatient dialysis services. Robert Kroese, CEO of PRHC stated, ''We choose to keep this dialysis clinic open despite the financial liability to the hospital for one reason only, people will have no choice but to die without it. Our community needs this service.''

Currently hospital-based dialysis units represent 13.6 percent of all dialysis facilities in the United States. Facilities classified as rural only make up 4.4 percent. The current CMS payment system defines a small facility as <5000 treatments annually as well as other control variables to include urban vs. rural and facility ownership. The proposed bundled payment system will decrease reimbursement further for these rural hospital-based units by decreasing the low-volume definition to <3000 treatments per year and eliminating rural facility payment adjustments (Leavitt, 2008). Considering the lack of buying power these small facilities face compared to the large dialysis companies, the hope of continuing this service in these rural areas is diminishing.

At what point is the financial burden going to be too much for these small rural hospitals to carry? The result will be thousands of patients without the healthcare services needed to sustain their lives. Please consider the effects on the unseen heroes in rural America trying to provide the best care possible to all Americans who need it. Help protect the dialysis patients who live in the underserved areas of America by contacting your state representatives regarding the preservation of Hospital-based rural dialysis units.

Mr. FEINGOLD. Mr. President, I will oppose the conference version of the Dodd-Frank bill. While it includes some positive provisions, it fails its most important mission, namely to ensure that taxpayers, consumers, businesses, and workers won't be victims of another financial crisis like the one which a few years ago triggered the worst recession our Nation has experienced since the Great Depression.

The measure certainly contains many good things, but those positive provisions do not outweigh the bill's serious failings. Of the several significant flaws in the bill, I will focus on two—the failure to reinstate the well-proven protections first established by the Glass-Steagall Act of 1933 that were repealed a decade ago, and the failure to firmly and finally address the essential problem posed by too-big-to-fail financial institutions.

Earlier this year I was pleased to cosponsor a bill introduced by the Senator from Washington, Ms. CANTWELL, to restore the safeguards that were enacted as part of the famous Glass-Steagall Act of 1933. And I was also pleased to cosponsor her amendment to the Financial Regulatory Reform bill, which was based on that legislation. It went to the very core of what the underlying bill we are considering seeks to address.

Unlike some other proposals we considered, that amendment had a track record we can review, because the economic history of this country can be divided into three eras—the time before Glass-Steagall, the Glass-Steagall era, and the most recent post-Glass-Steagall era.

In the first era—the time before the enactment of the Glass-Steagall Act of 1933—financial panics were frequent and devastating. Even before the market crash in 1929, the panics of 1857, 1873, 1893, 1901, and 1907 wrecked our economy, putting thousands of firms out of business, and leaving family breadwinners across the country without jobs.

In the wake of the 1929 crash—the last great panic of that first era—4,000 commercial banks and 1,700 savings and loans failed in this country, triggering the Great Depression that eliminated jobs for a quarter of the workforce.

It was that last financial crisis that spurred enactment of the Glass-Steagall Act of 1933, which marks the beginning of the second of our financial history's three eras.

The Glass-Steagall Act of 1933 put a stop to financial panics. It stabilized our banking system by implementing two key reforms. First, it established an insurance system for deposits, reassuring bank customers that their deposits were safe and thus forestalling bank runs. And second, it erected a firewall between securities underwriting and commercial banking. Financial firms had to choose which business to be in; they couldn't do both.

That wall between Main Street commercial banking and Wall Street investment financing was a crucial part of establishing the deposit insurance safety net because it prevented banks that accepted FDIC-insured deposits from making speculative investment bets with that insured money.

The Glass-Steagall Act was an enormous success. It helped prevent any major financial crisis in this country for most of the 20th century, and that financial market stability helped foster the economic growth we enjoyed for decades.

And that brings us to the last of the three eras—the post-Glass-Steagall era.

All that wonderful financial market stability that we had enjoyed for decades began to unravel when, in the 1980s, Wall Street lobbyists spurred regulators to undermine financial regulations, including the very firewall between Main Street banking and Wall Street investing that Glass-Steagall had established, and that had worked so well. That firewall was completely torn down when Wall Street lobbyists convinced Congress to pass the Gramm-Leach-Bliley Act of 1999.

We have seen the disastrous results of that ill-considered policy. It's a major part of the reason the financial regulatory reform bill was considered by this body.

I voted against the Gramm-Leach-Bliley Act, which eliminated the Glass-Steagall protections. The financial and economic record of that bill has been disastrous. If the financial regulatory reform bill before us did nothing else, it should have fixed the problems created by that ill-advised act.

Just a few weeks ago, at one of the listening sessions I hold in each of Wisconsin's 72 counties every year, a community banker from northwestern Wisconsin urged me to support restoring the Glass-Steagall protections. He rightly pointed out how the lack of those protections led directly to the Great Depression. And he argued that the bill we are currently debating doesn't go far enough in this respect. That community banker was absolutely right.

The bill before us tries to make up for the lack of a Glass-Steagall firewall by establishing some new limitations on the activities of banks, and gives greater power and responsibility to regulators. All of that is well intentioned, but we all know just how creative financial firms can be at eluding these kinds of limits and regulatory oversight when so much profit is at stake. No amount of oversight is an effective substitute for the legal firewall established by Glass-Steagall.

The era in our financial history in which the Glass-Steagall protections were in force was notable for the lack of instability and turmoil that had been a regular feature of our financial markets prior to Glass-Steagall, and that helped bring our economy to the brink after Glass-Steagall safeguards were repealed. Congress should have restored those time-tested protections, and reestablished the stability that brought our Nation half a century of remarkable economic growth.

We could have achieved that by adopting the Cantwell amendment. But, as we know, the Cantwell amendment was not even permitted a vote, such was the opposition to that commonsense reform by those who were guiding this legislation. So our financial markets will continue to remain adrift in the brief but ruinous post-Glass-Steagall era.

The other flaw I will highlight is the measure's failure to directly address what in many ways is the reason we are here today, namely the problem of too big to fail.

During the Senate's consideration of the measure, several amendments were offered that sought to confront that problem. Two of them, one offered by the Senator from North Dakota, Mr. DORGAN, and one offered by the Senators from Ohio, Mr. BROWN, and Delaware, Mr. KAUFMAN, took the problem on directly. Only one of those amendments even got a vote, and that proposal, from Senators BROWN and KAUFMAN, was strongly opposed, and ultimately defeated, by those who were shepherding the bill through the Senate.

As I noted, the problem of too big to fail is the reason we are considering financial regulatory reform legislation. It was the threat of the failure of the Nation's largest financial institutions that spurred the Wall Street bailout. I opposed that measure as well, in part because it was not tied to fundamental reforms of our financial system that would prevent a future crisis and the need for another bailout. There can be no doubt that we could have had a much tougher reform package if the bailout had been tied to such a measure.

Nor should there be any doubt about the role Congress has played in aggravating the problem of too big to fail. Fifteen years ago, the six largest U.S. banks had assets equal to 17 percent of our GDP. Today, after the enactment of the Riegle-Neal Interstate Banking and Branching bill and the Gramm-Leach-Bliley bill, the six largest U.S. banks have assets equal to more than 60 percent of our GDP.

Years ago, a former Senator from Wisconsin, William Proxmire, noted that as banking assets become more concentrated, the banking system itself becomes less stable, as there is greater potential for system wide failures. Sadly, Senator Proxmire was absolutely right, as recent events have proved. Even beyond the issue of systemic stability, the trend toward further concentration of economic power and economic decisionmaking, especially in the financial sector, simply is not healthy for the Nation's economy.

Historically, banks have had a very special role in our free market system: They are rationers of capital. While in recent decades we have seen changes in the capital markets that provide the largest corporations with other options to access needed capital, small businesses still remain dependent on the traditional banking system for the capital that is essential to them. So when fewer and fewer banks are making the critical decisions about where capital is allocated, there is an increased risk that many worthy enterprises will not receive the capital needed to grow and flourish.

For years, a strength of the American banking system was the strong community and local nature of that system. Locally made decisions made by locally owned financial institutions—institutions whose economic prospects were tied to the financial health of the communities they served—have long played a critical role in the economic development of our Nation and especially for our smaller communities and rural areas. But we have moved away from that system. Directly as a result of policy changes made by Congress and regulators, banking assets are controlled by fewer and fewer institutions, and the diminishment of that locally owned and controlled capital has not benefited either businesses or consumers.

Beyond the problems to our capital markets created by this development, there is Senator Proxmire's warning about the increased risk of system wide failure. Taxpayers across the country must now realize that Senator Proxmire's warning about the concentration of banking assets proved to be all too prescient when President Bush and Congress decided to bail out those mammoth financial institutions rather than allowing them to fail.

Some may argue that instead of imposing clear limits on the size of these financial behemoths, the bill before us seeks to limit their risk of failing by tightening the rules that should govern their behavior. And, they might add, the measure also permits regulators to address these matters more directly than ever before. But we have seen how Wall Street interests can maneuver around inconvenient regulations. Moreover, the track record of the regulators themselves has been troubling at best, and yet this bill relies on that same system to protect taxpayers and the economy from another financial market meltdown.

Today, the 10 largest banks have more than $10 trillion in assets. That is the equivalent of more than three-quarters of our Nation's GDP. And no one believes that, if one or more of those financial institutions were to get into trouble, they would be allowed to simply fail. The risk to the financial markets and the economy is seen as too great. They are literally too big to fail. And that is the problem.

As economist Dean Baker has noted, too big to fail implies two things: First, knowing the government will stand behind the debt-of-too-big to fail institutions, creditors will view those institutions as better credit risks and lower the cost of credit to them; and second, too-big-to-fail firms are able to engage in riskier behavior than other firms because creditors know the government will stand behind a too-big-to-fail firm if it gets in trouble, they will keep the money flowing when they otherwise might have closed it off. Baker is exactly right when he says that this is a recipe for many more bailouts.

Too big to fail has been a growing problem for more than a decade. Yet nothing in the Dodd-Frank bill requires that those enormous financial firms be whittled down to a size that would permit them to fail without disastrous consequences for financial markets or the economy. In fact, as Peter Eavis noted in the Wall Street Journal, the bill actually ''enshrines the bailout architecture, and thus the 'too-big-to-fail' distortions in the economy.'' And those distortions are not limited to the kind of massive, systemic collapse of the financial markets, which we just experienced. Too-big-to-fail distortions occur daily. They happen whenever a smaller community bank is competing with an enormous too-big-to-fail bank. Dean Baker calculated that the credit advantage the very biggest banks have over smaller institutions because of too-big-to-fail distortions is worth possibly $34 billion a year. Those who doubt such a distortion need only talk to a community banker for a few minutes to understand just how real it is.

Some suggest we should pass this bill because, despite the failings I have just described, it contains some positive reforms and that we should enact those improvements and then work to achieve the critically needed reforms that remain. That analysis assumes there will be some second great reform effort which will build on the work begun in this legislation, and that simply isn't going to happen. This is the bill. In the wake of the financial crisis and bailout, Congress essentially gets one shot to correct things and prevent a future crisis and bailout. There will be no financial regulatory reform, part two. Nobody seriously thinks the White House is planning a second reform package to go after too big to fail and to reinstate Glass-Steagall protections. Nor does anyone believe the Senate Banking Committee or the House Banking Committee is drafting a followup bill to deal with those issues. For that matter, I know of no advocacy groups that are seriously planning a followup reform effort to go after too big to fail or to reinstate the Glass-Steagall firewalls between commercial banking and Wall Street investment firms. It is not happening, because this is the moment and this is bill. To minimize the failings of this bill by suggesting there will be another one coming down the pike is at best misleading and at worst dishonest.

Mr. President, in this case, we have to get it right—completely right, not just make a good start. This bill fails the key test of preventing another crisis, and I will oppose it.

Mr. BROWNBACK. Mr. President, I rise to speak regarding the auto dealer exclusion in section 1029 of H.R. 4173, the Restoring American Financial Stability Act of 2010.

I am pleased that my amendment excluding auto dealers from the jurisdiction of the Bureau of Consumer Financial Protection, CFPB, was included in the conference report to H.R. 4173. This proposal attracted bipartisan support because the auto dealers should not have been regulated in this bill in the first place. They are retailers. They should not be regulated as bankers. They did not cause the Wall Street meltdown. They didn't bring down Lehman Brothers or Bear Stearns.

The purpose of my amendment was to protect third party auto financing. The CFPB could have abolished that kind of financing, but keeping these provisions in the bill will preserve a variety of auto financing choices for consumers, and we know that more choices result in lower prices. And the provisions of my amendment keep auto loans convenient and affordable while retaining existing consumer protection laws and policies.

The end result is a balance between consumer protection and the availability of affordable and accessible credit for consumers to meet their transportation needs. Except for subsection (d), Section 1029 is the result of a lot of debate and discussion in both houses of Congress dating back to last year. During the House Financial Services Committee's markup of this legislation, Representative JOHN CAMPBELL of California offered an amendment to exclude auto dealers from the jurisdiction of the CFPB. The Campbell amendment passed on a bipartisan vote of 47–21. A modified form of the Campbell amendment was included during floor consideration of H.R. 4173, which passed by a vote of 223–202 on December 11, 2009.

I offered an amendment during Senate consideration of H.R. 4173 to serve as a companion to the Campbell amendment. Although my amendment did not receive a direct vote, on May 24, the Senate voted to instruct its conferees to recede to the House on this matter, subject to the modifications of the Brownback amendment. This motion passed on a bipartisan vote of 60–30.

The final conference committee agreement incorporates the Brownback-Campbell language with some modifications. I want to discuss those provisions specifically and highlight some significant points.

First, section 1029(a) provides that the CFPB ''may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominately engaged in the sale and servicing of motor vehicle, the leasing and servicing of motor vehicles, or both.'' This is a clear, unambiguous exclusion from the authority of the CFPB for motor vehicle dealers.

Three exceptions to the exclusion for dealers are enumerated in section 1029(b). Subsection (b)(1) describes activity related to real estate transactions with consumers. Subsection (b)(2) describes motor vehicle transactions in which the dealer underwrites, funds, and services motor vehicle retail installment sales contracts and lease agreements without the involvement of an unaffiliated third party finance or leasing source so-called ''buy-here-pay-here'' transactions. Subsection (b)(3) describes the consumer financial products and services offered by motor vehicle dealers and limits the exclusion to those activities or any related or ancillary product or service. The combination of

1029(a) and 1029(b) ensures that motor vehicle dealers providing financial products or services related to the activities described in subsection (b)(3) are completely excluded from the CFPB.

Section 1029(c) preserves the authority of the Federal Reserve Board, the Federal Trade Commission and any other Federal agency having authority to regulate motor vehicle dealers.

Section 1029(d) provides that the Federal Trade Commission, FTC, will have the authority to write rules to address unfair or deceptive acts or practices by motor vehicle dealers pursuant to the procedures set forth in the Administrative Procedures Act instead of the Magnuson-Moss Act. Motor vehicles dealers are set to become the only businesses in America singled out for regulation in this manner. I want to emphasize that this specific provision was neither in the House or Senate bill and was not under consideration in either chamber. It was added by House-Senate conferees. Section 1029(d) was included without any evidence to justify its inclusion, or any debate for that matter. I do not support this provision, as I believe it invites the FTC to again engage in regulatory overreach. I am concerned that the removal of the well-established ''Magnuson-Moss'' safeguards gives the FTC free rein to conduct fishing expeditions into any area of automotive finance it perceives as ''unfair.''

The present leadership of the FTC has promised that if Magnuson-Moss were repealed, they would use their new power prudently. I hope that this is the case, because we do not want to repeat the kind of excessive FTC regulation that occurred in the 1970s. For that reason, Congress must monitor the FTC very closely to ensure the vast power Congress will now bestow on this agency is not once again abused.

Section 1029(e) requires the Federal Reserve Board and the Federal Trade Commission to coordinate with the Office of Service Member Affairs to ensure that any complaints raised by men and women in the armed services are addressed effectively by the appropriate enforcement agency.

Section 1029(f) defines certain terms in the bill. My amendment expanded the House language to also exclude similarly situated RV and boat dealers.

The concept of excluding auto dealers from the jurisdiction of the CFPB gained bipartisan support, but there was some debate about its effect on members of the U.S. Armed Forces. Because we all share the utmost concern for our service men and women, I think it is appropriate to revisit that argument briefly and to reiterate my strong belief that this exclusion will not hurt members of the military.

On February 26, Under Secretary of Defense Clifford Stanley wrote a widely distributed letter contending that excluding auto dealers from the CFPB would have a harmful effect on servicemembers. On May 14, I sent a letter to Under Secretary Stanley asking him to further clarify and substantiate the claims he made in his letter to ensure that the Senate would not take action that would harm military members.

Under Secretary Stanley's May 18 response to my letter offered a series of anecdotes about finance practices that were already illegal. In addition, Under Secretary Stanley's letter related the results of a survey of military members regarding auto financing. That survey, which was informal and unscientific, unfortunately failed to specify the sources of the problems some servicemembers encountered. It gave no indication that auto dealers were responsible for bad loans made to military members and made, and I think it is unfortunate that auto dealers were blamed for problems they did not cause on the basis of this survey.

In fact, I was surprised that Pentagon officials cited this survey instead of relying on their comprehensive 2006 report on abusive lending practices. This study, entitled ''Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents'' did not include dealer-assisted financing among its list of predatory lending practices. In the end, in my view, the best information available indicates that servicemembers will not be harmed by exempting dealers from the jurisdiction of the CFPB. I am glad that argument carried the day.

I am very concerned that the CFPB, which will not be overseen by the Office of Management and Budget and will not depend on Congress for its funding, will at some point in the future engage in regulatory overreach that will hurt our economy. Excluding auto, boat and RV dealers from the CFPB jurisdiction will ensure that these Main Street small businesses are protected from such harmful regulation. For consumers, my amendment guarantees that access to affordable credit is preserved, and all consumer protections laws are maintained. While I am very concerned about the implications of H.R. 4173 overall, I am pleased that at least in this instance we have found a way to limit the threat of regulations that hurt consumers and strangle our economy.

Mr. LEAHY. Mr. President, I strongly support the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The American people often are cynical, with good reason, about the success that powerful corporate interests have in trumping the interests and rights of everyday Americans, on Wall Street, in Congress and even on our Supreme Court. Backed by multimillions of dollars that ordinary Americans cannot match, the lobbying pressure that was sharply focused on trying to shape this bill at every step, including the conference, was almost without parallel. Yet the bill that emerged from conference truly reflects the Nation's interests in real Wall Street reform. This is a great, unheralded victory for the American people and one that should serve as an example again and again.

The recent financial crisis clearly exposed several flaws in our current regulatory system. Many large Wall Street investment banks and insurance companies hid their shaky finances from stockholders and government regulators. Corporate executives saw their salaries rise to extreme heights, even as their companies were failing and seeking government assistance. Through it all, Federal regulatory agencies failed to provide the necessary oversight to rein in these reckless actions. If this crisis has taught us anything, it is that the look-the-other way, hands-off deregulatory policies that were in vogue in recent times can jeopardize not only private investments but our entire economy.

The conference report we are voting on today goes directly to the heart of the Wall Street excesses that brought our economy to the brink. For far too long Wall Street firms made risky bets in the dark and reaped enormous profits. Then, when their bets went sour, they turned to America's taxpayers to bail them out. This bill is about changing the culture of rampant Wall Street speculation and doing what needs to be done to get our economy back on track. We need more transparency and oversight of Wall Street. These improvements will increase transparency in and oversight of the financial sector. These historic reforms will set clear standards and real enforcement—including jail time for executives—to finally curb the fraud, manipulation, and riotous speculation that punctured confidence in our markets and derailed our economy.

I commend Chairman BARNEY FRANK and Chairman CHRIS DODD for their excellent leadership of the conference. As a conferee, I know full well the pressure that powerful Wall Street special interests put on all Members to water down the bill, and I appreciate the difficulty the two chairmen have endured corralling the votes needed for final passage. Despite heavy and expensive lobbying from those who support the status quo, the conference committee put together a strong and balanced bill that will clean up Wall Street abuses, build confidence in our economy, and continue our progress toward economic recovery.

This bill makes several significant improvements to our financial services regulations. Specifically, it will create a new systemic regulatory council to watch for broad economic bubbles and red flags; end taxpayer bailouts of Wall Street institutions by establishing a new resolution authority to wind down failing megafirms outside of bankruptcy; create a new Consumer Financial Protection Bureau to oversee financial products on the market and rein in subprime lending; set new capital and leverage limits for financial institutions; give the SEC and CFTC new authorities and resources to protect investors; bring the massive derivatives market under Federal regulation for the first time; require hedge fund and other private investment advisers to register with the SEC; establish reasonable and fair swipe fees for debit and credit cards; and provide new resources for unemployed homeowners who are having trouble making their mortgage payments.

As chairman of the Senate Judiciary Committee, I am particularly pleased that the conference report also includes provisions I authored, working with Senator GRASSLEY, Senator SPECTER, and Senator KAUFMAN, to ensure law enforcement and Federal agencies have the necessary tools to investigate and prosecute financial crimes and to protect whistleblowers who help uncover these crimes. I am pleased that the conference report preserves meaningful antitrust oversight in the financial industry. I also am heartened that the conference agreement includes provisions I put forward to introduce true transparency into the complex operations of large financial institutions and the Federal agencies that regulate them. It has seemed to me that promoting transparency should be a vital element of Wall Street reform. Transparency is a cleansing agent for healthy markets. Open information helps investors make sound decisions. When information is murky, market decisions must be based on guesses or rumors that corrode trust and that encourage fraud and deception.

Another major step forward is the derivatives section of the conference report, crafted by the Agriculture Committee on which I serve. I applaud our committee chair, Senator BLANCHE LINCOLN, who fought tirelessly for these reforms. These changes will finally bring the $600 trillion derivatives market out of the dark and into the light of day, ending the days of backroom deals that put our entire economy at risk. The narrow end-user exemption in the bill will allow legitimate commercial interests, such as electric cooperatives and heating oil dealers on Main Street, to continue hedging their business risks, but it will stop Wall Street traders from artificially driving up prices of heating oil, gasoline, diesel fuel, and other commodities through unchecked speculation.

The conference report also includes a provision by Senator DICK DURBIN and Representative Peter Welch that I supported to protect our small businesses from complicated predatory rules that big credit card companies could otherwise impose on Vermont grocers and convenience stores. The Durbin-Welch amendment will ensure that a small business will be able to advertise a discount for paying cash or for using one card instead of another. I do not want Vermonters to pay more for a gallon of milk just because the credit card companies are demanding a high fee on small transactions and are not allowing the grocer to ask for cash instead of credit.

Another amendment I offered that is included in the final agreement is of particular importance to small States such as Vermont. My amendment will guarantee that Vermont and other small States each receive at least $5 million of the $1 billion in new Neighborhood Stabilization Program funds in the bill. Originally created in 2008, this program is designed to stabilize communities that have suffered from foreclosures and abandonment. My amendment overrode language proposed by the House that expressly prohibited a small-State-minimum from being used to allocate funds.

The extractive industries transparency disclosure provision that I sponsored is another major step forward for protecting U.S. taxpayers and shareholders and increasing the transparency of major financial transactions. This provision is about good governance and transparency so the American people and investors can know if they are investing in companies that are operating in dangerous or unstable parts of the world, thereby putting their investments at risk. This provision also will enable citizens of these resource-rich countries to know what their governments and governmental officials are receiving from foreign companies in exchange for mining rights. This will begin to hold governments accountable for how those funds are used and help ensure that the sale of their countries' natural resources are used for the public good.

I am also pleased that the bill includes a provision I cosponsored with Senator BERNIE SANDERS to increase transparency on the bailout transactions made by the Federal Reserve. Under this bill, we will finally have an audit of all of the emergency actions taken by the Federal Reserve since the financial crisis began, to determine whether there were any conflicts of interest surrounding the Federal Reserve's emergency activities. It is time we know more about the closed-door decisions made by the Federal Reserve throughout this financial crisis.

Mr. President, the Senate has before it today a conference report that will rein in Wall Street abuses, end government bailouts, and give everyday Americans the consumer protection they deserve and expect. It will help restore faith in our markets, which are part of the vital foundation of our economic progress. Taking this broom to Wall Street abuses will help build confidence in our economy and continue our progress toward economic recovery.

Mr. REED. Mr. President, on June 29, 2010, the House-Senate conference committee completed its deliberations on the most significant financial regulatory legislation since the 1930s. And, now, this conference report is before the Senate for final enactment. It will fundamentally change how we protect consumers, families, and small business from the reckless and abusive practices of the financial sector, and it will provide a framework for economic growth without the peril of periodic taxpayer bailouts of the financial sector.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 is a significant achievement. The legislation before the Senate declares that big banks cannot continue to take enormous risk, reaping billions in profits and rewarding their executives with hefty bonuses while counting on taxpayers to bail them out when they get in trouble. Unregulated mortgage lenders will no longer be able to make loans they know will not be repaid; loans that cripple families and communities. And, banks will no longer operate in an unregulated, opaque, and dangerous market for derivatives that helped lead us to the brink of financial catastrophe last year.

However, the events of the last decade and, particularly, the last several years should caution all of us with respect to the efficacy of any single legislative initiative. This bill must be thoughtfully and vigorously implemented. Indeed, the regulators must be particularly vigilant to ensure that this legislative effort is not undone by powerful interests who will be constrained by its provisions. In the years ahead, regulators must have the resources and the will to enforce these provisions to protect consumers and to protect the economy. The Congress must be prepared to provide rigorous oversight and move quickly to ensure that regulatory supervision will keep pace with a dynamic global marketplace.

More than a decade of excessive risk taking and lax regulation culminated in financial collapse in the autumn of 2008. The ensuing economic chaos has left millions unemployed and underemployed, precipitated a foreclosure crisis that still haunts neighborhoods throughout the country, and shattered the dreams of millions of American families.

With this new legislation, we create for the first time a consumer watchdog—the Consumer Financial Protection Bureau—that will solely focus on protecting consumers from unscrupulous financial activities. The law gives this agency independent rulemaking, examination, and enforcement responsibilities, and clear authority to prohibit unfair, deceptive, and abusive financial activities against middle-class families. And it consolidates the existing responsibilities of many regulators to ensure that there is a less fragmented, more comprehensive, and a fully accountable approach to protecting consumers.

The new Bureau represents a fundamental shift in how we inform Americans about abuses by banks, credit card companies, finance companies, payday lenders, and other financial institutions. It will focus these companies on doing their job of providing responsible and constructive financial products to help families and small businesses succeed, rather than destructive products that cause them to fail by draining their income and savings.

I am also pleased that the Senate voted 98 to 1 to approve the bipartisan amendment I offered with Senator SCOTT BROWN to create an Office of Service Member Affairs within the Consumer Financial Protection Bureau. This office will educate and empower members of the military and their families, help monitor and respond to complaints, and help coordinate consumer protection efforts among Federal and State agencies.

Although I would have preferred for the new Consumer Financial Protection Bureau to have sole authority over consumer protection matters for all banks and nonbank financial companies, the final bill represents a strong regime for consumer protection, including rulewriting authority over all entities. It also provides the Bureau with authority to examine and enforce regulations for banks and credit unions with assets of over $10 billion; all mortgage-related businesses, such as lenders, servicers, and mortgage brokers; payday lenders; student lenders; and all large debt collectors and consumer reporting agencies.

One glaring exception is the carveout for auto lenders. I opposed the Brownback amendment that created a special loophole for auto dealer-lenders, and I also opposed the compromise that is included in the conference report. The original protections in the bill were not meant to vilify auto dealers. The vast majority of dealers in my State of Rhode Island and across the country are hard-working business owners who operate responsibly. Rather, this debate was about ensuring fair and consistent scrutiny of all lending institutions. We cannot ignore the abuses that service members and others have endured because of predatory auto loans. We have learned from the debate that the abuse of service members by some auto dealers is an epidemic. During the debate I received a memo citing 15 recent examples of auto finance abuses just at Camp Lejeune alone. This problem will require close scrutiny after the bill is implemented.

I am also pleased that the legislation includes provisions from the Durbin amendment that will protect small business from unreasonable credit card company fees by requiring the Federal Reserve to issue rules ensuring that fees charged to merchants by credit card companies for debit card transactions are both reasonable and proportional to the cost of processing those transactions. These provisions will allow small businesses to invest more and pass on greater savings to their customers rather than spend their earnings on unreasonable interchange fees.

The Dodd-Frank Act also creates a new Financial Stability Oversight Council, comprised of existing regulators, to identify and respond to emerging risks throughout the financial system. This new council represents another significant improvement to protect families from devastating economic trends by, for the first time, creating one single entity responsible for looking across the financial system to prevent and respond to problems.

This section of the conference report also puts in place a new rigorous system of capital and leverage standards that will discourage banks from getting so large that they put our financial system at risk again. The new Financial Stability Oversight Council will make recommendations to the Federal Reserve to apply strict rules for capital, leverage, liquidity, and risk management so that firms that grow too big will face stricter rules that will likely deter the bigger is better mentality of too many banks. The council will also make recommendations for nonbank financial companies that have grown so large or complex that their activities pose a threat to the financial stability of the United Sates. No financial institution, bank or otherwise, will be able to take risks to multiply their gains without holding adequate capital. And, more importantly, such institutions will be on notice that the taxpayers will not bail them out.

The conference report includes a new Office of Financial Research, a proposal that I developed to provide an entity capable of researching, modeling, and analyzing risks throughout the financial system. For too long, those charged with keeping the banking system stable have lacked the data and analytical power to keep up with complex financial activities. This office ends that situation and takes a bold step forward to understand the factors that threaten to rip holes in our financial system, provide early warnings, and allow regulators to act on that information. As we create this new office, I will ensure that it retains its independence and broad data collection, budget, and hiring authority, so we are sure to better identify and mitigate economic challenges in the future. The challenge presented by the task of understanding the financial markets and monitoring systemic risk will require a sustained, integrated research effort that brings together some of the top researchers and practitioners in the country from a diverse range of relevant disciplines. The Office of Financial Research must become a world class institution that can go ‘‘toe to toe’’ with the top Wall Street banks.

In addition, this law creates a safe way to liquidate large financial companies, so that taxpayers will never again have to prop up a failing firm to avoid sending shockwaves through the financial system. Shareholders and unsecured creditors, not taxpayers, will bear losses, and culpable management will be removed. Financial institutions will pay for their failures, not taxpayers. Indeed, the existing rules on emergency lending authority and debt guarantees will be substantially changed to ensure that such tools cannot be used to bail out individual firms. This will send an important message to Wall Street: operate at your own risk since the taxpayers will no longer be in the business of bailing you out.

The Dodd-Frank Act also establishes important new limits on banks engaging in proprietary trading and in owning and investing in hedge funds and private equity funds. These provisions are known as the Volcker rule or the Merkley-Levin amendment. These new rules will help ensure that banks are not betting with consumer bank deposits on risky activities for the banks' own profit.

Until the last few decades, commercial banking and investment banking were largely conducted by separate institutions. However, in recent years, banks have engaged in a multitude of higher risk activities, such as short-term trading for a bank's own profit, and the sponsoring of hedge funds and private equity funds. The law changes that and prohibits any bank, thrift, holding company, or affiliate from engaging in proprietary trading or sponsoring or investing in a hedge fund or private equity fund. It also prohibits activities that involve material conflicts of interest between banks and their clients, customers, and counterparties.

The conference report also includes two provisions in this area that I authored. One requires the chief executive officer at a banking entity to certify annually that it does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private fund. The other provision requires banking entities to set aside more capital commensurate with the leverage of the hedge fund or private equity fund.

Although the final provisions included in the bill represent a stronger and more targeted approach to reducing risk in our banking system, I believe the change during the conference to allow for a 3 percent de minimus exclusion from the ban on sponsoring or investing in hedge funds or private equity funds was unwise. The original Merkley-Levin proposal did not include such an exclusion. Congress and the regulators will need to monitor bank activities very closely in the coming years to ensure that this exclusion is not abused.

The bill also makes some changes to consolidate our country's fragmented and inefficient system for supervising banks and holding companies. It eliminates the Office of Thrift Supervision, a particularly lax supervisor, and redistributes responsibilities for bank oversight and supervision to bring greater consistency and more effective oversight to all firms. These changes are an important step forward, although additional consolidation and streamlining of our regulatory agencies could have further improved the effectiveness of the system.

The Dodd-Frank bill also closes a significant gap in financial regulation by requiring advisers to hedge funds and private equity funds to register with the Securities and Exchange Commission. Based on legislation that I introduced, we will for the first time bring advisers to those funds within the umbrella of financial regulation. This will allow regulators to obtain the basic information they need to prevent fraud and mitigate systemic risk, while at the same time providing investors with more information and greater transparency.

Advisers to hedge funds and private equity funds—called ''private funds'' in the legislation—will have to register with either the SEC or a State, depending on the size of the funds they manage. Fund advisers with assets under management over $150 million must register with the SEC. Advisers to other types of funds will continue to have similar requirements, but the threshold for SEC registration will be $100 million. I also successfully included language in the conference report to ensure that State registration is only available to eligible fund advisers if the State has a registration and examination program.

From the beginning of this process I fought against any carve-outs in this title for private equity, venture capital, and family offices. While I successfully convinced the conferees to drop a carve-out for private equity advisers, the bill still contains problematic exemptions for venture capital firms and family offices. Through hearings and other means, I will continue to work to create a regulatory system in which none of the fraud and systemic risks that may lurk within private pools of capital remain out of view and reach of regulators.

On derivatives, the bill closes another huge set of regulatory gaps by overturning a law that prevented regulators from overseeing the shadowy over-the-counter derivatives market and, as a result, bringing accountability and transparency to the market. As we have learned from AIG and Lehman Brothers, derivatives were at a minimum the accelerant that complicated and expanded the financial crisis.

A major problem with derivatives is that they have not been regulated nor well-understood by even those buying and selling them. The legislation changes that and brings transparency and greater efficiency to the marketplace for swaps—derivatives in which two parties exchange certain benefits based on the value of an underlying reference like an interest rate—by requiring the reporting of the terms of these contracts to regulators and market participants. It will move as many swaps as possible from being opaque, bilateral transactions onto clearinghouses, exchanges, and other trading platforms. This should help make the marketplace fairer and more efficient by providing companies and investors with complete information on the market. Firms will also be required to put forward sufficient capital to engage in these transactions, which should help rein in the excessive speculation we saw in the past.

I successfully offered several amendments during the conference to correct potential opportunities for regulatory arbitrage between the Securities and Exchange Commission and the Commodity Futures Trading Commission. One of my improvements requires the SEC and the CFTC to conduct joint rulemaking in certain key areas rather than create potential gaps by conducting them separately. Other amendments clarify the definitions of mixed swap, security-based swap agreements, and index—which are all important terms that fall at the nexus of the two agencies' oversight—to ensure that the new swaps rules cannot be gamed and manipulated.

In a significant improvement to public transparency of swaps data, I successfully included another amendment that will ensure that regulators can require public reporting of trading and pricing data for uncleared transactions, not just aggregate data on transactions, just as they can for cleared transactions.

Also important are provisions to give the Federal Reserve a role in setting risk management standards for derivatives clearinghouses and other critical payment, clearing, and settlement functions, which has been a priority of mine given their importance to the financial system and their potential vulnerability to both natural and manmade disruptions.

The Dodd-Frank conference report also makes important improvements to the Federal Reserve System to ensure that as a financial regulator, it is accountable to the American public rather than to Wall Street. Among other governance improvements, the bill incorporates my proposal to create a new position of Vice Chairman for Supervision on the Federal Reserve Board of Governors, which should help ensure that supervision does not take a back seat to other priorities. The new Vice Chairman will develop policy recommendations for the board regarding the supervision and regulation of depository institution holding companies and other financial firms supervised by the board. He or she will also oversee the supervision and regulation of such firms.

Although the Senate bill included my proposal to require the head of the Federal Reserve Bank of New York to be Presidentially appointed and Senate confirmed, the provision was stripped out during conference. If the Governors of the Federal Reserve System in Washington are required to be confirmed by the Senate, then the President of the Federal Reserve Bank of New York, who played a pivotal and perhaps more powerful role in obligating taxpayer dollars during the financial crisis, should also be subject to the same public confirmation process. Wall Street should not have the ability to choose who is in such a powerful position. Although the final bill limits class A directors—who represent the stockholding member banks of the Federal Reserve District—from participating in the process, it still allows the other directors, who could be bankers or represent other powerful interests, to vote for the head of the New York Reserve Bank. I believe that more still needs to be done to make this position truly accountable to the taxpayers.

The Dodd-Frank Act also includes a number of strong investor protection provisions that represent a significant step forward in how we oversee our capital markets and ensure that investors have the best information available for their decisionmaking. This title reflects strong proposals I have put forward as the chairman of the Securities, Insurance, and Investment Subcommittee, including robust accountability provisions for credit rating agencies, and provisions to strengthen the tools and authorities of the Securities and Exchange Commission.

The conference report includes strong new rules I helped write to address problems we saw at credit rating agencies leading up to the financial crisis. It creates an Office of Credit Ratings at the SEC to increase oversight of nationally recognized statistical rating organizations, and contains strong new rules regarding disclosure, conflicts of interest, and analyst qualifications. Perhaps most significantly, it includes a strong new pleading standard I crafted that will make it easier for investors to take legal action if a rating agency knowingly or recklessly fails to review key information in developing a rating.

I also worked with the chairman and my colleagues in conference to incorporate more than a dozen improvements to the securities laws that will protect investors by strengthening the SEC's ability to bring enforcement actions, addressing issues revealed by the Madoff fraud, and modernizing the SEC's ability to obtain critical information. In particular, these provisions would enhance the ability of the SEC to hire outside experts, strengthen oversight of fund custodians, modernize the ability of the SEC to obtain information from the firms it oversees, and clarify and enhance SEC penalties and other authorities. I am particularly pleased that the conference report contains extraterritoriality language that clarifies that in actions brought by the SEC or the Department of Justice, specified provisions in the securities laws apply if the conduct within the United States is significant, or the external U.S. conduct has a foreseeable substantial effect within our country, whether or not the securities are traded on a domestic exchange or the transactions occur in the United

States. I also support the establishment of a program to reward whistleblowers when the SEC brings significant enforcement actions based upon original information provided by the whistleblower, and I look forward to the SEC rules that will detail the framework for this program.

Although I would have preferred the proposal in the Senate bill by Senator SCHUMER to provide the SEC with self-funding, I am pleased that the amendment on SEC funding that I offered with Senator SHELBY during conference was included in the conference report. These provisions would keep the SEC budget within the annual appropriations process, but change how the funding process would work for the Commission. Our proposal includes budget bypass authority, under which the SEC would provide Congress with its assessment of its budget needs at the same time it provides this information to the Office of Management and Budget. In addition, the President, as part of his annual budget request to the Congress, would be required to include the SEC's budget request in unaltered form. The language will also have the SEC deposit up to $50 million per year of the registration fees into a new reserve fund, which can be used for longer range planning for technology and other agency tools. The SEC will have permanent authority to obligate up to $100 million in any fiscal year out of the reserve fund.

One important investor protection that was also supported by Senators LEVIN, COBURN, and KAUFMAN but not included in the final bill was language that would have corrected what we and many others, including legal scholars, regard as the mistaken Supreme Court decision in Gustafson v. Alloyd. Before the Supreme Court's decision in this case, the rule was simple but clear: be careful not to mislead when selling securities in both public and private offerings. After Gustafson, this simple rule was needlessly complicated and limited just to public offerings.

Our amendment, which we will continue to work on a bipartisan basis to add to another legislative vehicle in the future, would have put investors in private offerings on the same level as investors in public offerings, thereby restoring congressional intent and a standard that was in place for 60 years before the Supreme Court decided Gustafson.

One of the lessons learned from the Bush era financial collapse is that too often rules were ignored and information was hidden. That is why I am extremely disappointed that the conference report includes an exemption for companies with less than $75 million in market capitalization from the requirements of Sarbanes-Oxley section 404(b). This change will exempt more than 5,000 public companies from audits, despite the fact that small companies have often been shown to be more prone to both accounting fraud and to accounting errors, including among the highest rates of restatements. Enacting this exemption in the name of reducing paperwork, when extensive evidence indicates that the costs of compliance are reasonable and dropping, is unnecessary and unwise. I think there will be a price in the future as fraud increases and investors suffer.

I am also disappointed that conferees included a provision that overturns a recent court case regarding equity indexed annuities. Equity indexed annuities are financial products that combine aspects of insurance and securities, but are sold primarily as investments. This language will preclude State and Federal securities regulators from applying strong disclosure, suitability, and sales practice standards to these often risky and harmful products. I believe this is bad policy.

Clearly with the State securities regulators on one side of this issue, and the insurance regulators on the other—this is not a matter which should have been resolved in a conference committee. The regulation of equity indexed annuities deserves more consideration through hearings and the development of a legislative record that informs the Congress of what changes should happen in this area.

I am pleased that the conference report makes it clear that after conducting a study, the SEC has the authority to impose a fiduciary duty on brokers who give investment advice, and that the advice must be in the best interest of their customers. It also includes language that gives shareholders a say on CEO pay with the right to a nonbinding vote on salaries and golden parachutes. This gives shareholders the ability to hold executives accountable, and to disapprove of misguided incentive schemes. I am also happy that after much dispute, the bill makes it clear that the SEC has the authority to grant shareholders proxy access to nominate directors. These requirements can help shift management's focus from short-term profits to long-term stability and productivity.

I am pleased that the conference report includes several provisions to discourage predatory lending and provide much needed foreclosure relief. To reduce risk, this legislation requires those companies that sell products like mortgage backed securities to hold onto at least 5 percent of what they're selling so that these companies have the incentive to sell only those products they would own themselves. In other words, we make sure that there is some ''skin in the game''.

The conference report also further levels the playing field by enacting some commonsense proposals to protect borrowers. Lenders will now have to ensure that a borrower has the ability to repay a mortgage, and they can no longer steer borrowers into a more expensive mortgage product when the borrower qualifies for a more affordable one. The bill outlaws pre-payment penalties that trapped so many borrowers into unaffordable loans, and those lenders who continue their predatory ways will be held accountable by consumers for as high as 3 years of interest payments and damages plus attorney's fees.

Additionally, the Consumer Financial Protection Bureau will have the authority to investigate and enforce rules against all mortgage lenders, servicers, mortgage brokers, and foreclosure scam operators so that hard-working Americans have a strong financial cop on the beat that has the interests of consumers in mind.

Finally, I am particularly pleased that the conference report includes several provisions, some of which come from legislation I first introduced last Congress and revised this Congress, to provide much needed foreclosure relief to those who have borne the brunt of this crisis. First, it provides $1 billion for loans to help qualified unemployed homeowners with reasonable prospects for reemployment to help cover mortgage payments. Second, I worked with my colleagues to ensure that the additional funding for HUD's Neighborhood Stabilization Program would reach all States, including Rhode Island. Third, I not only supported the inclusion of legal assistance for foreclosure-related issues, but I also fought to ensure that Rhode Island, which has one of the highest rates of foreclosure and unemployment, would be in a better position to receive priority consideration for this assistance. Lastly, I worked to include a national foreclosure database to give regulators an important tool to monitor and anticipate issues stemming from foreclosures and defaults in our housing markets and better pinpoint assistance to struggling homeowners.

Before I conclude I would like to take a moment to thank Kara Stein of my staff, who also serves as the staff director of the Securities, Insurance, and Investment Subcommittee, which I chair, and Randy Fasnacht, a detailee to the subcommittee from the GAO. They did a remarkable job and worked tirelessly. I also want to recognize the contributions of James Ahn of my staff as well as the foundation that Didem Nisanci, formerly of my staff, helped lay for this process. I also want to acknowledge the contributions of many others, including Chairman DODD and his staff.

I urge my colleagues to support this critical legislation. But the Senate's work does not end with the bill's passage. It will have to monitor and oversee the law's implementation very closely. The Dodd-Frank Wall Street Reform and Consumer Protection Act will make significant improvements to consumer protection that will benefit families and communities in my own State of Rhode Island and across the country. It will help create more transparent, fair, and efficient capital markets in our country, which will help create jobs and support American businesses. And it will provide a more secure and stable economic footing for the decades ahead.

Mr. AKAKA Mr. President, while I strongly support the Dodd-Frank conference report, I am concerned and disappointed that the legislation includes a particular provision that would exempt indexed annuity products from securities regulation. I ask unanimous consent that the accompanying letters in opposition to this provision from AARP, the North American Securities Administrators Association, the Consumer Federation of America, and the Financial Planning Association be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. AKAKA. Indexed annuities combine aspects of insurance and securities and are sold primarily as investment products. Consumers across the country, including some in Hawaii, have been harmed by the deceptive manner in which these products are being sold. For example, a seller in Hawaii pushed equity indexed annuities to collect unreasonably high commissions at the expense of senior citizens. Those investors were harmed by these financial products. Exempting indexed annuities from securities regulation would establish a dangerous precedent that promotes the development of financial products not subject to regulation and investor protection standards.

Opponents might argue that federal regulation is unnecessary or distracts from state regulation. However, Federal regulation is necessary to help protect investors by providing consistency and uniformity because securities laws can vary across states. Others are concerned that Federal regulation will limit access to indexed annuities. I counter that these products should only be sold when they are subject to the strong disclosure, suitability, and sales practice standards provided within the context of our Nation's securities laws.

I welcome further debate on and examination of this matter, including hearings to learn more about the consequences of this provision.

AARP,
Washington, DC, May 19, 2010.

Hon. CHRISTOPHER DODD,
U.S. Senate, Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: AARP writes to strongly oppose Harkin Amendment #3920, which would deprive investors in equity-indexed annuities of needed protections provided by state and federal securities laws.

These hybrid products combine elements of insurance and securities, but they are sold primarily as investments, not insurance, especially to people who are investing for their own retirement. Growth in equity-indexed annuity value is tied to one of several securities indexes (e.g. the S&P 500 or the Dow Jones Industrial Average), and comparing and choosing suitable products can be difficult for investors. These products also come with high fees and have long surrender periods, which may make them unsuitable as investments for most seniors.

In the fall of 2008, the Securities and Exchange Commission adopted a rule to regulate equity-indexed annuities as securities (Rule 151A). The rule was later challenged, and the Court of Appeals for the District of Columbia Circuit upheld the legal foundation for the SEC's action.

Because seniors are a target audience for these products, AARP submitted comments to the SEC supporting the rule, stating it was important that Rule 151A supplement, not supplant, state insurance law. In fact, the rule applies specifically to annuities regulated under state insurance law. AARP also submitted a joint amicus brief, along with the North American Securities Administrators Association and MetLife, supporting Rule 151A.

The Harkin amendment would overturn the SEC rule, which is designed to provide disclosure, suitability, and sales practice protections afforded by state and federal securities laws. The amendment would preempt any further ability of the SEC to regulate in this area. This not only deprives investors of needed protections against widespread abusive sales practices associated with these complex financial products, it also sets a dangerous precedent. If this amendment is adopted, the industry will be encouraged to develop hybrid products in the future specifically designed to evade a regulatory regime designed to protect consumers.

Regulating indexed annuities as securities is long overdue and vitally important for our nation's investors saving for a secure retirement.

The SEC's rule on indexed annuities accomplishes this goal in a thoughtful and reasonable fashion, and it should be allowed to take effect. AARP therefore opposes the Harkin amendment.

Sincerely,

DAVID SLOANE,
Senior Vice President,
Government Relations and Advocacy.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, June 14, 2010.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services, Washington, DC.

Hon. SPENCER BACHUS,
Chairman, Committee on Financial Services, Washington, DC.

Hon. CHRISTOPHER DODD,
Chairman, Committee on Banking, Housing and Urban Development, Washington, DC.

Hon. RICHARD SHELBY,
Ranking Member, Committee on Banking, Housing and Urban Development, Washington, DC.

OPPOSE ATTEMPT TO NULLIFY SEC RULEMAKING ON EQUITY INDEXED ANNUITIES

DEAR CHAIRMEN AND RANKING MEMBERS: On behalf of state securities regulators, I am writing to oppose an attempt to deprive investors in indexed annuities of the strong protections afforded by our nation's securities laws. A provision to nullify SEC Rule 151 A was not included in either the House or the Senate bill. I would argue that it is not germane to the conference, and the provision should not be accepted by the conferees. Furthermore, efforts such as this one that will ultimately deprive investors of important protections should not be allowed to succeed.

Indexed annuities are securities, and they are heavily marketed as such. All too often, deceptive sales practices have been used to promote these complicated investment products. As a result, investors—and senior citizens in particular—can fall prey to sales pitches designed to make these investments seem safe and straightforward when in fact they may be neither. Accordingly, it is vitally important that indexed annuities be regulated as securities and subjected to the strong standards afforded by our nation's securities laws.

To ensure that investors receive these protections, the Securities and Exchange Commission (''SEC'') adopted Rule 151A, which would subject indexed annuities to regulation as securities. The United States Court of Appeals for the District of Columbia Circuit upheld the legal foundation for Rule 151 A. Although remanding with respect to certain procedural requirements, the court upheld the rule on substantive legal grounds, finding it was reasonable for the SEC to conclude that indexed annuities should be subject to federal securities regulation.

Attempts to disparage the SEC's rule as a federal attack on state regulation are unfounded. Critics who level that charge ignore the fact that the rule will NOT interfere with the authority of state insurance commissioners to continue regulating indexed annuities and the companies that issue them. In fact, in order to be covered by the rule, a contract must be subject to regulation as an annuity under state insurance law.

Nor will the rule impose unreasonable burdens on industry. It will simply require compliance with essentially the same regulatory standards that for 75 years have applied to all companies that issue securities. Moreover, the rule is strictly prospective, applying only to indexed annuities issued after the effective date, and it does not take effect for two years, affording the industry ample time to prepare for compliance. In short, the rule will provide much needed protections for investors without unfairly burdening industry.

Indexed annuities are hybrid products that supposedly offer investors the combined advantages of guaranteed minimum returns along with profits from stock market gains. Although indexed annuities may be legitimate vehicles for some people, they have many features, including high costs, significant risks, and long surrender periods, that make these products unsuitable for many investors. Investors have a difficult time understanding these hazards because indexed annuities are hopelessly complex. Compounding the problem are the generous commissions that agents can earn from the sale of these products.

The problems associated with the marketing of indexed annuities are a matter of record in countless news articles, government warnings, regulatory enforcement actions, and lawsuits filed by innumerable investors seeking damages for the unsuitable and fraudulent sale of indexed annuities. Indeed, these products have become so infamous that they were featured in a prime time Dateline NBC report entitled ''Tricks of the Trade.''

Without question, the single most effective way to address abuses in the sale of indexed annuities is to regulate them as securities. This is legally appropriate because indexed annuities shift a significant degree of investment risk to purchasers, and therefore pose the very dangers that the federal securities laws were intended to address. Licensing standards under the securities laws will help ensure that agents have the requisite knowledge and character to sell these complex investment products. Under the securities laws, those agents will also be subject to strong supervision requirements. Mandatory registration of indexed annuities as securities will vastly increase the amount of information available to investors concerning the terms, risks, and costs of these offerings. Perhaps most important, the strong investor protection standards that have been a part of securities regulation for decades will deter abuses in the sale of indexed annuities and provide more effective remedies for those who are victimized.

The goal of financial reform is to strengthen investor confidence in our markets and regulating indexed annuities as securities under federal law is vitally important to meeting this objective. The SEC's Rule 151A on indexed annuities is a step in the right direction and it should be allowed to take effect. Any attempt to reverse this important regulatory initiative should not be adopted.

Sincerely,

DENISE VOIGT CRAWFORD,
Texas Securities Commissioner,
NASAA President.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, June 23, 2010.

PROTECT INVESTORS: REJECT SENATE PROPOSALS INCLUDED IN TITLE IX

DEAR CONFEREE: State securities regulators are profoundly disappointed that the Senate conferees approved a Title IX counteroffer that includes two provisions that seriously weaken investor protections in a bill purportedly written to strengthen them. I urge you to reject the Senate fiduciary duty study/rulemaking language and the amendment to exempt certain hybrid annuity products from securities regulation.

Fiduciary Duty. Instead of the strongest possible fiduciary duty for every financial intermediary providing investment advice, the ''compromise'' study in the Senate offer has been modified to lessen the chances that investors will ever realize the benefits of a fiduciary duty, the single most important investor protection in the reform package. For the following reasons, NASAA must strongly oppose it.

The study is nothing more than a delay tactic and should be rejected outright.

It is wasteful of the SEC's resources in that it requires the agency to review and study issues that have already been repeatedly studied.

If the study remains in place, it should be significantly streamlined so as to avoid needless repetition of prior studies. Further, if there must be a study, it should be required to be conducted on a fully-cooperative basis by both governmental regulators, the SEC and the states, in order to maximize resources and insure its completion within the one-year time frame.

To make matters worse, the rulemaking language proposed by the Senate fails to achieve the original goal of both the Senate Banking Committee and the House Financial Services Committee to impose the Investment Advisers Act fiduciary duty on broker-dealers when providing personalized investment advice to retail customers about securities. Our specific opposition to the Senate rulemaking language includes the following:

The two year rulemaking provision would mean that it could be three years before the SEC even undertakes an attempt to implement a rule to address the study findings. Further, and as more fully discussed below, the conditions imposed by this amendment on any such rulemaking process are so arduous that it is highly doubtful that a rule of any kind would be promulgated.

The new rulemaking language would not result in a fiduciary duty for broker-dealers providing investment advice. The House language authorizing the SEC to adopt rules imposing the full Investment Advisers Act fiduciary duty on brokers when they give personalized advice about securities to retail investors has been removed. It has been replaced by language authorizing the SEC to adopt rules requiring brokers to act in their customers' ''best interests'' which is far short of the fiduciary duty.

That weakened authority provided to the SEC is subject to such burdensome conditions and limitations that it is unlikely ever to be exercised. Before the SEC could even adopt a rule it would have to complete the study required above and then, as part of the rulemaking, show that no other approach could address the findings of the study. These draconian conditions would make any rule promulgated by the Commission subject to a legal challenge the agency would be unlikely to win.

The provisions requiring the SEC to harmonize enforcement of the standard, so that it is applied equally to brokers and advisers, have also been deleted.

Equity Indexed Annuities. The Senate conferees also approved an amendment to preempt securities regulation of equity-indexed annuities and future hybrid products that have both securities and insurance features. State securities regulators have actively pursued enforcement cases involving sales practice abuses of agents selling equity indexed annuities. These state enforcement actions are in danger of being preempted by the Harkin amendment and investors, especially seniors, would be left without the protection of vigorous securities enforcement activity.

The problems associated with the marketing of indexed annuities are a matter of record in countless news articles, government warnings, regulatory enforcement actions, and lawsuits filed by innumerable investors seeking damages for the unsuitable and fraudulent sale of indexed annuities. It was these problems that led the SEC to adopt Rule 151A after a fair and open rulemaking process.

The best way to ensure adequate investor protections in the sale of equity indexed annuities is to allow the SEC to exercise its appropriate authority over these products. State securities regulators urge you to reject this amendment as it has no place in a bill intended to strengthen investor protections.

In closing, we are extremely dissatisfied that the provisions in the Investor Protection title continue to be weakened. We urge you to reverse this trend, reject the Senate counteroffer and insist on strong protections for our nation's investors.

Sincerely,

DENISE VOIGT CRAWFORD,
NASAA President,
Texas Securities Commissioner.

NASAA & CFA,
May 14, 2010.

OPPOSITION TO HARKIN/JOHANNS/LEAHY AMENDMENT NO. 3920

DEAR SENATOR: We are writing to oppose the Harkin/Johanns/Leahy amendment, which deprives investors in indexed annuities of the strong protections afforded by our nation's securities laws. Indexed annuities are securities, and they are heavily marketed as such. All too often, deceptive sales practices have been used to promote these complicated investment products. As a result, investors—and senior citizens in particular—can fall prey to unsuitable sales. Accordingly, it is vitally important that indexed annuities be regulated as securities and subjected to the strong disclosure, suitability, and sales practice standards afforded by our nation's securities laws.

To ensure that investors receive these protections, the Securities and Exchange Commission (''SEC'') adopted Rule 151A, which would subject indexed annuities to regulation as securities. The United States Court of Appeals for the District of Columbia Circuit upheld the legal foundation for Rule 151A. Although remanding with respect to certain procedural requirements, the court upheld the rule on substantive legal grounds, finding it was reasonable for the SEC to conclude that indexed annuities should be subject to federal securities regulation.

Attempts to disparage the SEC's rule as a federal attack on state regulation are unfounded. Critics who level that charge ignore the fact that the rule will NOT interfere with the authority of state insurance commissioners to continue regulating indexed annuities and the companies that issue them. In fact, in order to be covered by the rule, a contract must be subject to regulation as an annuity under state insurance law.

Nor will the rule impose unreasonable burdens on industry. It will simply require compliance with essentially the same regulatory standards that for 75 years have applied to all companies that issue securities. Moreover, the rule is strictly prospective, applying only to indexed annuities issued after the effective date, and it does not take effect for two years, affording the industry ample time to prepare for compliance. In short, the rule will provide much needed protections for investors without unfairly burdening industry.

Indexed annuities are hybrid products that supposedly offer investors the combined advantages of guaranteed minimum returns along with profits from stock market gains. Although indexed annuities may be legitimate vehicles for some people, they have many features, including high costs, significant risks, and long surrender periods, that make these products unsuitable for many investors. Investors have a difficult time understanding these hazards because indexed annuities are hopelessly complex. Compounding the problem are the generous commissions that agents can earn from the sale of these products.

The problems associated with the marketing of indexed annuities are a matter of record in countless news articles, government warnings, regulatory enforcement actions, and lawsuits filed by innumerable investors seeking damages for the unsuitable and fraudulent sale of indexed annuities. Indeed, these products have become so infamous that they were featured in a prime time Dateline NBC report entitled ''Tricks of the Trade.''

Without question, the single most effective way to address abuses in the sale of indexed annuities is to regulate them as securities. This is legally appropriate because indexed annuities shift a significant degree of investment risk to purchasers, and therefore pose the very dangers that the federal securities laws were intended to address. Licensing standards under the securities laws will help ensure that agents have the requisite knowledge and character to sell these complex investment products. Under the securities laws, those agents will also be subject to strong supervision requirements. Mandatory registration of indexed annuities as securities will vastly increase the amount of information available to investors concerning the terms, risks, and costs of these offerings. Perhaps most important, the strong antifraud provisions and suitability standards that have been a part of securities regulation for decades will deter abuses in the sale of indexed annuities and provide more effective remedies for those who are victimized.

Regulating indexed annuities as securities under federal law is long overdue and vitally important for our nation's investors. The SEC's Rule 151A on indexed annuities accomplishes this goal in a thoughtful and reasonable fashion, and it should be allowed to take effect. The Harkin/Johanns/Leahy amendment would reverse this important regulatory initiative and should not be adopted.

Respectfully submitted,

DENISE VOIGT CRAWFORD,
President, NASAA.
BARBARA ROPER,

Director of Investor Protection, CFA.

CONSUMER FEDERATION OF AMERICA,
FUND DEMOCRACY,
June 12, 2010.

Hon. CHRISTOPHER DODD,
Chairman, Committee on Banking, Housing and Urban Development, U.S. Senate, Washington, DC.
Hon. BARNEY FRANK,
Chairman, Financial Services Committee, House of Representatives, Washington, DC.
Hon. RICHARD SHELBY,
Ranking Member, Committee on Banking, Housing and Urban Development, U.S. Senate, Washington, DC.
Hon. SPENCER BACHUS,
Ranking Member, Financial Services Committee, House of Representatives, Washington, DC.

PROTECT INVESTORS AND THE LEGISLATIVE PROCESS: REJECT EQUITY-INDEXED ANNUITIES PREEMPTION AMENDMENT

DEAR CHAIRMAN DODD, RANKING MEMBER SHELBY, CHAIRMAN FRANK, AND RANKING MEMBER BACHUS: We understand that members of the insurance industry continue to press for inclusion in the conference report of anti-consumer legislation to exempt equity-indexed annuities from securities regulation. We are writing to urge you to resist any such efforts.

Equity-indexed annuities are hybrid products that combine elements of both insurance and securities, but they are sold primarily as investments. Indeed, as documented in a seven-part Dateline NBC hidden camera expose, they are among the most abusively sold products on the market today. Responding to a rising level of complaints, the Securities and Exchange Commission voted in late 2008 to adopt rules regulating equity-indexed annuities as securities, a move that was immediately challenged in court by the insurance industry. In deciding the case, a U.S. Court of Appeals sided with the agency on the basic issue of whether equity-indexed annuities should be regulated as securities while remanding the rule with respect to procedural issues.

Having failed to prevail in court, the insurance industry has turned to Congress to preempt legitimate securities regulation of this product. We urge you to resist these efforts for the following reasons:

Equity-indexed annuities are complex products whose returns fluctuate with performance of the securities markets. Absent regulation under securities laws, they can be sold by salespeople with no more understanding of the markets than the customer.

Although the National Association of Insurance Commissioners has developed a model suitability rule for annuity sales, it has not been adopted in all states. Regulation under securities laws would provide national uniformity, would bring to bear the added regulatory resources of the SEC, state securities regulators, and FINRA, and would provide additional investor protections in the form of improved disclosures and limits on excessive compensation.

Exempting equity-indexed annuities from securities regulation would set a dangerous precedent and encourage the development of additional hybrid products designed specifically to evade a more rigorous form of regulation.

This highly controversial measure—which is opposed by consumer advocates as well as state and federal securities regulators—was not included in either the House or the Senate bill and is not germane to the underlying legislation. To include it in the conference report would be a gross violation of the integrity of the legislative process. We urge you to protect investors and the legislative process by preventing the equity-indexed annuities provision from being added to the conference report.

Respectfully submitted,

BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.
MERCER BULLARD,
Executive Director, Fund Democracy.

FINANCIAL PLANNING ASSOCIATION,
Washington, DC, June 15, 2010.

Hon. BARNEY FRANK, *Chairman*,
Hon. SPENCER BACHUS,
Ranking Member, Committee on Financial Services, House of Representatives, Washington, DC.
Hon. CHRISTOPHER J. DODD, *Chairman*,
Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing and Urgan Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN FRANK, CHAIRMAN DODD, RANKING MEMBER BACHUS, AND RANKING MEMBER SHELBY: I am writing to oppose efforts to strip the Securities and Exchange Commission (SEC) of authority to oversee sales practices in connection with indexed annuities that are marketed as investment products. At a time when Congress is seeking ways to improve consumer protections in the financial services sector, the Financial Planning Association (FPA) believes it would be completely inappropriate to preempt the SEC from exercising its existing authority to protect consumers from well-documented abuses.

Indexed annuities have a minimum guaranteed return, but the actual return will vary based on the performance of a securities index, such as the S&P 500. FPA members are very familiar with indexed annuities, with many financial planners specializing in retirement planning and more than half of our membership licensed to sell insurance and annuity products. They may recommend annuities, including indexed annuities, as an important component of a client's overall financial plan. As with other financial products, however, proper oversight is needed to help protect consumers from the few who would take advantage of them. FPA urges you to reject any efforts to strip the SEC of authority to protect purchasers of indexed annuities in the same way they protect those who purchase variable annuities.

In 2008, the SEC promulgated rules that would have brought indexed annuities under the same sales practice standards as variable annuities and other securities if they are marketed as investment products. Applying a two part test in accordance with Supreme Court precedent, the SEC sought to exercise oversight based on the allocation of investment risk between the insurance company and the customer, and on how the annuity is marketed. Notably, the SEC left regulation of the product itself to state insurance regulators and sought to merely oversee sales practices when the insurer chooses to market indexed annuities as an investment product.

FPA supported the SEC rule, as a measured and appropriate move to address a very real problem (See comment letter at www.fpanet.org/GovernmentRelations/). Opponents challenged the rule in court arguing that the SEC lacked authority, but the rule was vacated on other, technical grounds. Now they are seeking to preempt the SEC from overseeing the sales practices of these products, as it has effectively done so for variable annuities.

But the calculus is simple: if a product is marketed and sold as an investment product, and if the purchaser is bearing a certain investment risk, applying standard investor protections is common sense. Any issues particular to indexed annuities can be addressed through the normal rulemaking and comment process.

Consumer confidence and consumer protection are two of the most important considerations as you deliberate over important changes to our financial regulatory system. I urge you to resist any attempts to handcuff the SEC before it has even had an opportunity to bring its consumer protection resources to bear in this area.

Thank you for your consideration. If you have any questions, or if FPA can provide additional information, please contact me.

Very truly yours,

DANIEL J. BARRY,
Director of Government Relations.

Mrs. LINCOLN. Mr. President, as I have previously discussed, section 737 of H.R. 4173 will grant broad authority to the Commodity Futures Trading Commission to once and for all set aggregate position limits across all markets on non-commercial market participants. During consideration of this bill we all learned many valuable lessons about how the commodities markets operate and the impact that highly leveraged, and heretofore unregulated swaps, have on the price discovery function in the futures markets. I believe the adoption of aggregate position limits, along with greater transparency, will help bring some normalcy back to our markets and reduce some of the volatility we have witnessed over the last few years.

I also recognize that in setting these limits, regulators must balance the needs of market participants, while at the same time ensuring that our markets remain liquid so as to afford end-users and producers of commodities the ability to hedge their commercial risk. Along these lines I do believe that there is a legitimate role to be played by market participants that are willing to enter into futures positions opposite a commercial end-user or producer. Through this process the markets gain additional liquidity and accurate price discovery can be found for end-users and producers of commodities.

However, I still hold some reservations about these financial market participants and the negative impact of excessive speculation or long only positions on the commodities markets. While I have concerns about the role these participants play in the markets, I do believe that important distinctions in setting position limits on these participants are warranted. In implementing section 737, I would encourage the CFTC to give due consideration to trading activity that is unleveraged or fully collateralized, solely exchange-traded, fully transparent, clearinghouse guaranteed, and poses no systemic risk to the clearing system. This type of trading activity is distinguishable from highly leveraged swaps trading, which not only poses systemic risk absent the proper safeguards that an exchange traded, cleared system provides, but also may distort price discovery. Further, I would encourage the CFTC to consider whether it is appropriate to aggregate the positions of entities advised by the same advisor where such entities have different and systematically determined investment objectives.

I wish to also point out that section 719 of the conference report calls for a study of position limits to be undertaken by the CFTC. In conducting that study, it is my expectation that the CFTC will address the soundness of prudential investing by pension funds, index funds and other institutional investors in unleveraged indices of commodities that may also serve to provide agricultural and other commodity contracts with the necessary liquidity to assist in price discovery and hedging for the commercial users of such contracts.

Mr. President, as the Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, I am proud to say that the bill coming out of our committee was the base text for the derivatives title in the Senate passed bill. The Senate passed bill's derivatives title was the base text used by the conference committee. The conference committee made changes to the derivatives title, adopting several provisions from the House passed bill. The additional materials that I am submitting today are primarily focused on the derivatives title of the conference report. They are intended to provide clarifying legislative history regarding certain provisions of the derivatives title and how they are supposed to work together.

I ask unanimous consent that this material be printed in the RECORD.

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

The major components of the derivatives title include: 100 percent reporting of swaps and security-based swaps, mandatory trading and clearing of standardized swaps and security-based swaps, and real-time price reporting for all swap transactions—those subject to mandatory trading and clearing as well as those subject to the end user clearing exemption and customized swaps. Swap dealers, security-based swap dealers, major swap participants and major security-based swap participants will all be required to register with either the Commodity Futures Trading Commission, CFTC, or the Securities and Exchange Commission, SEC, and meet additional requirements including capital, margin, reporting, examination, and business conduct requirements. All swaps that are ''traded'' must be traded on either a designated contract market or a swap execution facility. All security-based swaps must be traded on either a national securities exchange or a security-based swap execution facility. It is a sea change for the $600 trillion swaps market. Swaps and security-based swaps which are not subject to mandatory exchange trading or clearing will be required to submit transaction data to swap data repositories or security-based swap data repositories. These new ''data repositories'' will be required to register with the CFTC and SEC and be subject to statutory duties and core principals which will assist the CFTC and SEC in their oversight and market regulation responsibilities.

There are several important definitional and jurisdictional provisions in title VII. For instance, the new definitions of ''swap'' and ''security-based swap'' are designed to maintain the existing Shad Johnson jurisdictional lines between the CFTC and the SEC which have been in place since 1982. Under the Shad Johnson accord, the CFTC has jurisdiction over commodity-based instruments as well as futures and options on broad-based security indices (and now swaps), while the SEC has jurisdiction over security-based instruments—both single name and narrow-based security indices—and now security-based swaps. The Shad Johnson jurisdictional lines were reaffirmed in 2000 with the passage of the Commodity Futures Modernization Act, CFMA, as it related to security futures products. Maintaining existing jurisdictional lines between the two agencies was an important goal of the Administration, as reflected in their draft legislation. This priority was reflected in the bills passed out of the Senate and House agricultural committees and through our respective chambers and now reflected in the conference report.

As noted above, the conference report maintains the Shad Johnson jurisdictional accord. We made it clear that the CFTC has jurisdiction under Section 2(a)(1) of the Commodity Exchange Act, ''CEA'', over both interest rate swaps and foreign exchange swaps and forwards. The definition of ''swap'' under the CEA specifically lists interest rate swaps as being a swap. This is CEA Section 1a(47)(A)(iii)(I). This is appropriate as the CFTC has a long history of overseeing interest rate futures. The futures exchanges have listed and traded interest rate contracts for nearly 40 years. The CME has listed for trading quarterly settled interest rate swap future contracts. In the last 24 months, some designated contract markets have listed futures contracts which mirror interest rate swaps in design, function, maturity date and all other material aspects. In addition, some of the CFTC registered clearing houses have listed and started to clear both these interest rate swap futures contracts as well as interest rate swap contracts. This is on top of the nearly $200 trillion in interest rate swap contracts which have been cleared at LCH.Clearnet in London.

Also, under this legislation, foreign exchange swaps and forwards come under the CFTC's jurisdiction under Section 2(a)(1) of the CEA. We listed in the definition of ''swap'' certain types of common swaps, including ''foreign exchange swaps'' so it would be clear that they are regulated under the CEA. See CEA Section 1a(47)(A)(iii)(VIII). In addition, the terms ''foreign exchange forward'' and ''foreign exchange swap'' are defined in the CEA itself. See CEA Section 1a(24) and (25). One should note that foreign exchange forwards are treated as swaps under the CEA.

The CEA as amended permits the Secretary of the Treasury to make a written determination to exempt either or both foreign exchange swaps and or foreign exchange forwards from the mandatory trading and clearing requirements of the CEA, which applies to swaps generally. Under new Section 1b of the CEA, the Secretary must consider certain factors in determining whether to exempt either foreign exchange swaps or foreign exchange forwards from being treated like all other swaps. These factors include: (1) whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States; (2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this Act for other classes of swaps; (3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements; (4) the extent of adequate payment and settlement systems; and (5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements. In making a written determination to exempt such swaps from regulation, the Secretary must make certain findings. The Secretary's written determination is not effective until it is filed with the appropriate Congressional Committees and provides the following information: (1) an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and (2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status. These provisions and this process related to exempting foreign exchange swaps and foreign exchange forwards from swaps regulation will be, and should be, difficult for the Secretary of the Treasury to meet. The foreign exchange swaps and foreign exchange forward market is approximately $65 trillion and the second largest part of the swaps market. It is important that the foreign exchange swaps market be transparent as well as subject to comprehensive and vigorous market oversight so there are no questions about possible manipulation of currencies or exchange rates.

I would also note that we have made it clear that even if foreign exchange swaps and forwards are exempted by the Secretary of the Treasury from the mandatory trading and clearing requirements which are applicable to standardized swaps, that all foreign exchange swaps and forwards transactions must be reported to a swap data repository under the CFTC's jurisdiction. In addition, we have made it clear that to the extent foreign exchange swaps and forwards are listed for trading on a designated contract market or cleared through a registered derivatives clearing organization that such swap contracts are subject to the CFTC's jurisdiction under the CEA and that the CFTC retains its jurisdiction over retail foreign exchange transactions.

We have made some progress in this legislation with respect to clarifying CFTC jurisdiction and preserving SEC enforcement jurisdiction over instruments which are ''security-based swap agreements.'' Security-based swap agreements are actually ''swaps'' and subject to both the CFTC and the SEC's jurisdiction. One will notice that we have inserted the definition of ''security-based swap agreements'' in both the Commodity Exchange Act and the Securities and Exchange Act—section 1a(47)(A)(v) of the CEA (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the SEA of 1934 (15 U.S.C. 78c(a)(78)). The term ''security-based swap agreement'' is a hold-over term from the CFMA of 2000. In the CFMA, Congress chose to exclude ''swap agreements'' from regulation by the CFTC and ''security-based swap agreements'' from regulation by the SEC. While the CFMA exclusions were broad, the SEC retained limited authority—anti fraud and anti manipulation enforcement authority—with respect to security-based swap agreements. The Agriculture Committee and Congress chose to preserve that existing enforcement jurisdiction of the SEC related to those swaps which qualify as security-based swap agreements. The swaps which will qualify as security-based swap agreements is quite limited. It would appear that non narrow-based security index swaps and credit default swaps may be the only swaps considered to be security-based swap agreements. The rationale for providing the SEC with enforcement authority with respect to security-based swap agreements in the CFMA was premised on the fact that the CFTC didn't have as extensive an anti-fraud or anti-manipulation authority as the SEC. This lack of CFTC authority was remedied in the title VII so that the CFTC now has the same authority as the SEC. It is good policy to have a second set of enforcement eyes in this area. The SEC can and should be able to back up the CFTC on enforcement issues without interceding in the main market and product regulation. In the new legislation, we repeal the specific exclusions related to swap agreements and security-based swap agreements in both the CEA and the Securities Exchange Act of 1934, ''SEA''. One should note that the definition of ''security-based swap agreement'' in the SEA specifically excludes any ''security-based swap'', which means that SBSAs are really swaps. This point is made clear in the definition of ''swap'' under the CEA. Under Section 1a(47)(A)(v) it states that ''any security-based swap agreement which meets the definition of ''swap agreement'' as defined in Section 206A of the Gramm-Leach-Bliley Act of which a material term is based on the price, yield, value or volatility of any security, or any group or index of securities, or any interest therein.'' Regulators should note that Congress chose to refer to security-based swap agreements as swaps at several points in the CEA. Further, the CFTC and the SEC, after consultation with the Federal Reserve, are to undertake a joint rulemaking related to security-based swap agreements. The regulators should follow Congressional intent in this area and preserve the SEC's anti-fraud and anti-manipulation enforcement authority for that limited group of swaps which are considered to be security-based swap agreements.

We have introduced a new term in this legislation, which is ''mixed swap''. The term is found in both the CEA and the SEA—CEA Section 1a(47)(D) and SEA Section 3(a)(68)(D). The term is subject to a joint rulemaking between the CFTC and the SEC. The term ''mixed swap'' refers to those swaps which have attributes of both security-based swaps and regular swaps. A ''mixed swap'' is somewhat similar to a ''hybrid product'' under the CEA which has attributes of both securities and futures. CEA Section 2(f). Hybrid products must be predominantly securities to be excluded from regulation as contracts of sale of a commodity for future delivery under the CEA. While there is no ''predominance'' or ''primarily'' test in the definition of ''mixed swap'' the regulators should ensure that when deciding the jurisdictional allocation of such mixed swaps in the joint rulemaking process, that mixed swaps should be allocated to either the CFTC or the SEC based on clear and unambiguous criteria like a primarily test. A de minimis amount of security-based swap attributes should not bring a swap into the SEC's jurisdiction just as a de minimis amount of swap attributes should not bring a security-based swap into the CFTC's jurisdiction. While there will be some difficult decisions to be made on individual swap contracts, it will be fairly clear most of the time whether a particular swap is more security-based swap or swap. We expect the regulators to be reasonable in their joint rulemaking and interpretations.

The mandatory clearing and trading of certain swaps and security-based swaps, along with real-time price reporting, is at the heart of swaps market reform. Under the conference report, swaps and security-based swaps determined to be subject to the mandatory clearing requirement by the regulators would also be required to be traded on a designated contract market, a national securities exchange, or new swap execution facilities or security-based swap execution facilities. To avoid any conflict of interests, the regulators—the CFTC and the SEC—will make a determination as to what swaps must be cleared following certain statutory factors. It is expected that the standardized, plain vanilla, high volume swaps contracts—which according to the Treasury Department are about 90 percent of the $600 trillion swaps market—will be subject to mandatory clearing. Derivatives clearing organizations and clearing agencies are required to submit all swaps and security-based swaps for review and mandatory clearing determination by regulators. It will also be unlawful for any entity to enter into a swap without submitting it for clearing if that swap has been determined to be required to clear. It is our understanding that approximately 1,200 swaps and security-based swaps contracts are currently listed by CFTC-registered clearing houses and SEC-registered clearing agencies for clearing. Under the conference report, these 1,200 swaps and security-based swaps already listed for clearing are deemed ''submitted'' to the regulators for review upon the date of enactment. It is my expectation that the regulators, who are already familiar with these 1,200 swap and security-based swap contracts, will work within the 90 day time frame they are provided to identify which of the current 1,200 swap and security-based swap agreements should be subject to mandatory clearing requirements. The regulators may also identify and review swaps and security-based swaps which are not submitted for clearinghouse or clearing agency listing and determine that they are or should be subject to mandatory clearing requirement. This provision is considered to be an important provision by senior members of the Senate Agriculture Committee, as it removes the ability for the clearinghouse or clearing agency to block a mandatory clearing determination.

The conference report also contains an end user clearing exemption. Under the conference report, end users have the option, but not the obligation, to clear or not clear their swaps and security-based swaps that have been determined to be required to clear, as long as those swaps are being used to hedge or mitigate commercial risk. This option is solely the end users' right. If the end user opts to clear a swap, the end user also has the right to choose the clearing house where the swap will be cleared. Further, the end user has the right, but not the obligation, to force clearing of any swap or security-based swap which is listed for clearing by a clearing house or clearing agency but which is not subject to mandatory clearing requirement. Again the end user has the right to choose the clearing house or clearing agency where the swap or security-based swap will be cleared. The option to clear is meant to empower end users and address the disparity in market power between the end users and the swap dealers. Under the conference report, certain specified financial entities are prohibited from using the end user clearing exemption. While most large financial entities are not eligible to use the end user clearing exemption for standardized swaps entered into with third parties, it would appropriate for regulators to exempt from mandatory clearing and trading inter affiliate swap transactions which are between for wholly-owned affiliates of a financial entity. We would further note that small financial entities, such as banks, credit unions and farm credit institutions below $10 billion in assets—and possibly larger entities—will be permitted to utilize the end user clearing exemption with approval from the regulators. The conference report also includes an anti-evasion provision which provides the CFTC and SEC with authority to review and take action against entities which abuse the end user clearing exemption.

In addition to the mandatory clearing and trading of swaps discussed above, the conference report retains and expands the Senate Agriculture Committee's real time swap transaction and price reporting requirements. The Agriculture Committee focused on swap market transparency while it was constructing the derivatives title. As stated earlier, the conference report requires 100% of all swaps transactions to be reported. It was universally agreed that regulators should have access to all swaps data in real time. On the other hand, there was some outstanding questions regarding the capacity, utility and benefits from public reporting of swaps transaction and pricing data. I would like to respond to those questions. Market participants—including exchanges, contract markets, brokers, clearing houses and clearing agencies—were consulted and affirmed that the existing communications and data infrastructure for the swaps markets could accommodate real time swap transaction and price reporting. Speaking to the benefits of such a reporting requirement, the committee could not ignore the experience of the U.S. Securities and Futures markets. These markets have had public disclosure of real time transaction and pricing data for decades. We concluded that real time swap transaction and price reporting will narrow swap bid/ask spreads, make for a more efficient swaps market and benefit consumers/counterparties overall. For these reasons, the Senate Agriculture Committee required ''real time'' price reporting for: (1) All swap transactions which are subject to mandatory clearing requirement; (2) All swaps under the end user clearing exemption which are not cleared but reported to a swap data repository subject; and, (3) all swaps which aren't subject to the mandatory clearing requirement but which are cleared at a clearing house or clearing agency—under permissive, as opposed to mandatory, clearing. The conference report adopted this Senate approach with one notable addition authored by Senator Reed. The Reed amendment, which the conference adopted, extended real time swap transaction and pricing data reporting to ''non-standardized'' swaps which are reported to swap data repositories and security-based swap data repositories. Regulators are to ensure that the public reporting of swap transactions and pricing data does not disclose the names or identities of the parties to the transactions.

I would like to specifically note the treatment of ''block trades'' or ''large notional'' swap transactions. Block trades, which are transactions involving a very large number of shares or dollar amount of a particular security or commodity and which transactions could move the market price for the security or contract, are very common in the securities and futures markets. Block trades, which are normally arranged privately, off exchange, are subject to certain minimum size requirements and time delayed reporting. Under the conference report, the regulators are given authority to establish what constitutes a ''block trade'' or ''large notional'' swap transaction for particular contracts and commodities as well as an appropriate time delay in reporting such transaction to the public. The committee expects the regulators to distinguish between different types of swaps based on the commodity involved, size of the market, term of the contract and liquidity in that contract and related contracts, i.e; for instance the size/dollar amount of what constitutes a block trade in 10-year interest rate swap, 2-year dollar/euro swap, 5-year CDS, 3-year gold swap, or a 1-year unleaded gasoline swap are all going to be different. While we expect the regulators to distinguish between particular contracts and markets, the guiding principal in setting appropriate block-trade levels should be that the vast majority of swap transactions should be exposed to the public market through exchange trading. With respect to delays in public reporting of block trades, we expect the regulators to keep the reporting delays as short as possible.

I firmly believe that taking the Senate bill language improved the final conference report by strengthening the regulators enforcement authority dramatically. The Senate Agriculture Committee looked at existing enforcement authority and tried to give the CFTC the authority which it needs to police both the futures and swaps markets. As I mentioned above, we provided the CFTC with anti-fraud and anti-manipulation authority equal to that of the SEC with respect to non narrow-based security index futures and swaps so as to equalize the SEC and CFTC enforcement authority in this area. The CFTC requested, and received, enforcement authority with respect to insider trading, restitution authority, and disruptive trading practices. In addition, we added in anti-manipulation authority from my good friend Senator Cantwell. Senator Cantwell and I were concerned with swaps participants knowingly and intentionally avoiding the mandatory clearing requirement. We were able to reach an agreement with the other committees of jurisdiction by providing additional enforcement authority that I believe will address the root problem. Further, I would be remiss in not mentioning that we provided specific enforcement authority under Section 9 for the CFTC to bring actions against persons who purposely evade the mandatory clearing requirement. This provision is supposed to work together with the anti-evasion provision in the clearing section. Another important provision is one related to fraud and an episode earlier this year involving Greece and the use of cross currency swaps. We gave new authority to the CFTC to go after persons who enter into a swap knowing that its counterparty intends to use the swap for purposes of defrauding a third party. This authority, which is meant to expand the CFTC's existing aiding and abetting authority, should permit the CFTC to bring actions against swap dealers and others who assist their counterparties in perpetrating frauds on third parties. All in all, the CFTC's enforcement authority was expanded to meet known problems and fill existing holes. It should give them the tools which are necessary to police this market.

A significant issue which was fixed during conference was clarifying that in most situations community banks aren't swap dealers or major swap participants. The definition of swap dealer was adjusted in a couple of respects so that a community bank which is hedging its interest rate risk on its loan portfolio would not be viewed as a Swap Dealer. In addition, we made it clear that a bank that originates a loan with a customer and offers a swap in connection with that loan shouldn't be viewed as a swap dealer. It was never the intention of the Senate Agriculture Committee to catch community banks in either situation. We worked very hard to make sure that this understanding came through in revised statutory language which was worked out during conference. There were some concerns expressed about banks being caught up as being highly leveraged financial entities under prong (iii) of the major swap participant definition. This concern was addressed by adding language clarifying that if the financial entity had a capital requirement set by a federal banking regulator that it wouldn't be included in the definition under that prong. This particular prong of the major swap participant provision was intended to catch entities like the hedge fund LTCM and AIG's financial products subsidiary, not community banks. We also clarified in Section 716 that banks which are major swap participants are not subject to the federal assistance bans. These changes and clarifications should ensure that community banks, when acting as banks, are not caught by the swap dealer or major swap participant definitions.

Section 716 and the ban on federal assistance to swap entities is an incredibly important provision. It was agreed by the administration, and accepted by the conference, that under the revised Section 716, insured depository institutions would be forced to ''push out'' the riskiest swap activities into a separate affiliate. The swap dealer activities which would have to be pushed out included: swaps on equities, energy, agriculture, metal other than silver and gold, non investment grade debt, uncleared credit default swaps and other swaps that are not bank permissible investments. We were assured by the administration that all of the types of swaps enumerated above are not bank permissible and will be subject to the push out. Further, it is our understanding that no regulatory action, interpretation or guidance will be issued or taken which might turn such swaps into bank permissible investments or activities.

It should also be noted that a mini-Volcker rule was incorporated into Section 716 during the conference. Banks, their affiliates and their bank holding companies would be prohibited from engaging in proprietary trading in derivatives. This provision would prohibit banks and bank holding companies, or any affiliate, from proprietary trading in swaps as well as other derivatives. This was an important expansion and linking of the Lincoln Rule in Section 716 with the Volcker Rule in Section 619 of Dodd-Frank.

Section 716's effective date is 2 years from the effective date of the title, with the possibility of a 1 year extension by the appropriate Federal banking agency. It should be noted that the appropriate federal banking agencies should be looking at the affected banks and evaluating the appropriate length of time which a bank should receive in connection with its ''push out.'' Under the revised Section 716, banks do not have a ''right'' to 24 month phase-in for the push out of the impermissible swap activities. The appropriate federal banking agencies should be evaluating the particular banks and their circumstances under the statutory factors to determine the appropriate time frame for the push out.

The Senate Agriculture Committee bill revised and updated several of the CEA definitions related to intermediaries such as floor trader, floor broker, introducing broker, futures commission merchant, commodity trading advisor, and commodity pool operator as well as adding a statutory definition of the term commodity pool. We note that the definition of futures commission merchant is amended to include persons that are registered as FCMs. This makes clear that such persons must comply with the regulatory standards, including the capital and customer funds protections that apply to FCMs. The Senate Agriculture Committee wanted to ensure that all the intermediary and other definitions were current and reflected the activities and financial instruments which CFTC registered and regulated entities would be advising on, trading or holding, especially in light of Congress adding swaps to the financial instruments over which the CFTC has jurisdiction. We note that in addition to swaps, we added other financial instruments such as security futures products, leverage contracts, retail foreign exchange contracts and retail commodity transactions which the CFTC has jurisdiction over and which would require registration where appropriate.

With respect to commodity trading advisors, CTAs, commodity pool operators, CPOs, and commodity pools, we wanted to provide clarity regarding the activities and jurisdiction over these entities. Under Section 749 we have provided additional clarity regarding what it means to be ''primarily engaged'' in the business of being a commodity trading advisor and being a commodity pool. To the extent an entity is ''primarily engaged'' in advising on swaps, such as interest rate swaps, foreign exchange swaps or broad-based security index swaps, then it would be required to register as a commodity trading advisor with the CFTC. On the other hand, to the extent an entity is primarily engaged in advising on security-based swaps it would be required register as an investment adviser with the SEC or the states. We would note that under existing law the CEA and the Investment Advisers Act have mirror provisions which exempts from dual registration and regulation SEC registered IAs and CFTC registered CTAs as long as they only provide very limited advice related to futures and securities, respectively. This policy is continued and expanded to the extent it now covers advice related to swaps and security-based swaps.

With respect to commodity pools, the SEC has long recognized that commodity pools are not investment companies which are subject to registration or regulation under the Investment Company Act of 1940. Alpha Delta Fund No Action Letter (pub avail. May 4, 1976); Peavey Commodity Futures Fund I, II and III No action letter (pub avail. June 2, 1983)); Managed Futures Association No Action Letter (Pub Avail. July 15, 1996). To be an ''investment company'' under Section 3(a) of the Investment Company Act an entity has to be primarily engaged in the business of investing, reinvesting, or trading securities. In the matter of the Tonopah Mining Company of Nevada, 26 S.E.C. 426 (July 22, 1947) and SEC v. National Presto Industries, Inc., 486 F.3d 305 (7th Cir. 2007). Commodity pools are primarily engaged in the business of investing, reinvesting or trading in commodity interests, not securities. For this reason, commodity pools are not investment companies and are not utilizing an exemption under the Investment Company Act. A recent and well know example of commodity pools which the SEC has recognized as not being investment companies, and not being required to register under the Investment Company Act, comes in the commodity based exchange traded funds (ETF) world. While recent ETFs based on gold, silver, oil, natural gas and other commodities have registered their securities under the 1933 and 1934 Acts and listed them on national securities exchanges for trading, these funds, which are commodity pools which are operated by CFTC registered commodity pool operators, are not registered as investment companies under the Investment Company Act of 1940. See the Investment Company Institute 2010 Fact Book, Chapter 3. We have clarified that commodity interests include not only contracts of sale of a commodity for future delivery and options on such contracts but would also include swaps, security futures products, leverage contracts, retail foreign exchange contracts, retail commodity transactions, physical commodities and any funds held in a margin account for trading such instruments. I am pleased that the Conference Report includes these new provisions which were in the bill passed out of the Senate Agriculture Committee.

I would also note the importance of Section 769 and Section 770. These sections amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 so that certain terms in the CEA are now incorporated into both of the 1940 Acts, which are administered by the SEC. We believed it was appropriate to incorporate these important definitions from the CEA into the two 1940 Acts as it relates to advice on futures and swaps, such as interest rate swaps and foreign exchange swaps and forwards, as well as what constitutes being a commodity pool and being primarily engaged in the business of investing in commodity interests as distinguished from being an investment company which is primarily engaged in the business of investing, reinvesting, holding, trading securities. I am pleased that the Conference Report includes these new updated definitions as it should help clarify jurisdictional and registration requirements.

Another extremely important issue which originated in the Senate Agriculture Committee was imposing a fiduciary duty on swap dealers when dealing with special entities, such as municipalities, pension funds, endowments, and retirement plans. The problems in this area, especially with respect to municipalities and Jefferson County, Alabama in particular are very well known. I would like to note that Senators Harkin and Casey have been quite active in this area and worked closely with me on this issue. While Senators Harkin, Casey and I did not get everything which we were looking for, we ended up with a very good product. First, there is a clear fiduciary duty which swap dealers and major swap participants must meet when acting as advisors to special entities. This is a dramatic improvement over the House passed bill and should help protect both tax payers and plan beneficiaries. Further, we have expanded the business conduct standards which swap dealers and major swap participants must follow even when they are not acting as advisors to special entities. I'd make a very important point, nothing in this provision prohibits a swap dealer from entering into transactions with special entities. Indeed, we believe it will be quite common that swap dealers will both provide advice and offer to enter into or enter into a swap with a special entity. However, unlike the status quo, in this case, the swap dealer would be subject to both the acting as advisor and business conduct requirements under subsections (h)(4) and (h)(5). These provisions will place tighter requirements on swap entities that we believe will help to prevent many of the abuses we have seen over the last few years. Importantly, the CFTC and the SEC have the authority to add to the statutory business conduct standards which swap dealers and major swap participants must follow. We expect the regulators to utilize this authority. Among other areas, regulators should consider whether to impose business conduct standards that would require swap dealers to further disclose fees and compensation, ensure that swap dealers maintain the confidentiality of hedging and portfolio information provided by special entities, and prohibit swap dealers from using information received from a special entity to engage in trades that would take advantage of the special entity's positions or strategies. These are very important issues and should be addressed.

Section 713 clarifies the authority and means for the CFTC and SEC to facilitate portfolio margining of futures positions and securities positions together, subject to account-specific programs. The agencies are required to consult with each other to ensure that such transactions and accounts are subject to ''comparable requirements to the extent practicable for similar products.'' The term ''comparable'' in this provision does not mean ''identical.'' Rather, the term is intended to recognize the legal and operational differences of the regulatory regimes governing futures and securities accounts.

Title VII establishes a new process for the CFTC and SEC to resolve the status of novel derivative products. In the past, these types of novel and innovative products have gotten caught up in protracted jurisdictional disputes between the agencies, resulting in delays in bringing products to market and placing U.S. firms and exchanges at a competitive disadvantage to their overseas counterparts.

In their Joint Harmonization Report from October 2009, the two agencies recommended legislation to provide legal certainty with respect to novel derivative product listings, either by a legal determination about the nature of a product or through the use of the agencies' respective exemptive authorities. Title VII includes provisions in Sections 717 and 718 to implement these recommendations.

It does so by establishing a process that requires public accountability by ensuring that jurisdictional disputes are resolved at the Commission rather than staff level, and within a firm timeframe. Specifically, either agency can request that the other one: 1) make a legal determination whether a particular product is a security under SEC jurisdiction or a futures contract or commodity option under CFTC jurisdiction; or 2) grant an exemption with respect to the product. An agency receiving such a request from the other agency is to act on it within 120 days. Title VII also provides for an expedited judicial review process for a legal determination where the agency making the request disagrees with the other's determination.

Title VII also includes amendments to existing law to ensure that if either agency grants an exemption, the product will be subject to the other's jurisdiction, so there will be no regulatory gaps. For example, the Commodity Exchange Act is amended to clarify that CFTC has jurisdiction over options on securities and security indexes that are exempted by the SEC. And Section 741 grants the CFTC insider trading enforcement authority over futures, options on futures, and swaps, on a group or index of securities.

We strongly urge the agencies to work together under these new provisions to alleviate the ills that they themselves have identified. The agencies should make liberal use of their exemptive authorities to avoid spending taxpayer resources on legal fights over whether these novel derivative products are securities or futures, and to permit these important new products to trade in either or both a CFTC- or SEC-regulated environment.

Section 721 includes a broad and expansive definition of the term ''swap'' that is subject to the new regulatory regime established in Title VII. It also provides the CFTC with the authority to further define the term ''swap'' (and various other new terms in Title VII) in order to include transactions and entities that have been structured to evade these important new legal requirements. The CFTC must not allow market participants to ''game the system'' by labeling or structuring transactions that are swaps as another type of instrument and then claim the instrument to be outside the scope of the legislation that Congress has enacted.

Section 723 creates a ''Trade Execution Requirement'' in new section 2(h)(8) of the Commodity Exchange Act (CEA). Section 2(h)(8)(A) requires that swaps that are subject to the mandatory clearing requirement under new CEA Section 2(h)(1) must be executed on either a designated contract market or a swap execution facility. Section 2(h)(8)(B) provides an exception to the Trade Execution Requirement if the swap is subject to the commercial end-user exception to the clearing requirement in CEA Section 2(h)(7), or if no contract market or swap execution facility ''makes the swap available to trade.'' This provision was included in the bill as reported by the Senate Agriculture Committee and then in the bill that was passed by the Senate.

In interpreting the phrase ''makes the swap available to trade,'' it is intended that the CFTC should take a practical rather than a formal or legalistic approach. Thus, in determining whether a swap execution facility ''makes the swap available to trade,'' the CFTC should evaluate not just whether the swap execution facility permits the swap to be traded on the facility, or identifies the swap as a candidate for trading on the facility, but also whether, as a practical matter, it is in fact possible to trade the swap on the facility. The CFTC could consider, for example, whether there is a minimum amount of liquidity such that the swap can actually be traded on the facility. The mere ''listing'' of the swap by a swap execution facility, in and of itself, without a minimum amount of liquidity to make trading possible, should not be sufficient to trigger the Trade Execution Requirement.

Both Section 723 and Section 729 establish requirements pertaining to the reporting of pre-enactment and post-enactment swaps to swap data repositories or the CFTC. They do so in new Sections 2(h)(5) and 4r(a) of the Commodity Exchange Act, respectively, which provide generally that swaps must be reported pursuant to such rules or regulations as the CFTC prescribes. These provisions should be interpreted as complementary to one another and to assure consistency between them. This is particularly true with respect to issues such as the effective dates of these reporting requirements, the applicability of these provisions to cleared and/or uncleared swaps, and their applicability—or non-applicability—to swaps whose terms have expired at the date of enactment.

Section 724 creates a segregation and bankruptcy regime for cleared swaps that is intended to parallel the regime that currently exists for futures. Section 724 requires any person holding customer positions in cleared swaps at a derivatives clearing organization to be registered as an FCM with the CFTC. Section 724 does not require, and there is no intention to require, swap dealers, major swap participants, or end users to register as FCMs with the CFTC to the extent that such entities hold collateral or margin which has been put up by a counterparty of theirs in connection with a swap transaction. In amending both the Commodity Exchange Act (CEA) and the Bankruptcy Code to clarify that cleared swaps are ''commodity contracts,'' Section 724 makes explicit what had been left implicit under the Commodity Futures Modernization Act of 2000. Specifically, we have clarified that: 1) title 11, Chapter 7, Subchapter IV of the United States Bankruptcy Code applies to cleared swaps to the same extent that it applies to futures; and 2) the CFTC has the same authority under Section 20 of the CEA to interpret such provisions of the Bankruptcy Code with respect to cleared swaps as it has with respect to futures contracts.

Section 731 prohibits a swap dealer or major swap participant from permitting any associated person who is subject to a statutory disqualification under the Commodity Exchange Act (CEA) to effect or be involved in effecting swaps on its behalf, if it knew or reasonably should have known of the statutory disqualification. In order to implement this statutory disqualification provision, the CFTC may require such associated persons to register with the CFTC under such terms, and subject to such exceptions, as the CFTC deems appropriate.

The term ''associated person of a swap dealer or major swap participant'' is defined in Section 721 as a person who, among other things, is involved in the ''solicitation'' or ''acceptance'' of swaps. These terms would also include the negotiation of swaps.

Section 731 includes a new Section 4s(g) of the CEA to impose requirements regarding the maintenance of daily trading records on swap dealers and major swap participants. To reflect advances in technology, CEA Section 4s(g) expressly requires that these registrants maintain ''recorded communications, including electronic mail, instant messages, and recordings of telephone calls.'' Under current law, Section 4g of the CEA governs the maintenance of daily trading records by certain existing classes of CFTC registrants, and is worded more generally and without expressly mentioning the recorded communications enumerated in CEA Section 4s(g). The enactment of this provision should not be interpreted to mean or imply that the specifically-identified types of recorded communications that must be maintained by swap dealers and major swap participants under CEA Section 4s(g) would be beyond the authority of the CFTC to require of other registrants by rule under Section 4g.

Sections 733 and 735 establish a regime of core principles to govern the operations of swap execution facilities and designated contract markets, respectively. Certain of these swap execution facility and designated contract market core principles are identically worded. Given that swap execution facilities will trade swaps exclusively, whereas designated contract markets will be able to trade swaps or futures contracts, we expect that the CFTC may interpret identically-worded core principles differently where they apply to different types of instruments or for different types of trading facilities or platforms.

Section 737 amends Section 4a(a)(1) of the Commodity Exchange Act (CEA) to authorize the CFTC to establish position limits for ''swaps that perform or affect a significant price discovery function with respect to registered entities.'' Subsequent descriptions of the significant price discovery function concept in Section 737, though, refer to an impact on ''regulated markets'' or ''regulated entities.'' The term ''registered entity'' is specifically defined in the CEA, and clearly includes designated contract markets and swap execution facilities. By contrast, the terms ''regulated markets'' and ''regulated entities'' are not defined or used anywhere else in the CEA. This different terminology is not intended to suggest a substantive difference, and it is expected that the CFTC may interpret the terms ''regulated markets'' and ''regulated entities'' to mean ''registered entities'' as defined in the statute for purposes of position limits under Section 737.

Section 737 also amends CEA Section 4a(a)(1) to authorize the CFTC to establish position limits for ''swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity.'' Later, Section 737 sets out additional provisions authorizing CFTC position limits to reach swaps, but without utilizing this same wording regarding swaps traded on or off designated contract markets or swap execution facilities. The absence of this wording is not intended to preclude the CFTC from applying any of the position limit provisions in Section 737 in the same manner with respect to DCM or SEF traded swaps as is explicitly provided for in CEA Section 4a(a)(1).

Finally, Section 737 amends CEA Section 4a(a)(4) to authorize the CFTC to establish position limits on swaps that perform a significant price discovery function with respect to regulated markets, including price linkage situations where a swap relies on the daily or final settlement price of a contract traded on a regulated market based upon the same underlying commodity. Section 737 also amends CEA Section 4a(a)(5) to provide that the CFTC shall establish position limits on swaps that are ''economically equivalent'' to futures or options traded on designated contract markets. It is intended that this ''economically equivalent'' provision reaches swaps that link to a settlement price of a contract on a designated contract market, without the CFTC having to first make a determination that the swaps perform a significant price discovery function.

Section 741, among other things, clarifies that the CFTC's enforcement authority extends to accounts and pooled investment vehicles that are offered for the purpose of trading, or that trade, off-exchange contracts in foreign currency involving retail customers. Thus, the CFTC may bring an enforcement action for fraud in the offer and sale of such managed or pooled foreign currency investments or accounts. These provisions overrule an adverse decision in the CFTC enforcement case of CFTC v. White Pine Trust Corporation, 574 F.3d 1219 (9th Cir. 2009), which erected an inappropriate limitation on the broad mandate that Congress has given the CFTC to protect this country's retail customers from fraud.

Section 742 includes several important provisions to enhance the protections afforded to customers in retail commodity transactions, and I would like to highlight three of them. First, Section 742 clarifies the prohibition on off-exchange retail futures contracts that has been at the heart of the Commodity Exchange Act (CEA) throughout its history. In recent years, there have been instances of fraudsters using what are known as ''rolling spot contracts'' with retail customers in order to evade the CFTC's jurisdiction over futures contracts. These contracts function just like futures, but the court of appeals in the Zelener case (CFTC v. Zelener, 373 F.3d 861 (7th Cir. 2004)), based on the wording of the contract documents, held them to be spot contracts outside of CFTC jurisdiction. The CFTC Reauthorization Act of 2008, which was enacted as part of that year's Farm Bill, clarified that such transactions in foreign currency are subject to CFTC anti-fraud authority. It left open the possibility, however, that such Zelener-type contracts could still escape CFTC jurisdiction if used for other commodities such as energy and metals.

Section 742 corrects this by extending the Farm Bill's ''Zelener fraud fix'' to retail off-exchange transactions in all commodities. Further, a transaction with a retail customer that meets the leverage and other requirements set forth in Section 742 is subject not only to the anti-fraud provisions of CEA Section 4b (which is the case for foreign currency), but also to the on-exchange trading requirement of CEA Section 4(a), ''as if'' the transaction was a futures contract. As a result, such transactions are unlawful, and may not be intermediated by any person, unless they are conducted on or subject to the rules of a designated contract market subject to the full array of regulatory requirements applicable to on-exchange futures under the CEA. Retail off-exchange transactions in foreign currency will continue to be covered by the ''Zelener fraud fix'' enacted in the Farm Bill; further, cash or spot contracts, forward contracts, securities, and certain banking products are excluded from this provision in Section 742, just as they were excluded in the Farm Bill.

Second, Section 742 addresses the risk of regulatory arbitrage with respect to retail foreign currency transactions. Under the CEA, several types of regulated entities can provide retail foreign currency trading platforms—among them, broker-dealers, banks, futures commission merchants, and the category of ''retail foreign exchange dealers'' that was recognized by Congress in the Farm Bill in 2008. Section 742 requires that the agencies regulating these entities have comparable regulations in place before their regulated entities are allowed to offer retail foreign currency trading. This will ensure that all domestic retail foreign currency trading is subject to similar protections.

Finally, Section 742 also addresses a situation where domestic retail foreign currency firms were apparently moving their activities offshore in order to avoid regulations required by the National Futures Association. It removes foreign financial institutions as an acceptable counterparty for off-exchange retail foreign currency transactions under section 2(c) of the CEA. Foreign financial institutions seeking to offer them to retail customers within the United States will now have to offer such contracts through one of the other legal mechanisms available under the CEA for accessing U.S. retail customers.

Section 745 provides that in connection with the listing of a swap for clearing by a derivatives clearing organization, the CFTC shall determine, both the initial eligibility and the continuing qualification of the DCO to clear the swap under criteria determined by the CFTC, including the financial integrity of the DCO. Thus, the CFTC has the flexibility to impose terns or conditions that it determines to be appropriate with regard to swaps that a DCO plans to accept for clearing. No DCO may clear a swap absent a determination by the CFTC that the DCO has proper risk management processes in place and that the DCO's clearing operation is in accordance with the Commodity Exchange Act and the CFTC's regulations thereunder.

Section 753 adds a new anti-manipulation provision to the Commodity Exchange Act (CEA) addressing fraud-based manipulation, including manipulation by false reporting. Importantly, this new enforcement authority being provided to the CFTC supplements, and does not supplant, its existing anti-manipulation authority for other types of manipulative conduct. Nor does it negate or undermine any of the case law that has developed construing the CEA's existing anti-manipulation provisions.

The good faith mistake provision in Section 753 is an affirmative defense. The burden of proof is on the person asserting the good faith mistake defense to show that he or she did not know or act in reckless disregard of the fact that the report was false, misleading, or inaccurate.

Section 753 also re-formats CEA Section 6(c), which is where the new anti-manipulation authority is placed, to make it easier for courts and the public to use and understand. Changes made to existing text as part of this re-formatting were made to streamline or eliminate redundancies, not to effect substantive changes to these provisions.

Title VIII of the legislation provides enhanced authorities and procedures for those clearing organizations and activities of financial institutions that have been designated as systemically important by a super-majority of the new Financial Stability Oversight Council. Title VIII preserves the authority of the CFTC and SEC as primary regulators of clearinghouses and clearing activities within their jurisdiction. Title VIII further expands the CFTC's and SEC's authorities in prescribing risk management standards and other regulations to govern designated clearing entities, and financial institutions engaged in designated activities. Similarly, Title VIII preserves and expands the CFTC's and SEC's examination and enforcement authorities with respect to designated entities within their respective jurisdictions.

Title VIII sets forth specific standards and procedures that permit the Council, upon a supermajority vote of the Council, and upon a determination that additional risk management standards are necessary to prevent significant risks to the stability of the financial system, to require the CFTC or SEC to impose additional risk management standards regarding designated financial market utilities or financial institutions engaged in designated activities.

Thus, the authorities granted in Title VIII are intended to be both additive and complementary to the authorities granted to the CFTC and SEC in Title VII and to those agencies' already existing legal authorities. The authority provided in Title VIII to the CFTC and SEC with respect to designated clearing entities and financial institutions engaged in designated activities would not and is not intended to displace the CFTC's and SEC's regulatory regime that would apply to these institutions or activities.

Whereas Title VIII is specifically addressed to payment, settlement, and clearing activities, Title I is addressed to consolidated entity supervision of complex financial institutions. Accordingly, to prevent coverage under two separate regulatory schemes, clearing agencies and derivatives clearing organizations are generally excepted from Title I. Also excepted from Title I are national exchanges, designated contract markets, swap execution facilities and other enumerated entities.

Title X of the legislation, which establishes a new Bureau of Consumer Financial Protection, maintains the supervisory, enforcement, rulemaking and other authorities of the CFTC over the persons it regulates. The legislation expressly prohibits the new Bureau from exercising any powers with respect to any persons regulated by the CFTC, to the extent that the actions of those persons are subject to the jurisdiction of the CFTC. It is not intended that Title X would lead to overlapping supervision of such persons by the Bureau. In this respect, the legislation is fully consistent with the Treasury Department's White Paper on Financial Regulatory Reform, which proposed the creation of an agency ''dedicated to protecting consumers in the financial products and services markets, except for investment products and services already regulated by the SEC or CFTC.'' (See Treasury White Paper at 55–56 (June 17, 2009) (emphasis added)).

Mr. DURBIN. Mr. President, I rise to speak about my interchange fee amendment that was incorporated into the Dodd-Frank Wall Street Reform and Consumer Protection Act. There are some important aspects of the amendment that I want to clarify for the record.

First, it is important to note that while this amendment will bring much-needed reform to the credit card and debit card industries, in no way should enactment of this amendment be construed as preempting other crucial steps that must be taken to bring competition and fairness to those industries. For example, a key component of the Senate-passed version of my amendment was a provision that would prohibit payment card networks from blocking merchants from offering a discount for customers who use a competing card network. This provision was unfortunately left out of the final conference report, but the need for this provision remains undiminished. It is blatantly anticompetitive for one company to prohibit its customers from offering a discounted price for a competitor's product, and I will continue to pursue steps to end this practice.

Additionally, in no way should my amendment be construed as preempting or superseding scrutiny of the credit card and debit card industries under the antitrust laws. Section 6 of the Dodd-Frank act conference report contains an antitrust savings clause which provides that nothing in the act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. I want to make clear that nothing in my amendment is intended to modify, impair, or supersede the operation of any of the antitrust laws, nor should my amendment be construed as having that effect. Vigorous antitrust scrutiny over the credit and debit card industries will continue to be needed after enactment of the Dodd-Frank act, particularly in light of the highly concentrated nature of those industries.

With respect to the new subsection 920(a) of the Electronic Fund Transfer Act that would be created by my amendment, there are a few issues that should be clarified. The core provisions of subsection (a) are its grant of regulatory authority to the Federal Reserve Board over debit interchange transaction fees, and its requirement that an interchange transaction fee amount charged or received with respect to an electronic debit transaction be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Paragraph (a)(4) makes clear that the cost to be considered by the Board in conducting its reasonable and proportional analysis is the incremental cost incurred by the issuer for its role in the authorization, clearance, or settlement of a particular electronic debit transaction, as opposed to other costs incurred by an issuer which are not specific to the authorization, clearance, or settlement of a particular electronic debit transaction.

Paragraph (5) of subsection (a) provides that the Federal Reserve Board may allow for an adjustment of an interchange transaction fee amount received by a particular issuer if the adjustment is reasonably necessary to make allowance for the fraud prevention costs incurred by the issuer seeking the adjustment in relation to its electronic debit transactions, provided that the issuer has demonstrated compliance with fraud-related standards established by the Board. The standards established by the Board will ensure that any adjustments to the fee shall be limited to reasonably necessary costs and shall take into account fraud-related reimbursements that the issuer receives from consumers, merchants, or networks. The standards shall also require issuers that want an adjustment to their interchange fees to take effective steps to reduce the occurrence of and costs from fraud in electronic debit transactions, including through the development of cost-effective fraud prevention technology.

It should be noted that any fraud prevention adjustment to the fee amount would occur after the base calculation of the reasonable and proportional interchange fee amount takes place, and fraud prevention costs would not be considered as part of the incremental issuer costs upon which the reasonable and proportional fee amount is based. Further, any fraud prevention cost adjustment would be made on an issuer-specific basis, as each issuer must individually demonstrate that it complies with the standards established by the Board, and as the adjustment would be limited to what is reasonably necessary to make allowance for fraud prevention costs incurred by that particular issuer. The fraud prevention adjustment provision in paragraph (a)(5) is intended to apply to all electronic debit transactions, whether authorization is based on signature, PIN or other means.

Paragraph (6) of subsection (a) exempts debit card issuers with assets of less than $10 billion from interchange fee regulation. This paragraph makes clear that for purposes of this exemption, the term ''issuer'' is limited to the person holding the asset account which is debited, and thus does not count the assets of any agents of the issuer. However, the affiliates of an issuer are counted for purposes of the $10 billion exemption threshold, so if an issuer together with its affiliates has assets of greater than $10 billion, then the issuer does not fall within the exemption.

It should be noted that the intent of my amendment is not to diminish competition in the debit issuance market. I will be watching closely to ensure that the giant payment card networks Visa and MasterCard do not collude with one another or with large financial institutions to take steps to purposefully disadvantage small issuers in response to enactment of this amendment.

Paragraph (7) of subsection (a) exempts from interchange fee regulation electronic debit transactions involving debit cards or prepaid cards that are provided to persons as part of a federal, state or local government-administered payment program in which the person uses the card to debit assets provided under the program. The Federal Reserve Board will issue regulations to implement this provision, but it is important to note that this exemption is only intended to apply to cards which can be used to transfer or debit assets that are provided pursuant to the government-administered program. The exemption is not intended to apply to multi-purpose cards that mingle the assets provided pursuant to the government-administered program with other assets, nor is it intended to apply to cards that can be used to debit assets placed into an account by entities that are not participants in the government-administered program.

The amendment would also create subsection 920(b) of the Electronic Fund Transfer Act, which provides several restrictions on payment card networks. Paragraphs (1), (2) and (3) of 920(b) are intended only to serve as restrictions on payment card networks to prohibit them from engaging in certain anticompetitive practices. These provisions are not intended to preclude those who accept cards from engaging in any discounting or other practices, nor should they be construed to preclude contractual arrangements that deal with matters not covered by these provisions. Further, nothing in these provisions should be construed to mean that merchants can only provide a discount that is exactly specified in the amendment. The provisions also should not be read to confer any congressional blessing or approval of any other particular contractual restrictions that payment card networks may place on those who accept cards as payment. All these provisions say is that Federal law now blocks payment card networks from engaging in certain specific enumerated anti-competitive practices, and the provisions describe precisely the boundaries over which payment card networks cannot cross with respect to these specific practices.

Paragraph (b)(1) directs the Federal Reserve Board to prescribe regulations providing that issuers and card networks shall not restrict the number of networks on which an electronic debit transaction may be processed to just one network, or to multiple networks that are all affiliated with each other. It further directs the Board to issue regulations providing that issuers and card networks shall not restrict a person who accepts debit cards from directing the routing of electronic debit transactions for processing over any network that may process the transactions. This paragraph is intended to enable each and every electronic debit transaction—no matter whether that transaction is authorized by a signature, PIN, or otherwise—to be run over at least two unaffiliated networks, and the Board's regulations should ensure that networks or issuers do not try to evade the intent of this amendment by having cards that may run on only two unaffiliated networks where one of those networks is limited and cannot be used for many types of transactions.

Paragraph (b)(2) provides that a payment card network shall not inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of a particular form of payment—cash, checks, debit cards or credit cards—provided that discounts for debit cards and credit cards do not differentiate on the basis of the issuer or the card network, and provided that the discount is offered in a way that complies with applicable Federal and State laws. This paragraph is in no way intended to preclude the use by merchants of any other types of discounts. It just makes clear that Federal law prohibits payment card networks from inhibiting the offering of discounts which are for a form of payment—for example, a 1-percent discount for payment by debit card. This paragraph also provides that a network may not penalize a person for the way that the person offers or discloses a discount to customers, which will end the current practice whereby payment card networks have regularly sought to penalize merchants for providing cash, check or debit discounts that are fully in compliance with applicable Federal and State laws.

Paragraph (b)(3) provides that a payment card network shall not inhibit the ability of any person to set a minimum dollar value for acceptance of credit cards, provided that the minimum does not differentiate between issuers or card networks, and provided that the minimum does not exceed $10. This paragraph authorizes the Board to increase this dollar amount by regulation. The paragraph also provides that card networks shall not inhibit the ability of a Federal agency or an institution of higher education to set a maximum dollar value for acceptance of credit cards, provided that the maximum does not differentiate between issuers or card networks. As with the discounts, this provision is not intended to preclude merchants, agencies or higher education institutions from setting other types of minimums or maximums by card or amount. It simply makes clear that payment card networks must at least allow for the minimums and maximums described in the provision.

Paragraph (b)(4) contains a rule of construction providing that nothing in this subsection shall be construed to authorize any person to discriminate between debit cards within a card network or to discriminate between credit cards within a card network on the basis of the issuer that issued the card. The intent of this rule of construction is to make clear that nothing in this subsection should be cited by any person as justification for the violation of contractual agreements not to engage in the forms of discrimination cited in this paragraph. This provision does not, however, prohibit such discrimination as a matter of federal law, nor does it make any statement regarding the legality of such discrimination. In addition, this provision makes no statement as to whether a payment card network's contractual rule preventing such discrimination would be legal under the antitrust laws.

Finally, it should be noted that the payment card networks as defined in the amendment are entities such as Visa, MasterCard, Discover, and American Express that directly, or through licensed members, processors or agents, provide the proprietary services, infrastructure and software that route information to conduct credit and debit card transaction authorization, clearance and settlement. The amendment does not intend, for example, to define ATM operators or acquiring banks as payment card networks unless those entities also operate card networks as do Visa, MasterCard, Discover and American Express.

Overall, my amendment contains much needed reforms that will help increase fairness, transparency and competition in the debit card and credit card industries. More work remains to be done along these lines, but this amendment represents an important first step, and I thank my colleagues who have supported this effort.

Mr. KOHL. Mr. President, I rise to speak on the Wall Street Reform and Consumer Protection Act which the Senate will pass today. After 2 years of work, the reckless practices of Wall Street firms that resulted in terrible losses for people in Wisconsin and across the nation will finally be ended.

These events showed us that maintaining the current regulatory system is not an acceptable option. Wall Street needs accountability and transparency to avoid future financial meltdowns. Congress has the duty to ensure that this kind of failure never happens again. The Wall Street Reform and Consumer Protection Act takes vital steps to end ''too big to fail,'' bring unregulated shadow markets into the light, and make our financial system work better for everyone.

This bill has been thoroughly deliberated in both the House and the Senate. The Banking Committee held more than 80 hearings since 2008 on the financial crisis, addressing its causes, grave impacts and potential remedies. These hearings explored all of the elements of this legislation in detail, and also looked at the specific regulatory failures that contributed to the crisis.

The information gathered at these hearings laid down the foundation for the current bill. The bill was carefully debated and deliberated while on the Senate floor for 3 weeks—almost as long as the debate on health care reform.

After the bill passed in the House and the Senate it was then negotiated by the Conference Committee. I was pleased with the Conference Committee's ability to address Members' concerns in both Chambers. The conference lasted 2 weeks and was televised and open to the public for viewing. This all brought welcome transparency to the legislative process.

Throughout the consideration of financial reform, I met with people, banks and businesses in Wisconsin to better understand their needs so that our businesses and families can be protected from future recklessness. I have worked hard to make sure that this bill protects Main Street and its businesses by focusing on Wall Street—the source of this crisis.

I am proud to say that we now have a bill that will change our regulatory system in a way that will prevent and mitigate future crises. The bill will ensure that a Federal bailout will never again be an option for irresponsible businesses. The bill creates a council of regulators to monitor the economy for systemic threats. It will institute new regulations on hedge funds and over-the-counter derivatives and create a Bureau of Consumer Financial Protection that will oversee mortgage, credit cards and other credit products.

Consumers will now have a single entity to report their concerns about abusive financial practices, allowing regulators to address these issues in a timelier manner—before more consumers are harmed. The bill improves access to credit, increases protections and expands financial education programs enabling consumers to make smart financial decisions and reducing widespread predatory practices

In addition to providing consumers with adequate protections against fraud and predatory practices, I also believe that consumers need affordable alternatives to predatory lending products like pay day loans. Senator DANIEL AKAKA shares this belief which is why we worked together to draft title XII of this bill.

Title XII will help to improve the lives of the millions of low- and moderate-income households in America that do not have access to mainstream financial institutions by providing grants to community development financial institutions so that they can give small dollar loans at affordable terms to people who are currently limited to riskier choices like payday loans. This grant making program will dramatically help to increase the number of small dollar loan options to consumers that need quick access to money so that they can pay for emergency medical costs, car repairs and other items they need to maintain their lives. This legislation is modeled in part after the FDIC's Small Dollar Loan Pilot Program.

As chairman of the Judiciary Subcommittee on Antitrust, I am pleased to see that this bill will preserve the ability of the Federal antitrust agencies to protect competition and American consumers in the financial services industries. The legislation includes a broad antitrust savings clause that makes clear that nothing in the act will modify, impair or supersede the operation of any of the antitrust laws. It also includes more specific antitrust savings clauses in key provisions, further ensuring the continued ability of the antitrust agencies to fully enforce the relevant laws in these critical sectors in our economy.In addition to strengthening the oversight of mergers and acquisitions involving financial services firms, the bill specifically maintains the ability of the antitrust agencies to perform a thorough competition review of the transactions between these firms.

This robust merger review authority ensures that the Federal antitrust agencies can continue to play their key role in protecting competition and ensuring consumers have choices for financial services and products at competitive rates and prices. Competition is the cornerstone of our Nation's economy, and the antitrust laws ensure strong competitive markets that make our economy strong and protect consumers. This bill will ensure that the antitrust laws retain their critical role in the financial services industry.

This bill is another step in a long process of financial overhaul. The Wall Street Reform and Consumer Protection Act provides regulators with flexibility to implement a number of new rules. They will have to make decisions on issues ranging from determining fair charges on debit card swipe fees to deciding when a risky firm should be taken over. We need to make sure that our regulators have the tools and resources they need to get the job done right. As a member of the Banking Committee, I am going to keep a watchful eye on the regulators to make sure they are given adequate resources and oversight to do the job that they have been charged with.

Clearly we would not have this bill without the hard work and effort of Senator CHRIS DODD. It has been an honor to work with him and I hope he is as proud of this great accomplishment as I am.

Finally I would like to take a moment to recognize the staff that worked so hard on this bill. I would like to acknowledge the staff of the Banking Committee for all of their exceptional work: including Levon Bagramian, Julie Chon, Brian Filipowich, Amy Friend, Catherine Galicia, Lynsey Graham Rea, Matthew Green, Marc Jarsulic, Mark Jickling, Deborah Katz, Jonathan Miller, Misha Mintz-Roth, Dean Shahinian, Ed Silverman, and Charles Yi.

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

Mr. DODD. Mr. President, I would like to clarify the intent behind one of the provisions in the conference report to accompany the financial reform bill, H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 204(d) contemplates that the FDIC, as receiver, may take a lien on assets of a covered financial company or a covered subsidiary. With respect to assets of a covered subsidiary that is an insurance company or a direct or indirect subsidiary of an insurance company, I believe that the FDIC should exercise such authority cautiously to avoid weakening the insurance company and thereby undermining policyholder protection. Indeed, any lien taken on the assets of a covered subsidiary that is an insurance company or a direct or indirect subsidiary of an insurance company must avoid weakening or undermining policyholder protection. As a result, the FDIC should normally not take a lien on the assets of such a covered subsidiary except where the FDIC sells the covered subsidiary to a third party, provides financing in connection with the sale, and takes a lien on the assets of the covered subsidiary to secure the third party's repayment obligation to the FDIC. I understand that the FDIC intends to promulgate regulations consistent with this view.

Mr. President, I would also like to clarify the intent behind another of the provisions in the conference report to accompany the financial reform bill, H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 1075 of the bill amends the Electronic Fund Transfer Act to create a new section 920 regarding interchange fees. This is a very complicated subject involving many different stakeholders, including payment networks, issuing banks, acquiring banks, merchants, and, of course, consumers. Section 1075 therefore is also complicated, and I would like to make a clarification with regard to that section.

Since interchange revenues are a major source of paying for the administrative costs of prepaid cards used in connection with health care and employee benefits programs such as FSAs, HSAs, HRAs, and qualified transportation accounts—programs which are widely used by both public and private sector employers and which are more expensive to operate given substantiation and other regulatory requirements—we do not wish to interfere with those arrangements in a way that could lead to higher fees being imposed by administrators to make up for lost revenue. That could directly raise health care costs, which would hurt consumers and which, of course, is not at all what we wish to do. Hence, we intend that prepaid cards associated with these types of programs would be exempted within the language of section 920(a)(7)(A)(ii)(II) as well as from the prohibition on use of exclusive networks under section 920(b)(1)(A).

Mr. President, I want to clarify a provision of the conference report of the Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173. Section 1012 sets forth the executive and administrative powers of the Consumer Financial Protection Bureau, CFPB, and section 1012(c)(1)—Coordination with the Board of Governors—provides that ''Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.'' This provision is not intended to override section 1026, which will continue to define the Bureau's examination and enforcement authority over insured depository institutions and insured credit unions with assets of less than $10 billion. The conferees expect that the board will not delegate to the Bureau its authority to examine insured depository institutions with assets of less than $10 billion.

Throughout the development of and debate on the Consumer Financial Protection Bureau, CFPB, I have insisted that the legislation meet three requirements—independent rule writing, independent examination and enforcement authority, and independent funding for the CFPB. The CFPB, as established by the conference report, meets each of those requirements. I want to speak for a moment about section 1017, which establishes the independent funding mechanism for the CFPB.

The conference report requires the Federal Reserve System to automatically fund the CFPB based on the total operating expenses of the system, using 2009 as the baseline. This will ensure that the CFPB has the resources it needs to perform its functions without subjecting it to annual congressional appropriations. The failure of the Congress to provide the Office of Federal Housing Enterprises Oversight, OFHEO, with a steady stream of independent funding outside the appropriations process led to repeated interference with the operations of that regulator. Even when there was not explicit interference, the threat of congressional interference could very well have served to circumscribe the actions OFHEO was willing to take. We did not want to repeat that mistake in this legislation.

In addition, because many of the employees of the CFPB will come from existing financial regulators, the conferees take the view that it is important that the new entity have the resources to keep these high quality staff and to attract new equally qualified staff, and to provide them with the support that they need to operate effectively. To that end, the conferees adopted the employment cost index for total compensation of State and Federal employees, ECI, as the index by which the funding baseline will be adjusted in the future. This index has generally risen faster than the CPI, which was the index used in the Senate bill. However, the ECI has typically risen at a more gradual rate than the average operating costs of the banking regulators, which was the index proposed by the House conferees.

In the end, the conferees agreed to use the ECI and provide for a contingent authorization of appropriations of $200 million per year through fiscal year 2014. In order to trigger this authorization, the CFPB Director would have to report to the Appropriations Committees that the CFPB's formula funding is not sufficient.

Section 1085 of the legislation adds the Consumer Financial Protection Bureau, CFPB, to the list of agencies authorized to enforce the Equal Credit Opportunity Act, ECOA—15 U.S.C. §1691c(a)(9). The legislation also amends section 706(g)—15 U.S.C. §1691e(g)—to require the CFPB to refer a matter to the Attorney General whenever the CFPB has reason to believe that 1 or more creditors has engaged in a ''pattern or practice of discouraging or denying applications for credit'' in violation of section 701, 15 U.S.C. §1691(a). The general grant of civil litigation authority to the CFPB, in section 1054(a), should not be construed to override, in any way, the CFPB's referral obligations under the ECOA.

The requirement in section 706(g) of the ECOA that the CFPB refer a matter involving a pattern-or-practice violation of section 701, rather than first filing its own pattern-or-practice action, furthers the legislation's purpose of reducing fragmentation in consumer protection and fair lending enforcement under the ECOA. The Attorney General, who currently has authority under section 706(g) to file those pattern-or-practice ECOA actions in court on behalf of the government, receives such pattern-or-practice referrals from other agencies with ECOA enforcement responsibilities and will continue to do so under the legislation. By subjecting the CFPB to the same referral requirement, the legislation intends to avoid creating fragmentation in this enforcement system under the ECOA where none currently exists.

Title XIV creates a strong, new set of underwriting requirements for residential mortgage loans. An important part of this new regime is the creation of a safe harbor for certain loans made according to the standards set out in the bill, and which will be detailed further in forthcoming regulations. Loans that meet this standard, called ''qualified mortgages,'' will have the benefit of a presumption that they are affordable to the borrowers.

Section 1411 explains the basis on which the regulator must establish the standards lenders will use to determine the ability of borrowers to repay their mortgages. Section 1412 provides that lenders that make loans according to these standards would enjoy the rebuttable presumption of the safe harbor for qualified mortgages established by this section. These standards include the need to document a borrower's income, among others. However, certain refinance loans, such as VA-guaranteed mortgages refinanced under the VA Interest Rate Reduction Loan Program or the FHA streamlined refinance program, which are rate-term refinance loans and are not cash-out refinances, may be made without fully reunderwriting the borrower, subject to certain protections laid out in the legislation, while still remaining qualified mortgages.

It is the conferees' intent that the Federal Reserve Board and the CFPB use their rulemaking authority under the enumerated consumer statutes and this legislation to extend this same benefit for conventional streamlined refinance programs where the party making the new loan already owns the credit risk. This will enable current homeowners to take advantage of current low interest rates to refinance their mortgages.

There are a number of provisions in title XIV for which there is not a specified effective date other than what is provided in section 1400(c). It is the intention of the conferees that provisions in title XIV that do not require regulations become effective no later than 18 months after the designated transfer date for the CFPB, as required by section 1400(c). However, the conferees encourage the Federal Reserve Board and the CFPB to act as expeditiously as possible to promulgate regulations so that the provisions of title XIV are put into effect sooner.

I would like to clarify that the conferees consider any program or initiative that was announced before June 25 to have been initiated for the purposes of section 1302 of the conference report. I also want to make clear that the conferees do not intend for section 1302 to prevent the Treasury Department from adjusting available resources that remain after the adoption of the conference report among such existing programs, based on effectiveness.

Mr. President, I also wish to explain some of the securities-related changes that emerged from the conference committee in the conference report.

The report amends section 408 to eliminate the blanket exemption for private equity funds and replace it with an exemption for private fund advisers with less than $150 million under management. The amendment also requires the SEC in its rulemaking to impose registration and examination procedures for such funds that reflect the level of systemic risk posed by midsized private funds.

Section 913 has been amended to combine the principle of conducting a study on the standard of care to investors in the Senate bill with a grant of additional authority to the SEC to act, such as is contained in the House-passed bill. The section requires the SEC to conduct a study prior to taking action or conducting rulemaking in this area. The study will include a review of the effectiveness of existing legal or regulatory standards of care and whether there are regulatory gaps, shortcomings or overlaps in legal or regulatory standards. Even if there is an overlap or a gap, the Commission should not act unless eliminating the overlap or filling a gap would improve investor protection and is in the public interest. The study would require a review of the effectiveness, frequency, and duration of the regulatory examinations of brokers, dealers, and investment advisers. In this review, the paramount issue is effectiveness. If regulatory examinations are frequent or lengthy but fail to identify significant misconduct—for example, examinations of Bernard L. Madoff Investment Securities, LLC—they waste resources and create an illusion of effective regulatory oversight that misleads the public. The SEC, in studying potential impacts that would result from changes to the regulation or standard of care, should seek to preserve consumer access to products and services, including access for persons in rural locations. In assessing the potential costs and benefits, the SEC should take into account the net costs or the difference between additional costs and additional benefits. For example, it should consider not only higher transaction or advisory charges or fees but also the return on investment if an investor receives better recommendations that result in higher profits through paying higher fees. After reporting to Congress, the SEC is required to consider the findings, conclusions, and recommendations of its study.

New section 914 requires the SEC to study the need for enhanced examination and enforcement ''resources.'' The study of resources should not be limited to financial resources but should consider human resources also. Human resources involves whether there is a need for enhanced expertise, competence, and motivation to conduct examinations that satisfactorily identify problems or misconduct in the regulated entity. For example, if examinations fail to identify misconduct due to insufficient staff expertise, competence, or motivation, the study should conclude that there is a need for more effective staff or better management rather than merely more financial resources devoted to hiring additional staff of the same caliber.

New section 919D creates the SEC Ombudsman under the Office of the Investor Advocate. The Ombudsman can act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations and to review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws. This list of duties in subsection (8)(B) is not intended to be an exhaustive list. For example, if the Investor Advocate assigns the Ombudsman duties to act as a liaison with persons who have problems in dealing with the Commission resulting from the regulatory activities of the Commission, this would not be prohibited by this legislation.

Title IX, subtitle B creates many new powers for the SEC. The SEC is expected to use these powers responsibly to better protect investors.

Section 922 has been amended to eliminate the right of a whistleblower to appeal the amount of an award. While the whistleblower cannot appeal the SEC's monetary award determination, this provision is intended to limit the SEC's administrative burden and not to encourage making small awards. The Congress intends that the SEC make awards that are sufficiently robust to motivate potential whistleblowers to share their information and to overcome the fear of risk of the loss of their positions. Unless the whistleblowers come forward, the Federal Government will not know about the frauds and misconduct.

In section 939B, the Report eliminated an exception so that credit rating agencies will be subject to regulation FD. Under this change, issuers would be required to disclose financial information to the public when they give it to rating agencies.

In section 939F, the report requires the SEC to study the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models; the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products. The report directs the SEC to implement the system for assigning credit ratings that was in the base text unless it determines that an alternative system would better serve the public interest and the protection of investors.

The report limits the exemption from risk retention requirements for qualified residential mortgages, by specifying that the definition of ''qualified residential mortgage'' may be no broader than the definition of ''qualified mortgage'' contained in section 1412 of the report, which amends section 129C of the Truth in Lending Act. The report contains the following technical errors: the reference to ''section 129C(c)(2)'' in subsection (e)(4)(C) of the new section 15G of the Securities and Exchange Act, created by section 941 of the report should read ''section 129C(b)(2).'' In addition, the references to ''subsection'' in paragraphs (e)(4)(A) and (e)(5) of the newly created section 15G should read ''section.'' We intend to correct these in future legislation.

The report amended the say on pay provision in section 951 by adding a shareholder vote on how frequently the compare should give shareholders a ''say on pay'' vote. The shareholders will vote to have it every 1, 2, or 3 years, and the issuer must allow them to have this choice at least every 6 years. Also in section 951, the report required issuers to give shareholders an advisory vote on any agreements, or golden parachutes, that they make with their executive officers regarding compensation the executives would receive upon completion of an acquisition, merger, or sale of the company.

The report required Federal financial regulators to jointly write rules requiring financial institutions such as banks, investment advisers, and broker-dealers to disclose the structures of their incentive-based compensation arrangements, to determine whether such structures provide excessive compensation or could lead to material losses at the financial institution and prohibiting types of incentive-based payment arrangements that encourage inappropriate risks.

In section 952, the report exempted controlled companies, limited partnerships, and certain other entities from requirements for an independent compensation committee.

Section 962 provides for triennial reports on personnel management. One item to be studied involves Commission actions regarding employees who have failed to perform their duties, an issue that members raised during the Banking Committee's hearing entitled ''Oversight of the SEC's Failure to Identify the Bernard L. Madoff Ponzi Scheme and How to Improve SEC Performance,'' as well as circumstances under which the Commission has issued to employees a notice of termination. The GAO is directed to study how the Commission deals with employees who fail to perform their duties as well as its fairness when they issue a notice of termination. In the latter situation, they should consider specific cases and circumstances, while preserving employee privacy. The SEC is expected to cooperate in making data available to the GAO to perform its studies.

In section 967, the report directs the SEC to hire an independent consultant with expertise in organizational restructuring and the capital markets to examine the SEC's internal operations, structure, funding, relationship with self-regulatory organizations and other entities and make recommendations. During the conference, some conferees expressed concern about objectivity of a study undertaken by the SEC itself. We are confident that the SEC will allow the ''independent consultant'' to work without censorship or inappropriate influence and the final product will be objective and accurate.

The report also added section 968 which directs the GAO to study the ''revolving door'' at the SEC. The GAO will review the number of employees who leave the SEC to work for financial institutions and conflicts related to this situation.

The report removed the Senate provision on majority voting in subtitle G which required a nominee for director who does not receive the majority of shareholder votes in uncontested elections to resign unless the remaining directors unanimously voted that it was in the best interest of the company and shareholders not to accept the resignation.

The report added the authority for the SEC to exempt an issuer or class of issuers from proxy access rules written under section 971 after taking into account the burden on small issuers.

In section 975, the report added a requirement that the MSRB rules require municipal advisors to observe a fiduciary duty to the municipal entities they advise.

In section 975, the report changed the requirement that a majority of the board ''are not associated with any broker, dealer, municipal securities dealer, or municipal advisor'' to a requirement that the majority be ''independent of any municipal securities broker, municipal securities dealer, or municipal advisor.''

In section 978, the report authorized the SEC to set up a system to fund the Government Accounting Standards Board, the body which establishes standards of State and local government accounting and financial reporting.

The report added section 989F, a GAO Study of Person to Person Lending, to recommend how this activity should be regulated.

The report added section 989G to exempt issuers with less than $75 million market capitalization from section 404(b) of the Sarbanes-Oxley Act of 2002 which regulates companies' internal financial controls. This section also adds an SEC study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxle Act of 2002 for companies whose market capitalization is between $75 million and $250 million for the relevant reporting period while maintaining investor protections for such companies.

Section 989I adds a follow-up GAO study on the impact of the Sarbanes-Oxley section 404(b) exemption in section 989G of this bill involving the frequency of accounting restatements, cost of capital, investor confidence in the integrity of financial statements and other matters, so we can understand its effect.

The report added section 989J, which provides that fixed-index annuities be regulated as insurance products, not as securities. This provision clarifies a disagreement on the legal status of these products.

In section 991, the report changed the method of funding for the SEC so that it remains under the congressional appropriations process while giving the SEC much more control over the amount of its funding. The report also doubled the SEC authorization between 2010 and 2015, going from $1.1 billion to $2.25 billion, which will provide tremendous increase in SEC financial resources. These resources can be used to improve technology and attract needed securities and managerial expertise. However, the inspector general of the SEC and others have reported on situations where SEC financial or human resources have not been used effectively or with appropriate prior cost-benefit analysis. While the SEC is receiving more resources, we expect that it will use resources efficiently.

Mr. President, Senator DORGAN wishes to be heard, which pretty much will end the debate. I will take a minute or so to conclude, and then the votes will occur around 2 o'clock.

I ask unanimous consent that even though time may be expired, at least 10 minutes be reserved for the minority to be heard.

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

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I will vote for the conference report on financial reform. Before I describe why I think it is essential to vote in favor, let me compliment Senator DODD. We have had some differences on some issues, but that is not unusual. What is unusual is when a piece of legislation this complicated, this consequential, and this large gets to this point so we will have a final vote and it will go to the President for signature. It is going to make a difference. It is not all I would want. I would have written some of it differently. But there are provisions in this legislation that will prevent that which happened that nearly caused this country to have a complete economic collapse. That was the purpose of writing the legislation.

This bill on financial reform establishes a new independent bureau, housed at the Federal Reserve Board but not reporting to it, dedicated to protecting consumers from abusive financial products and practices. It puts in place systems to ensure taxpayer funds will not be used for Wall Street bailouts in the future. It creates an advanced warning system, looking out for troubled institutions to make sure we understand who they are and where they are, those whose failure would threaten financial markets and the economy. It imposes some curbs on proprietary trading and hedge fund ownership by banks. There are a number of things that are salutatory and important.

The vote this afternoon is a starting point, not an ending point. I make the point by showing the headlines that exist in the newspapers these days about the fact that there will be substantial amounts of work done to try to curb activities even in the executive branch with respect to rules and regulations which are now essential.

The PRESIDING OFFICER. The time under the control of the majority has expired.

Mr. DORGAN. I ask the Senator from Connecticut, my understanding is Republicans have 10 minutes. I began the process because the Republican Senator was not here to claim that. I will be happy to cease at this point, if he wishes to take his 10 minutes, and then complete my statement, or I could complete my statement with more time.

Mr. DODD. How much more time would my colleague require?

Mr. DORGAN. Probably 7 more minutes or so.

Mr. DODD. I think it follows more naturally that way.

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

Mr. DORGAN. I appreciate the courtesy of the Senator from Nebraska.

We all understand why this legislation is trying to prevent this from ever happening again. I have shown this on the floor many times. This was from a credit company called Zoom advertising mortgages. We ran up to a near collapse of the economy with companies advertising this: Credit approval is just seconds away. Get on the fast track at Zoom Credit. At the speed of light, Zoom Credit will preapprove you for a car loan, a home loan, a credit card, even if your credit is in the tank.

Then it says: Zoom Credit is like money in the bank. We specialize in credit repair and debt consolidation. Bankruptcy, slow credit, no credit? Who cares?

We wonder how this country got in trouble. Today on the Internet this exists. Nothing has changed. Speedy, bad credit loans. If you want to get a loan, you have bad credit, go to the Internet to this site. I am not advertising for them because clearly it is probably a bunch of shylocks running this operation. Bad credit, no credit, bankruptcy, no problem, no downpayment, no delays. Come to us, if you want money. Unbelievable.

This is on the Internet today. It describes why we have to pass this legislation and what we are trying to do to protect the American consumer and why regulations that come from this are so important. Easy loan for you. Instant approval. Regardless of your credit score or history, approval is guaranteed.

This sort of nonsense is not good business. It is not a sensible way to do things. It is what nearly bankrupted this country.

Wall Street Journal, July 14, let me read the first sentence: Shirley Davis, 66 years old, retired phone company administrator, lives in Brooklyn, NY, is more than $33,000 dollars in debt, earns $2,400 a month, filed for bankruptcy last month. Shortly before that, she ripped open an envelope from Capitol One Financial Corporation which pitched her a credit card, even though it sued her 4 years ago to recover $4,400 she owed on a different credit card from the same bank.

She is quoting now from the letter from Capital One:

> At some point we lost you as a customer, and we would like to get you back.

Mrs. Davis said she was stunned. ''Even I wouldn't give me a credit card at this point.''

It is still going on. It is why passing this conference report is so essential.

Would I have written it differently? Yes. I would have restored part of Glass-Steagall. Ten years ago that was taken apart. Those protections were put in place after the last Great Depression, and they protected this country for 70 years or so. It should have been put back together.

I would ban the trading of naked credit default swaps. That is betting, not investing. I would have done that.

I would have imposed more aggressive curbs on proprietary trading by banks. If the taxpayer has to underwrite you as a commercial bank, you ought not have a casino atmosphere in your lobby.

Having said that, what was done in this legislation is a very substantial beginning. It is not an ending, No. 1. No. 2, the regulatory agencies now have to do a lot of work to make this bill work, to make this bill effective, to stop what happened from ever happening again.

Finally, I believe there will be an additional need to legislate in the future to address some of the things I mentioned.

I believe the work done to get to this point in a Chamber in which it is very difficult for us to accomplish anything is a success. I commend my colleague, Senator DODD from Connecticut, and others who worked on this legislation in a thoughtful way to try to decide how we can stop this sort of thing. We all understood it. We heard these things on the radio and television. Massive loans, they would securitize them. They would trade the securities back up in derivatives and credit default swaps. Everybody was making money on all sides, but they were building a house of cards that came down and nearly collapsed this entire country's economy.

A lot of people, as I speak today, are still paying the price. They got up this morning without a job, millions and millions of them. They can't find work. They are the victims of this cesspool of greed we have watched for far too long. This legislation has great merit in advancing solutions to these issues. That is why I will vote yes. Is it perfect? No. Is it an end point? No. It is a starting point in a process that is very important.

I hope in the months ahead those who are charged with creating the regulatory environment to fix this, to implement this legislation, will get it right because they have the opportunity the way this is written to get this right if they are smart and effective and want to protect this country's economy.

Thanks to those who put this together. I intend to cast my vote as yes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Briefly, I thank my colleague from North Dakota. He has been an outspoken advocate on behalf of working families in the time we have served together. The concerns he has expressed consistently in this process are ones I appreciate very much. We did have a couple of disagreements over how to proceed, but that is the normal process of doing business. It was done with civility during the debate and consideration of the legislation. But I am deeply grateful to him for his contributions and those of his staff. He made some good suggestions, and I thank my friend.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. JOHANNS. Mr. President, I ask unanimous consent to speak for 10 minutes as in morning business.

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

(The remarks of Mr. JOHANNS pertaining to the introduction of S. 3593 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, if there is no one on the minority side waiting to speak, I ask unanimous consent that I be allowed to speak for 4 minutes.

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

Mr. LEVIN. Mr. President, for too long, too many firms on Wall Street have had free rein to profit at the expense of their own clients, to engage in the riskiest sorts of speculation, to prosper from their risky bets when they pan out, and to have the taxpayers cover the losses when they do not pan out. For too long, there has been no cop on the beat on Wall Street.

That must end, and we can end it today by passing the Dodd-Frank bill. The legislation before us will rebuild the firewall between the worst high-risk excesses of Wall Street and the jobs and homes and futures of ordinary Americans.

The Permanent Subcommittee on Investigations, which I chair, spent 18 months and held four hearings investigating the causes of the financial crisis. The bill Senator DODD and so many others have crafted will do much to rein in the problems we identified in our four hearings and during our investigation, and I greatly appreciate the recognition of the role of our work on the subcommittee in Senator DODD's remarks last night.

This bill will prevent mortgage lenders such as Washington Mutual, the subject of our first hearing, from making ''liar loans'' to borrowers who cannot repay, from paying their salespeople more for selling loans with higher interest rates, and from unloading all the risk from their reckless loans on to the rest of the financial system.

This bill will dissolve the Office of Thrift Supervision, which looked the other way despite abundant evidence of Washington Mutual's abuses, as our second hearing showed.

This bill will bring new oversight and accountability to credit rating agencies, which, as our third hearing showed, issued inaccurate ratings that misled investors. Those ratings were paid for by the very same companies that produced the products being rated, which is a clear conflict of interest.

The bill before us will rein in the abusive practices of investment banks such as Goldman Sachs, the subject of our fourth hearing. It will sharply limit their risky proprietary trading. It will stop the egregious conflicts of interest that result when these firms package and sell investment products, often containing junk they want to dispose of, and then make a bundle betting against those very same products.

Those who claim this bill fails to rein in Wall Street cannot explain the massive amounts of effort and money Wall Street has spent to defeat this bill. If Wall Street likes this bill, it sure has a funny way of showing it.

The evidence from our investigation and from so many other sources is clear: We must put an officer back on the beat on Wall Street so the jobs, homes, and futures of Americans are not again destroyed by excessive greed. I commend Senator DODD and his staff and all those who have brought us to this historic moment. More than anything else, it is the power of Senator DODD's arguments and the deep respect for him among the Members of this body that have brought us to the finish line.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me again say to my great friend, we have served here a long time together, Senator CARL LEVIN of Michigan and I. He does a remarkable job as chairman of the Armed Services Committee and the Governmental Oversight Committee, which he also handles as well.

I am not sure my colleague was here, but I pointed out yesterday that the hearings the Senator held just prior—I am sure people think we orchestrate all these things; we look more organized than we usually are around here, but the fact is, the Senator from Michigan went off and had planned the hearings for months. The amount of work he and his staff did for months in preparation for those hearings threw a tremendous amount of light and great clarity on the subject so that the average citizen in this country could actually see—not just read something but see—a moment occurring during those 2 days when the exposure of what had occurred was so vivid and so clear. Then, frankly, it was a matter of days after that when we were on the floor considering the legislation.

As I said, I would love to tell people that was a highly organized set of events. It was purely coincidental the way it occurred. Again, those hearings that occurred publicly involved weeks and months of preparation before they were actually conducted.

So I say to my friend from Michigan, I thank him immensely for his work, for his contribution to this bill as well, not for just the set of hearings but then working to include the provisions that are a part of this legislation. The Senator has made a very valuable contribution and has highlighted a very important point.

It was fascinating to me, by the way, as to the number of former chief executive officers from major financial firms in the country who strongly endorsed what the Senator was doing. This was not merely a suggestion coming from consumer groups or labor organizations or others that one might associate with the Senator's idea. But people who literally had spent their careers in the financial services sector were strongly recommending the contributions the Senator made to the bill.

I do not think that was said often enough, that this was a significant contribution endorsed by those who understood, had worked, had earned livelihoods in this industry, who had watched an industry change dramatically over the years which subjected this country to the exposure that we are suffering from today.

So I thank my friend from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my dear friend from Connecticut. He has made such an extraordinary contribution, not just to this bill but to this Senate over the years. I cannot say enough about him, his extraordinary integrity and passion that he brings to these subjects.

Senator MERKLEY, on the proprietary trading language, of course, as the Senator from Connecticut has already recognized, is in the lead there and has been an absolutely great partner and leader on that.

But I want to especially thank the Senator from Connecticut for his passion and for his—and I was very serious about the respect with which the Senator is held in this body. Without it, without that feeling about the Senator, as well as the cause the Senator espouses with others, obviously, we would not be where we are today.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank my friend.

We are about to wrap up this long journey, now going back a long ways.

Let me mention a couple things. First of all, yesterday I included the names of the Senate Banking Committee staff who have made such a difference in the bill. I am not going to go back over all their names. They are arrayed in the Chamber. A couple of them are sitting next to me on the floor. Others are in the back. They are led by Eddie Silverman, who worked with me 20 years ago, as I arrived in the Senate. He spent decades with me and then left Senate service and went off and did other things in his life. At my request, he came back for the last year or so to be a part of this effort. So I thank a great personal friend, Eddie Silverman, for the job he did.

I thank Amy Friend, who was also deeply involved in this legislation. If I start down the list, I am going to miss somebody. That is always a danger. But I thank all of the Members for the tremendous work they have contributed to this legislation.

I thank HARRY REID, the majority leader. Again, I know I have talked about him on a couple of occasions. But if we do not have someone to help bring this all together, it does not happen.

I see my colleague from the State of Washington. I do not know if she cares to be heard. I was sort of filling in time for the next few minutes.

Let me thank the Senator. She has been an advocate with great passion on these issues. She brought a great deal of knowledge. She is someone who has spent a career herself in the area of financial services and understands this issue beyond just the intellectual and theoretical standpoint but has lived it. She saw the successes of it and the failures of it. So she brings a great wealth of information and ability to the issue.

I yield to my colleague.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank the chairman for yielding time.

I thank the Senator for his diligence, particularly in the area of the derivatives market and the fact that this legislation will be the first time—the first time—the over-the-counter derivatives market in this country will be regulated.

The fact that Congress made a mistake and said hands off to derivatives in 2000, and then an $80 trillion market exploded into what is today a $600 trillion dark market—the chairman has now made sure that for the first time ever, over-the-counter derivatives will be regulated. That means for the first time over-the-counter derivatives will have to be exchange-traded, which means there will be transparency. It is the first time over-the-counter derivatives will have to be cleared, which means a third party will have to validate whether there is real money behind these transactions.

It is the first time the CFTC will be able to enforce aggregate position limits across all exchanges, which means you cannot hide this dark market derivative money on some exchange that is not properly regulated or try to make the market across all exchanges. It is the first time things like the London Loophole will be closed so we cannot have markets and exchanges that are not regulated. So the American people will know something as dangerous as credit default swaps—which brought down our economy—that now for the first time we will have regulation of these over-the-counter derivatives.

I thank the chairman for his efforts in that area.

A $600 trillion market, which is greater than 10 times the size of world GDP, is a danger to our economy if it is not regulated. Thank God we are going to be regulating it for the first time. I would encourage all my colleagues on the other side of the aisle, who at one point in time said these are too complicated to understand—understand, they brought down our economy and understand we are going to, for the first time, regulate over-the-counter derivatives.

I thank the chairman for his leadership.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Senator from Washington. Again, I thank her for her contribution.

Mr. President, we have arrived at that moment. Let me make a parliamentary inquiry. There are two votes, as I understand it. One is on the waiver of the budget point of order, and the second vote that will occur will be on adoption of the conference report. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. Mr. President, have the yeas and nays been ordered on the waiver of the budget point of order?

The PRESIDING OFFICER. They have.

Mr. DODD. Have the yeas and nays been ordered on adoption of the conference report?

The PRESIDING OFFICER. They have not.

Mr. DODD. Mr. President, I ask for the yeas and nays on the adoption of the conference report.

The PRESIDING OFFICER? Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DODD. Mr. President, in conclusion, I express my thanks to all. I want to thank the floor staff as well, both on the minority and majority side. We have spent a lot of time together over the last year, and I am deeply grateful to them for the orderly way in which they conduct their business and how fair and disciplined they are about making sure the floor of the Senate runs so well. So I thank them immensely for their work.

I urge my colleagues to waive the point of order and to support this historic landmark piece of legislation that we hope will set our country on a course of financial stability and success in the generations to come.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 60, nays 39, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

NAYS—39

Alexander	Bennett	Brownback
Barrasso	Bond	Bunning

Burr	Graham	McCain
Chambliss	Grassley	McConnell
Coburn	Gregg	Murkowski
Cochran	Hatch	Risch
Corker	Hutchison	Roberts
Cornyn	Inhofe	Sessions
Crapo	Isakson	Shelby
DeMint	Johanns	Thune
Ensign	Kyl	Vitter
Enzi	LeMieux	Voinovich
Feingold	Lugar	Wicker

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 39. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. Mr. President, I have been conferring off and on throughout the day with the Republican leader. There will be no more votes today following final passage. That will be the last vote today.

We are going to swear in the new Senator from West Virginia at 2:15 p.m. on Tuesday. Immediately after that, as soon as that is over, at 2:30, we will vote on extending unemployment benefits.

The Republican leader and I are working on a way to move forward on small business. I think we have a pretty good path figured out on that.

After that, it is my intention to move to the supplemental appropriations bill. It appears that we are going to have to have a cloture vote. I think we can work out the time on that and not spend too much time.

I have conferred with the Republican leader at the beginning of the work period, on Monday. We have a list of things we need to accomplish before we leave here. As everybody knows, we are going to be here either 4 or 5 weeks. The leaders—Democrat and Republican—are betting on 4 rather than 5 weeks. But we need cooperation to get that done.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The yeas and nays having been ordered, the clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

NAYS—39

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

The conference report was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the conference report was agreed to and to lay that motion on the table.

The motion to lay on the table was agreed to.

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

NOMINATION OF ELENA KAGAN

Mr. SPECTER. Mr. President, I have sought recognition to state my position on the nomination of Solicitor General Elena Kagan to be Associate Justice of the Supreme Court of the United States and to comment about the appropriate role of the Senate, what is happening to the doctrine of separation of powers, and how institutionally the Senate might assert itself to stop the erosion of powers from this body to the Court and from the Congress to the executive branch.

I am supporting Ms. Kagan because of her intellect, her professional background, her academic background, and because I think she will be an effective balance in the ideological battle which is being waged in the conference room of the Supreme Court—the ideological balance which is so sorely needed at the present time.

The hesitancy I have had, as I have expressed it in the hearings, has been on the failure of Ms. Kagan to respond with substantive answers so that Senators would have a realistic idea as to where she stands philosophically on some of the very important questions of the day—not how she would decide cases but what standards she would apply if confirmed, and I will be very specific about that.

It has been especially troublesome because Ms. Kagan has been outspoken in the past about the importance of having substantive answers in nomination proceedings. She wrote a now-famous article for the University of Chicago Law Review criticizing Supreme Court proceedings on nominations by saying that they were vacuous and a farce and by name criticized Justice Ruth Bader Ginsburg and Justice Stephen Breyer for not answering questions and, in effect, criticized the Senate and Senators for not asking and pressing questions to find out where nominees stood. There was a similar article written by a young lawyer in Phoenix, AZ, named Bill Rehnquist, back in 1958, for the Harvard Law Record, where he criticized the confirmation proceeding of Supreme Court Justice Whittaker, saying that the Senate did not ask questions about the important substantive matters. During the confirmation of Chief Justice Rehnquist, I asked him a series of questions which he declined to answer; I cited his own words, and then he answered a few—not very many, just about enough to be confirmed. Which has been my conclusion, generally, having been a party now to 13 confirmation hearings. Nominees answer just about as many questions as they think they have to.

When Justice Scalia came up for confirmation in 1986, he answered virtually nothing. When the question came up about Marbury v. Madison, he said: Well, I can't answer that question. It might come before the Court.

May the RECORD show the look of amazement on the face of the distinguished Senator from Minnesota who is presiding. I was frankly amazed by it myself.

But, with the tenor of the times, following the very contentious nomination proceeding of Chief Justice Rehnquist, and other factors, Justice Scalia was confirmed handily, 98 to nothing.

I have seen him frequently at social events. I saw him at one a couple of weeks ago. I commented to a group standing with him that prisoners of war give their name, rank, and serial number, but in the Scalia nomination proceeding he would only give his name and rank. It just about amounted to that.

Following the hearing on Justice Scalia, Senator DeConcini and I were formulating a resolution which would establish standards that Senators would insist on, or could insist on—some guidance to try to get more forthcoming answers. Then we had the confirmation hearing of Judge Robert Bork, who answered questions. Judge Bork did so in a context of having very extensive legal writings, an article in the Indiana Law Journal in 1971 on original intent. In the context of that article, and books, many speeches, law review articles, I think it is realistic to say that Judge Bork had no alternative but to answer questions.

Since the Bork hearings, the pattern has evolved where nominees do not give substantive answers. It is a well-known fact of confirmation life that there are murder boards. That is what they call them, when the nominee goes down to the White House and they have practice sessions. Since that time it has been pure prepared pablum. That is what we get in these hearings.

So there had been reason to expect more from Ms. Kagan. We didn't get it. I had expressed at the hearings the concern as to how we could get answers on substantive issues and was there any way to find that out short of voting ''no,'' and rejecting a nominee? I decided it would not be sensible to vote no to issue a protest vote in the context of what has regrettably become the standard. Ms. Kagan was following the accepted practice. Why not, in the face of that strong advice from the White House and the success of all of the nominees who have stonewalled and been confirmed?

I have since discussed with a number of my colleagues the prospect of reverting to what Senator DeConcini and I had thought about in early 1987, to try to establish some standards. Not that Senators would be bound to follow them. We have our stature under the Constitution to ask questions as we choose. We cannot compel answers. Perhaps they would not be followed. But it could obviate one line of excuse that nominees have given: They better not be too specific or they may breach the standard of ethics. If the Senate were to establish standards as to what we were looking for, for confirmation—it is our constitutional role—there might be some benefit.

In looking further, to try to make a determination on the Kagan nomination, there were two of her responses which I found impressive. One was her comments about Justice Thurgood Marshall, for whom she had clerked, who was a role model. There was extensive testimony about her admiration for the way he decided cases. I inferred from that, that looking as best I could to find her philosophy, ideology, where she would stand, that she would be protective of civil rights, protective of constitutional rights, of individual rights, and respectful of rights of the Congress.

The second line of answers which she gave which I thought—and I do think—is very important is her very positive attitude about televising the Supreme Court. I will come to that in a few minutes, because there is an urgent need to find some line to have some influence on the Court as to their following precedent on stare decisis, as to their respecting the constitutional role of the Congress in fact finding. They have judicial independence and are the bulwark of the Republic. The rule of law is what makes the United States famous for the stability of our government and that is very highly prized. In the long history of this country, it has been the courts which have protected civil rights. It was the Supreme Court, as we all know, in Brown v. Board of Education, where the Court did what the Congress did not have the political courage to do, nor did the President have the political courage to do, to integrate schools in America—the best example but only one example of where the courts have stood up as a bulwark to do what the elective branches have not had the political courage to do.

Now on to the specifics, as to the concerns on the substantive questions to which Ms. Kagan did not give substantive answers. I pressed her hard on the separation of powers. We all know of the three branches of government. Congress was article I, thought by the Framers to be the most important; the executive, President, No. II; and the Court, No. III. I think if the Constitution were to be rewritten today the numbers would be changed. The Court would be No. I, and the other branches would be a distant second and third, but again the executive would be ahead of the legislative branch because of the way the Court has interpreted the law.

Coming to the first line of legislative responsibility, it is fact finding on which we make a determination of what ought to be enacted by way of public policy. The Supreme Court of the United States has changed the rules of the game. For a long time it was a ''rational basis'' test, to decide whether the record was sufficient for the legislation which was enacted.

Then, in 1997, in a case captioned City of Boerne, the Supreme Court of the United States adopted a new standard: Was the evidence proportionate and congruent; the test of proportionate and congruent. That test, with its fluidity, has been the basis for the Supreme Court legislating, taking over from the Congress. Now it is the Supreme Court which decides the sufficiency of the record on a test which is not discernible with any specificity. Justice Scalia has called the test a ''flabby test,'' which is used for judicial legislation. That was the fact in the case of United States v. Morrison, which tested at the time constitutionality of legislation to protect women against violence and there was, in the hearings leading to that important legislation, a mountain of evidence as described by Justice Souter in dissent. Yet the Court overturned that important statute to protect women against violence, citing the Congress's ''method of reasoning.'' It is a little hard to understand what that means. We are not perfect around here. There are a lot of failures in this body, especially now—even some failures across the Rotunda in the House of Representatives. But who can challenge the method of reasoning and what miraculous occurrence is there, when somebody leaves the hearing room of the Judiciary Committee, walks across Constitution Avenue, across the green from this Chamber, and suddenly is in a position to have some superior reasoning? But that legislation went down, as has so much legislation.

Another illustration is in Citizens United, where a 100,000-page report was amassed, detailing the problems with what goes on with money in politics and what the corrupting influence is. As a result, the McCain-Feingold law was passed, and, in Citizens United, the critical section was declared unconstitutional. So there you have a tremendous shift in power from the Congress of the United States to the courts, to the Supreme Court. What we legislate on our traditional standards—we have the institutional expertise, and I am going to come to that in some greater detail in a few moments, analyzing the positions which have been taken by Chief Justice Roberts and Justice Alito.

But first an analysis of a decisive shift from the power of the Congress of the United States to the executive branch, to the President. Here again I will be specific. Arguably the most dramatic historic confrontation between Congress and the President is the Foreign Intelligence Surveillance Act, which establishes the exclusive way to invade privacy and get a wiretap contrasted with the Terrorist Surveillance Program, initiated by President Bush, for warrantless wiretapping.

It was a Friday in December of 2005. I chaired the Judiciary Committee. We were in the final day on the reauthorization of the PATRIOT Act, and that morning the New York Times broke the information about this secret program of warrantless wiretapping.

As it was expressed on the floor that day, Senators who had been prepared to vote to reauthorize the PATRIOT Act declined to do so. There was an extended proceeding—which is not relevant to the specific point I am making now. But back to the point, a Federal judge in Detroit declared the Terrorist Surveillance Program unconstitutional. The case went on appeal to the Court of Appeals for the Sixth Circuit, which declined to hear the merits in a 2-to-1 decision on standing grounds.

The petition for cert. to the Supreme Court to take the case was denied, no reason given. The doctrine of standing is a very flexible doctrine, which I think, in a practical sense, although inelegantly stated, accurately stated, it is the way the Court ducks a case if they don't want to hear the case. It avoids a judicial decision. But any fair-minded reading of the dissenting opinion in the Sixth Circuit would say there was plenty of room for a judicial decision, adequate basis for standing in that case.

We currently have before the Judiciary Committee legislation on another issue which illustrates the shift of power from the Congress to the executive branch because of the failure of the Supreme Court to decide a case, and that involves the litigation brought by survivors of people killed on 9/11 against, among others, the Government of Saudi Arabia, Saudi princes, and Saudi charities, litigation where there is an enormous factual record showing the connection between financing of al-Qaida and the Saudi charities, which are really instrumentalities of the Saudi Government, and showing the financing from Saudi princes and from the government itself.

The Second Circuit denied the claim on what I think is a spurious ground, saying that Saudi Arabia is not on the list of countries declared by the State Department to be terrorist states. Well, there is an alternative under the immunity statute, and that is for tortious conduct, that is wrongful actions. Certainly that would encompass flying a plane into a building. And Senator SCHUMER, Senator LINDSEY GRAHAM, and I have introduced legislation to clarify this issue.

When an application was made for certiorari to the Supreme Court, the administration opposed having the Supreme Court hear the case on the ground that the acts by the Saudis in financing the terrorists occurred outside of the United States. That hardly is a rational basis when you plot in Saudi Arabia and pay money to bring terrorists to the United States, to board airplanes, to hijack the planes to fly into American buildings, to fly and crash in Pennsylvania, fly and crash into the Pentagon. That certainly happened in the United States. It is arguably the most barbaric conduct in the history of mankind, certainly among the terrorists.

Now I mention these cases because when I pressed Ms. Kagan—and others did—what standard would you apply? Going back to the factfinding, the two standards are proportionate and congruent, contrasted with rational basis.

Now, that is not asking a nominee to decide a case; that is asking a nominee to decide a standard—certainly well within the ambit of Ms. Kagan's famous law review article in 1995. But she simply stated she would not answer.

On the cases involving the terrorist surveillance program and on the 9/11 litigation, would she grant to hear the case—not how she would decide the case but would she take the case? Again, a refusal to answer the question.

So in this context, we are really searching for ways to find out more about the nominees, and Ms. Kagan has said just enough to get my vote because of voting my hopes, rather than my fears, that she will be in the mold, as a general sense, of Justice Thurgood Marshall and also because of her position on television, which I think has the potential for being a very ameliorating factor in what goes on in the Supreme Court, and that is the business of publicity.

The famous article "What Publicity Can Do" by lawyer Louis D. Brandeis back in 1913 provides insights as to where we might go in the modern world with television. In that article, Brandeis made the famous statement that, "Sunlight is said to be the best of disinfectants." Well, that may be a little strong for these circumstances. We are not exactly looking at it as a disinfectant, but neither was Brandeis, and he was really talking about publicity as the way to deal with problems in our society. I believe that if we had publicity and people understood what was going on, there would be a realistic chance to have the Court respect the powers of Congress and have the Court respect the separation of power between the President and the Congress.

I now turn to the confirmation proceedings as to Chief Justice Roberts and Justice Alito, which bear very heavily on this subject. Both of the nominees were questioned at length during the course of the nomination proceeding, and this is what Chief Justice Roberts testified to on the question of factfinding:

> The reason that Congressional factfinding and determination is important is because the courts recognize they can't do that. The Supreme Court cannot sit and hear witness after witness in a particular area and develop that kind of a record. Courts can't make the policy judgments about what type of legislation is necessary in light of the findings that are made. The courts don't have it, Congress does. It is constitutional authority. It is not our job.

He goes on to say:

> When the courts engage in factfinding, they are really, in effect, legislating.

These are his exact words in the confirmation hearing:

> As a judge, you may be beginning to transgress into the area of making a law. That is when you are in a position of reevaluating legislative findings because that doesn't look like a judicial function.

This is what Justice Alito had to say in his confirmation hearing:

> The Judiciary is not equipped at all to make findings about what is going on in the real world, not this sort of legislative findings. And Congress, of course, is in the best position to do that. Congress can have hearings and examine complex social issues, receive statistical data, hear testimony from experts, analyze that and synthesize that and reduce that to the findings.

These two Justices were in the five-person majority which disregarded 100,000 pages of congressional findings to make a declaration that McCain-Feingold was unconstitutional.

Then you had the similar issue of stare decisis.

The best way to limit judicial activism is by respecting what the Congress has done on factfinding, and when the Court disregards congressional factfinding and substitutes its own judgment on policy, they are making the law. That is conceded by the citations I have read.

Then there was extensive questioning of both Chief Justice Roberts and Justice Alito on the issue of stare decisis.

This is what Chief Justice Roberts had to say, in part, about stare decisis:

> I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness. It is not enough that you may think the prior decision was wrongly decided.

Justice Alito said about the same thing, in part:

> It is important—

That is, stare decisis is important—

> because it limits the power of the judiciary. It is important because it protects reliance interests.

These are two of a five-person majority which decided in Citizens United that McCain-Feingold was unconstitutional.

This is what Seventh Circuit Judge Richard Posner, a distinguished jurist and a commentator on the Court, had to say about the role of Chief Justice Roberts in these decisions, coming from his book "How Judges Think":

> Less than two years after his confirmation, he demonstrated by his judicial votes and opinions that he aspires to remake significant areas of constitutional law. The tension between what he said at his confirmation hearing and what he is doing as a justice is a blow to Roberts's reputation for candor and further debasement of the already debased currency of the testimony of nominees at judicial confirmation hearings.

In going into these issues, as to the contrast between what Chief Justice Roberts and Justice Alito testified to and what they have done once on the Court, I do not challenge their good faith. I understand the difference between what happens in a judicial confirmation hearing and what happens in court when there is a case in controversy to be decided by the Justices of the Supreme Court. But these variations are so stark that had there been an understanding by Senators on these confirmation hearings as to the judicial philosophy and how factfinding would be handled in court and how precedents and stare decisis would be handled in court, to take the opinion by Chief Justice Roberts, his concurring opinion in Citizens United where they disregarded the Austin case as an "aberration"—there is your license to eliminate stare decisis: the case is an aberration, down the drain. So what happened to precedent? Is Roe v. Wade safe based on that standard? I questioned Chief Justice Roberts at length about Roe v. Wade and the successor case, Casey, and how the case stood.

Austin was not reversed when the Supreme Court had an opportunity to do so. Chief Justice Roberts says in his opinion: Well, nobody asked the Supreme Court to reverse the Austin case. Well, the way the Court reached for the Hillary movie in Citizens United, the way they reconstructed the issue, you do not have to—it is a thin veneer to say that the Court is guided and that it is determinant who raises an issue and who asked the Court for a decision.

What can be done to have Justices adhere to standards agreed to at their hearings? I spoke earlier about the sanctity of judicial independence and how the Court is the bulwark of our Republic and the rule of law. The most promising idea that I have found is to demonstrate to the public what the Court does, how powerful the Court is, and how it makes decisions on the cutting edge of all of the judgments in society. It decides who lives and who dies, a woman's right to choose. It decides on late-term abortion. It decides on the death penalty. It decides whether juveniles may be executed for crimes committed below the age of 18. It decides affirmative action, who goes to school, who gets into the best colleges, who gets a job. It decides assisted suicide. It decides cases of international law. It is the ultimate arbiter on all the cutting-edge issues.

America is cited as being the most litigious country on the face of the Earth, but there is not an understanding among the public as to how far the power of the Supreme Court is, how they have taken it from the Congress, how they have let the executive branch take it from the Congress.

In an article published yesterday in the Washington Post, Stuart Taylor, Jr., a noted commentator on the Supreme Court, had some interesting observations on this precise subject. This is what he wrote in part:

The key is for the Justices to prevent judicial review from denigrating into judicial usurpation.

This goes right to the point of separation of powers, to defer far more often to the elected branches. Well, that is the Congress. That is the hue and cry. That is the question asked every time we have a confirmation hearing in the Judiciary Committee: Will you interpret the law rather than make the law? But these are matters where demonstrably they make the law.

Then Taylor goes on to write:

. . . the justices know that as long as they stop short of infuriating the public, they can continue to enjoy better approval ratings than Congress and the President, even as they usurp those branches' powers.

This is an interesting test, the first time I have seen it articulated this way. It is the ''infuriating the public test.'' Whatever you may say in a democracy, in our society, the public has the ultimate power, and it is felt in many ways, perhaps even by osmosis. But wherever you go, when the public attitude changes on segregation, the Supreme Court changes the decision. When the public attitude changes on sexual orientation, the Supreme Court's position changes on sodomy cases. When we find so many States recognize same-sex marriage, it is a change recognized by the courts, as the Massachusetts court recently did in declaring the Defense of Marriage Act unconstitutional. It wouldn't have happened when it was passed 86 to 14 in the Senate of the United States in 1996. So how do we activate the doctrine of ''infuriating the public''?

The best way, to my knowledge, is to televise the Court. In that magnificent chamber across the green from where I stand, we have a room which seats about 300 people fighting to get in there for about 3 minutes. That is where the most important business of the country is being conducted. Years ago the Supreme Court decided that when it came to judicial proceedings newspapers had a right to be in the courtroom. That same logic would give television cameras and electronic radio similar rights to inform the public. That was a case in 1940. Today the information is gleaned largely from television and, to a lesser extent, by radio. So if the public knew what was going on in the Supreme Court, if they understood it, there would be a chance that they would be a little more respectful of the constitutional doctrine of separation of powers.

When the case of Bush v. Gore was scheduled for argument, then-Senator BIDEN and I wrote to Chief Justice Rehnquist asking that television cameras be permitted inside the courtroom. To get inside the courtroom that day, one practically had to be on the Judiciary Committee. It was packed. Americans should have been able to see it.

Surrounding the building on all sides were mobile television units. I am not sure exactly what they were doing. The most they could have would be standups outside the chamber because they couldn't get inside the chamber. That day the Supreme Court did release an audio of the proceedings, which was a novelty at that time. They have done that occasionally since, but relatively rarely.

Mr. President, in the face of these factors, I have been pressing for more than a decade for legislation to televise the Supreme Court. It has come out of the Judiciary Committee, once 12 to 6, and, most recently this year, 13 to 6, first, a legislative proposal which would call for the Supreme Court to be televised and, second, a sense-of-the-Senate resolution urging the Supreme Court on its own to be televised.

I believe as a legal matter that the Congress has the authority to require the Supreme Court to be televised. I say that because it is an administrative function. Congress has the authority to decide, for example, how many Justices there will be on the Court, illustrated by the famous Roosevelt Court packing plan where the effort was made to raise the number from 9 to 15 new faces to control the decision. The Congress by law establishes the number of Justices—six—for a quorum. The Congress decides that the Court will begin its session on the first Monday in October. The Congress has set the time limits on habeas corpus matters in the appellate system under the Speedy Trial Act. I think a strong case—in fact, the appropriate conclusion—is that Congress has the authority to act in this field.

There are now cameras in the United Kingdom's Supreme Court. They are now televised in Canada. They are now televised in many State supreme courts. They are now televised in two Federal appellate courts.

A recent poll was conducted and released on the day of the start of hearings on Solicitor General Kagan. That poll, conducted by C–SPAN, showed that 63 percent of the American people think the Court ought to be televised. Among the 37 percent who said no, when they were told that the proceedings are open to the public but people have to come to Washington to see them and can only stay for 3 minutes, most of those folks decided they ought to have television.

So the number went from 63 to 85 percent of the American people who think the Supreme Court ought to be televised. That is a pretty good indication that the Congress ought to act; that if the Supreme Court will not open its doors on a voluntary basis, the Congress ought to respond.

On recent nominations I have asked every nominee: What is your attitude on television? I was pleased. Both in the informal meeting with Ms. Kagan and in her testimony before the Judiciary Committee, she said she was in favor of television; that the more information the public has, the better off our society is. It is a pretty obvious conclusion, but she would press the issue if seated.

Another key factor in my affirmative vote for Ms. Kagan is her sense of humor, her quick wit, which she displayed. She was even almost a match for the distinguished junior Senator from Minnesota, who has had some expert experience in that line. I think that will stand her in good stead in the ideological battle in that small conference room where these big decisions are made.

Chief Justice Roberts said he would be open to the idea. Justice Alito testified he voted for it on the Third Circuit but would want to confer with his colleagues. I believe Justice Breyer said in a hearing on the budget in the House of Representatives a few months ago that television was inevitable. Justice Ginsburg was quoted at one point as saying that if it were gavel to gavel, it would be satisfactory. Justice Scalia has been negative about it most of the time because there would only be snippets, but if some way could be found to have gavel to gavel so that it was not just a snippet, there may be some flexibility on his part.

It is an item whose time has come because, institutionally, we ought to be doing something about it in the Senate. Institutionally, we have the responsibility to confirm. We aren't doing a very good job of finding out what a reasonable understanding is of where these nominees are heading. While we are fiddling, our institutional power is burning. If we lose much more of it, what we legislate to will not amount to a tinker's dam when the Supreme Court disagrees with our factual findings no matter how voluminous and solid they may be. What power is left is going to gravitate down Pennsylvania Avenue to the White House. So it is time to sit up and take notice.

Ms. Kagan quoted me in her 1995 Law Review article, saying that I said one day the Senate is going to have to stand up on its rear legs and reject a nominee. Well, now is not the right day, in my opinion, for the reasons I have said.

One other point I want to make. I would ask how much time I have remaining, but I think a more appropriate question would be how much time have I gone over?

The PRESIDING OFFICER (Mr. FRANKEN). The Senator has consumed his time.

Mr. SPECTER. What is the answer to my question?

The PRESIDING OFFICER. Seventeen minutes extra.

Mr. SPECTER. Extra?

The PRESIDING OFFICER. Yes.

Mr. SPECTER. Mr. President, I ask unanimous consent for 4 more minutes.

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

Mr. SPECTER. Only one colleague is present. He is the congenial junior Senator from Florida. I thank my colleague.

I want to make one more point. That is on the issue of the Supreme Court taking more cases. Here again, if there was transparency, America would be outraged at the workload on the Supreme Court, as the Court has moved from one clerk, to two clerks, to three clerks, to four clerks. And I do not begrudge them the time between the session ending in late June and the first Monday in October, where they travel and lecture and write books. But I am much concerned about the circuit splits.

For anyone who may be watching on C–SPAN2—and I know my aunt and sister are watching—these cases are very important because if the Third Circuit, having Pennsylvania, New Jersey, and Delaware, decides a case one way and the Ninth Circuit, governing the Western States, decides it another way, and the case arises in Wichita, KS, nobody knows which precedent to follow because the circuits are autonomous.

There are many important cases which the Supreme Court does not decide when there are circuit splits and they have time to decide them. They have time to decide the conflict between the Foreign Intelligence Surveillance Act and the Terrorist Surveillance Program. They have time to hear the case involving the 9/11 terrorist attacks and sovereign immunity.

But these are the statistics which are very informative: In 1886, the Supreme Court decided 451 cases. In 1987, the Supreme Court wrote 146 opinions. That was cut by less than half in 2006 to 68, in 2007 to 67, in 2008 to 75, 2009 to 73; this in the face of Chief Justice Roberts's testimony at his confirmation hearing that the Supreme Court ought to hear more cases. Ms. Kagan said about the same thing. My recollection is that Justice Sotomayor said about the same thing.

So here, again, it is a matter of the public understanding it. We are very conscious in this body about not missing votes. When I miss votes, it appears in the Philadelphia Inquirer or the Pittsburgh Post-Gazette. The public does not like to see ARLEN SPECTER missing votes. I am paid to vote.

Well, you cannot vote on a case if you do not take a case. But having the discretion not to take the case just leaves this level of workload with circuit splits undecided, and this is something which ought to be handled.

I have legislation pending to compel the Supreme Court to take, for example, the Terrorist Surveillance Program litigation. Most people do not know, but Congress cannot decide cases for the Court. The Congress can mandate what cases they take, as we did the flag burning case, as we did McCain-Feingold, and many other cases.

So it is my hope that when we confirm Ms. Kagan—and it looks like we will confirm her—we will pause on the nomination proceedings and focus on their utility, if not to get substantive answers to see what intellectual dexterity the nominee has, but providing an opportunity to review what the Court is doing. We have to bone up on what happened since the last nomination proceeding. I think the record is open to substantial question. I think those questions could be answered for the reasons I have given, if we move ahead with television.

Mr. President, in conclusion, I ask unanimous consent that a full copy of the text of my prepared statement be printed in the RECORD with these exact words so people will understand what I have said up until now is repeated to some extent in the formal written statement. Mr. President, I refer my colleagues to the two letters which I wrote to Chief Justice Roberts in anticipation of his nominating proceeding, three letters I wrote to Justice Alito, three letters I wrote to Justice Sotomayor, and three letters I wrote to Ms. Kagan. All have previously been printed in the RECORD.

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

Mr. President, I have sought recognition to speak on the nomination of Solicitor General Elena Kagan to be an Associate Justice of the Supreme Court of the United States. General Kagan comes before us with an impressive background. She received her bachelor's degree summa cum laude from Princeton University, her master's degree through a prestigious fellowship at Oxford University, and her law degree magna cum laude from Harvard Law School. She was a clerk for Judge Abner Mikva of the DC Circuit and for Supreme Court Justice Thurgood Marshall. She practiced law at a top private firm, Williams & Connolly, and served as special counsel on the Senate Judiciary Committee. General Kagan was an associate White House counsel to President Bill Clinton and Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council. General Kagan has taught constitutional and administrative law as a tenured professor at two of the country's best law schools, Harvard and the University of Chicago. A breaker of glass ceilings, General Kagan became the first female Dean of Harvard Law School and the first female Solicitor General of the United States, in which capacity she argued six cases before the Supreme Court. Given these extraordinary credentials, it is little surprise that the American Bar Association's Standing Committee on the Federal Judiciary gave General Kagan a unanimous ''well-qualified'' rating.

One characteristic of General Kagan which, I think, is a subtle but important trait is her sense of humor. She is a real intellectual beyond any question. And I think that since the Court is an ideological battleground, it is good to have somebody there to go against the ideologues, like Justice Scalia in particular. A sense of humor is, in my opinion, a high level intellectual characteristic. General Kagan is very good at humor. As I said in the hearing, that trait is very much to her credit because it demonstrates that she's fast on her feet and I suspect it will serve her well as she sits with her colleagues at that intimate conference table and casts her votes on cases of monumental import.

In addition to her impressive resume and quick wit, General Kagan brings with her a striking show of support from lawyers representing all points on the ideological spectrum. The outpouring of accolades from conservatives includes the testimony of Professor Jack Goldsmith of Harvard Law School, a respected scholar whose own views are much closer to those of Justice Scalia than to those of General Kagan. Professor Goldsmith, who served in the Bush Department of Justice and Department of Defense, had this to say about Elena Kagan:

Based on my experiences with Kagan, my reading of her scholarly work, and my assessment of her very successful legal career, I believe that she will be a truly outstanding Supreme Court Justice. I urge this Committee to approve her nomination and the entire Senate to confirm her.

Professor Goldsmith also testified to General Kagan's deep knowledge of the areas of law which arise often before the Court. ''As an academic,'' he explained, ''Kagan taught and was expert in constitutional law, administrative law, First Amendment law, civil procedure, and labor law. These subjects constitute a large chunk of the Supreme Court's docket . . . Elena Kagan is immensely qualified to serve on the Supreme Court. She should be easily confirmed.''

Professor Goldsmith is not alone in his effusive praise for General Kagan; many other conservatives have expressed strong support for her confirmation. Miguel Estrada, a conservative lawyer nominated to the D.C. Circuit by President Bush, wrote in his letter of support that ''Elena possesses a formidable intellect, an exemplary temperament and a rare ability to disagree with others without being disagreeable . . . Elena is an impeccably qualified nominee.''

Professor Michael McConnell, a constitutional law expert at Stanford and a former Bush-appointed federal appellate court judge, also speaks highly of General Kagan. He writes,

On a significant number of important and controversial matters, Elena Kagan has taken positions associated with the conservative side of the legal academy. This demonstrates an openness to a diversity of ideas, as well as a lack of partisanship, that bodes well for service on the Court . . . Publicly and privately, in her scholarly work and her arguments on behalf of the United States, Elena Kagan has demonstrated a fidelity to legal principle even when it means crossing her political and ideological allies.

This perspective is shared by conservative legal scholar and former Judiciary Committee aide to Senator John Cornyn, Professor Brian Fitzpatrick of Vanderbilt Law School. Professor Fitzpatrick, who was General Kagan's student in administrative law at Harvard, wrote: ''The best those of us on my side of the aisle can hope for at this time are Supreme Court nominees who are thoughtful and open minded, with views nearer the center than the poles. There is little doubt that Elena fits this bill. In my experience, her ideas have been more than reasonable, and she has always treated those who may disagree with her with respect and understanding.''

General Kagan has also received strong support from legal scholars and practitioners with moderate or progressive views. The depth of her bipartisan support is clear from a letter written by eight former Solicitors General—five Republicans, three Democrats. According to their letter, Elena Kagan ''would bring to the Supreme Court a breadth of experience and a history of great accomplishment in the law.'' Additionally, the former Chief Judge of the D.C. Circuit and Carter appointee Patricia M. Wald wrote of General Kagan,

She is an extraordinarily smart lawyer with a practical bent of mind. Her significant exposure as a law clerk and Solicitor General to the way in which courts of appeal as well as the Supreme Court operate, to the thrust and parry of dueling theories in the academy and finally to the competing demands at the highest level of government policymaking provide a broad spectrum of experience on which she can draw in the important post of Justice.

The praises of Judge Wald, who served on the D.C. Circuit while General Kagan worked there as a law clerk for Judge Abner Mikva, are echoed by Kagan's colleagues from the world of academia. The former Dean of Notre Dame Law School, Professor Patricia A. O'Hara, wrote in her letter of support that General Kagan ''possesses a powerful intellect . . . She listens to the views of others, adds her own, exhibits respect for differences of opinion, and cogently makes her case.'' In addition, the deans of 56 law schools, including the top schools in the nation, expounded on General Kagan's personal attributes, intellectual prowess, and legal experience, arguing for swift confirmation. They wrote,

Elena Kagan excels along all relevant dimensions desired in a Supreme Court Justice. Her knowledge of law and skills in legal analysis are first rate. Her writings in constitutional and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law, with a deep understanding of both doctrine and policy. In terms of intelligence as intellectual ability, she is superbly qualified to sit on the United States Supreme Court . . . She was a superb and successful dean, among other reasons, because of her willingness to listen to diverse viewpoints and give them all serious consideration.

Prominent legal organizations also spoke out in favor of General Kagan's nomination, including the American Bar Association, the National District Attorneys Association, and the National Association of Women Judges. The consensus among these groups is that General Kagan is well-qualified for the position of Supreme Court Justice. It should also be mentioned that noted attorney and past President of the American Bar Association Jerome Shestack wrote in favor of General Kagan, saying that ''Our Court and nation will be well served if Elena Kagan becomes a Justice of the Supreme Court.''

General Kagan's diversity of experience—in private practice, in academia, in the executive branch, and in Congress as an aide to the Judiciary Committee—has clearly cultivated in General Kagan a deep and penetrating understanding of the impact of law on people's lives. By practicing, teaching, and studying the law from a broad array of perspectives, Elena Kagan has prepared herself well for the work of an Associate Justice of the Supreme Court.

The Fourteenth Amendment (which prohibits states from denying any person within their borders the equal protection of the laws or depriving them of life, liberty, or property with due process of law) and the Fifteenth Amendment (which prohibits both the federal government and the states from denying any citizen the right to vote ''on account of race'') give Congress strong remedial power to enforce their commands. It is critical that the Court not stand in the way of its exercise. The enforcement of the amendments' substantive provisions depends on whether private citizens can enforce their rights against states in federal and state courts. Whether they can depends, in turn, on whether Congress can abrogate the states' Eleventh Amendment immunity from suits by private parties. The Supreme Court has held that Congress cannot abrogate Eleventh Amendment immunity under its Article I powers (including its Commerce Clause powers). Only through its remedial powers under the Fourteenth and Fifteenth Amendments can Congress do so.

Until 1997, the Court required no more of federal legislation passed under the Fourteenth and Fifteenth Amendments than that it satisfy a ''rational basis'' test. That is same test that governs legislation enacted under Congress's Article I powers, including its power to regulate interstate commerce, as I noted during the hearing when I cited Justice Harlan's 1968 Commerce-Clause decision in Maryland v. Wirtz. As the Supreme Court explained in South Carolina v. Katzenbach (1966), Congress could ''use any rational means to effectuate the constitutional prohibition[s]'' of the Fourteenth and Fifteenth Amendments. A strong presumption of constitutionality attended the rational basis standard. With one anomalous exception, every civil rights statute of the twentieth century tested in the Court under this rational basis standard was upheld as a permissible exercise of Congress's remedial authority.

That all changed in 1997 with the Court's decision in City of Boerne v. Flores. The Court there abandoned the rational-basis test and, citing no precedent, held that ''there must be congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'' This worked a sea change in the relationship between Congress and the Court. As Justice Scalia observed in Tennessee v. Lane (2004), the ''congruence and proportionality standard, like all flabby legal tests, is a standing invitation to judicial arbitrariness and policy-driven decisionmaking. . . . [I]t casts . . . [the Supreme] Court in the role of Congress's taskmaster. Under it, the courts . . . must regularly check Congress's homework to make sure that it has identified sufficient constitutional violations to make its remedy congruent and proportional.''

Wielding the congruence-and proportionality test, the Court has, again in Justice Scalia's words, come into ''constant conflict'' with Congress. It has, among other things, struck down the provision of the Age Discrimination in Employment Act that prohibits age discrimination in employment by states (Kimel v. Florida Board of Regents (2000)), the provision of the Americans with Disabilities Act prohibiting states from discriminating against disabled persons in employment (Board of Trustees of the University of Alabama v. Garrett (2001)), and the provisions of the Violence Against Women Act that created a federal civil remedy for the victims of gender-based crimes against private parties (United States v. Morrison (2000)). In Morrison, the Court refused even to sustain the challenged provisions on the alternative ground that Congress could prohibit gender-based crimes under its Article I authority—long considered to admit of few, if any, justiciable limitations—to regulate interstate commerce. This was just the second time since the New-Deal era that the Court struck down a federal statute on the ground that Congress exceeded its Article I power to regulate commerce.

Of the few federal statutes that survived Constitutional muster under the congruence-and-proportionality test, most survived by only slim margins. Chief among them were the provisions of the Family and Medical Leave Act (FMLA) governing state employment practices challenged in Nevada Department of Human Resources v. Hibbs (2003). There was no principled basis to uphold the FMLA in Hibbs but not, say, the ADA in Garrett. The Court's post-Boerne cases illustrate, as Justice Scalia has noted, that the congruence-and-proportionality test often allows the Supreme Court to go any which way and the Justices to indulge their own personal policy preferences.

Most significantly, in applying the congruence and proportionality test (and, in Morrison, in evaluating the challenge statute's constitutionality under the Commerce Clause), the Court has cast aside legislative findings justifying remedial legislation as it has never before done. Each of the cases striking down federal civil rights legislation—including Kimel, Garrett, and Morrison—involved extensive Congressional factual findings justifying the legislation. The Court even went out of its way in Morrison to disparage the ''method of reasoning'' that underlay Congress's unassailable finding that gender-based crimes have a substantial effect on interstate commerce. This prompted Justice Souter, in a dissent joined by three other justices, to decry the Court's long-standing practice of assessing no more than the ''rationality of Congressional conclusions.'' Justice Souter's criticism reflects the once-dominant view that, in Laurence Tribe's words, only ''Congress has the institutional competence,'' including the fact-finding capabilities, to evaluate what practices threaten the Fourteenth Amendment's guarantees.

General Kagan, it seems to me, acknowledged the crazy quilt of decisions in cases where the Court was reviewing statutes enacted through Congress's remedial authority under Section 5 of the Fourteenth Amendment. Though she did not prejudge the congruence-and-proportionality test by affirmatively labeling it ''unworkable,'' she did go pretty far in repeating criticisms of the test and in acknowledging that its application is unfair to Congress.

While General Kagan was not as forthcoming as she ought to have been, or as forthcoming as her law review article stated nominees should be, she did do a better job of answering questions than most nominees have done.

When I criticized Chief Justice Rehnquist's denigration of Congress's ''method of reasoning'' in Morrison and asked ''do you think there is some unique endowment when nominees leave this room and walk across the street to have a method of reasoning which is superior to [the] congressional method of reasoning so that a court can disregard voluminous records because of our method of reasoning?'' General Kagan replied, ''Well, to the contrary . . . I think it's extremely important for judges to realize that there is a kind of reasoning and a kind of development of factual material more particularly that goes on in Congress.'' She continued, ''I think it is very important for the courts to defer to congressional fact finding, understanding that the courts have no ability to do fact finding, are not, would not legitimately, could not legitimately do fact finding.'' Furthermore, General Kagan said, ''I have enormous respect for the legislative process. Part of that respect comes from working in the White House and working with Congress on a great many pieces of legislation.''

After contrasting Justice Harlan's test in Wirtz with the congruence-and-proportionality test that Justice Scalia criticized in Lane, I asked General Kagan, ''would you take Harlan's test as opposed to the congruence and proportionality test'' and she replied, ''Justice Scalia is not the only person who has been critical of the test. A number of people have noted that the test which is of course a test relating to Congress' power to legislate under Section 5 of the Fourteenth

Amendment, that the test has led to some apparently inconsistent results in different cases.'' I followed up stating, ''What I want to know from you is whether you think that is an appropriate standard to replace the rational basis test of Wirtz?'' General Kagan responded, ''Now . . . there are times when the Court decides that a precedent is unworkable. It just, it produces a set of chaotic results.'' When I asked whether the congruence-and-proportionality test was unworkable General Kagan testified, ''I think that the question going forward, and it is a question, I'm not stating any conclusion on it, but I think that something that Justice Scalia and others are thinking about is whether the congruent and proportionality test is workable or whether it produces such chaotic results . . . .'' General Kagan further testified that she knew ''that Congress needs very clear guidance in this area. It is not fair to Congress to keep moving the goal posts. It is not fair to say oh well, you know, if you do this this time it will be okay but if you do that the next time it won't.''

While General Kagan refused to say whether, if confirmed, she would apply the congruence-and-proportionality standard to test the constitutionality of remedial legislation enacted under the Fourteenth Amendment, she did at least express serious reservations about that standard. She noted that the standard had been subject to ''significant criticism'' and, more importantly, that ''it's produced some extremely erratic results.'' She added: ''There seems to me real force in the notion that a test in this area dealing with Congress' section 5 powers [under the Fourteenth Amendment] really needs to provide clear guideposts to Congress so that Congress knows what it can do and know what it can't do. And so the goal posts don't keep changing and so . . . Congress can . . . pass legislation confident in the knowledge that legislation will be valid. And I think those concerns are of very significant weight.'' None of General Kagan's predecessors (Justice Sotomayor, Justice Alito, and Chief Justice Roberts)—all of whom I questioned about Congress's Fourteenth-Amendment powers—was as forthcoming. General Kagan also said that Congressional fact findings are entitled to ''great deference.''

When I later returned to the question of whether Justice Kagan would apply a rational basis test or a congruence-and-proportionality test when reviewing congressional facts General Kagan replied, ''as I understand it, the congruence and proportionality test is currently the law of the [C]ourt, and notwithstanding that, its been subjected to significant criticism and notwithstanding that its produced some extremely erratic results. And I can't . . . sit at this table without briefing, without argument, without discussion with my colleagues and say, well, I just don't approve of that test, I would reverse it.''

When I cited Justice Stevens' dissent in Citizens United and asked General Kagan ''what deference [she] would show to congressional fact finding'' she replied, ''the answer to that is great deference to congressional fact finding.'' When I asked General Kagan if there was ''any way you could look at Citizens United other than it being a tremendous jolt to the system'' she replied, ''this is one that as an advocate, I have taken a strong view on which is that it was a jolt to the system. There was a great deal of [reliance] interests involved and many states had passed pieces of legislation in reliance upon Austin that Congress had passed legislation after accumulating a voluminous record.''

I also asked General Kagan about cases regarding Sovereign Immunity and Federal Court Jurisdiction. One of the two cases involving the jurisdiction of the federal courts was Weiss v. Assicurazioni Generali, S.P.A., 529 F.3d 113 (2d Cir. 2010). It was brought by victims of the Holocaust and their heirs to recover on unpaid World War II-era insurance policies issued by an Italian insurance company. Just a few months ago, the United States Court of Appeals for the Second Circuit affirmed the dismissal of the plaintiffs' claims on the ground that they were preempted by an Executive-branch foreign policy favoring the resolution of such claims through an international commission. The Second Circuit did so in reliance on the Supreme Court's 2003 decision in American Insurance Association v. Garamendi. There the Court held that this policy, though not formalized in an executive agreement (let alone a Senate-ratified treaty), preempted a state law requiring insurers to disclose information about certain Holocaust-era insurance policies. Among the important questions presented by Generali is whether the executive branch can shut the courthouse doors on litigants in the absence of Congressional authorization. I asked General Kagan whether, if confirmed, she would vote to grant cert. in the Holocaust case and she replied, ''this is difficult for me because, as I understand this, this is a live case and I continue to represent one of the parties in this case. In other words, there may very well be a petition for certiorari in this case, but I continue to be Solicitor General and—and would head the office that would have to respond to a petition.''

The other case involving the jurisdiction of the federal court was In re Terrorist Attacks on September 11, 2001, 538 F.3d 113 (2d Cir. 2009). This litigation was brought by over 6,000 victims of the September 11 terrorist attacks against, among other defendants, the Kingdom of Saudi Arabia and five Saudi princes. The plaintiffs asserted various claims arising from their allegation that Saudi Arabia financed the attacks. The United States Court of Appeals for the Second Circuit ruled that Saudi Arabia was immune from suit under the Foreign Sovereign Immunities Act (FSIA). In a brief filed on behalf of the United States, Solicitor General Kagan urged the Court not to hear the case even though she conceded that the Second Circuit had effectively nullified the key statutory exception to sovereign immunity on which the plaintiffs had relied. I raised the case at Solicitor General Kagan's confirmation hearing because of the key objective underlying the FSIA: to take sovereign immunity determinations away from the executive branch (which until enactment of the FSIA had made discretionary immunity determinations on case-by-case basis) and vest them the courts (which would make immunity determinations according to the FSIA's objective, non-discretionary statutory criteria). I asked General Kagan, ''As a justice, would you vote to take that kind of case?'' General Kagan responded, ''the government did argue, based on very extensive consultations, that the Supreme Court ought not to take that case, and that continues to be the government's position. You know, I don't think it would be right for me to undermine the position that we took in that way by suggesting it was wrong.''

Another case I raised with Solicitor General Kagan concerned the constitutionality of the Bush Administration's secretive Terrorist Surveillance Program (TSP). The TSP brought into sharp conflict Congress's authority under Article I to establish the 'exclusive means' for wiretaps under the Foreign Intelligence Surveillance Act with the President's authority under Article II as Commander-in-Chief to order warrantless wiretaps. The TSP operated secretly from shortly after September 11, 2001, until December 2005, when The New York Times exposed the existence of the program. In August 2006, the United States District Court for the Eastern District of Michigan found the program to be unconstitutional. In July 2007, the Sixth Circuit reversed on the ground that the plaintiffs lacked standing to sue. One judge on the three-judge panel , Judge Gilman, dissented. Judge Gilman noted that ''the attorney-plaintiffs in the present case allege that the government is listening in on private person-to-person communications that are not open to the public. . . . [T]he attorney-plaintiffs have thus identified concrete harms to themselves flowing from their reasonable fear that the TSP will intercept privileged communications between themselves and their clients.'' The Supreme Court denied certiorari without explanation. I asked her about the Court's reticence to take up the Sixth Circuit's decision in the Terrorist Surveillance Program (TSP) case and General Kagan testified, in part, ''In a case where the executive branch is determined or is alleged, excuse me, is alleged to be violating some congressional command, it is I think one of the kinds of cases that the [C]ourt typically should take.'' She called this a third specie of case, aside from circuit splits and those that strike down statutes on constitutional grounds, where there ''is an issue of some vital national importance.''

I later asked her ''would you vote to take that kind of case?'' General Kagan responded, in pertinent part, ''Well . . . I do think that this is a case that, as I understand it, generally falls within the third category of case, a case which presents an extremely important Federal issue as to whether the executive has overstepped its appropriate authority and has essentially flouted legislation in the area.''

When I referenced the Court's declining docket and the need to resolve more circuit splits of authority, General Kagan responded, ''I do generally agree with that. I clerked on the [C]ourt in 1987 which was pretty much at the high point of what the [C]ourt was doing, about 140 cases a year.'' She went on to testify, ''I do agree with you that there do seem to be many circuit conflicts and other matters of vital national significance.''

Although General Kagan failed, in many instances, to adhere to her own standard of providing forthcoming and detailed answers during her confirmation hearing, there is much that we can glean from her record prior to her nomination. Since nominees have a vested interest in saying whatever will get them confirmed, and since past nominees have not always decided cases in line with their testimony at nomination hearings, in many ways a nominee's prehearing record is more reliable than her confirmation hearing testimony.

While General Kagan refused to say whether, if confirmed, she would apply the congruence-and-proportionality standard to test the constitutionality of remedial legislation enacted under the Fourteenth Amendment her pre-hearing record on the issue, though limited, strongly suggests that she shares my concerns about the denigration of Congressional power. I refer to her notes of two (un-transcribed) speeches she gave in 2003 (one to Princeton alumni) the other to an audience at the University of Minnesota Law School). The notes suggest that, contrary to the position taken by Justices Kennedy, Scalia, and Thomas, as well as former Chief Justice Rehnquist and Justice O'Connor, General Kagan believes that the Court should give Congress substantial deference, especially when legislating under its Fourteenth Amendment authority. In a May 21, 2010, article, The Wall Street Journal characterized General Kagan's views as expressed in one of the speeches as follows: ''The piece, in short, seems to suggest that in at least one key area, she would be an arbiter of judicial restraint, prone to giving considerable deference to Congress. . . . [S]he says [that] courts should defer to Congress when the framer of the Constitution clearly authorized legislators to exercise power. Such a clear authorization, she says, can be found in section 5 of the 14th Amendment. . . . So, Kagan concludes, courts should defer to Congress when it takes actions to effectuate 14th Amendment rights.'' As I said during my June 7, 2010, floor statement on the confirmation process, the Senate should put considerable weight on such pre-hearing statements reflecting a nominee's legal ideology.

It is also clear that General Kagan is a strong and principled supporter of civil rights. As Harvard Professor Ronald Sullivan pointed out in his testimony before the Committee, a telling story about General Kagan is that she turned down the Royall Professorship of Law, Harvard Law School's first endowed chair, because the fortune that endowed the chair was derived from the slave trade. Instead, then-Dean Kagan decided to become the first Charles Hamilton Houston Professor of Law, a chair named in honor of one of Harvard Law's most accomplished African-American graduates and, as an architect of the civil rights movement's legal strategy, an historic figure in his own right.

Elena Kagan's support for civil rights extends far beyond symbolism, however. In an email from her time at the Clinton White House, General Kagan wrote that she ''care[s] about [affirmative action] a lot,'' which she demonstrated through her work on the issue. For example, in a brief to then-Solicitor General Walter Dellinger strategizing how to ''avoid a broad and harmful ruling invalidating non-remedial affirmative action in employment,'' General Kagan argued in favor of pursuing a narrow judgment which would preserve affirmative action policies. She wrote, ''I think this is exactly the right position—as a legal matter, as a policy matter, and as a political matter.'' This echoes her comments to Justice Thurgood Marshall in a memo urging denial of certiorari on a case involving a school desegregation plan which had been upheld at the circuit court level. In her memo, Kagan described the plan as ''amazingly sensible,'' even though it was not implemented in response to historic state-sponsored school segregation in that particular district. It is clear to me from these memos and from her comments that when it comes to civil rights, General Kagan supports strong protections for racial minorities and believes in expanding opportunities for historically disadvantaged groups. If General Kagan were seated on the Court, cases like Parents Involved in Community Schools v. Seattle School District No. 1 may have been decided differently.

Additionally, General Kagan's record reveals strong support for ensuring fair and clean elections through campaign finance regulation. Long before she urged the Court in Citizens United v. FEC to uphold the federal ban on independent campaign expenditures by corporations, Elena Kagan assisted the development of the McCain-Feingold Act during her time in the White House. In one of her memos from that time, she argued vigorously for President Clinton to support campaign finance reform and criticized the Court for its ''mistaken'' conclusion ''that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment problems.'' She argued not only that the Court should uphold campaign finance regulation on the basis of the compelling government interest in preventing corruption or the appearance of corruption, she also argued that the Court should reexamine the basis for its rejection of expenditure regulations beginning with Buckley v. Valeo in 1976. Although she may have made some of these arguments in her capacity as a policy advisor and advocate for the President's agenda, these memos provide insight into General Kagan's views of campaign finance reform—views which appear to be positive in terms of both personal preference and legal analysis.

General Kagan's time as a senior aide to President Clinton also shows that she has respect for Congress, respect born of personal experience and legal reasoning. Although some from my party have expressed concern that General Kagan has too broad a view of executive power, her writings indicate otherwise. She has clearly and unequivocally rejected the Unitary Executive theory, which posits the President possesses plenary authority over all federal agencies involved in administering federal law and that Congress had been granted too much power relative to the executive. In her famous 2001 Harvard Law Review article, Presidential Administration, she wrote, ''I do not espouse the Unitarian position . . . the constitutional values sometimes offered in defense of this claim are too diffuse, too diverse, and for these reasons, too easily manipulable'' to support exclusive presidential control over the administration of federal law through agencies. Additionally, then-Dean Kagan criticized the expansive views of executive authority in the so-called torture memos of the Bush administration, which she described in a 2007 commencement address as ''expedient and unsupported.'' General Kagan also criticized expanding executive power to the detriment of Congressional prerogative when she wrote in a 1996 White House memo on a pending decision on whether or not the Solicitor General would defend two particular statutes. She wrote:

What difference does it really make whether Congress explicitly directs the executive branch to take action against private persons (via separation) or implicitly directs the executive branch to take such action (via prosecution)? In either case, refusal to comply with the directive violates congressional will.

In light of these writings, it seems not only General Kagan's personal opinion but also her legal opinion that Congress has a powerful role to play vis-à-vis the executive and the courts. Finally, General Kagan's experience working with Congress and on the Senate Judiciary Committee also increases my confidence in her understanding and respect for this institution as the first branch of American government.

General Kagan has been clear and straightforward on the issue of making the Supreme Court more accessible and more accountable by televising its proceedings for the public. In her 2009 speech before the Ninth Circuit Judicial Conference, she expressed support for televising the Court. When I met with General Kagan in my office, she continued to be forthcoming about her support for broadcasting the Court's proceedings, which I appreciated. I asked General Kagan ''Wouldn't televising the [C]ourt and information as to what the [C]ourt does have an impact on the values which are reflected in the American people'' and she replied, ''I do think . . . it would be a good thing from many perspectives and I would hope to if I am fortunate enough to be confirmed to engage with the other Supreme Court Justices about that question. I think it is always a good thing when people understand more about government rather than less and certainly the Supreme Court is an important institution and one that the American citizenry has every right to know about and understand. I also think that it would be a good thing for the [C]ourt itself that that greater understanding of the [C]ourt I think would go down to its own advantage. So I think from all perspectives, televising would be a good idea.''

I have introduced both a resolution expressing the sense of the Senate that Supreme Court proceedings should be televised, as well as a bill to require the Court to allow the television broadcast of its open proceedings, except in some special circumstances. The Judiciary Committee passed both the resolution and the bill on April 29, 2010, by an overwhelming vote of 13 to 6. With the retirement, last year, of Justice Souter, the strongest opponent of televising the Court's proceedings, and the potential addition of General Kagan, there is a good chance that the Court will finally be accessible to all Americans, as it should be. If the Court does not allow cameras in of its own volition, I will continue to press for passage of my legislation before the end of the year.

Regardless of personal political persuasion, there is near consensus among Senators that a nominee should be able to unmoor herself from political and policy views when deciding a case in our nation's highest court. In her 25 years of experience in the law, General Kagan has consistently demonstrated fairness, humility, moderation, and adherence to duty—the exact attributes we all seek in a Justice of the Supreme Court of the United States.

In my first autobiography, Passion for Truth, I wrote:

Chief Justice William Rehnquist, at his 1986 confirmation hearing, would not answer basic constitutional questions. Rehnquist, an associate justice since 1971, didn't believe he should have to go before the Senate a second time for promotion to chief, according to Tom Korologos, a premier Washington lobbyist. . . . Rehnquist cited Korologos the case of former Senator Sherman Minton, whom President Truman nominated to the Supreme Court and who refused to go before the Senate for a hearing. Minton argued that the legislative branch had no right to question a nominee. The Senate confirmed Minton without a hearing. ''What do you think of that?'' Rehnquist asked Korologos. ''Why do I have to testify?'' he demanded. Rehnquist's record was there; his opinions were public. He would not expand on them or defend them. Rehnquist insisted Korologos try to get him through without a hearing. ''I said, 'Fine, Bill,' and dismissed it out of hand,'' Korologos recalled. . . . ''What am I going to do, tell the leadership we're not going to have a hearing on Rehnquist? Anyway, it died before it got off the ground.'' [Korologos continued]. Rehnquist relented and agreed to go before the Senate.

I further observed that ''Chief Justice Rehnquist answered barely enough questions to get my vote. In all, sixty-five senators supported him, but thirty-three others voted against his nomination.'' Turning to Judge Robert Bork's nomination in July 1987, I noted that Democrats controlled the Senate and Senator Kennedy was a strong opponent of the nomination. ''Considering the context and controversy, Bork concluded—correctly, I think—that he would have to answer questions on judicial philosophy to have a chance at confirmation.'' Perhaps General Kagan concluded—again correctly—that with a Democratic Senate and little controversial published work of her own, she would be confirmed without betraying many of her substantive views. I regret that she chose that course but it is a course many before her have chosen and it is a course that the Senate has permitted.

When I was questioning Rehnquist he refused to answer my question about stripping the federal courts' jurisdiction. He deflected my question, stating "I feel I cannot go to any further than that, for fear that that sort of issue will come before the Court." When I pressed him, Rehnquist insisted, "I honestly feel I must adhere to my view that it would be improper for a sitting justice to try to advance an answer to that question."

I describe in my book that during an overnight recess, when the hearing continued, a staffer brought me an article from the Harvard Law Record that Rehnquist had written in 1959, when he was a practicing lawyer. The article criticized Charles Whittaker's nomination to the Supreme Court because Whittaker had essentially told the Senate only that he was the son of two states, that he had been born in Missouri and practiced law in Kansas. Much like General Kagan in her 1995 law review article, Rehnquist, in his Harvard article, expressed outrage that the Senate had endorsed Whittaker without asking him any substantive questions, writing that "Until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process." The next day I confronted Justice Rehnquist with his article and his own words twenty-seven years later. Rehnquist responded "I don't think I appreciated, at the time I wrote that, the difficult position the nominee is in."

Following that admission, I pressed Rehnquist on jurisdiction and he finally answered that Congress cannot take away jurisdiction from the Supreme Court on the First Amendment. He refused, however, to answer questions regarding the Fourth Amendment (search and seizure), the Fifth Amendment (privilege against self-incrimination), the Sixth Amendment, the Eighth Amendment (cruel and unusual punishment), or even his reasoning for answering a question regarding the first amendment but not the others.

While I do not condone General Kagan's change of view on how much a nominee should answer, she is not the first nominee to criticize the Senate for not insisting on substantive answers and then later change her mind when she is a Supreme Court nominee. We confirmed Chief Justice Rehnquist after he disclaimed his statements in the Harvard article, so there is no reason, at this point, not to do the same for General Kagan.

I have never asked that a nominee satisfy an ideological litmus test—whether liberal or conservative—much less that a nominee commit to reaching a particular certain outcome in any given case. What I have asked is that a nominee, first, affirm his or her commitment to the doctrine of stare decisis; and, second, to honor the legislative powers the Constitution assigns to the Congress, especially its remedial powers to enforce the Fourteenth and Fifteenth Amendments.

Nominees committed to stare decisis and respectful of Congress's lawmaking powers are much less likely to indulge their ideological preferences—whether left or right—in interpreting the open-ended provisions of the Constitution and federal statutes to which very different meanings could be ascribed. They are, in short, less likely to become activists. Noted Court commentator Jeffrey Rosen made just that point soon before the Roberts confirmation hearing. He said that the "best way" to find out whether Chief Justice Roberts was a conservative activist (in the mold of Justice Scalia and Thomas) or a moderate, cautious, and restrained conservative (in the mold of Justice O'Connor) would be "to explore Judge Roberts's view of precedents, which the lawyers call stare decisis, or 'let the decision stand.' " ("In Search of John Roberts," The New York Times, July 21, 2005.)

That is why when I questioned Roberts and Alito in 2005 and 2006, respectively, I focused heavily on the issue of stare decisis. Several other Senators did as well. Both Chief Justice Roberts and Justice Alito provided extensive testimony on the subject. Their testimony warrants extensive quotation.

Chief Justice Roberts testified:

"Judges are like umpires. Umpires don't make the rules, they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules, but it is a limited role. Nobody ever went to a ball game to see the umpire. Judges have to have the humility to recognize that they operate within a system of precedent shaped by other judges equally striving to live up to the judicial oath . . . ."

"[T]he importance of settled expectations in the application of stare decisis is a very important consideration."

"I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness. It is not enough—and the Court has emphasized this on several occasions. It is not enough that you may think the prior decision was wrongly decided."

"Well, I think people's personal views on this issue derive from a number of sources, and there's nothing in my personal views based on faith or other sources that would prevent me from applying the precedents of the Court faithfully under principles of stare decisis."

"I think one way to look at it is that the Casey decision [Casey v. Planned Parenthood of Southeastern Pennsylvania (1992)] itself, which applied the principles of stare decisis to Roe v. Wade [1973], is itself a precedent of the Court, entitled to respect under principles of stare decisis. And that would be the body of law that any judge confronting an issue in his care would begin with, not simply the decision in Roe v. Wade but its reaffirmation in the Casey decision. That is itself a precedent. It's a precedent on whether or not to revisit the Roe v. Wade precedent. And under principles of stare decisis, that would be where any judge considering the issue in this area would begin."

Testifying a year later, Justice Alito was no less emphatic. He testified:

"I think the doctrine of stare decisis is a very important doctrine. It's a fundamental part of our legal system, and it's the principle that courts in general should follow their past precedents, and it's important for a variety of reasons. It's important because it limits the power of the judiciary. It's important because it protects reliance interests, and it's important because it reflects the view of the courts should respect the judgments and the wisdom that are embodied in prior judicial decisions. It's not an inexorable command, but it's a general presumption that courts are going to follow prior precedents."

"I agree that in every case in which there is a prior precedent, the first issue is the issue of stare decisis, and the presumption is that the Court will follow its prior precedents. There needs to be a special justification for overruling a prior precedent."

"I don't want to leave the impression that stare decisis is an inexorable command because the Supreme Court has said that it is not, but it is a judgment that has to be based, taking into account all of the factors that are relevant and that are set out in the Supreme Court's cases."

Again, without challenging their good faith, I note the contrast between the testimony cited at length above, from both Chief Justice Roberts and Justice Alito, with their concurring opinion in Citizens United. That concurrence, authored by Roberts and joined by Alito, says, "The Court's unwillingness to overturn Austin in [subsequent] cases cannot be understood as a *reaffirmation* of that decision." (emphasis in original). It seems to me that Chief Justice Roberts's concurrence flies in the face of what he said about Casey reaffirming the central holding in Roe. Contrary to his testimony that "It is not enough that you may think the prior decision was wrongly decided[,]" Roberts went on to write in Citizens United, "[w]hen considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions *decided* against the importance of having them *decided right*." (emphasis in original). That is an about face.

In announcing my "aye" vote for General Kagan's nomination to the Supreme Court, I have attempted to sound a cautionary note. The point is to remind Senators, in the first instance, of the need to jealously guard against incursions from the other branches. It is also, I submit, to remind the nominee and the sitting Justices of the Supreme Court that Congress is a coequal branch of Government deserving of a modicum of respect. It takes at least fifty-one votes in the Senate (some would say sixty) and at least two-hundred and eighteen votes in the House to present legislation to the President for his signature. Getting from the introduction of any legislative measure to enacting a new law is a Herculean task. When that task is augmented by a lengthy congressional record supported by hearings and reasoned testimony it should not be cast aside. So it has been important for this Senator to underscore a healthy respect for Congress in the course of Supreme Court confirmation proceedings.

Of the 13 nominees to have come before the Judiciary Committee for a hearing during my tenure in the Senate, none was less forthcoming than Justice Scalia. He answered no substantive questions at all. He would not even say whether Marbury v. Madison, which established the principle of judicial review, was correctly decided.

In my first autobiography, Passion for Truth, I wrote that "From my experience participating in Supreme Court nomination hearings, I have found that the better the nominee thinks his chances are, the less he will say at the hearing to minimize his risk." In short, Justice Scalia was confident he would be confirmed and, therefore, less forthcoming on substantive inquiries. Justice Scalia's testimony prompted Senator DeConcini to remark: "It is apparent to me that nominees are advised by the administration to be as evasive and passive as they can be."

Since General Kagan has only followed the precedent set by previous nominees and by the Senate, I believe that she should be confirmed based on her record. In evaluating Ms. Kagan's overall record and performance before the committee, I have concluded that her intellect, academic accomplishments, professional qualifications and earlier statements expressing great respect for Congress outweigh her failure to give substantive answers. But it is worth preserving for the record my views as to what she failed to testify to during the course of the hearing. Several Senators tried in vain to elicit meaningful answers from General Kagan. Senator Kohl asked straightforward questions. When Senator Kohl asked her about her passions, she demurred, discussing "the rule of law" instead. He asked again, "What are your passions?" but General Kagan did not answer. Senator Kohl asked how she would impact the everyday lives of Americans. Again, General Kagan did not answer. She referred back to her previous three responses, where she discussed just taking ''one case at a time,'' and nothing more. Senator Kohl tried asking ''Which cases will motivate you?'' and again General Kagan refused to answer, and instead simply recited facts we already knew about the certiorari process. When asked by Senator Kohl about her views on the Bush v. Gore case, a case that the Court specifically said was unique and would not hold precedential value, General Kagan refused to answer, stating that she could not answer because the ''question of when the court should get involved in election contests . . . might well come before the court again.''

Similarly, when asked by Senator Coburn if a law requiring Americans to eat three vegetables and three fruits every day would be unconstitutional, certainly not a case likely to come before the Court, she refused to answer even that question in a substantive manner.

After pressing General Kagan on her views of the Second Amendment several times without making any progress, Senator Grassley resigned himself to the fact that, in his words, she ''[didn't] want to tell us what [her] own personal belief is.''

Senator Coburn criticized General Kagan for ''dancing'' around instead of answering questions and suggested that ''Maybe [she] should be on 'Dancing with the Stars'.''

When General Kagan refused to discuss internal Justice Department deliberations with White House staff regarding upcoming cases, Senator Kyl pointed out that ''simply noting whether or not there were such contacts would not be an inappropriate thing for you to provide the Committee.''

General Kagan consistently declined to answer questions on whether she would vote to take two critical cases as Justice.

Toward the conclusion of my second round of questions, I told General Kagan:

I think the commentaries in the media are accurate. We started off with the standard you articulated at the University of Chicago Law School about substantive discussions. And they say we haven't had them here, and I'm inclined to agree with them . . . It would be my hope that we could find some place between voting ''no'' and having some sort of substantive answers. . . . I think we are searching for a way how senators can succeed in getting substantive answers, as you advocated in the Chicago Law Review, short of voting ''no.''

In her 1995 article, General Kagan criticized Justice Ginsburg's handling of her nomination hearing, stating that ''Justice Ginsburg's favored technique took the form of a pincer movement. When asked a specific question on a constitutional issue, Ginsburg replied . . . that an answer might forecast a vote and thus contravene the norm of judicial impartiality. Said Ginsburg: 'I think when you ask me about specific cases, I have to say that I am not going to give an advisory opinion on any specific scenario, because . . . that scenario might come before me.' But when asked a more general question, Ginsburg replied that a judge could deal in specifics only; abstractions, even hypotheticals, took the good judge beyond her calling. Again said Ginsburg: 'I prefer not to . . . talk in grand terms about principles that have to be applied in concrete cases. I like to reason from the specific case.'''

However, General Kagan failed to take her own advice. She frequently refused to answer questions without having a concrete case or briefs to read. In my attempt to find her views on the ''congruence and proportionality'' standard, she repeatedly avoided answering, saying ''I've not delved into the question the way I would want to as a judge,'' citing the fact that she hadn't read any briefs as she would in a case in controversy.

The Ginsburg-Kagan pincer movement creates a Catch-22 for Senators, who must avoid asking about a concrete case that could come before the Court, but then cannot receive any answer from a nominee on a more abstract question because the nominee simply shrugs and says, ''I haven't read the briefs.''

In her article, General Kagan went so far as to say she understood why nominees refused to answer questions, calling it a ''game'' in which the ''safest and surest route to the prize'' involves avoiding substantive answers. She wrote ''Neither do I mean to deride Justices Ginsburg and Breyer for the approach each took to testifying. I am sure each believed . . . that disclosing his or her views on legal issues threatened the independence of the judiciary. (It is a view, I suspect, which for obvious reasons is highly correlated with membership in the third branch of government.) More, I am sure both judges knew that they were playing the game in full accordance with a set of rules that others had established before them. If most prior nominees have avoided disclosing their views on legal issues, it is hard to fault Justice Ginsburg or Justice Breyer for declining to proffer this information. And finally, I suspect that both appreciated that, for them (as for most), the safest and surest route to the prize lay in alternating platitudinous statement and judicious silence. Who would have done anything different, in the absence of pressure from members of Congress?''

General Kagan certainly did the same. . . . Even with pressure from members of Congress, such as Senators Kohl, Grassley, Coburn, and myself, she still refused to answer to questions.

In her article, General Kagan took issue with the Senators for not insisting that nominees answer questions. She stated that ''Senators today do not insist that any nominee reveal what kind of Justice she would make, by disclosing her views on important legal issues. Senators have not done so since the hearings on the nomination of Judge Bork. They instead engage in a peculiar ritual dance, in which they propound their own views on constitutional law, but neither hope nor expect the nominee to respond in like manner.''

Again, I asked General Kagan several specific questions that she refused to answer. When I asked a direct question as to whether she would apply to the congruence-and-proportionality test in evaluating the constitutionality of laws passed under Congress's Fourteenth Amendment remedial authority, she refused to answer. When Senator Kyl asked her if detainees had habeas rights, she refused to answer. Senator Grassley asked her if Heller was correctly decided and she refused to answer. So I would hope that General Kagan will not claim that all Senators participating in her confirmation hearing did not hope for, or expect, substantive answers. We tried our best to get her to answer questions, but it was General Kagan who insisted on avoiding substantive answers.

Mr. SPECTER. Finally, Mr. President, I ask unanimous consent that a copy of an op-ed which I wrote which appeared in USA Today be printed in the RECORD.

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

[From USA Today, July 15, 2010]

SPECTER: ''KAGAN DID JUST ENOUGH TO WIN MY VOTE''

(By Arlen Specter)

Supreme Court nominee Elena Kagan did little to undo the impression that nominating hearings are little more than a charade in which cautious non-answers take the place of substantive exchanges.

In this, she was following the practice of high court nominees since Judge Robert Bork. But her non-answers were all the more frustrating, given her past writings that the hearings were vacuous and lacked substance. She accused Justice Ruth Bader Ginsburg and Stephen Breyer of stonewalling, but then she did the same, leaving senators to search for clues on her judicial philosophy.

Her hearings showed an impressive legal mind, a ready humor and a collegial temperament suitable to the court. But they shed no light on how she feels about the court's contemptuous dismissal of Congress' ''fact-finding'' role, its overturning of precedent in allowing corporate political advertising, and the expansion of executive authority at the expense of congressional power.

She offered no meaningful observations on U.S. vs. Morrison, in which the court overturned the Violence Against Women Act, blaming Congress' ''method of reasoning,'' notwithstanding a ''mountain of data assembled by Congress'' demonstrating ''the effects of violence against women on interstate commerce'' noted in Justice David Souter's dissent.

She offered no substantive comment on Citizens United, in which the court reversed a century-old precedent by allowing corporations to engage in political advertising. Justice John Paul Stevens said in dissent that the court showed disrespect by ''pulling out the rug beneath Congress,'' which had structured the campaign-finance reform bill, McCain-Feingold, on a 100,000-page factual record based on standards cited in a recent Supreme Court decision.

Likewise, she avoided taking sides in the court's expansion of executive authority, declining comment on the historic clash posed by the Foreign Intelligence Surveillance Act and the president's warrantless wiretapping authorized under the Terrorist Surveillance Program.

Despite repeated questioning, Kagan refused to comment on the court's refusal to resolve a contentious dispute involving the Sovereign Immunity Act and the Obama administration's foreign policy. Survivors of 9/11 victims sued Saudi Arabia, Saudi princes and a Saudi-controlled charity with substantial evidence that they had financed the 9/11 terrorists. The Obama administration persuaded the court not to hear the case, arguing that the Saudi Arabian conduct occurred outside the U.S.

On one controversial issue—the question of whether to televise open Supreme Court proceedings—Kagan was candid, stating that she welcomed TV in the court and, if confirmed, would seek to convince her colleagues on the bench. ''It's always a good thing,'' she said, ''when people understand more about government, rather than less. And certainly, the Supreme Court is an important institution and one that the American citizenry has every right to know about and understand.''

Her testimony recognized that the court is a public institution that should be available to all Americans, not just the select few who can travel to Washington. A recent C–SPAN poll found that 63% of Americans support televising the Supreme Court's oral arguments.

Given the fact that the court decides all of the cutting-edge questions—a woman's right to choose, death penalty cases for juveniles, affirmative action, freedom of speech and religion—public demand for greater transparency should come as no surprise. When 85% of those polled think the Citizens United case expanding corporate spending in politics was a bad decision, one can conclude they want to know why the court decided as it did.

On balance, Kagan did little to move the nomination hearings from the stylized ''farce'' (her own word) they have become into a discussion of substantive issues that reveal something of the nominee's judicial philosophy and predilections.

It may be understandable that she said little after White House coaching and the continuing success of stonewalling nominees. But it is regrettable. Some indication of her judicial philosophy may be gleaned by her self-classification as a ''progressive'' and her acknowledged admiration for Justice Thurgood Marshall. That suggests she would uphold congressional fact-finding resulting in remedial legislation and protect individual rights in the congressional-executive battles.

The best protection of those values may come from the public's understanding through television of the court's tremendous power in deciding the nation's critical questions. In addition to her intellect, academic and professional qualifications, Kagan did just enough to win my vote by her answers that television would be good for the country and the court, and by identifying Justice Marshall as her role model.

Mr. SPECTER. I thank the Presiding Officer, and I thank my distinguished colleague from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. LEMIEUX. Mr. President, it is always good to follow my distinguished colleague from Pennsylvania and to hear his comments.

FINANCIAL REGULATORY REFORM

Mr. LEMIEUX. Mr. President, I am here today to talk about the bill the Senate just voted on and passed, the financial regulation overhaul bill. It is, in my mind, a missed opportunity. We had the opportunity to truly address the causes of the financial meltdown and put into place measures that would stop the meltdown from happening the next time. But, unfortunately—as I have seen in about the year's time I have had the privilege to serve in the Senate—it seems it is the predilection of this Congress to take a crisis and then come forward not with a narrowly focused and tailored solution but, instead, a large-ranging, comprehensive bill that creates more government, that creates more bureaucracy, that puts more debt on our system of government, and still fails to address the very problem we should be trying to focus upon.

We were supposed to rein in the wild and risky speculative tools and empower our regulators to prevent another crisis. But we did not. I heard Senator DODD, who I have enormous respect for—and I think he put a tremendous amount of time into this bill, but I heard him on the floor the other day, in giving his sort of summation as to why this bill should be passed, saying this will not stop any future recessions. He is right. He is right because we did not do what we needed to do in order to truly fix the problems that happened back in the 2007–2008 era when we had this tremendous financial meltdown—this meltdown which has depleted trillions of dollars of the net worth of Americans; this meltdown that has led to one of the greatest, if not the greatest, recession since the Great Depression.

In my home State of Florida, people are suffering mightily. We have nearly 12 percent unemployment. We are either No. 1 or No. 2—depending upon the month—in mortgage foreclosures, and our people are behind on their mortgage payments more than any other State in the Union.

We are a State that has been based, perhaps too much, on growth. So when folks are not coming to build a new home, the contractor does not have a job. When folks are not coming to visit our beaches or our tourist attractions, the restaurateur, the hotelier—they lose their work. So things are very difficult in Florida.

This financial crisis stemmed in part from some of the problems we saw in lending, in real estate, and there was no place that was any worse than what happened in Florida. What this bill fails to address: the underwriting standards that should have been in place to stop these so-called ninja loans—''no income, no job.'' They called them ninja loans. Anybody could get one, and people were put into homes they could not afford.

Why was that able to happen? It was because there were no underwriting standards. There was no skin in the game for those getting the mortgage. There was no skin in the game for the mortgage broker, who was able to sell off this mortgage to Wall Street, where there was this vast and great demand to bundle these products into mortgage-backed securities, and, for the first time ever, tie our real estate market, our homes—our most important investments—with the financial markets.

As soon as that was done, the speculation and the speculators ran wild. This bill does not do enough to prevent that in the future, to provide the real skin in the game that should be needed to trade those mortgage-backed securities. We failed to address those two factors. Perhaps even worse, we failed to address Fannie and Freddie, the government-sponsored entities that stood as silent guarantors to all these mortgages, that let the market have faith and confidence that the government was the backstop to these mortgages that should have never been let. This bill fails to address that. Two of the leading causes of the financial debacle we failed to addressed.

Finally, a point we needed to address, and we did: My colleague and friend, who presides over the Senate this afternoon, was the person who was the leading proponent on trying to do something about the rating agencies, and we did do something. I was pleased to work with Senator CANTWELL, and I was appreciative of the efforts of Senator FRANKEN, to try to do something about these rating agencies. And we did.

That is one good thing about this bill. They are written out of law. These rating agencies compounded the problem because when these mortgages, packed together—mortgages that were not any good, that were not going to get paid, that then got turned into a trading vehicle—when they went up to Wall Street, these rating agencies that are paid for by the investment banks stamped them with AAA ratings, gave them the ''good housing seal of approval'' and let the world believe they were sound investments. They failed. And lo and behold, we find that the government has given a sanction in law to these rating agencies to be the determiners of creditworthiness—a monopoly, if you will.

Well, one good thing this bill does is to strip that out. No longer will they be given that state-sponsored monopoly. Now the marketplace will have to work. Now we will not be so relying upon people who are paid by the investment banks that did not do their homework and in part caused this crisis.

If we would have tackled the GSEs, Fannie and Freddie, and if we would have tackled underwriting standards, I would be here giving a speech today talking about why I voted for the bill. But we only did one of the four things and, unfortunately, now, we have a bill that Wall Street loves. Citigroup loves it. Goldman Sachs loves it. But Main Street is very concerned about it. We are going to make sure that orthodontists are regulated because they, every once in a while, extend credit to their patients. But the folks on Wall Street, who caused these problems, and the underlying cause of the debacle, the mortgage problem, the underwriting problem, and the Fannie and Freddie problem do not get addressed.

According to the study by the U.S. Chamber of Commerce, this bill will create a huge new governmental bureaucracy: 70 new Federal regulations through the Bureau of Consumer Financial Protection, 54 new Federal regulations through the U.S. Commodity Futures Trading Commission, 11 new Federal regulations through the Federal Deposit Insurance Corporation, 30 through the Federal Reserve, 205 through the SEC.

You may say: Well, that sounds good. We need more regulations, right? There was a problem. But if the regulation does not go after the problem that caused the debacle, what do the regulations do? We are in a situation right now where business in this country is frozen. It is frozen solid because of the actions of the Congress and this administration who are doing so much to this economy that big business and small business alike do not believe they can hire new workers.

There is so much uncertainty in the marketplace. I hear this from small businesspeople in Florida where we have 1.9 million small businesses, to workforce centers which are trying to get people back to work, to incubators which are trying to grow new jobs, to presidents of chambers of commerce, and other folks I talk to regularly. They tell me business is frozen. Washington is doing so much to the economy they do not know where to turn next. Because they do not know what the future looks like, and because this government is pulling these huge levers on the economy, they believe they cannot make any moves.

Because of the health care bill, businesses in Florida, small businesses are telling me they are not going to hire new people because they cannot afford the new regulation. In fact, some of these businesses are not only going to not hire new people, they are going to let people go.

This financial regulatory reform bill—a business in Florida has told me its trading desk is going to the Bahamas. Those folks are now going to move and no longer add to our tax base and the wealth and diversity of our community because this regulation is going to put them in a situation where business says it is more beneficial to move them out of the State, out of the country. There are always unintended consequences. When we pull these huge levers on the economy, we create tremendous uncertainty, and business does what business needs to do to keep its people working and to make profits. That is what business is focused on. Those are the jobs that allow all of us to work, to provide for our families. Right now, those jobs are under siege. In a State such as mine where we have nearly 12 percent unemployment, where times are especially difficult, the last thing in the world we need is for the Federal Government to be monkeying with the economy to the extent that businesses can't feel as though they can hire new workers.

This financial regulatory reform bill does more of what the health care bill did, and it seems to be the penchant of this Congress. We should be focused on jobs. We should be here day and night trying to find ways to make sure business has the incentives it needs to create new jobs and retain jobs, because we need to get people back to work.

This financial regulatory reform bill was a bill we should have had 80 or 90 votes on. It should have been narrowly focused and tailored on the problems that caused the financial debacle of 2008 that we still suffer through. This Chamber needs to get in the business of focusing on what should be done to address the problem and not using every crisis as an excuse to grow government. This new consumer agency we created will cost billions of dollars and will empower a new Federal Government executive, who reports to no board, to be able to make broad and wide-ranging policy decisions across this country and in the boardrooms of the businesses of America's companies. That is how Washington solves a problem these days. We don't fix the SEC which is the agency that is supposed to be doing the job. We don't go in and fire all the people at the Securities and Exchange Commission who should have been on top of this. We create a whole new governmental level of bureaucracy. We layer governmental agency on top of governmental agency, create more power, create bigger government, spend more of your money, and run this country into further debt.

We need a change. We need to do things differently. I wish I could have voted for this. I wish it would have focused on the issues it needed to, but, unfortunately, I can't because it does more harm than good. I am appreciative of my colleagues for supporting the amendment I did with Senator CANTWELL on the rating agencies, but only in that regard and in a few other regards did we do something that actually helped. Most of what we did didn't fix the problem and it caused more harm than good.

With that, I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Kentucky.

Mr. BUNNING. Madam President, I have come to the floor to speak about the conference report on the financial regulation bill the Senate has just passed. I think it was a huge mistake. I voted against the bill, and now I wish to take some time to explain why.

The short explanation is the bill does not address the causes of the financial crisis and instead it sows the seed of the next financial crisis while adding unnecessary strains on our already struggling economy. I am going to spend the next little while giving the longer explanation.

As I have said many times in the Banking Committee and on the floor of the Senate, I want to pass a strong financial reform bill that reins in the excesses of our large financial companies and the Federal Reserve. No one has been a stronger voice against the financial industry enablers at the Fed than I have. I have fought every bailout brought to the Congress as well as the bailouts that the Federal Reserve and both the Bush and Obama administration put in place without the approval of Congress. I very much wanted to pass a bill that ends bailouts and reins in the reckless activities of our financial system. Unfortunately, like the bill passed by the Senate earlier this year, the conference report before the Senate today did not end bailouts. In fact, it does the opposite and makes them permanent.

This bill will also lead to future financial disasters because it ignores the root causes of the crisis. It fails to put the necessary handcuffs on the key parts of the financial system and will result in even greater concentration of the financial system in a very few large firms.

The largest single contributing factor in the current financial crisis and most other financial crises in the past is flawed Federal Reserve monetary policy. Starting in the late 1990s, former Fed Chairman Alan Greenspan used easy money to prop up the financial firms, manipulate the stock market, and micromanage the economy. That easy money inflated the tech stocks and the dot.com bubble. After that bubble burst, as well as following the September 11 terrorist attacks, he again loosened monetary policy which began to inflate the largest asset bubble in history. While the bubble was the most visible in housing, it was a debt bubble that spread across all households, corporate, and government borrowing.

In about 2004, the housing bubble started to become unstable, but lending standards were relaxed and the rise of subprime and other nontraditional mortgages enabled the bubble to keep growing for another couple of years. Eventually, the housing bubble became unsustainable and popped. The corporate debt bubble largely did the same, and we are now seeing government debt become unsustainable around the world, including here in the United States of America.

Despite the Fed's history of causing financial crises and its clear role in the current crisis, this bill does nothing to rein in the Fed. Chairman DODD's original draft bill presented to the Banking Committee last year took some positive steps to get the Fed back on track by removing the Fed as a regulator. But unfortunately, that did not make it into the final bill. Nothing in this bill will stop the next bubble or collapse if the Fed continues with its easy money policies. Cheap money will always distort prices and lead to dangerous behavior. No amount of regulation can contain it.

In addition to its flawed monetary policy, the Federal Reserve failed as a regulator leading up to the crisis. The Fed was responsible for regulating most of the large financial holding companies, but instead of regulating them, it was a cheerleader for them. The Fed, along with other regulators, allowed those firms to grow even larger and take unwise risks. And in what may be the Fed's greatest regulatory failure, Chairman Greenspan refused to do the job Congress gave him and the Fed in 1994—1994—the job to regulate mortgages. Instead of taking action that could have prevented at least part of the housing bubble inflated by subprime and nontraditional mortgages, Chairman Greenspan encouraged homebuyers to get those kinds of mortgages. He and Chairman Bernanke, along with many others at the Fed, sang the praises of those mortgages as financial innovation that reduced risk.

How well did the Fed approach to regulation work, I ask my colleagues? Well, in 2008, most, if not all, of the largest firms regulated by the Fed would have failed had they not been bailed out through TARP or by the Fed on its own. That seems like a pretty open-and-shut case for me for removing all regulatory responsibility from the Fed and giving it to someone who will use it. But that is not what this bill does. Instead of real regulatory reform, the bill concentrates regulation of the largest financial firms at the Federal Reserve, despite the Fed's long history of failed regulation.

As I mentioned earlier, the original draft of this bill removed bank and consumer protection regulations from the Fed and all the other regulators and created a single new banking regulator. That is a better approach. But it was dropped before the bill ever got out of the Banking Committee, and now the Fed gets more power for both jobs. Except for possibly Chairman DODD, no one has criticized the Fed more than me for its failure to use its consumer protection powers to regulate mortgages. Chairman Greenspan did nothing for 12 years after Congress gave him the power. Chairman Bernanke took another 2 years to act after he replaced Chairman Greenspan. Clearly, the Fed did not take consumer protection seriously and it deserves to lose that job.

I support strengthening consumer protection in the financial system, but I cannot understand keeping that job inside the same Fed that ignored it for decades. Next to reining in the Fed, the most important goal of this bill should be to end bailouts and the idea of too big to fail. Instead, the bill makes too big to fail a permanent feature of our financial system and will increase the size of the largest financial firms. As I said earlier, the bill concentrates regulation of the largest financial institutions at the Federal Reserve. The Fed failed as a regulator leading up to the crisis and should not be the regulator of any banks. But now Fed regulation will be a sign that a firm is too big to fail.

On top of the new Fed's seal of approval for the largest banks, this bill creates a new stability council that will designate other nonbank firms for Federal regulation and, thus, too big to fail. Fed regulation of the largest banks is not the only way this bill makes too big to fail and bailouts permanent. The largest bank holding companies and other financial firms will now be subject to a new resolution process. Any resolution process is by definition a bailout because the whole point is to allow some creditors to get paid more than they would in a bankruptcy court. The regulator will have the power to pick winners and losers by paying some creditors off on better terms than other creditors.

Even if the financial company is closed down at the end of the process, the fact that the creditors are protected against the losses they would normally take will undermine market discipline and encourage more risky behavior. That will lead to more Bear Stearns, Lehmans, and AIGs, not less.

The resolution process is not the only way this bill keeps bailouts alive. The bill does not shut off the Federal Reserve's bailout powers. While some limits are placed on the Fed, the bill still lets it create bailout programs to buy up assets and pump money into struggling firms through ''broad-based'' programs. That will put taxpayers directly at risk and make Fed bailouts a permanent part of the financial system.

Instead of putting all these bailout powers into law, we should be putting failing companies into bankruptcy. Bankruptcy provides certainty and fairness, and protects taxpayers. Under bankruptcy, similar creditors are treated the same, which prevents the government from picking winners and losers in bailouts. Shareholders and creditors also know up front what losses they are facing and will exercise caution when dealing with financial companies. Some of us tried to replace the bailout provisions with a revised bankruptcy section for financial companies, but, unfortunately, we were not successful.

Since the bill does not take away government protection for financial companies and send those that fail through bankruptcy, it should at least make them small enough to fail. Decades of combination have allowed a handful of banks to dominate the financial landscape. The four largest financial companies have assets totaling over 50 percent of our annual gross domestic product, and the six largest have assets of more than 60 percent. The four largest banks control approximately one-third of all deposits in the country. This concentration has come about because creditors would rather deal with firms seen as too big to fail, knowing that the government will protect them from losses. I would rather take away the taxpayer protection for creditors of large firms and let the market determine their size. But if that is not going to happen we should place hard limits on the size of financial companies and limit the activities of banks with insured deposits. Any financial companies that are over those size limits must be forced to shrink. This will lead to a more competitive banking sector, reduce the influence of the largest firms, and prevent a handful of them from holding our economy and government hostage ever again. Like most of the other real reform ideas that were proposed while previous versions of this bill were in the Banking Committee or on the Senate floor, meaningful limits on the size of banks were left out.

Along with not solving too big to fail, this bill does not address the housing finance problems that were at the center of the crisis—and still with us today. First, there is nothing in this bill that will stop unsafe mortgage underwriting practices such as zero down-payment and interest-only mortgages. There is a lot of talk of making financial companies have skin in the game, but when it comes to mortgages, the skin in the game that matters is the borrower's. Second, the bill ignores the role of government housing policy and Fannie Mae and Freddie Mac, which have received more bailout money than anyone else. The bill does not put an end to the government-sponsored enterprises' taxpayer guarantees and subsidies or stop the taxpayers from having to foot the bill for their irresponsible actions over the past decade. Over 96 percent of all mortgages written in the first quarter were backed by some type of government guarantee. Until we resolve the future of the these entities, the private mortgage market will not return and the risk to the taxpayers will continue to increase.

As I mentioned at the beginning of my statement, this bill is going to have real consequences for the economy at a time when the recovery is looking more like a second dip of the recession. Combined with the tax increases that will take effect at the end of this year, I am afraid we may not see real recovery until 2012 or later. One way this bill is going to affect the economy is by the increased consumer protection regulation that will reduce the availability of credit from banks and other firms that had nothing to do with the financial crisis.

Another way was highlighted in a front-page article in the Wall Street Journal yesterday on the impact of the derivatives regulation in the bill on farmers. I have been as critical as anyone of the lack of regulation of derivatives—which was again largely thanks to Alan Greenspan—and I think we need more transparency and oversight in that market, especially for credit default swaps and related products. But the bill goes too far in its impact on ordinary end users who are using derivatives to hedge commodity costs or interest rate and currency risks. The Wall Street casino needs to be shut down, but the bill should not prevent legitimate derivative customers from buying responsible protection.

I have many other concerns about this bill that I have discussed in the past on the floor and in the Banking Committee. The bill returned by the conference committee will not solve the problems in our financial system. It is regulation without reform. I had hoped we could work together in a bipartisan way to craft a bill that ends too big to fail forever, but this is a highly partisan bill that will accomplish little. And one of the chief authors of the bill, Chairman DODD, admits that even he does not know how the bill will work and won't until after it is in place.

In the end, the bill gives so much discretion to the Fed that the best description of the new regulations is they are whatever the Fed says they are. Or to borrow the title of David Wessel's recent book, it can be described as ''in Fed we trust''. We saw how well that worked out the last time. I cannot understand why anyone expects it will work out better this time.

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. CHAMBLISS. 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. CHAMBLISS. Madam President, I ask unanimous consent that Senator ISAKSON and I be allowed to speak as in morning business.

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

HONORING OUR ARMED FORCES

LIEUTENANT ROBERT WILSON COLLINS

Mr. CHAMBLISS. Madam President, I rise today to urge my colleagues to join me and my colleague, Senator ISAKSON, in honoring the life and commitment of 1LT Robert Collins of Tyrone, GA.

Lieutenant Collins grew up in the small town of Tyrone in Fayette County, where he attended Sandy Creek High School, played football on Friday nights, where he became a standout student that would take him to the halls of West Point, and where he attended Hopewell United Methodist Church with his family every Sunday morning.

On the 7th of April 2010, Lieutenant Collins made the ultimate sacrifice when an improvised explosive device detonated near his vehicle on the streets of Mosul, Iraq. He was 24 years old.

To me, it is a particularly difficult situation because Lieutenant Collins was one of my appointees to West Point. He graduated from West Point in 2008 and became an officer in B Company, 1st Battalion, 64th Regiment of the Armor Unit, 3rd Infantry Division, based at Fort Stewart, GA. He deployed to Iraq in the autumn of 2009.

Lieutenant Collins served as his platoon's commander. While in Iraq, his unit was charged with improving security and the quality of life for the Iraqi people. He and his men also provided security for the recent successful Iraqi elections. They were dedicated to the goal of a democratic Iraq and sought to help its people lead normal, safe lives.

Robert's friends have described him as a man of great compassion. He was a natural leader who truly found a calling in the honor and patriotism of service in the U.S. Army. He has been described by his superiors as a young man who performed his duties courageously, without hesitation, and without reservations because, after all, he was a soldier in the U.S. Army.

As a small token of gratitude and remembrance for the ultimate sacrifice paid by Lieutenant Collins, I am pleased to join Senator ISAKSON in urging our colleagues to rename the post office in Tyrone, GA, as the ''1st Lt. Robert Wilson Collins Post Office Building'' in Lieutenant Collins' honor. Nothing we can do can ever repay the debt and the ultimate sacrifice this young man has made, but this will ensure his name lives on, not just in his friends' and families' hearts but in the heart of his hometown.

I yield the floor.

Mr. ISAKSON. Madam President, I am pleased to join the senior Senator from Georgia, my friend SAXBY CHAMBLISS, to pay tribute today to Robert Collins.

This naming of a post office is most appropriate in Tyrone, GA, and it is most appropriate because of the great sacrifice of this young man, whose story, as Senator CHAMBLISS says, is compelling.

One interesting point I wish to make is that he was the son of two lieutenant colonels retired from the U.S. military. His mother, LTC Sharon L.G. Collins, and his father, LTC Burkitt ''Deacon'' Collins, spent more than 20 years in the U.S. military.

His mother said: We never asked him to follow us into the family business—being the military—but he did follow us into the family business in large measure because of what happened on 9/11/2001.

Following that tragic day in American history when he watched the terrorist attacks on the Twin Towers, he expressed to his parents a desire to join the U.S. military. His mother responded, along with his father, by making an appointment for him to visit West Point. They dressed him up in his very best outfit and took him to West Point.

Upon leaving Tyrone, one of his friends stopped him before he got in the car to go to West Point and said: Why are you dressed up so well?

He said: Because my mom and dad are colonels.

That is the kind of young man he was—respect for his parents, the U.S. military, and the greatness of our country.

He applied to West Point. Senator CHAMBLISS appointed him to West Point, and he was there with distinction. And later in 2009, he went off to serve the U.S. military. Unfortunately, on April 7, he made the ultimate sacrifice for the people of this country.

It is only appropriate in every way possible that we pay tribute to the young men and young women who sacrifice for us so all of us can enjoy the freedom of our country.

I am pleased, I am honored, and I am proud to join Senator CHAMBLISS in naming this post office in Tyrone, GA, after First Lieutenant Collins, who was a member of B Company, 1st Battalion, 64th Armor Regiment, 3rd Infantry Division, Fort Stewart, GA.

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.

Ms. MURKOWSKI. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

REMEMBERING MAURICE ''MO'' BAILEY

Ms. MURKOWSKI. Madam President, as I mentioned, this has been a very difficult week for our military and our veterans communities in the State of Alaska. On Tuesday of this week we came together in Sitka, at Sitka Air Station, the Coast Guard air station there, to honor the memory of three members of the U.S. Coast Guard who gave their lives in a very tragic accident, the crash of an H–60 Jayhawk helicopter. This was off the coast of Washington on July 7. It was a real tragedy for the Coast Guard families as a whole. The community of Sitka is one that truly embraces the men and the women of the Coast Guard. In addition to being the ones who pluck the fishermen out of the sea when they are in jeopardy or at risk, these are the men and women who are helping in the local churches, helping with Boy and Girl Scouts, coaching the kids. They are truly members of our community. The loss of these three men is very painful for us all.

I attended that ceremony on Tuesday in the hangar in Sitka. After I left, I took the flight back to Washington, DC. I took the redeye. When I arrived on Wednesday morning I was informed of the passing of a very dear friend of mine, a gentleman who made a profound contribution to the lives of so many of Alaska's veterans. I am speaking today of an individual by the name of Maurice Bailey. We called him Mo. Mo was from Wasilla, AK, and he was a disabled Vietnam era veteran who fought the VA bureaucracy to obtain his earned benefits.

He fought for himself and he was successful in that, but he went beyond that. He devoted the rest of his life to ensuring that the challenges of Alaska's veterans were not forgotten. He focused his efforts on those veterans who live in more than 200 rural communities that are not connected by road to the rest of Alaska or certainly to the continental United States. These are the communities of bush Alaska.

In 2003, Mo founded Veterans Aviation Outreach. This is an organization of volunteer pilots who travel to rural Alaska, to the communities that are hundreds and hundreds of miles from the nearest VA facility. He and his other volunteers did what the VA simply was not doing. They sought out those forgotten veterans and helped them in every way they possibly could.

When you listen to the stories about what Mo did and what the Veterans Aviation Outreach group did, it was a little bit of everything. They helped the veterans fill out applications for their benefits. Oftentimes it meant volunteering to fly a veteran to Anchorage for a medical appointment or perhaps raising the money for an airplane ticket. In so many of our very rural, very remote communities, there is no road. You don't get in your car and drive. So for the veteran to go for care, they may be traveling hundreds of miles. They don't have the money to do so. So Mo would bring his guys together or he would get in his plane and he would fly out there and pick them up.

Sometimes the help meant delivering moose meat, clearly a very desired food staple in rural Alaska. Sometimes it meant building a wheelchair ramp in a veteran's home. This was an all-volunteer operation. It functioned on raffles and bake sales. All too often the money came straight from the pockets of its own volunteers.

We are a State that reveres all of our veterans. In Alaska we are home to more veterans per capita than any other State in the Union. We are also known as a very strong State for voluntarism. Support for veterans is clearly the rule. In many of the communities it is difficult to provide for that level of support, but we figure out a way to do it anyway.

It is universally acknowledged that there was something exceptional about Mo Bailey. His was a life of selfless service, sacrifice, and humility. He was truly a cut above the rest, and that is a pretty strong statement when you consider the many veterans who call Alaska home. But Mo never sought recognition for himself. He was so humble. But this did not stop his friends from ensuring that he received the recognition he had so honorably earned. In 2007, Mo was awarded with the prestigious Alaska Governor's Veterans Advocacy Award. I do not believe I am overstating when I say today that we mourn the loss of one of our State's most significant veteran leaders.

Mo Bailey was born in 1939 and grew up in Memphis, TN, during the Jim Crow era. The story goes he was looking up at the B–17s flying overhead and he told himself: Someday I am going to be flying those. Mo recounted, in a 2009 interview published in the Frontiersman newspaper:

> Black people there said they didn't think this would ever happen. But at 7 years old I knew this is the United States of America and you can do anything you want to do. That was my heart's desire.

Those were Mo's words.

Mo enlisted in the Army at the age of 17. I say to the pages down here, he joined the Army at 17. He forged his father's signature on the consent form. Then he served 20 years. He pulled two tours in Vietnam and one in Alaska. He was a helicopter crew chief and a gunner.

Then, upon retirement from the Army, he decided to stay in Alaska and get involved in our community. He became a private pilot and a flight instructor. He was a trained Veterans Service Officer and he served as president of the Vietnam Veterans of America Chapter 903 in the Matanuska-Susitna Valley.

It was not too long ago that Mo discovered he had leukemia, but he said it was not going to slow him down. In an interview in the Frontiersman newspaper Mo said:

> I feel as though I'm probably on somebody else's time. But that's OK. There is no quit. No way, no how. I'm never going to prepare myself to die. Never.

Mo really did live his life and live it large.

I got a call in early January. I was traveling and I got a call from my staff person out in the Mat-Su Valley and he said: Mo has leukemia. He is not doing well. He is in the hospital and this may be it.

I called the hospital. A man answered. I asked to speak to Mo. The guy on the other end said, ''Well, this is Mo.''

I said: Mo, you sound pretty healthy.

He said: Yes, they tell me I am not going to make it. They tell me I am done. I am in the hospital. But I just don't feel like dying. I don't feel like I am ready.

I said: Mo, you don't sound like you are going anywhere. You sound like you have got a lot of fight left in you.

Mo said: You know, there are some things I want to do. I have been working on this veterans gathering. It is a big gathering in the valley with so many of our Alaskan veterans. I have got a lot of things to do. I have got some things I want to give you. You know, I am focusing on that.

I said: Mo, I will see you in May at the gathering.

This was January and he had been told this was pretty much the end. But in May Mo hosted the gathering in Palmer, his annual day-long event that provides Alaska vets across the generations an opportunity to spend time with one another. They listen to music. They donate something to the Veterans Aviation Outreach, and they have a lot of fun.

There are some speeches, too. You can't go to any veterans gathering without a speech or so. But at that May gathering, Mo honored me with a Veterans Aviation Outreach jacket. It has my name on it and I am an honorary member of the Veterans Aviation Outreach.

Mo stood with me there and we both talked about the fact that, back in January, May looked like it was a long way away. But Mo is a fighter. Mo was not one who was going to go out easy.

At those many speeches I told those at the gathering that as much as I can do, as much as I want to do for our veterans, I am here in the Senate to help Alaska's and all veterans. I said: Mo, I will never hold a candle to you, but I sure promise to try. And I promised to try to do more, and today I renew that commitment in Mo's loving memory.

Many of us who were gathered there thought that event was going to be Mo's ''last hurrah,'' and indeed that is the way it turned out. But Mo continued to fight right up until the very end on Tuesday evening.

I could go on for a while about Mo's work in service to the Alaska veterans community, but I would suggest it is probably a more powerful statement, a more powerful story, if it is done in Mo's own words. I ask unanimous consent that two articles, one from the Vietnam Veterans of America magazine and the other from the Anchorage Daily News, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Ms. MURKOWSKI. I place these articles in the RECORD not only because Mo's legacy needs to be preserved in history, not only to do justice to the tremendous contribution of Mo Bailey, I am really hoping these articles will catch the attention of some of the senior officials within the VA. Reading about the gaps in service Mo Bailey sought to fill might challenge the VA to think a little bit harder about how it can improve its service to other rural veterans. At the very least, it might cause the VA to acknowledge the debt it owes to people like Mo Bailey and so many others in our veterans service organizations who are giving of their own time, their own energy, their own money, to fill these gaps. So maybe, just maybe, Mo's story, which has been an inspiration to so many of us in Alaska, will also inspire the VA to do more and to do better.

On behalf of all of my Senate colleagues, I express my deepest condolences to Mo's wife Ann and all of those who have been touched by Mo Bailey's generosity and kindness.

EXHIBIT 1

REACHING THE UNREACHED IN ALASKA VETERANS AVIATION OUTREACH

(By Jim Belshaw)

In the course of his 20-year Army career, Maurice Bailey, president of VVA Chapter 903 in Mat-Su, Alaska, pulled two tours in Vietnam and one in Alaska. He thought Alaska was a ''cool place'' and went back there to live. It was different from anything he'd known, and he liked things that were different. Since 1980, the mechanic-turned-pilot has flown small fixed wing aircraft around the state. With a handful of other veteran-pilots, he's hoping to turn those long years of experience in the air into something that will help Alaska's aging veteran population.

As Bailey himself got a little older, he said he decided to put in for ''some VA disability stuff Agent Orange-related and PTSD. Just a whole gamut of stuff.'' He said the VA experience ''wasn't a cakewalk,'' but when it was done the VA found him to be 90 percent disabled. That got him to thinking about other veterans. 74,000 of whom live in Alaska, some in remote villages far from any kind of service, Alaska being a good place to be alone if that's your desire. There are 234 villages in Alaska. They range in population from 50 to 500. A big town might have as many as 2000.

''A lot of people are hiding,'' Bailey said. ''They just wanted to run away. They just don't want to be bothered.''

He'd spent many year flying to such places. While he noticed the large number of veterans, he didn't give it much thought until he went through his own VA experience. He wondered how many of Alaska's veterans might be so far removed that they didn't know they had benefits coming, let alone how to get them.

He became a veterans service officer. It seemed the natural for him. He met men he hadn't expected to meet.

''I met World War II guys,'' he said. ''One guy in particular, a tough old guy 84 years old. He was gut shot twice, medically discharged, and given a 30 percent disability. He quietly disappeared into the wilds of Alaska. When I met him, he was still flying airplanes. The oldest guy I saw was 90 years old.

He says he doesn't mean to criticize the VA when he says it needs to do outreach. He thinks that if the VA did a credible job of outreach, it would be overwhelmed by the needs of veterans. He thought perhaps a smaller number of people working on a modest scale might be a good place to begin.

Maurice Bailey got together with other veteran pilots—Tom Baird and Joe Stanistreet (no longer with VAO) and Chuck Moore—to talk about the possibility of doing outreach themselves. Bailey had been doing it on his own for a year and asked his friends if they'd like to join him. A fourth later joined the group—Jim Kendall, a photographer and navigator.

From these conversations grew Veterans Aviation Outreach, Inc., three veteran pilots flying their own airplanes to reach people who live ''off the road'' in a place not known to have many roads. Many of those veterans live in what is described as ''survival mode'', barely existing, often finding comfort in alcohol, only to have the alcohol lead to unemployment.

From the beginning, Bailey said, trust was the critical factor in the success they've had. Because of his long experience flying around Alaska, he came to know many of the distant veterans. It made a difference when he broached the subject of benefits. By way of illustration, he tells of another veteran who went to a small village where no one came out to greet him. But when Aviation Outreach went to the same place, they signed up 29 people in two days for health care and benefits.

''These guys have seen me around these villages and they trust me,'' Bailey said. ''I know most of them. I know their kids.''

Bailey said Moore, with whom he served in Vietnam 38 years ago, is a key player in the effort and the pilot with the most experience.

''He was a young pilot (19) and I was an old man (25),'' Bailey said. ''He flew gunships. He left the Army and went into the Navy to fly jets. He flies 90 percent of the missions for VAO. At this time he also flies for the State of Alaska. We have three pilots and four airplanes. Chuck owns two airplanes and the other two are owned by Tom Baird and myself.''

Tom Baird underscores the importance of trust with the veteran's community.

When I travel in the bush, most contacts are developed by these kinds of relationships,'' he said. ''Once you establish a relationship with an individual as a friend, you end up being steadfast friends. Individual homes are open to one another. Most of the people in this state will stop and give a hand if you need it. We want to reach the unreached who are out of sight and out of mind. These individuals are extremely independent. They like to do things for themselves whether they can or not.''

Bailey says the four members of Veterans Aviation Outreach have no grand illusions. They try to do ''small stuff.'' They sign people for VA benefits; they recruit new VVA members. Believing there is strength in numbers, they do what they can to build the veterans community.

They built a wheelchair ramp for a veteran to get in and out of his house. He's 50, Bailey said, and he'd ''given up on life.'' So they do small things that will enhance that life.

They put in a claim for a veteran suffering from diabetes. It took eight months to settle, but the veteran received $4,000 in back pay and now gets $200 a month for the rest of his life.

''He's real happy because now he can buy fuel oil,'' Bailey said.

Bailey is direct when dealing with veterans, ''I try to explain to them, ''Look guys, you're old and you're sick now,'' he said.

Tom Baird said decisions between quantity and quality is always difficult.

''We've run into difficulty making decisions about reaching as many people as we can or making sure those we have contacted are taken care of before we move on,'' he said. ''Because of the difficulties of processing and getting things done, it's looking like we're going to go for quality first. These guys already had been promised the world and gotten nothing, so it makes no sense to go out there if we're not going to be able to do it right.''

Maurice Bailey counts his blessings and speaks of a duty to share them.

''Life has been pretty good to me,'' he said. ''I live pretty good. But we're here for more than to just live pretty good. We're here to help people when they need it.''

[From the Anchorage Daily News, Nov. 18, 2008]

PILOTS BRING HOPE, HELP TO VETERANS IN ALASKA—VAO: OUTREACH BY 7 VETS INCLUDES FOOD, CLAIMS HELP AND FLIGHTS TO THE DOCTOR

(By Zaz Hollander)

WASILLA—A national veteran's group report released last month highlighted healthcare struggles facing Alaska Army National Guard members returning from deployments to rural villages. But news of under-served Bush veterans came as no surprise to Maurice ''Mo'' Bailey, a Wasilla flight instructor who served as a helicopter flight engineer with the U.S. Army during the Vietnam War.

Several years ago, Bailey and six other veterans—also pilots—took to the skies in their own planes to help veterans living in Western Alaska. All had flown the area for fun, and saw veterans in need of help. In 2003, Bailey created a nonprofit, Veteran's Aviation Outreach, which serves ''isolated veterans'' in rural or remote parts of western Alaska and elsewhere.

The men mostly help people file for Veterans Administration benefits. But they've also flown out veterans in need of medical care, made sure deceased veterans got flags for their graves, and shared literally tons of moose meat scored from helpful guides.

In 2005, they filed benefit claims on behalf of six Naknek veterans. The next year, they flew a rural resident to Anchorage for emergency medical care, a visit that also resulted in diagnoses—and later treatment—of diabetes and post-traumatic stress disorder.

Now 69, Bailey last year received the Governor's Veterans Advocacy Award for his ''outstanding volunteer service.''

He talked about the flying outreach group during a recent conversation.

Q. Why did you start?

A. Seeing the conditions that many veterans are in. Me and the rest of the pilots used to fly to western Alaska. We saw that people would have medical problems and some people in some cases died, leaving huge debts. Had they known they had benefits, the VA would have taken care of that. It's mostly information: these people are clueless. Once you're released from the military, you are not tracked, updated.

Q. Why western Alaska?

A. We were retired, just kind of goofing around (and flying the area). They're all combat pilots—the rest of the guys are. I'm not. We were all in Vietnam together. All of us are retired from the military, looking at our brothers and sisters and saying, ''Well, what can we do?'' We didn't set out to do this, trust me. We were enjoying our retirement, our grandchildren.

Q. Can you give me some specifics of the kind of outreach you do?

A. We've been to all villages up and down the Kvichak River and Lake Iliamna. We found out veterans had been buried without flags. We decided that was totally unacceptable.

Q. Where was that?

A. It was in Newhalen on Lake Iliamna. We came back and went around to organizations such as the VFW. We got flags at the Wasilla Vet Center. We took flags out to make sure that people who had died recently, they received flags they hadn't gotten before and we left flags there so they could have them to take to six surrounding villages. That was last year.

Q. What about more recently?

A. We help veterans, no matter where. Last month, a guy was on dialysis. He had to come into Wasilla three times a week. He lived in Sutton. His house was not sanitized, broken pipes. We took a couple ladies out, cleaned the house, took a plumber out to fix pipes for water, built a handicapped ramp. Now he's able to do his dialysis at home.

Q. Where does the money come from?

A. Most of it comes out of our pockets. Sometimes people give fundraisers, spaghetti dinners, garage sales, cookie bakes or whatever. We do lots of stuff. I tell you what, I'm not just bragging, I'm really proud. We've had a heckuva impact doing things for people, little things that (otherwise) people, they got to paperwork it to death.

We just gave away 2,100 pounds of moose meat. We do it every year, have a deal with guides in Healy. They bring Lower 48'ers on hunts. They want horns. We want meat. We caravan a couple of trucks, pick up the meat and have it processed. The neediest people get it first. Valley veterans. Actually, we sent meat to the Bush—400 pounds last year to Naknek. Last week we also bought two freezers for needy veterans and filled both up with meat.

Q. How many veterans do you serve?

A. I just started tracking that. We see and help maybe two veterans a week. On a large scale, like the meat giveaway, it's to 50 to 60 people. Out in the Bush, we file claims for people with disabilities, illnesses. We do a little bit of everything.

Q. Where's the next trip?

A. Dillingham. Hopefully (early November). We'd like to have a gathering there. We had 600 people last spring at a Wasilla Airport gathering, with a barbecue and a band . . . We had World War II, Korea, Vietnam, Iraq and Afghanistan vets.

What made it so amazing was that these young guys that just returned from Iraq and Afghanistan were able to communicate and talk to guys that was in World War II. A lot of those guys won't be around here next year.

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

MORNING BUSINESS

Mr. MENENDEZ. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

CUBA TRAVEL BAN

Mr. MENENDEZ. I have come to the floor many times to speak out about the Castro regime's abuses of the Cuban people. Today, I come to the floor once again, this time in strong opposition to any attempt in this Chamber to pass any bill that in any way lifts or lessens the travel ban on Cuba. I wish to make it absolutely clear that I will oppose and filibuster, if I need to, any effort to ease regulations that stand to enrich a regime that denies its own people basic human rights. I do not want to obstruct the business of this Chamber, but I know my colleagues on both sides of the aisle are well aware of how deeply I feel about freeing the people of Cuba from the repressive regime under which they have suffered for too long.

The fact is, the big corporate interests behind this misguided attempt to weaken the travel ban could not care less whether the Cuban people are free. They care only about opening a new market and increasing their bottom line. This is about the color of money, not the desire for freedom.

The very fact that a travel bill has moved through the House Agriculture Committee makes one wonder why American agricultural interests would even care about tourist travel to Cuba. One can only assume it is about generating increased tourism dollars for the Castro regime to buy more agricultural products. That would only serve to enrich the regime and do absolutely nothing to bring democracy to the island.

Let's be clear. Those who believe that increasing travel will magically breed democracy in Cuba are simply dead wrong. For years, the world has been traveling to Cuba and nothing has changed. Millions of tourists from democratic nations have visited Havana, and the Castro regime has not loosened its iron grip on its people. It has not ended its repressive policies. It has not stopped imprisoning and brutally abusing prodemocracy forces.

Now, sometimes I wonder; those who lament our dependence on foreign oil because it enriches regimes and terrorist states such as Iran should not have a double standard when it comes to enriching a brutal dictatorship such as Cuba right here in our own backyard.

How coincidental that suddenly, now that the Congress is considering lifting a travel ban, the Castro regime is hoping the world will believe it will release 52 prisoners of conscience. Well, let's set the record straight. Many people are wrongly under the impression—wrongly, reading and watching media reports—that 52 political prisoners have already been released and are free in Cuba. The fact is, only about seven have been released, and forcibly—forcibly—deported from their country—another human rights violation—instead of allowing them to stay and peacefully advocate for change within their own country.

So even when the regime releases people whose simple crime was trying to peacefully create change in their country and who get imprisoned for years for that peaceful act, then when they are released, they are released only with the understanding that they will be deported out of their country so they can no longer be advocates, peaceful advocates, for civil society and democratic change. Imagine if those of us who are Americans could be arrested simply because we disagreed with the government, sought to peacefully change it, and then ultimately, after being arrested for years, were deported to some other country in the world.

The remaining 47 prisoners are set to be released but not now, not tomorrow, not next week, not even next month, but sometime during the next 3 to 4 months, we are told—or so the regime says.

According to reports in the Miami Herald, nine of those prisoners have said they will refuse to leave for Spain if released, and many who were released and forcibly deported to Madrid have vowed to continue their activism in exile. They have told reporters they feel the shock of being forced to leave their country. Omar Rodriguez Saludes told a reporter he feels ''like I was still in prison. I left behind part of my family. I still feel like I have the cuffs on my hands.''

The released men said conditions in the prison were horrendous. They shared their cells with rats. Diseases infested the prison. And they told of inmates trying to kill themselves or do themselves bodily harm because of the squalid prison conditions they were forced to endure. Remember, these are political prisoners, not people who committed common crimes.

Julion Cesar Galvez, one of the dissidents, told reporters:

> The hygiene and health conditions in prisons in Cuba are not terrible—they're worse than terrible. We had to live with rats and cockroaches and excrement. It's not a lie.

Galvez, a 66-year-old journalist who was sentenced to 15 years simply because of what he sought to write, 15 years of his life in these horrible prisons, said:

> There were outbreaks of dengue fever and tuberculosis.

He said there were more than 1,500 prisoners in the prison in Villa Clars—40 prisoners to a cell measuring 32 square feet.

Another prisoner, Norman Hernandez, said:

> The prisoners are tired of demanding their rights . . . They lose all hope. They lose their desire to live, and they try to hurt themselves so they will get attended to.

These men were lucky to be released, but they will not give up. They will continue to tell their stories, and they will continue to fight for freedom for all Cubans.

It took the regime one night in March to arrest these 52 people—one night. That scooped up 52 people who were peacefully advocating for change in their own country. So we might ask ourselves: If it took you one night to arrest 52 political prisoners, why will it take 4 months to release all of them?

It is not a coincidence that during the next 3 or 4 months, there will be Members of the Congress who will be looking to provide the Castro regime with billions of dollars of added tourism revenue. It is not a coincidence that in September, the European Union will once again deliberate the wisdom of its remaining sanctions. The nagging question that lingers in my mind is, Will the 47 ever see the light of day or will they be forcibly deported from their country and another 52 arrested overnight to take their place?

It is possible the regime will never release them because they do not want the world to see them because of the torture to which they have been subjected. Here is one of those prisoners. Last month, a man named Ariel Sigler was released from a Cuban prison on the verge of death. He was a 250-pound amateur boxer. You see him there in great health. This is the picture of his release—a 100-pound paraplegic. A 100-pound paraplegic. He did nothing to deserve that set of consequences.

Last month, the regime once again refused to let the United Nations Special Rapporteur on Torture visit the island, which, in my own view, speaks volumes about the conditions of the thousands of Cubans who have been imprisoned.

When you oppose the Castro regime, you are called dangerous, and there is a charge of dangerousness. Thousands of Cubans have been sent to Castro's prisons because of dangerousness. That is dangerousness: simply opposing the regime and seeking change in your home country—and for other trumped-up political charges.

If that is what is happening to the 200 internationally recognized and known political prisoners, then how much worse must it be for the thousands of anonymous political prisoners who have not been reported because they fall under the charge of dangerousness?

According to the State Department:

> The total number of detainees is unknown because the government does not disclose such information and keeps its prisons off limits to human rights organizations and international human rights monitors.

Again according to the State Department:

> One human rights organization lists more than 200 political prisoners currently detained in Cuba in addition to as many as 5,000 people sentenced for dangerousness.

Yet, in the face of this repression, some Members want to provide the Castro regime with its No. 1 source of income: tourism. This is not about travel; this is about rewarding a repressive regime. We already have hundreds of thousands of Americans who travel to Cuba for family, education, or humanitarian reasons under our existing law. But tourism to Cuba is a natural resource, akin to providing refined petroleum products to a country such as Iran. It is reported that 2.5 million tourists visit Cuba each year—1.5 million from North America, 1 million Canadians; more than 170,000 from England; more than 400,000 from Spain, Italy, Germany, and France combined; all bringing in nearly $2 billion in revenue to the Castro regime.

Yet nothing has changed in Cuba except the amount of tourism dollars the regime has at its disposal. What does it do with nearly $2 billion of resources from tourism? Does it put more food on the plates of Cuban families? Does it create a better quality of life for the Cuban people? No. Even with all of that money coming in, the Castro regime still rations people's food. They have to stand in line with a coupon to get access to a simple meal, waiting in long lines for a subsistence meal. Of course, when the regime rations people and they are in line just trying to get a meal for the day, there is no time for promoting democracy or human rights. The people are just trying to exist, trying to keep their family fed. There is no time but to stand in line, despite several billions of dollars to the Castro regime from tourism.

To me, that is an irreversible concession to a regime that this week arrested a Cuban American for providing laser printers and ink cartridges to a rural woman's opposition movement in Santiago. He was interrogated, the head of the movement's home raided by a dozen state security agents, the printer and cartridges confiscated. What a threat, a bunch of printers and ink cartridges. What a threat. He was subsequently released and put on a plane back. Meanwhile, an American remains in prison for helping the island's Jewish community connect to the Internet. After 6 months in jail, this individual still faces no trial and no charges, a U.S. citizen, jailed simply because he was trying to help the Jewish community in Havana to access the Internet. What a crime. What a crime. Yet for the most part we are relatively silent.

They were looking to help the Cuban people. But the regime doesn't want anyone engaging with the Cuban people. They want tourists to provide only one thing—hard currency, dollars, money.

Visiting the beaches of Varadero and sipping a Cuba libre, which is an oxymoron, provides money to continue repression, but it will not let the Cuban people sip the sweetness of freedom. It will not change the plight of the Women in White. These are women who are the mothers, daughters, sisters, and wives of those many political prisoners in Castro's jails who each week, normally on Sunday, march dressed in white in peaceful protest with a gladiola and, in doing so, are ultimately trying to say: Free my relative.

This photograph shows the consequence of what they face. State security, dressed up as civilians, ultimately, as we can see, assaulting them, hurting them, arresting them. It will not change the fate of the Women in White, and it will not change the fate of their family member who remains jailed.

It will not change the fate of being imprisoned by the regime and then being released, as they have done so many times when there is some international spotlight on an individual, only to be rearrested over and over and over.

It will not change the tragic fate of Orlando Zapata Tamayo, who was deemed a prisoner of conscience by Amnesty International, who died in February after being on a hunger strike in a Cuban prison for 85 days protesting horrific prison conditions. It will not end the desire for freedom or change conditions in Cuba for men like Guillermo Farinas who began his hunger strike after the death of Zapata, ending it after he heard of the prisoner release, but vowing that he and other courageous Cubans would join in yet another hunger strike, if the 52 other political prisoners are not released and put back in their homes by November 7.

This photograph shows what he has been emaciated to in his hunger strike.

Lifting the travel ban, allowing tourist dollars to flow to the regime will not end any of it. It will not free the people of Cuba. It will not change the fate of the Women in White or the desire for freedom of Guillermo Farinas and the other political prisoners. It will only enrich the regime.

Reports this week have pointed out the economic impact opening travel to Cuba will cause to the Gulf States, Puerto Rico, the Virgin Islands, and other democratic neighbors in the Caribbean. The dollars that will be transferred from those tourism economies should be for the benefit of a democratic government in a free Cuba not to bail out a brutal regime. The Castros don't deserve it, and the U.S. Gulf States and our Caribbean friends cannot afford it.

According to the Jamaica Daily Gleaner:

> The results of various studies of the likely impact on the Caribbean of lifting of the U.S. travel ban suggests that Cuba's tourism arrival would surge to full capacity at the expense of other Caribbean destinations . . .
>
> . . . Apart from Puerto Rico and the U.S. Virgin Islands, the most heavily dependent Caribbean destinations on the U.S. and the most vulnerable, should the legislation to lift the travel ban pass, ultimately include [many of the islands in the Caribbean that would have an enormous economic damage to them].

It seems to me we should be promoting tourism to the beaches along the gulf coast, not to the apartheid beaches of Castro's Cuba.

You are not even allowed, as a Cuban citizen, to go to the beaches, many of the beaches of your own homeland, because they are reserved for tourists. You can't enter some of the hotels unless a tourist in your own country brings you in. That is why we call it apartheid. You cannot have access in your own homeland.

Imagine in my home State of New Jersey, where we love the New Jersey shore, imagine me not being able to go to any of the beaches in New Jersey because the government wants to restrict me from interacting with tourists and that those beaches would be reserved only for foreign tourists in my own home State in my own home country. That is what goes on.

Allowing the regime to benefit from increased tourism will not change a thing in Cuba. It will not bring democracy to Cuba. It will not make conditions for the Cuban people any better or change the history of the brutality of the Castro regime, a brutality that continues to this day. Sometimes I think some of my colleagues just don't have a sense. This is not using the word ''brutality'' for the sake of it. The pictures speak a thousand words.

I would like my friends in the Senate and others beyond, who may not have fully engaged in understanding what this brutality is all about, to recall the words of Armando Valladeres who wrote the prize-winning book ''Against All Hope.'' He was imprisoned in the infamous Isla de Pinos in 1960 for his opposition to communism. He lived through the hell of Castro's jail, suffering violence, forced labor, and solitary confinement. His writings were smuggled out of Cuba, read throughout the world. He was finally released after intense international pressure, 22 years after he was taken prisoner. They had to rehabilitate him because they didn't want him released and shown to the world in the circumstances that some of these prisoners are.

Here are some of his memories of activity at the hands of the Castro brothers while in captivity:

> I recalled the two sergeants, Porfirio and Matanzas, plunging their bayonets into Ernesto Diaz Madruga's body. . . . Boitel, denied water, after more than fifty days on a hunger strike, because Castro wanted him dead; Clara, Boitel's poor mother, beaten by Lieutenant Abad in a Political Police station just because she wanted to find out where her son was buried. . . . Officers . . . threatened family members if they cried at a funeral.
>
> I remember Estebita and Piri dying in blackout cells, the victims of biological experimentation. . . . So many others murdered in the forced-labor fields, quarries and camps. A legion of specters, naked, crippled, hobbling and crawling through my mind, and the hundreds of men mutilated in the horriffing searches.
>
> Eduardo Capote's fingers chopped off by a machete. Concentration camps, tortures, women beaten. . . .
>
> And in the midst of that apocalyptic vision of the most dreadful and horrifying moments in my life, in the midst of the gray, ashy dust and the orgy of beatings and blood, prisoners beaten to the ground, a man emerged. . . .
>
> . . . the skeletal figure of a man wasted by hunger with white hair, blazing blue eyes, and a heart overflowing with love, raising his arms to the invisible heaven and pleading for mercy for his executioners.
>
> ''Forgive them, Father, for they know not what they do.'' And a burst of machine-gun fire ripping open his chest.

I hope my colleagues remember these memories of Armando Valladeres and the realities of Castro's prisons before we think about rewarding the Castro regime in any way. Their sins are too great, and this is not a thing of the past. Their brutality and repression have been going on since the inception and still go on today. It has never stopped. It has never gotten better. It has never changed. It never will for so long as the regime is in power.

When I hear my colleagues come to the floor and talk about lifting the travel ban, I am compelled to ask, Why is there such an obvious double standard when it comes to Cuba? Why are the gulags of Cuba so different than the gulags of other places in the world? Why are we willing to tighten sanctions against some but loosen them when it comes to an equally repressive regime in Cuba, in effect rewarding them? Why are we so willing to throw up our hands and say: It is time to forget?

I don't believe it is time to forget. We can never forget those who have suffered and died at the hands of dictators anywhere, and certainly not in Cuba. It is clear the repression in Cuba continues unabated, notwithstanding the embargo, notwithstanding calls by those who want us to ease travel restrictions, ease sanctions, notwithstanding the fact that we have millions of visitors from other places in the world bringing billions of dollars, and still the repression goes on. In good conscience, I cannot do that. I will not step back.

I have come to the floor in the past to oppose any attempt to do that, to pass any bill that in essence lifts the travel ban on Cuba. I will continue to do so. I will continue to do so until we have the opportunity to make sure the Cuban people are ultimately free, make sure they have the basic fundamental rights that you and I enjoy in this great country, and to ensure the voices of all who languish in Castro's jails—for which the world seems to be deaf to their cries, does not seem to care, does not speak about, does not do anything about—will continue to raise their voices in this Chamber and beyond.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

TRAVEL TO CUBA

Mr. DORGAN. Mr. President, sometimes on the floor of the Senate, good friends disagree—perhaps not as often as some would think, but on occasion that is the case, and it is the case today, when I observed and listened to a presentation by my colleague from New Jersey on the subject of Cuba. I am sure we do not disagree about some parts of this subject; that is, I do not like the Cuban Government. I want freedom for the Cuban people. We, I assume, both believe that and believe the imprisonment of political prisoners in Cuba—who languish in Cuban jails for exercising their right of free speech and who are doing that in dark cells—is wholly unfair and we should as a country do everything we can to try to bring the vestige of freedom to the Cuban people. I understand all that. I support that strongly.

I have been to Cuba. I have spoken to Cuban Government leaders. I have spoken to dissidents. I have spoken to people on the streets of Cuba. And I want Cuba, an island 90 miles off the shore of our country, to be a free country.

Let me describe how long Cuba has had Communist rule and, by the way, how many Presidents we have had during that Communist rule and, therefore, the embargo that has been leveled against Cuba all these years. Let me describe how many Presidencies that embargo has existed through. The Presidencies begin with John F. Kennedy and go through this administration. That is 10 Presidencies.

We slapped an embargo on the country of Cuba and punished the American people in the process by saying: We are going to limit your right to travel to Cuba. And we were going to shut off all commerce to Cuba, including, by the way, most of these years, a restriction on sending food and medicine to Cuba.

The embargo has not seemed to work very well. It is now 50 years old, and it still exists. Well, what has happened as a result of the embargo? We have now a debate about what should happen with respect to our relationship with Cuba at this point. My colleagues say: Well, don't do anything that would reward the Cuban Government. Far from it. I have no interest in rewarding a government that I substantially disagree with, a government that I believe throws innocent people in jail. I have no interest, nor do the people who support the bill Senator ENZI and I have now offered in the Senate, with 40 Senators cosponsoring it—we have no interest in rewarding the Cuban Government. That is not the issue. But we do believe the restriction on the American people's rights—the decision by a government that says: We are going to tell the American people where they can and cannot travel—we believe that is inappropriate. We do believe that ought to change.

So what I would like to do is talk about a couple things, including, No. 1, lifting the travel ban to Cuba and making it easier to sell food to Cuba.

I was the person who changed the law 10 years ago that allowed for the first time just a crack in this embargo that allows us to sell food into Cuba if it is paid for with cash. I think it is immoral for a countty to use food as a foreign policy weapon. I do not think food ought to be part of any embargo. I think that is immoral.

By the way, using food as a part of an embargo just hurts poor, sick, and hungry people. Do you think the Castro brothers have missed breakfast or lunch or dinner because we had an embargo on food shipments to Cuba? Hardly. So 10 years ago, I got the law changed. In fact, it was the Dorgan-Ashcroft amendment. I got the law changed. That allowed us to begin selling food into the country of Cuba. That was the first opportunity to make any changes at all in this embargo.

Now the question is travel to Cuba by the American people. Should we continue to say to the American people: You have no right to travel to Cuba. We do not like the Cuban Government, so what we are going to do is restrict the rights of the American people? We have been doing that for 50 years, and it is time—long past the time—for it to change.

Let me describe a letter that came recently to the House of Representatives.

By the way, the reason this issue has now come to the forefront is the Agriculture Committee of the House of Representatives just passed a bill that lifts the travel restrictions on the American people to travel to Cuba. It also makes some changes in the conditions under which agricultural goods can be sold to Cuba, which is very important to do as well because even though 10 years ago I got the provision enacted into law that allows the sale of farm products for cash into Cuba, in 2003, as a runup to the 2004 election, President Bush tightened all of those provisions and actually changed a rule so that in order for Cuba to purchase goods from our country; that is, agricultural commodities, they had to pay in cash before the commodities were even shipped. Well, that never happens in a transaction. You pay cash when you get the goods. But President Bush was attempting to restrict the sale of agricultural products to Cuba. So we need to fix that as well.

But the House of Representatives Agriculture Committee has now passed a bill lifting the travel ban. That means this issue is going to be front and center here in the Senate. Senator ENZI and I have the bill—it is bipartisan—that would lift the travel ban to Cuba, and we have 40 Senators who are cosponsors.

Let me read to you a letter that was sent to the U.S. House of Representatives by 74 Cuban human rights leaders, dated May 30, 2010, just a month and a half ago. They said:

> The supportive presence of American citizens, their direct help, and the many opportunities for exchange, used effectively and in the desired direction, would not be an abandonment of Cuban civil society but rather a force to strengthen it. Similarly, to further facilitate the sale of agricultural products would help alleviate the food shortages we now suffer.
>
> The current Cuban government has always violated this right [to travel] and in recent years has justified its actions with the fact that the government of the United States

also restricts its citizens' freedom to travel. The passage of this bill would remove this spurious justification.

This is not from me or the cosponsors of my bill; this is from 74 Cuban human rights leaders.

As to the issue of lifting the travel ban—the one we have slapped on the American people in order to punish somebody else; we have punished the American citizens because we are upset with somebody else—here are people who support lifting the travel ban: a political prisoner, Marcelo Rodriquez from Cuba; Guillermo Farinas, a hunger striker in Cuba; Yoani Sanchez, one of the leading political bloggers in Cuba; Oscar Chepe, a former political prisoner; and Miriam Leiva, founder of the Ladies in White.

One of my colleagues recently had a poster I saw about the Ladies in White. The founder of the Ladies in White supports lifting this travel ban. They are not soft on Castro or soft on a Communist government. They just believe this travel ban should be lifted because it will be beneficial to their interests as leaders in human rights in the country of Cuba.

The sacrifices of those whom I have shown here in photographs, the sacrifices they have made in Cuba—sitting in dark prison cells, hunger strikes, and more—I think give them great credibility when they speak out on what is the best way to promote democracy in Cuba.

I indicated that I got a law passed that allowed us to sell some food into Cuba for cash. Since that time, U.S. farmers have sold $3.2 billion worth of food to Cuba. I mentioned that in 2003 the Bush administration decided to dramatically change that to try to restrict the sale of agricultural products to Cuba, and they succeeded in some respects. We need to change that as well. It makes no sense to do what they did in 2003.

But let me try to describe what was done in 2003 so that everybody understands what happened. The President, trying to get tough in 2003, eliminated the people-to-people visits program with Cuba; eliminated secondary school education travel with Cuba; restricted family travel to Cuba by Cuban Americans; restricted amateur athletic travel; prohibited gift parcels with clothing, personal hygiene items, soap-making equipment, and so on; restricted religious travel; and then also imposed the cash-before-shipment rule in order to restrict the sale of agricultural commodities to Cuba. So that is where we have been with respect to what happened in the previous administration.

President Obama has taken some unilateral actions since taking office. He has removed the restrictions on Cuban Americans who want to visit Cuba for family visits, and he has authorized U.S. telecommunications companies to sell their services in Cuba. I think he should go further immediately, and I think he has the capability to do that by restoring people-to-people visits to Cuba, permanently restoring the original definition of the term ''payment of cash in advance'' so that farmers can continue to sell agricultural products to Cuba. And especially, we need here in the Congress to pass S. 428, which is the Freedom to Travel to Cuba Act.

The American people have the right to travel almost anywhere they wish. They could travel to Russia in the middle of the Cold War. In fact, we sent our philharmonic orchestra, in 1959, right at the height of the Cold War, to play music in Communist Russia. They were not restricted. There is no travel restriction with respect to Russia.

The New York Philharmonic, in 2008, went to North Korea. And if you want to get a lump in your throat and feel really proud, go get the recording, the DVD, watching the New York Philharmonic play a concert in North Korea. It is extraordinary. But they were not prohibited from traveling to North Korea because you can travel to North Korea.

You can travel to the country of Iran. This picture is from the Office of Foreign Assets Control, which is the office down in the bowels of the Treasury Department that determines how they are going to enforce the travel ban to Cuba. They say:

All transactions ordinarily incident to travel to or from Iran . . . are permitted.

So let's review. You could travel to Russia in the middle of the Cold War. You can travel to Iran right now. You can travel to North Korea right now. North Korea is a Communist country. You can travel to China right now. China is a Communist country. You can travel to Vietnam right now. Vietnam is a Communist country. By the way, with respect to China, I am cochair of the Congressional Executive Commission on China. We have the world's most complete database of political prisoners held in China. There are very serious problems in China with respect to imprisonment of innocent people who are now sitting in the dark corners of cells in the farthest reaches of China, political prisoners, and we don't decide because of that we are not going to allow travel or trade with China or Vietnam. We have decided that engagement through travel and trade is the most productive way to move those countries toward greater human rights. It is only with Cuba that our country has decided it is not a strategy that works at all. What works is punishing the American people.

So what we have done is decided we are going to punish the American people who wish to travel to Cuba by tracking them down—by diverting somewhere around 25 percent of the resources in the Office of Foreign Assets Control, which is a little office in the Treasury Department that is supposed to be working on tracking financing by terrorists. Instead, about a quarter of their time, I am told, is used to try to track American tourists who are being suspected of vacationing in Cuba. When they track them down, they get after them. They want to levy a big fine.

I have described previously, and I will again, because my colleague who presented used a lot of posters to show what the circumstances are, but here is what the Office of Foreign Assets Control says with respect to travel to Cuba by an American citizen:

Unless otherwise authorized, any person subject to U.S. jurisdiction who engages in any travel-related transaction in Cuba violates the regulations.

So what does that mean? What are the consequences? Well, it means we are punishing the American people saying: We restrict your right to travel. So Carlos Lazo, a man whom I have met and who went to Iraq to fight for his country and who won a Bronze Star because he was brave and was a great soldier, came back to this country after having served his country in uniform, was awarded with great fanfare a Bronze Medal for bravery, and then was told, when he was informed—he had two sons living in Cuba and his older son was sick—you have no right to travel to Cuba to see your sick child. Unbelievable. In fact, I even forced a vote in the Senate on this question.

Sergeant Lazo, back from Iraq, with a sick son in Cuba was told: You have no right to travel. Unbelievable. Yet that was the case.

I have shown this photograph many times, but it is useful to describe how unbelievably foolish these policies are. This is Joan Scott. The Presiding Officer knows Joan Scott as well. She went to Havana to distribute free Bibles on the streets of Havana. For that, her government tracked her down and tried to fine her $10,000. For going to Cuba to distribute free Bibles, this government is going to track its citizens down to try to fine them $10,000.

I have met Joan Slote as well. She was riding bicycles in Cuba. She joined a Canadian bicycle tour and took a bicycle trip to Cuba. This government of ours tracked her down and tried to fine her $10,000. By the way, this woman, I think, made $1,100 a month in Social Security, and her government decided to try to attach her Social Security payments. What was her transgression? What was her crime? She took a bicycle trip to Cuba as an American citizen.

I don't think there needs to be said very much more about this. This is the most unbelievable policy with respect to Cuba. I have been to Vietnam, I have been to China—both Communist countries. We decided engagement through trade and travel is constructive. It works. It is why I assume the legislation Senator ENZI and I have offered is cosponsored by Senator LUGAR, the ranking member of the Senate Foreign Relations Committee; Senator DODD, the chairman of the Banking Committee and chairman of the Subcommittee on Western Hemisphere Affairs. They are part of the 40 Senators who have cosponsored legislation saying to our government: Would you stop punishing the American people because you are upset with somebody else, and would you stop being so unbelievably inconsistent?

Don't tell us that trade and travel is a constructive way to deal with Communist countries and then tell us that dealing with Cuba 90 miles off our shore requires us to punish the American people by restricting their right to travel.

I say again: What right does this government have to tell an American citizen where they can travel? They can go to North Korea, Iran, China, Vietnam, but not travel to Cuba. That is obscene. It makes no sense to me. Aside from we ought to stop doing stupid things, aside from just that notion, we surely ought to decide that it is not in the interests of this country to have its government telling people how, when, and where they can travel.

I wish to finish by just saying this again. I don't deny there are substantial human rights abuses in Cuba. I have been there. I have talked to the dissidents. I have talked to the Cuban people who have come to this country who know of, who have seen, who have watched the unbelievable lack of human rights that exist in that country. So that is not the point. The point isn't to deny the charts that people show on the floor of the Senate showing abuse. I could bring to the floor of the Senate, as chairman of the commission that deals with China, dozens of photographs of Chinese prisoners held in the darkest cells in the farthest reaches of China who have done nothing but are suffering. But we have not decided as a country that we will restrict the American people's right to go to China because that exists in China. We have set quite the opposite policy. We believe the best way to promote a march toward greater human rights in China and Vietnam and elsewhere is through trade and travel. That is the construction that this country has taken for a long while, except with respect to Cuba. In that circumstance, we say, no, we must, we must, we must prevent Americans from traveling to Cuba.

I say, again, 74 leading Cuban human rights leaders have signed a letter sent to us from Havana, Cuba—74 of them—and have said: Lift this travel ban. This travel ban makes no sense. You want to help Cuba? You want to help the people of Cuba? Lift this travel ban.

I also would say again, if I can find the chart that I had, the very brave citizens in Cuba who have spoken out and who are widely recognized, and who have suffered: Marcelo Rodriquez, Yoani Sanchez, Guillermo Farinas, Oscar Chepe, and Miriam Leiva, all of them have suffered in Cuba. All of them believe this travel ban ought to be lifted.

I hope this Senate pays some attention to that and finally sees we can't do two things at the same time: No. 1, stop punishing the American people because we disagree with another country's government and, No. 2, do smart things that allow us to find ways to push and move that government toward greater human rights for its citizens.

Lifting the travel ban will accomplish both because there are 40 of us in the Senate who have sponsored and cosponsored legislation to lift that travel ban. When we have the opportunity for that vote in the Senate, I believe we will prevail at last—at long last—and we will prevail, and it will be constructive public policy for this country to have done so. Certainly, it will have lifted the yolk of oppression by a government that restricts the rights of its own citizens—I am talking about our government—that will lift the yolk of oppression that has existed for some 50 years by a government that tells its citizens where it can and cannot travel.

I don't want to hear any more about a government that tracks down a guy from the State of Washington whose father was a minister in a small church in Cuba, who immigrated to this country, and his father died and his father's last wish was that his ashes would be strewn on the church property in Cuba where he was a minister. So his son carried out his father's wish. He went to Cuba and took his father's ashes to the church where he once served and deposited them on the lawn by that church. For that his government tracked him down and attempted to levy a very substantial fine on that young man from the State of Washington.

I am tired of those stories. Those stories are an embarrassment about public policy gone wrong, and we need to fix it.

Mr. President, I yield the floor.

CROSS-BORDER THREAT OF ASSAULT WEAPONS

Mr. LEVIN. Mr. President, last month, Mexican President Felipe Calderón addressed a joint session of Congress, highlighting the dangerous role that American-made firearms play in the violence currently plaguing both sides of the U.S.-Mexico border. President Calderón drew a link between the 2004 expiration of the U.S. federal assault weapons ban and a subsequent surge in violence in Mexico. In his speech, President Calderón urged Congress to reinstate a federal ban on assault weapons, a call I have long supported. By exploiting weak U.S. gun laws and corrupt gun sellers in the United States, Mexican drug gangs have amassed arsenals of military-style assault weapons. These guns have been used to kill thousands in Mexico and pose a grave and growing security threat to Americans north of the border.

Mexican law enforcement officials increasingly are being out-gunned by drug gangs bearing military-style assault weapons, .50 caliber sniper rifles and other high-powered weapons that originate in the United States. Using trace data from the Bureau of Alcohol, Tobacco, Firearms and Explosives, ATF, the U.S. Government Accountability Office, GAO, determined that from fiscal year 2004 to fiscal year 2008, over 20,000, or 87 percent, of firearms seized by Mexican authorities originated in the United States. Additionally, the GAO reported that the number of assault weapons within this total continues to grow. In fact, approximately 25 percent of the firearms seized by Mexican authorities in fiscal year 2008 were high-powered assault weapons, such as AR–15 and AK-type semi-automatic rifles.

However, the threat posed by assault weapons is not faced exclusively by law enforcement personnel in Mexico. Drug trafficking across the border into the United States has been increasingly accompanied by violence in the American Southwest, forcing police departments to combat criminals with military-style arsenals. Former Houston Police Chief Harold Hurtt acknowledged the AK–47 assault rifle has become the "weapon of choice" for major drug dealers, warring gangs and immigrant smugglers. "The reality on the street is that many of these weapons are readily available," according to Hurtt, forcing the Houston Police Department to consistently upgrade its weaponry to match the firepower of criminals armed with assault weapons. Just last week, Jeffrey Kirkham, the Chief of Police in Nogales, Arizona, reported that Mexican drug cartels have made death threats against his department in response to a successful drug bust. Criminals armed with assault weapons are a direct threat to American law enforcement officials and the communities they protect.

Reauthorizing a Federal ban on assault weapons would help to reduce violence in Mexico and the United States. When the first federal assault weapons ban expired in 2004, 19 of the highest powered and most lethal firearms became legal to purchase, including semiautomatic weapons that incorporated bayonet mounts or grenade launchers. In the absence of a ban, these lethal weapons continue to stream across the Mexican border, arming criminals and placing border communities in grave danger. The reinstatement of a Federal assault weapons ban has the overwhelming support of the law enforcement community, and I look forward to working with my colleagues in the Senate toward that goal.

REMEMBERING SENATOR ROBERT C. BYRD

Mr. BARRASSO. Mr. President, West Virginia, the U.S. Senate, and our Nation have experienced an incredible loss. Over the last few weeks, this Chamber witnessed poignant eulogies and remembrances of the legendary Senator Robert Byrd. Much has been said and written since Senator Byrd's death on June 28, 2010.

Those who have so eloquently written and spoken knew the Senator much better than I—Presidents, Senators, world leaders, dignitaries, as well as members of his family and friends in West Virginia.

He will be remembered as an intelligent, compassionate and illustrious figure. A giant.

Many people have recalled his historic milestones, distinguished career and legendary speeches. I first met Senator Byrd when I arrived in the Senate in 2007. I introduced myself and told him about a friend and patient of mine from Wyoming who had told me that Robert Byrd was his favorite senator. Like Senator Byrd, my friend uses a wheelchair. Senator Byrd asked me why my friend liked him so much. I told him it was because of their mutual commitment to the Constitution.

I went on to say that he thought Senator Byrd was ''the best thing since sliced bread.'' Senator Byrd's eyes brightened and widened with the reference to sliced bread. He then gave me a complete history of sliced bread in America and the date when the first mechanical bread slicer was used in the United States. As a true man of the people, Senator Byrd also sent a note and a copy of the Constitution to my friend in Wyoming.

When former Wyoming Senator Cliff Hanson died late last year, I shared the news with Senator Byrd. Senator Byrd said, ''I liked Cliff Hansen. Cliff Hansen was a friend of mine. Cliff Hansen knew what he stood for.'' The same can be said for Senator Byrd.

As a public servant, he had few equals. As a parliamentary expert, he had none. Every day, Senator Byrd showed his enduring dedication to his family, the people of West Virginia, the United States Constitution, and our Nation.

Senator Byrd leaves us with a memory of the man—the memory of his kindness, grace, and passion. He had a depth of institutional understanding and knowledge of the traditions of the U.S. Senate that will never be replaced. While many of us are students of history, Senator Byrd truly lived this Nation's history. His strength, determination, and unyielding pursuit of knowledge serve as a model for all of us.

To his daughters Mona Byrd Fatemi and Marjorie Byrd Moore, his grandchildren, and family, I extend my family's sympathy and hope the coming days are filled with love, enduring strength, and God's grace.

Bobbi and I wish the Byrd family our best and our prayers are with you.

KYRGYZSTAN

Mr. KAUFMAN. Mr. President, in the last few weeks, great turmoil has unfolded in Kyrgyzstan. According to media reports, ethnic riots in the southern cities of Osh and Jalalabad have left up to 2,000 dead—309 confirmed by the Kyrgyz Government—thousands have been injured, and approximately 400,000 Uzbeks have been displaced.

I am deeply concerned about ethnic clashes and ongoing tension between the Kyrgyz and Uzbeks, especially given reports that international observers have noted they are reminiscent of the tragedies in Bosnia and Rwanda in the 1990s. Today, the situation appears to have stabilized, but we cannot discount the potential for renewed conflict after an apparent lull, which happened in both Bosnia and Rwanda.

We must also not forget that what happens in Kyrgyzstan has implications for U.S. interests throughout central Asia. As the Senate noted in Resolution 566, which passed unanimously on June 25, the events of the past month could spark unrest across the Ferghana Valley, which borders Kyrgyzstan, Uzbekistan, and Tajikistan. Kyrgyzstan also plays host to a U.S. air base at Manas International Airport that serves as a critical supply line for NATO and U.S.-led operations in Afghanistan.

For these reasons, I rise today to urge the provisional government and all citizens of Kyrgyzstan to move ahead with the process of reconciliation. I would also like to commend the Obama administration and others in the international community—particularly the United Nations and Russia—who have rendered fiscal and humanitarian aid to the Government of Kyrgyzstan during this difficult time. The international community must call on all parties to refrain from violence, cease persecution of minorities, and explore peaceful routes to conflict resolution.

There is other news out of Kyrgyzstan worth noting—namely, the referendum held on June 27 in support of a constitution that will establish central Asia's first parliamentary democracy. This referendum was peaceful and inclusive, and I commend the provisional government for organizing this process. The referendum marked a historic opportunity to usher in a new period of democracy and stability in Kyrgyzstan, and the stakes are high. This is why I would like to highlight three areas where I hope there can be additional progress can be made.

Perhaps most importantly, there must be a credible investigation into the recent violence. One of the most important actions to take is to establish an investigative team that is viewed as credible by all sides. This investigation must ensure the perpetrators of violence are held accountable for their actions and initiate a process whereby all citizens, including ethnic Uzbeks, see themselves as sufficiently represented in the country's national institutions.

The interim government must also ensure a smooth transition to the new Constitution. This means that the Kyrgyz authorities should redouble efforts to prevent the escalation of violence, and observers must monitor the elections. The first transition of power is critical to the success of this democratic transition because it will set the baseline for all future elections. The people of Kyrgyzstan have shown overwhelmingly that they want democracy, and now the provisional government should do everything in its power to make those aspirations a reality.

Finally, the government must promote freedom of the press. According to Freedom House, in 2010, Kyrgyzstan was ranked 159th of 192 countries. At this critical juncture, the interim government may feel tempted to muzzle criticism to avoid giving fodder to dissidents. But to do so would undermine its credibility far more than any words published in a free press. There is an undeniable connection between a population's confidence in their political system and the capacity of that system to ensure the free flow of information through an independent media. If the interim government and its successor want to identify the failures of previous governments in Kyrgyzstan, they need look no further than its abysmal record in the area of press freedom. To make the new constitution in Kyrgyzstan a success, the nation needs a truly independent media.

Mr. President, we are at an important turning point in Kyrgyzstan, where there is a glimmer of hope about democracy taking root in the future. At the same time, the potential for renewed unrest, rampant corruption, and curtailed freedoms could easily jeopardize recent progress. It is incumbent on all sides to act responsibly and to ensure there is not a resurgence of violence, so that the new Government of Kyrgyzstan can set an example of successful democracy for the region.

SMALL BUSINESS LENDING

Ms. SNOWE. Mr. President, I rise to speak of an amendment, cosponsored by Senators GRASSLEY, ENZI, ISAKSON, and COLLINS, which has proven small business job creating power.

It should come as no surprise to anyone that it remains difficult for small businesses to access credit. We have all heard the justifiable frustration and outrage expressed by entrepreneurs nationwide in response to the albatross of tight credit which has a chokehold on our economy. And frankly, who could blame them, when just this past April, the Federal Reserve's Senior Loan Officer Opinion Survey found the percentage of banks easing credit terms for small businesses was just a meager 1.9 percent—after it was an astonishing zero percent in both the past January and October surveys! Is this any way to jumpstart an anemic economy?

As ranking member of the Senate Small Business Committee I, along with Chair LANDRIEU, have vigorously championed measures to ease credit and increase small business lending. Together, we fought to include in the

Recovery Act key provisions to increase the maximum government guarantee on Small Business Administration, SBA, loans to 90 percent and to appropriate $375 million to reduce fees for SBA 7(a) and 504 borrowers. This program proved to be so popular and viable that its funds were expended first in November 2009, then in February 2010, and again in March 2010, following short term extensions.

But regrettably, these provisions have lapsed, and a program that paid tangible dividends, having been credited with increasing loan volumes by a remarkable 90 percent nationwide and 236 percent in Maine, has to my dismay come to a close. At a time when unemployment hovers at near ten percent and consumer confidence hangs in abeyance, nothing could be more counter-intuitive than to allow this to happen. And the numbers speak for themselves. In June alone, the SBA approved only $647 million in SBA 7(a) guaranteed loans, a 65.9 percent decrease from the $1.9 billion in 7(a) loans it approved in May.

No wonder in a July 11 New York Times article, SBA Administrator Karen Mills urged Congress to continue these programs, stating that ''we've been able to put $30 billion in the hands of small businesses and now is not the time to pull back . . . .'' Talk about the proverbial snatching defeat from the jaws of victory!

Our amendment would resuscitate this highly effective program, providing $485 million to reinstate SBA fee reductions and the elevated guarantee on SBA 7(a) loans through the end of 2010. And we pay for it by using unobligated Recovery Act funds. In fact, according to the Recovery Accountability and Transparency Board, there are approximately $50 billion in unobligated stimulus funds, and our amendment, which would cost less than 1 percent—.97 percent to be exact—of the overall amount, is paid for by rescinding, on a pro rated basis, from these funds. While we all must make difficult spending decisions, it should be clear that reinstating these vital provisions represents a commonsense approach to providing capital to small businesses across our Nation.

These are actions we can take right here and right now that complement this bill's SBA related provisions which increase the maximum limits for SBA 7(a) and 504 loans from $2 million to $5 million, raise the maximum microloan limit from $35,000 to $50,000, and allow for the refinancing of conventional small business loans through the SBA 504 program.

They will begin providing capital immediately to small businesses, and they have strong industry support from the National Association of Development Companies, which represents 504 lenders and the National Association of Government Guaranteed Lenders, which represents 7(a) lenders.

In conclusion, this initiative ought to be a simple way to swiftly provide assistance to those economic engines that are the lifeblood of our economy—our Nation's small businesses. It is my hope that this body can accept this amendment quickly, by unanimous consent, so that we can provide our economic catalysts with at least a modicum of capital security, financial stability, and economic certainty.

BOMBINGS IN UGANDA

Mr. FEINGOLD. Mr. President, I join President Obama, Secretary Clinton, and people around the world in condemning the horrific bombings in Uganda last Sunday. These attacks killed scores of innocent people and wounded many others who had peacefully gathered to watch the World Cup final.

I was particularly saddened to learn that Nate Henn, an American who worked as a volunteer with Invisible Children to help children affected by war in Uganda's northern region, was among those murdered in this cowardly act. I have worked closely with members of the Invisible Children team to bring attention to the atrocities committed by the Lord's Resistance Army, and I know their passion and dedication. I offer my deepest condolences to the Henn family and the whole Invisible Children family, as well as to all the other victims and their families.

The United States has close ties and a strong working partnership with the people and Government of Uganda, and we stand with them in this difficult moment. I strongly support efforts by the U.S. Government to assist Ugandan authorities to investigate these attacks and bring the perpetrators to justice. And given the news of another attempted attack on Tuesday, we should also help the government take enhanced security measures.

At the same time though, we should encourage the government to avoid any actions that could be seen as broadly targeting Somalis or the Muslim community more generally in Uganda. These communities in Uganda have not been known for violent or extremist activity in the past, and it would be counterproductive to alienate them. They should be allies in seeking to identify and apprehend those individuals behind these heinous attacks.

Al Shebaab, the Somali terrorist group whose leaders have links to al-Qaida, has claimed responsibility for this attack. Al Shebaab has been threatening for months to carry out attacks in Kenya, Uganda, and Burundi, and if their claim is true, this would be the first time that they have carried out a major attack outside Somalia's borders. It would underscore the threat that this terrorist group poses not only to neighboring countries but throughout Africa and potentially even to the United States.

For years, I have drawn attention to the continuing conflict in Somalia and its direct ramifications for our national security. As I mentioned, al Shebaab's leadership has links to al-Qaida and has indicated a desire to work with al-Qaida affiliates worldwide, particularly al-Qaida in the Arab Peninsula in Yemen. In addition and perhaps even more disconcerting, al Shebaab has recruited a number of Americans to travel to the region and fight. In October 2008, a Somali-American blew himself up in Somalia as part of a coordinated attack by al Shebaab. The Justice Department has since brought terrorist charges against more than a dozen people for recruiting and raising funds for Americans to fight with al Shebaab.

These developments have not gone unnoticed by our national security leaders, and the Obama administration has rightly put greater focus on Somalia. But our policy toward the country still lacks a strategic, long-term vision, and sufficient resources. The Obama administration is providing some support to the Transitional Federal Government and to the AU peacekeeping force in Mogadishu, but this support has done little to change the fundamental dynamics of the situation. We need to go back to the drawing board and develop a strategy that directly targets the conflicts and conditions that are bolstering al Shebaab and, by extension, al-Qaida. That strategy may entail greater support for the TFG and AMISOM, but we may also need to explore alternative options.

To carry out such a strategy, we need a diplomatic effort equal to the challenges we face in Somalia. We need an increased, strengthened team with the necessary resources, access, and mandate to engage with actors in Somalia and across the wider region. I have called on the President and Secretary of State to appoint a senior envoy to help oversee such a diplomatic effort toward Somalia. Such an envoy could also advance much needed public diplomacy efforts to address the high level of suspicion and resentment with which many Somalis continue to view the United States. And finally, this person could help ensure that we are connecting the dots among all the other countries affected by the Somalia crisis and al Shebaab.

Mr. President, there are no easy or quick solutions to Somalia's troubles, and attempts by external actors to impose solutions have failed. But as the tragic events in Uganda this week should make clear, the current situation in Somalia is intolerable—for the region and the international community, not to mention the Somali people who continue to suffer one of the world's worst humanitarian crises. We cannot afford to just continue with our current halfhearted efforts and hope for the best. Working with our regional partners and others in the international community, we need to get serious about a new push for peace and stability in Somalia.

OSCE PARLIMENTARY ASSEMBLY SESSION IN OSLO

Mr. CARDIN. Mr. President, I want to report on the activities of a bicameral, bipartisan congressional delegation I had the privilege to lead last week as chairman of the Helsinki Commission. The purpose of the trip was to represent the United States at the 19th Annual Session of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, otherwise known as the OSCE PA. The annual session this year was held in Oslo, Norway, and the U.S. delegation participated fully in the assembly's standing committee, the plenary sessions, the three general committees and numerous side events that included discussion of integration in multiethnic societies and addressing gender imbalances in society.

Although some last-minute developments at home compelled him to remain behind, our colleague from the other Chamber, Mr. ALCEE HASTINGS of Florida, was present in spirit as the deputy head of the delegation. Mr. HASTINGS, who cochairs the Helsinki Commission, was very active in the preparations for the trip, and his legacy of leadership in the OSCE PA—for over a decade—is tangible in the respect and goodwill afforded the United States during the proceedings.

Our assistant majority leader, Mr. DURBIN of Illinois, joined me on the trip, as he did last year. Our colleague from New Mexico who serves as a fellow Helsinki Commissioner, Mr. UDALL, also participated. Helsinki Commissioners from the other Chamber who were on the delegation include Mr. CHRISTOPHER SMITH of New Jersey, serving as the ranking member of the delegation, as well as Mrs. LOUISE MCINTOSH SLAUGHTER of New York, and Mr. ROBERT ADERHOLT of Alabama. Although not a member of the Helsinki Commission, Mr. LLOYD DOGGETT of Texas has a longstanding interest in OSCE-related issues and also participated on the delegation.

As many of you know, the OSCE Parliamentary Assembly was created within the framework of the OSCE as an independent, consultative body consisting of over 300 Parliamentarians from virtually every country in Europe, including the Caucasus, as well as from Central Asia, and the United States, and Canada. The annual sessions are held in late June/early July as the chief venue for debating issues of the day and issuing a declaration addressing human rights, democratic development and the rule of law; economic cooperation and environmental protection; and confidence building and security among the participating states and globally.

This active congressional participation helps ensure that matters of interest to the United States are raised and discussed. Robust U.S. engagement has been the hallmark of the Parliamentary Assembly since its inception nearly 20 years ago.

The theme for this year's annual session was ''Rule of Law: Combating Transnational Crime and Corruption.'' In addition to resolutions for each of the three general committees, delegations introduced a total of 35 additional resolutions for consideration, a record number, including 4 by the United States dealing with:

Nuclear security, which followed up directly on the Nuclear Summit here in Washington in April;

The protection of investigative journalists, a critical human rights issue as those who seek to expose corruption are targeted for harassment or worse;

Mediterranean cooperation, building on the OSCE partnerships to engage important countries in North Africa and the Middle East; and

Combating the demand for human trafficking and electronic forms of exploitation, a longstanding Helsinki Commission issue requiring persistence and targeted action.

U.S. drafts on these relevant, important topics received widespread support and were adopted with few if any amendments.

Beyond these resolutions, the United States delegation also undertook initiatives in the form of packages of amendments to other resolutions. These initiatives addressed:

the needs of the people of Afghanistan in light of the smuggling and other criminal activity which takes place there;

the struggle for recovery stability and human rights in Kyrgyzstan, which is an OSCE state in the midst of crisis; and

manifestations of racism and xenophobia that have become particularly prevalent in contemporary Europe.

A critical U.S. amendment allowed us generally to support a French resolution that usefully addressed issues relating to the closure of the detention facility in Guantanamo Bay. Still other amendments coming from specific members of the U.S. Delegation covered a wide range of political, environmental and social issues relevant to policymakers. My colleagues and I were also active in the successful countering of amendments that would have steered resolutions on the Middle East and on the future of the OSCE multilateral diplomatic process in directions contrary to U.S. policy.

Beyond the consideration of the resolutions which now comprise the Oslo Declaration, the annual session also handled some important affairs for the OSCE PA itself. These, too, had relevance for U.S. policy interests:

the American serving as OSCE PA Secretary General, Spencer Oliver, was reappointed to a new 5-year term;

a modest—and for the third fiscal year in a row—frozen OSCE PA budget of about $3½ million was approved that requires continued and unparalleled efficiency in organizing additional conferences, election observation missions, and various other activities that keep the Parliamentary Assembly prominently engaged in European and Central Asian affairs;

in addition to my continued tenure as a vice president in the Parliamentary Assembly, Mr. ADERHOLT of Alabama was reelected as the vice chair of the general committee dealing with democracy, human rights, and humanitarian questions which ensures strong U.S. representation in OSCE PA decisionmaking; and

a Greek parliamentary leader defeated a prominent Canadian senator in the election of a new OSCE PA president, following a vigorous but friendly campaign that encouraged the assembly to take a fresh look at itself and establish a clearer vision for its future.

While the congressional delegation's work focused heavily on representing the United States at the OSCE PA, we tried to use our presence in Europe to advance U.S. interests and express U.S. concerns more broadly. The meeting took place in Norway, a very close friend and strong, long-time ally of the United States of America. In discussions with Norwegian officials, we expressed our sorrow over the recent deaths of Norwegian soldiers in Afghanistan. We also shared our concerns about climate change and particularly the impact global warming has on polar regions

Indeed, on our return we made a well received stop on the archipelago of Svalbard, well north of the Arctic Circle, to learn more about the impact firsthand, from changing commercial shipping lanes to relocated fisheries to ecological imbalance that make far northern flora and fauna increasingly vulnerable. The delegation also visited the Svalbard Global Seed Vault, a facility that preserves more than 525,000 types of seeds from all over the world as a safeguard for future crop diversity, and took the opportunity to donate additional U.S. seeds to the collection.

Norway is located close to a newer, but also very strong, ally with close ties to the United States, Estonia. Since last year's delegation to the OSCE PA Annual Session went to Lithuania and included Latvia as a side trip, I believed it was important to utilize the opportunity of returning to northern Europe to visit this Baltic state as well.

While some remained in Oslo to represent the United States, others traveled to Tallinn, where we had meetings with the President, Prime Minister, and other senior government officials, visited the NATO Cooperative Cyber-Defense Center of Excellence and were briefed on electronic networking systems that make parliament and government more transparent, efficient and accessible to the citizen. Estonia has come a long way since it reestablished its independence from the Soviet Union almost 20 years ago, making the visit quite rewarding for those of us on the Helsinki Commission who tried to keep a spotlight on the Baltic States during the dark days of the Cold War.

During the course of the meeting, the U.S. delegation also had bilateral meetings with the delegation of the Russian Federation and a visiting delegation from Kyrgyzstan to discuss issues of mutual concern and interest.

U.S. engagement in the OSCE Parliamentary Assembly sends a clear message to those who are our friends and to those who are not that we will defend U.S. interests and advance the causes of peace and prosperity around the world.

REMEMBERING NATALIA ESTEMIROVA

Mr. KERRY. Mr. President, on July 15, 2009, Natalia Estemirova, head of the Memorial Human Rights Center in Grozny, Chechnya, was abducted from her home and murdered. Estemirova belonged to a tradition of Russian heroism, persevering for truth and justice in spite of great danger, but she deserves recognition from all nations.

Today, as we commemorate the 1-year anniversary of her tragic passing, it is fitting to recall the words of the Memorial's founder, Andrei Sakharov:

> You always have to be aware of [your ideals], even if there is no direct path to their realization. Were there no ideals, there would be no hope whatsoever. Then everything would be hopelessness, darkness—a blind alley.

In her life and in her work, Estemirova radiated hope in the face of adversity, and was steadfast in her ideals even when pursuing them entailed great risk and personal sacrifice.

Natalia Estemirova was born in 1958 to a Russian mother and a Chechen father, embodying in her parentage what was to become her life's calling: reconciling both peoples through her keen sense of justice and singular commitment to the truth. A widow and a mother, a teacher and an advocate, Estemirova found her purest voice in Chechnya. Her reporting on the second Chechen war and its aftermath exposed countless abuses committed by both sides, and provided an invaluable source of information to the outside world.

Estemirova was no stranger to controversy. On more than one occasion, her work raised the ire of the local authorities, and twice she was forced to flee her homeland. But Estemirova was not one to surrender to fear. It is said that above all she was motivated by the love of her daughter, Lana, and the desire to help the victims of Chechnya's tragic wars.

And help other people she did. From the wrongly accused in need of legal assistance to the families in search of their loved ones, Estemirova provided solace and service to generations of Russians. She pursued hidden graves, requested investigations from the authorities, and gave voice to Chechens by bringing their cases to the European Court of Human Rights.

Estemirova knew better than anyone about the tenuous stability that reigns in Chechnya. She knew that corruption there could spread to neighboring provinces and corrode the institutions of the Russian state. She knew that violence and instability are seldom contained within internationally recognized borders. And she believed that justice for victims must be at the center of any effort to rebuild societies devastated by war.

On this day, we are called to remember Estemirova's generosity of spirit and dedication of purpose in spite of the many blind alleys that confronted her in life. Her voice may be silenced, but her message of hope and reconciliation endure.

ADDITIONAL STATEMENTS

TRIBUTE TO BLANQUITA CULLUM

• Mr. COBURN. Mr. President, as Blanquita Cullum's service as Governor on the Broadcasting Board of Governors comes to an end, I wish to make note of her untiring efforts to maintain United States international broadcasting during times of enormous pressures.

Throughout her tenure, Blanquita Cullum has been a champion for the mission of American international broadcasting, but also for the audiences who rely upon our international broadcasts for credible, authoritative, accurate and factual news and information.

Chief among her concerns has been for the continuation of U.S. international radio broadcasts, the form of communication which to this day remains the most readily accessible and cost-effective means of communication for billions of oppressed people living in poverty.

In our technologically driven consumer society, it escapes our attention that almost two billion people make less than $2 a day. Blanquita Cullum has insisted, often in the face of resistance, that these populations not be abandoned and their fate left to chance.

In addition, she has argued strongly that cuts not be made to critical strategic regions of the world where regions are often one incident away from open conflict. She was among those calling for the resumption of United States international broadcasts to Russia. This call to action was given added impetus during the armed conflict between Russia and the Republic of Georgia, days after U.S. international broadcasts to Russia were ended. Even though the other members of the Board inexplicably refused to restore Russian broadcasts, Blanquita Cullum's forceful arguments helped avert their planned termination of U.S. broadcasts to the Republic of Georgia and the Ukraine.

Blanquita Cullum has global vision. International terrorism and other threats to the United States are globalized. We ignore this fact at our own risk. For example, she has argued strongly for a more robust presence of U.S. international broadcasting to Latin America, including targeted broadcasts to Cuba, Venezuela, and other audiences whose airwaves are saturated with antidemocracy sentiments and propaganda.

Further, she has strongly argued for increased oversight and accountability with regard to U.S. international broadcasting, recognizing the importance of our broadcasts being above reproach. In the course of my own investigations, I discovered VOA broadcasts to Iran that undermined U.S. policy and gave a platform for the propaganda of our enemies. U.S. broadcasts in Arabic have also given uninterrupted and unchallenged platforms to terrorists and other enemies of the U.S. and our allies. Blanquita Cullum was the only Governor to support my and my colleagues' calls for greater transparency and accountability in our broadcasts—an ongoing need that has yet to be adequately rectified.

In the Asian sphere, she resisted efforts by the BBG bureaucracy to reduce the agency's Tibetan broadcasts and made certain that broadcasts to Burma during its violent crackdown of pro-democracy advocates were not interrupted.

Long before it became a topic of urgency, Blanquita Cullum recognized the importance of cybersecurity and argued for increased vigilance on the part of the agency's technical component to take measures necessary to ensure that BBG broadcasts and Internet assets were protected against such threats.

Finally, it is a secret to no one that Blanquita Cullum has been a strong believer in the human component of the agency's operations. She has enjoyed an engaged relationship with the agency's employees and bristled over the agency's poor showing in the annual Human Capital Survey. An organization that cannot command the confidence of its staff is not likely to be fully engaged with the audiences it portends to serve.

One needs to look no further than Governor Blanquita Cullum as the model of unselfish public service in the National and Public Interest. She will be sorely missed by those at the BBG and in Congress who still believe in the original purpose of U.S. international broadcasting. The new Board of Governors will have a challenge ahead of them as they attempt to fill her shoes and continue her efforts to reform U.S. International Broadcasting.•

TRIBUTE TO LEANNE MEDEMA

• Mr. CRAPO. Mr. President, today I join my colleague, Mr. RISCH, to honor an outstanding woman as she retires from everyday working life. Leanne Medema has spent close to 20 years working on behalf of Idaho's nuclear research industry, and she has been a terrific asset to local contractors as well as to the Idaho congressional delegation over the years.

Leanne came to Idaho from Illinois in the early 1990s and helped manage a complex and very public transition with one of the Idaho National Laboratory's facilities, INL, the Idaho Chemical Processing Plant. She has spent 30 years working to improve the working environment of the companies who have employed her. And she has succeeded admirably. She has a personable manner that makes everyone feel comfortable, and she has an unerring sense of how best to resolve conflicts and address other challenges.

Most recently, Leanne worked as the protocol officer at the INL, which was a terrific fit. She always handled herself well and dealt with tough situations without ever losing her poise.

INL's reputation has increased nationally and internationally, and Leanne's efforts have been essential to the process. She always goes above and beyond to make sure each visitor to INL feels like they are a special guest.

We have particularly appreciated Leanne's relationship with our own Senate offices. Her professionalism was always top notch, her knowledge of the INL is superb and her ability to communicate and work easily with others is among the finest we have seen. When schedules are tight and people were stressed, Leanne had the ability to rise above it all and navigate the pitfalls with style, grace and ease.

We would be remiss if we didn't mention Leanne and her family and their involvement in the local community. She was an active volunteer with the Idaho Falls Chamber of Commerce serving as co-chair on the Legislative Committee and always did an outstanding job in each of her assignments.

As she nears retirement, we join many others in thanking her for her service to her community and the state of Idaho. She has done an outstanding job at the INL, one that will be hard for others to fill. We wish her the best in her retirement, knowing that she isn't one to stay still for long. Thank you, Leanne, and enjoy your future endeavors.●

TRIBUE TO PASTOR WILLIAM L. ROBINSON

● Mrs. LINCOLN. Mr. President, today I congratulate William L. Robinson as he celebrates 28 years as pastor of First Baptist Church in North Little Rock. First Baptist is the oldest Black church in North Little Rock, and under Pastor Robinson's leadership, the congregation has thrived for nearly 30 years.

From a young age, Pastor Robinson knew his calling. At the age of 12, he was licensed by Dr. T. M. Chambers, then Pastor of Gaines Street Baptist Church in Little Rock. In 1977, at the age of 17, Pastor Robinson became an ordained minister.

An Arkansas native, Pastor Robinson graduated from historic Little Rock Central High School and earned a bachelor of arts degree in social sciences from Arkansas Baptist College in Little Rock. He is a graduate of Jackson Theological Seminary of Shorter College in North Little Rock.

Recognized as a pillar of the North Little Rock community, Pastor Robinson has been asked to serve in a variety of statewide commissions and leadership roles, including the Martin Luther King Jr. Commission, the Board of Trustees of the William F. Laman Library Commission, and the Executive Board of the Union Rescue Mission and Salvation Army. Pastor Robinson is an Honorary Deputy Sheriff of Pulaski County and a Chaplain of the North Little Rock Police and Sheriff's Office.

Pastor Robinson has also been invited to take part in numerous inaugurations and official events in Arkansas and Washington, DC. He is the visionary of the recently reestablished ''4'' Church Fellowship and serves currently as president. This fellowship consists of local churches coming together to uplift our Savior and the community through quarterly worship services. Most recently, Pastor Robinson served as cochairman of the First Interfaith Christian Conference, ''The Arkansas Gathering,'' featuring nationally known pastors and more than 100 local pastors and their churches for a 4-day retreat.

Pastor Robinson is also a local radio personality in his own right. For more than 26 years, he has promoted First Baptist's ''Sunday Morning at The First,''' a 1 hour broadcast that airs Sunday evening at 5 p.m., reaching all four corners of Arkansas.

I salute Pastor Robinson and the work he does for North Little Rock and the entire state of Arkansas. Along with all Arkansans, I congratulate him for his years of service, and wish him all the best for the years to come.●

TRIBUTE TO DR. FRED BOURLAND

● Mrs. LINCOLN. Mr. President, today I congratulate Arkansan Dr. Fred Bourland, who was recently named the International Cotton Researcher of the Year by the International Cotton Advisory Committee. Dr. Bourland is a cotton breeder and director of the University of Arkansas Division of Agriculture's Northeast Research and Extension Center in Keiser. Dr. Bourland won the award for his innovative cotton breeding achievements.

The Cotton Researcher of the Year award was started in 2009 to help raise awareness of the importance of research to the improvement of the cotton industry and to provide international recognition of exceptional achievements. Dr. Bourland will receive a trophy and $1,000 prize.

I commend Dr. Bourland for his research, which benefits Arkansas's entire cotton farming community. Through his efforts, he represents the best of our Arkansas values: hard work, dedication, and perseverance. He also inspires the next generation of Arkansas leaders as a member of the UA team.

As an Arkansas farmer's daughter, and as chairman of the Senate Agriculture Committee, I understand firsthand and appreciate the hard work and contributions of our Arkansas agriculture community. Agriculture is the backbone of Arkansas's economy, creating more than 270,000 jobs in the state and providing $9.1 billion in wages and salaries. In total, agriculture contributes roughly $15.9 billion to the Arkansas economy each year.

I salute Dr. Bourland and the entire Arkansas agriculture community for their hard work and dedication.●

ROGERS-LOWELL AREA CHAMBER OF COMMERCE

● Mrs. LINCOLN. Mr. President, today I congratulate the Rogers-Lowell Area Chamber of Commerce for receiving a five star re-accreditation from the U.S. Chamber of Commerce, the highest accreditation a chamber can receive.

Of the 6,936 chambers in the United States, only 249 of are accredited. Of these, only 66 are accredited with five stars, roughly equal to 1 percent of chambers nationwide. Rogers-Lowell is the only five-star chamber in the State of Arkansas.

The Rogers-Lowell Area Chamber of Commerce was founded in 1922 and is one of the largest chambers in Arkansas. Under the leadership of President and CEO Raymond Burns, members are committed to growing business and building community. I commend Chairman Tom Spillyards, Accreditation Chair Greg Spragg, the Board of Directors, and the entire Chamber membership for their outstanding efforts to better their community.

Located in the center of the booming Northwest Arkansas region and the beautiful Arkansas Ozarks, the Rogers-Lowell area offers quality, growth and opportunity to residents and visitors alike. As one of the most dynamic communities in the region, Rogers and Lowell offer upscale, urban amenities, along with a slower pace, beautiful scenery, and endless outdoor recreational opportunities.

I salute the Rogers-Lowell Area Chamber of Commerce and the entire Rogers community for their efforts to build and grow their community. As my fellow Arkansans know, our state is a beautiful one, and I am proud to see the Rogers-Lowell Chamber of Commerce receive this prestigious accreditation.●

RECOGNIZING THE ROGERS COMMUNITY

● Mrs. LINCOLN. Mr. President, today I congratulate the residents of Rogers for being named in the ''Top 10'' list of U.S. small cities, as ranked by Money Magazine.

The community received this recognition for being one of the Nation's best small cities in which to raise a family. The rankings were determined through criteria examining education, crime rate, housing affordability, jobs, diversity, health care, and arts and leisure.

I also commend Rogers' community leaders, including Raymond Burns, president and chief executive of the Rogers-Lowell Area Chamber of Commerce. The tireless efforts by these leaders to build and maintain a safe, desirable community helped make this top ranking a reality. They represent the best of our state, and I am proud of their accomplishments for their community.

I salute the entire Rogers community for their efforts to maintain the heritage, beauty, and history of their community. I join all Arkansans to express my pride in this jewel of Arkansas.●

TRIBUTE TO DAVID DANIEL

● Mr. VITTER. Mr. President, today I congratulate Mr. J. David Daniel, a resident of my home State, as he nears the end of his term as the 105th chairman of the Nation's largest insurance association, the Independent Insurance Agents & Brokers of America, IIABA. Mr. Daniel was elected to the IIABA's executive committee in 2004 and was installed as the association's chairman last September.

Founded in 1896, IIABA, or the Big ''I'' as it is better known, is the Nation's oldest and largest association of independent insurance agents and brokers, representing a network of more than 300,000 agents, brokers, and their employees. During his term as chairman of the Big ''I,'' David Daniel has been a leader on a number of issues for the association including health care overhaul legislation and financial services regulatory reform. In a time of tectonic shifts in the financial services industry landscape, Mr. Daniel has proven to be a strong leader and a steady hand for the association and the insurance industry as a whole.

David Daniel is president of Daniel and Eustis Insurance in Baton Rouge, LA. Prior to his election to the IIABA Executive Committee in 2004, he served on the board of directors of the Independent Insurance Agents & Brokers of Louisiana, IIABL, for eight years before becoming president in 1997. Daniel served as Louisiana's national board director beginning in 1998 and has acted as the State association's representative to the Louisiana Insurance Rating Commission. Mr. Daniel is also the recipient of IIABL's Lifetime Achievement Award and the Outstanding Committee Chairman Award. On the national level, Mr. Daniel has served on IIABA's Technical Affairs Committee and was chairman of the Governance and Communication Task Force.

David Daniel has long been praised for his work in Baton Rouge as well as the insurance industry. For 28 years he has been a member of the Capital City Kiwanis and was once awarded the George R. Hixson award for community service. As a pioneering member of the Christmas on the River Committee, Daniel worked to revitalize the riverfront area in Baton Rouge. He has been a volunteer youth basketball coach for the YMCA and is a founding member of the Vision 21 Foundation, an organization that collects and distributes grant money to nonprofit groups in the Baton Rouge area.

I would like to sincerely thank David Daniel for his commitment to his profession, his community, and the state of Louisiana. His efforts are greatly appreciated, and I wish Mr. Daniel, his wife Janet, and their family all the best in their future endeavors.●

TRIBUTE TO JIM FUNK

● Mr. VITTER. Mr. President, today I wish to recognize Mr. Jim Funk for his leadership and dedication to the Louisiana Restaurant Association. Mr. Funk has served as the president and chief executive officer of the Louisiana Restaurant Association for almost 30 years, and announced his retirement earlier this year. I would like to take some time to remark on his work and his contribution to the State of Louisiana.

First founded in 1946, the Louisiana Restaurant Association promotes, protects, and serves the interests of Louisiana's food service and hospitality industry. Now one of the premiere associations in the Nation, the Louisiana Restaurant Association has grown in membership and status with Jim Funk at the helm during the past three decades. Through recessions, hurricanes and the most recent oil spill, Mr. Funk has led the industry through a business climate that has challenged Louisiana's restaurants on many levels.

Mr. Funk has also been recognized nationally for his success in association management, for his clout in Louisiana's politics, and for his dedication to culinary education. In 2007, he received the industry's highest honor—induction into the National Restaurant Association Educational Foundation College of Diplomats. Mr. Funk was also an impressive advocate for the employees of the hospitality industry. As the head of the Louisiana Restaurant Association, he created the LRA's Self Insurer's Fund for Worker's Compensation, which provides important and necessary insurance to Louisiana restaurants and their workers. The fund now ensures more than 2,300 restaurants and hotels in Louisiana.

Mr. Funk also fought to protect the integrity and reputation of Louisiana restaurants and food products. At the National Restaurant Association Show on May 22 of this year, he stressed the need to protect the wetlands and Louisiana's prominent fishing and seafood industry. Having guided the LRA through the devastating destruction of Hurricane Katrina and the current oil-spill threatening our shores, Mr. Funk has shown laudable leadership.

The profile of Louisiana's restaurants industry and culinary traditions has been significantly enhanced during Mr. Funk's tenure as president of the Louisiana Restaurant Association. Thus, today, I am proud to honor Jim Funk and thank him for his dedication to the Louisiana Restaurant Association and to the State of Louisiana.●

TRIBUTE TO COLONEL ALVIN B. LEE

● Mr. VITTER. Mr. President, I wish to acknowledge the service of COL Alvin B. Lee as he relinquishes command of the New Orleans District, U.S. Army Corps of Engineers. Colonel Lee, the New Orleans District's 60th commander and district engineer, took command on July 20, 2007, and has served in that position for the past 3 years.

The New Orleans District is the largest district within the Corps of Engineers. The complexity and magnitude of the issues dealt with in this command are staggering. In addition to the normal operating budget of $550 million, this district includes the $14 billion hurricane and storm damage risk reduction system, HSDRRS, program for the Greater New Orleans Metropolitan area. No other colonel in the Corps of Engineers is given responsibility even remotely close to this.

Previous to his service as commander, New Orleans District, Colonel Lee served in other key command and staff positions which include: Company Commander, 317th Engineer Battalion, 3rd Brigade, 24th Infantry Division, Mechanized; Commander, Alaska Projects Office, Cold Regions Research Laboratory; Battalion Executive Officer of the 10th Engineer Battalion, and the Engineer Brigade Operations Officer, Third Infantry Division, Mechanized. Colonel Lee also served in Afghanistan during Operation Enduring Freedom as the Deputy Commander for the Afghanistan Engineer District. This resume serves as a testament to the character of Colonel Lee.

While it is no secret that I do not see eye-to-eye with the Army Corps of Engineers as an organization, I can say that I greatly appreciate the efforts of Colonel Lee individually. Colonel Lee earned the respect of many within the local Louisiana communities over the past three years through his strong leadership and hard work. He is a fine officer who has given much in service to the Nation. I wish him well in future endeavors.●

TIMBER LAKE, SOUTH DAKOTA

● Mr. THUNE. Mr. President, today I recognize Timber Lake, SD. Founded in 1910, the town of Timber will celebrate its 100th anniversary this year.

Located in Dewey County, Timber Lake possesses the strong sense of community that makes South Dakota an outstanding place to live and work. Throughout its rich history, Timber Lake has continued to be a strong reflection of South Dakota's greatest values and traditions. The community of Timber Lake has much to be proud of and I am confident that Timber Lake's success will continue well into the future.

The town of Timber Lake will commemorate the 100th anniversary of its founding with a celebration held from July 19 through July 25, featuring events such as a community play, rodeo, demolition derby, parade, and a fireworks display. I would like to offer my congratulations to the citizens of Timber Lake on this milestone anniversary and send my best wishes to them in the years to come.●

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 10:24 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 5502. An act to amend the effective date of the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009.

The enrolled bill was subsequently signed by the President pro tempore (Mr. INOUYE).

At 11:10 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1722. An act to require the head of each executive agency to establish and implement a policy under which employees shall be authorized to telework, and for other purposes.

H.R. 2864. An act to amend the Hydrographic Services Improvement Act of 1998 to authorize funds to acquire hydrographic data and provide hydrographic services specific to the Arctic for safe navigation, delineating the United States extended continental shelf, and the monitoring and description of coastal changes.

H.R. 5390. An act to designate the facility of the United States Postal Service located at 13301 Smith Road in Cleveland, Ohio, as the ''David John Donafee Post Office Building''.

H.R. 5450. An act to designate the facility of the United States Postal Service located at 3894 Crenshaw Boulevard in Los Angeles, California, as the ''Tom Bradley Post Office Building''.

H.R. 5712. An act to provide for certain clarifications and extensions under Medicare, Medicaid, and the Children's Health Insurance Program.

At 2:38 p.m., a message from the House of Representatives, delivered by one of its reading clerks, Mrs. Cole, announced that the House has passed the following bill, without amendment:

S. 1508. An act to amend the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars.

ENROLLED BILLS SIGNED

At 2:48 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 689. An act to interchange the administrative jurisdiction of certain Federal lands between the Forest Service and the Bureau of Land Management, and for other purposes.

H.R. 3360. An act to amend title 46, United States Code, to establish requirements to ensure the security and safety of passengers and crew on cruise vessels, and for other purposes.

H.R. 4840. An act to designate the facility of the United States Postal Service located at 1981 Cleveland Avenue in Columbus, Ohio, as the ''Clarence D. Lumpkin Post Office''.

The enrolled bills were subsequently signed by the President pro tempore (Mr. INOUYE).

ENROLLED BILL SIGNED

At 5:52 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4173. An act 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 enrolled bill was subsequently signed by the President pro tempore (Mr. INOUYE).

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1722. An act to require the head of each executive agency to establish and implement a policy under which employees shall be authorized to telework, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

H.R. 2864. An act to amend the Hydrographic Services Improvement Act of 1998 to authorize funds to acquire hydrographic data and provide hydrographic services specific to the Arctic for safe navigation, delineating the United States extended continental shelf, and the monitoring and description of coastal changes; to the Committee on Commerce, Science, and Transportation.

H.R. 5390. An act to designate the facility of the United States Postal Service located at 13301 Smith Road in Cleveland, Ohio, as the ''David John Donafee Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 5450. An act to designate the facility of the United States Postal Service located at 3894 Crenshaw Boulevard in Los Angeles, California, as the ''Tom Bradley Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

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

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 5712. An act to provide for certain clarifications and extensions under Medicare, Medicaid, and the Children's Health Insurance Program.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6633. A communication from the Executive Analyst, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report on the discontinuation of service in acting role and action on the nomination for the position of Assistant Secretary for Planning and Evaluation; to the Committee on Health, Education, Labor, and Pensions.

EC–6634. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Fiscal Year 2009 Medical Device User Fee and Modernization Act (MDUFMA) Financial Report''; to the Committee on Health, Education, Labor, and Pensions.

EC–6635. A communication from the Program Manager, Office of the National Coordinator for Health Information Technology, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology'' (RIN0991–AB58) received in the Office of the President of the Senate on July 13, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–6636. A communication from the Acting Deputy Associate Administrator for Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Circular 2005–44, Introduction'' (FAC 2005–44) received in the Office of the President of the Senate on July 12, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6637. A communication from the Acting Deputy Associate Administrator for Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Circular 2008–039, Reporting Executive Compensation and First—Tier Subcontract Awards'' (FAC 2005–44) received in the Office of the President of the Senate on July 12, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6638. A communication from the Acting Deputy Associate Administrator for Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; FAR Circular 2005–44, Small Entity Compliance Guide'' (FAC 2005–44) received in the Office of the President of the Senate on July 12, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–6639. A communication from the Associate General Counsel, Department of Homeland Security, transmitting, pursuant to law, a report relative to a vacancy in the Federal Emergency Management Agency in the position of Administrator, U.S. Fire Administration; to the Committee on Homeland Security and Governmental Affairs.

EC–6640. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Office's annual report on Federal agencies' use of the physicians comparability allowance (PCA) program; to the Committee on Homeland Security and Governmental Affairs.

EC–6641. A communication from the Director, Office of Personnel Management, transmitting a legislative proposal entitled ''Federal Civilian Employees in Zones of Armed Conflict Benefits Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–6642. A communication from the General Counsel of the Department of Defense, transmitting a legislative proposal entitled ''Federal Civilian Employees in Zones of Armed Conflict Benefits Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–6643. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Viruses, Serums, Toxins, and Analogous Products and Patent Term Restoration; Nonsubstantive Amendments'' (Docket No. APHIS–2009–0069) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6644. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tier I Issue: IRC δ 118 Abuse Directive No. 9'' (LMSB–4–0710–020) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Finance.

EC–6645. A communication from the Deputy Associate Director for Management and Administration and Designated Reporting Official, Office of National Drug Control Policy, Executive Office of the President, transmitting, pursuant to law, (2) reports relative to vacancies in the Office of National Drug Control Policy in the positions of Deputy Director for Demand Reduction and Deputy Director for State, Local and Tribal Affairs; to the Committee on the Judiciary.

EC–6646. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, a report entitled ''College Scholarship Fraud Prevention Act of 2000 Annual Report to Congress: July 2010''; to the Committee on the Judiciary.

EC–6647. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Fourth of July Fireworks Event, Pagan River, Smithfield, VA'' ((RIN1625–AA00)(Docket No. UCSG–2010–0454)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6648. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Stockton Ports Baseball Club/City of Stockton, 4th of July Fireworks Display, Stockton, CA'' ((RIN1625–AA00)(Docket No. USCG–2010–0369)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6649. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Jameson Beach 4th of July Fireworks Display'' ((RIN1625–AA00)(Docket No. USCG–2010–0378)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6650. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Marine Events within the Captain of the Port Sector Northern New England Area of Responsibility, July through September'' ((RIN1625–AA00)(Docket No. USCG–2010–0315)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6651. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Ship Repair in Penobscot Bay, ME'' ((RIN1625–AA00)(Docket No. USCG–2010–0519)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6652. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; AVI May Fireworks Display, Laughlin, Nevada, NV'' ((RIN1625–AA00)(Docket No. USCG–2009–1132)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6653. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; America's Discount Tire 50th Anniversary, Fireworks Display, South Lake Tahoe, CA'' ((RIN1625–AA00)(Docket No. USCG–2010–0151)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6654. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Tacoma Freedom Fair Air Show, Commencement Bay, Tacoma, Washington'' ((RIN1625–AA00)(Docket No. USCG–2010–0495)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6655. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Delta Independence Day Foundation Celebration, Mandeville Island, CA'' ((RIN1625–AA00)(Docket No. USCG–2010–0364)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6656. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; City of Pittsburg Independence Day Celebration, Pittsburg, CA'' ((RIN1625–AA00)(Docket No. USCG–2010–0366)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6657. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Fourth of July Fireworks Event, Cape Charles City Harbor, Cape Charles, VA'' ((RIN1625–AA00)(Docket No. USCG–2010–0477)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6658. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; July Firework Display in Captain of the Port, Puget Sound AOR'' ((RIN1625–AA00)(Docket No. USCG–2010–0476)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6659. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Neptune Deep Water Port, Atlantic Ocean, Boston, MA'' ((RIN1625–AA00)(Docket No. USCG–2010–0542)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6660. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; City of Martinez 4th of July Fireworks, Martinez, CA'' ((RIN1625–AA00)(Docket No. USCG–2010–0371)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6661. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Grand Marais Splash-In, West Bay, Lake Superior, Grand Marais, MI'' ((RIN1625–AA00)(Docket No. USCG–2010–0470)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6662. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; DEEPWATER HORIZON at Mississippi Canyon 252 Outer Continental Shelf MODU in the Gulf of Mexico'' ((RIN1625–AA00)(Docket No. USCG–2010–0448)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6663. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Shore Thing and Independence Day Fireworks, Chesapeake Bay, Norfolk, VA'' ((RIN1625–AA00)(Docket No. USCG–2010–0294)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6664. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Mackinac Island 4th of July Fireworks, Lake Huron, Mackinac Island, MI'' ((RIN1625–AA00)(Docket No. USCG–2010–0497)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6665. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Festivals and Fireworks Celebration, East Moran Bay, Lake Huron, St. Ignace, MI'' ((RIN1625–AA00) (Docket No. USCG–2010–0452)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6666. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Reedville July 4th Celebration, Cockrell's Creek, Reedville, VA'' ((RIN1625–AA00) (Docket No. USCG–2010–0293)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6667. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Sault Sainte Marie 4th of July Fireworks, St. Mary's River, Sault Sainte Marie, MI'' ((RIN1625–AA00) (Docket No. USCG–2010–0543)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6668. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Michigan City Super Boat Grand Prix, Lake Michigan, Michigan City, IN'' ((RIN1625–AA00) (Docket No. USCG–2010–0235)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6669. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Chicago Tall Ships Fireworks, Lake Michigan, Chicago, IL'' ((RIN1625–AA00) (Docket No. USCG–2010–0250)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6670. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA'' ((RIN1625–AA00) (Docket No. USCG–2010–0023)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6671. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI'' ((RIN1625–AA00) (Docket No. USCG–2010–0174)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6672. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Private Fireworks, Wilson Creek, Gloucester, VA'' ((RIN1625–AA00) (Docket No. USCG–2010–0257)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6673. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones; City of Chicago's July 4th Celebration Fireworks, Lake Michigan, Chicago, IL'' ((RIN1625–AA00) (Docket No. USCG–2010–0249)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6674. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones; Annual Firework Displays within the Captain of the Port, Puget Sound Area of Responsibility'' ((RIN1625–AA00) (Docket No. USCG–2010–0063)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6675. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Michigan Orthopaedic Society 50th Anniversary Fireworks, Lake Huron, Mackinac Island, MI'' ((RIN1625–AA00) (Docket No. USCG–2010–0496)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6676. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; McNary-John Day Transmission Line Project, Columbia River, Hermiston, OR'' ((RIN1625–AA00) (Docket No. USCG–2010–0504)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6677. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Milwaukee Air and Water Show, Lake Michigan, Milwaukee, WI'' ((RIN1625–AA00) (Docket No. USCG–2010–0225)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6678. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones; 2010 Muskegon Summer Celebration Air Show, Muskegon Lake, Muskegon, MI'' ((RIN1625–AA00) (Docket No. USCG–2010–0506)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6679. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Parade of Ships, Seattle SeaFair Fleet Week, Pier 66, Elliot Bay, WA'' ((RIN1625–AA00) (Docket No. USCG–2010–0525)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6680. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Marquette 4th of July Fireworks, Marquette Harbor, Lake Superior, Marquette, MI'' ((RIN1625–AA00) (Docket No. USCG–2010–0512)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6681. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Fireworks for the Virginia Lake Festival, Buggs Island Lake, Clarksville, VA'' ((RIN1625–AA00) (Docket No. USCG–2010–0478)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6682. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; North Jetty, Named the Barview Jetty, Tillamook Bay, OR'' ((RIN1625–AA00) (Docket No. USCG–2010–0214)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6683. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Fireworks Display in Stevenson, WA'' ((RIN1625–AA00) (Docket No. USCG–2010–0332)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6684. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Pierce County, Washington, Department of Emergency Management, Regional Water Exercise'' ((RIN1625–AA00) (Docket No. USCG–2010–0475)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6685. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Alligator River, NC'' ((RIN1625–AA00) (Docket No. USCG–2010–0091)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6686. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Wilson Bay, Jacksonville, NC'' ((RIN1625–AA00) (Docket No. USCG–2010–0158)) received in the Office of the President of the Senate on July 14, 2010; to the Committee on Commerce, Science, and Transportation.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–128. A resolution adopted by the House of Representatives of the State of Illinois urging Congress to pass legislation that would provide financial assistance to those states with budget deficits in order that the length and depth of the recession will not be worsened due to the limited resources and difficult alternatives presently confronting many states; to the Committee on Appropriations.

HOUSE RESOLUTION NO. 551

Whereas, at this time, the United States is continuing to experience one of the worst economic downturns in its history; and

Whereas, the Department of Labor recently reported that the unemployment rate in June rose to a level of 9.5%; and

Whereas, approximately 3.5 million jobs have been lost in the United States since the beginning of the year; and

Whereas, state governments furnish assistance to the unemployed and also provide direct and indirect services to the neediest people in our communities, including the elderly, the disabled, and the very young; and

Whereas, although the American Recovery and Reinvestment Act of 2009 is providing funds to state governments as part of the economic stimulus package designed to spur our nation's economic recovery, the budget deficits of many states have grown significantly, even with the original infusion of federal funds, as shown by the current budget gaps of $26.3 billion in California and approximately $9.2 billion in Illinois; and

Whereas, each state with a revenue shortfall faces difficult decisions involving raising taxes and fees on its citizens and businesses that are already adversely affected by the recession and unemployment; reducing financial assistance and grants to educational institutions, local governments, and social service agencies; and laying off significant numbers of employees from the state workforce; and

Whereas, the effect of a state, like Illinois, taking one or more of those difficult alternatives may be to worsen the effects of the recession in that state because of higher unemployment, increased state costs of health care for the uninsured, increased numbers of foreclosures, increased state expenditures for unemployment insurance, and lower state tax revenues due to reduced economic activity; and

Whereas, the federal government has the resources and the ability to assist states with budget deficits during this difficult time so that the rate of unemployment can be reduced, or at least not increased, and so that educational and social service programs can be continued at current levels; and

Whereas, the state budget deficits could be eliminated if Congress passed new legislation, with reasonable repayment requirements, to provide financial assistance to the states with budget deficits; therefore, be it

Resolved, by the House of Representatives of the Ninety-sixth General Assembly of the State of Illinois, That we urge Congress to pass legislation that would provide financial assistance to those states with budget deficits in order that the length and depth of the recession will not be worsened due to the limited resources and difficult alternatives presently confronting many states; and be it further

Resolved, That suitable copies of this resolution be presented to President Barack Obama, the Speaker of the United States House of Representatives, the President pro tempore of the United States Senate, and each member of the Illinois congressional delegation.

POM–129. A resolution adopted by the Senate of the State of Louisiana urging the President of the United States, Congress, and the Federal Communications Commission to refrain from regulating Internet broadband services as common carrier services under Title II of the Communications Act of 1934; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION NO. 117

To memorialize the president of the United States, the United States Congress, and the Federal Communications Commission to refrain from regulating Internet broadband services as common carrier services under Title II of the Communications Act of 1934.

Whereas, due in large part to the unregulated efforts of private enterprise over the past twenty-five years, the development of the Internet has dramatically transformed the way Louisiana citizens work, live, and learn; and

Whereas, the deployment of efficient, fast, and reliable broadband networks throughout the state has created thousands of jobs and many benefits for local economies; and

Whereas, in order to encourage the growth and development of the Internet, the Federal Communications Commission (FCC) historically has refrained from regulating broadband Internet services as common carrier services under Title II of the Communications Act of 1934; and

Whereas, as a result, the United States has been at the forefront of technological, business, and social innovation on the Internet; and

Whereas, on May 6, 2010, the chairman of the FCC announced a policy to reclassify broadband Internet services as common carrier services so that they can be more tightly regulated, with a proposal to forebear from imposing certain common carrier obligations on broadband Internet providers; and

Whereas, using antiquated provisions of Title II of the Communications Act of 1934 to regulate the Internet will slow investment in Louisiana's Internet broadband infrastructure and jeopardize future job growth. Therefore, be it

Resolved, That the Senate of the Legislature of Louisiana memorializes the president of the United States, the United States Congress, and the Federal Communications Commission to refrain from regulating Internet broadband services as common carrier services under Title II of the Communications Act of 1934. Be it further

Resolved, That a copy of this Resolution be transmitted to the president of the United States, to the presiding officers of the Senate and the House of Representatives of the United States Congress, to each member of the Louisiana congressional delegation, and to the chairman of the Federal Communications Commission.

POM–130. A concurrent resolution adopted by the Legislature of the State of Louisiana urging Congress to support expansion and use of domestic natural gas reserves and alternative energies to reduce our reliance on imported oil by supporting H.R. 1835 and S. 1408; to the Committee on Energy and Natural Resources.

SENATE CONCURRENT RESOLUTION NO. 8

To memorialize the United States Congress to support expansion and use of domestic natural gas and alternative energies, and to urge agencies to operate vehicles using compressed natural gas.

Whereas, the United States imports more than sixty-five percent of its petroleum, two-thirds of which is used in the form of gasoline and diesel fuel to power vehicles; and

Whereas, a large percentage of worldwide petroleum reserves are located in politically volatile countries, making the United States vulnerable to supply disruptions; and

Whereas, the United States has an abundance of natural gas; and

Whereas, compressed natural gas provides safe, clean, reliable, efficient, and secure energy, and is the alternative fuel most used today for transportation in the United States, with more than two hundred thousand buses, taxis, delivery vehicles, and other fleet vehicles across the nation using compressed natural gas daily; and

Whereas, the United States Department of Energy indicates that compressed natural gas can be used as a replacement for gasoline in light-duty vehicles and as a replacement for diesel in heavy-duty vehicles; and

Whereas, vehicles powered by compressed natural gas discharge far fewer harmful emissions than vehicles powered by gasoline or diesel fuel; and

Whereas, studies indicate that maintenance costs for vehicles powered by compressed natural gas are lower than for vehicles powered by gasoline or diesel fuel; and

Whereas, the federal government currently provides, and is expected to increase, incentives for use of alternative fuels and, at the current price of various fuels, any additional costs to purchase vehicles to run on compressed natural gas would be quickly recouped; and

Whereas, in 2009, the United States imported four billion, three hundred and fifty million barrels of oil, spending roughly two hundred and sixty-five million dollars; and

Whereas, eighty-five million barrels of oil were produced daily around the world; and

Whereas, twenty-one million barrels of oil are used daily in the United States; and

Whereas, world oil production has been declining since 2005; and

Whereas, roughly twenty percent of every barrel of oil imported into the United States is used to fuel the transport of goods around the country by road. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the United States Congress to support expansion and use of domestic natural gas reserves and alternative energies to reduce our reliance on imported oil by supporting H.R. 1835 and S. 1408, which are under consideration by the United States Congress. Be it further

Resolved, That the Legislature of Louisiana urges state and federal agencies to purchase, when possible, vehicles that can be converted to run on compressed natural gas, when it is available. Be it further

Resolved, That a copy of this Resolution be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives, and to each member of the Louisiana delegation to the United States Congress.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KOHL, from the Committee on Appropriations, without amendment:

S. 3606. A bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2011, and for other purposes (Rept. No. 111–221).

EXECUTIVE REPORT OF COMMITTEE

The following executive report of a nomination was submitted:

By Mr. ROCKEFELLER for the Committee on Commerce, Science, and Transportation.

*Coast Guard nominations of Rear Adm. (lh) Sandra L. Stosz, to be Rear Admiral Lower Half.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CHAMBLISS (for himself and Mr. ISAKSON):

S. 3592. A bill to designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the "First Lieutenant Robert Wilson Collins Post Office Building"; to the Committee on Homeland Security and Governmental Affairs.

By Mr. JOHANNS:

S. 3593. A bill to require the Federal Government to pay the costs incurred by a State or local government in defending a State or local immigration law that survives a constitutional challenge by the Federal Government in Federal court; to the Committee on the Judiciary.

By Mr. NELSON of Florida:

S. 3594. A bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to mitigate the economic impact of the transition to sustainable fisheries on fishing communities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BROWN of Ohio (for himself and Mr. SANDERS):

S. 3595. A bill to strengthen student achievement and graduation rates and prepare young people for college, careers, and citizenship through innovative partnerships that meet the comprehensive needs of children and youth; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. HAGAN:

S. 3596. A bill to establish the Culture of Safety Hospital Accountability Study and Demonstration Program; to the Committee on Finance.

By Mr. ROCKEFELLER:

S. 3597. A bill to improve the ability of the National Oceanic and Atmospheric Administration, the Coast Guard, and coastal States to sustain healthy ocean and coastal ecosystems by maintaining and sustaining their capabilities relating to oil spill preparedness, prevention, response, restoration, and research, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LAUTENBERG (for himself and Mrs. GILLIBRAND):

S. 3598. A bill to amend the Safe Drinking Water Act and the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to reduce or eliminate the risk of releases of hazardous chemicals from public water systems and wastewater treatment works, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG (for himself and Mrs. GILLIBRAND):

S. 3599. A bill to enhance the security of chemical facilities and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. ROCKEFELLER:

S. 3600. A bill to amend the Jones Act and related statutes with respect to the liability of vessel owners and operators for damages; to the Committee on Commerce, Science, and Transportation.

By Mr. MERKLEY (for himself, Mr. CARPER, Mr. UDALL of New Mexico, and Mr. BENNET):

S. 3601. A bill to promote the oil independence of the United States, and for other purposes; to the Committee on Finance.

By Mr. CARDIN:

S. 3602. A bill to amend title 23, United States Code, to direct the Secretary to establish a comprehensive program to control and treat polluted stormwater runoff from federally funded highways and roads, and for other purposes; to the Committee on Environment and Public Works.

By Ms. CANTWELL:

S. 3603. A bill to amend the Oil Pollution Act of 1990 to establish the Federal Oil Spill Research Committee and to amend the Federal Water Pollution Control Act to include in a response plan certain planned and demonstrated investments in research relating to discharges of oil and to modify the dates by which a response plan is required to be updated; to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. GRASSLEY, Mr. ENZI, Mr. ISAKSON, and Ms. COLLINS):

S. 3604. A bill to extend the small business loan enhancements; to the Committee on Small Business and Entrepreneurship.

By Mr. ROCKEFELLER:

S. 3605. A bill to invest in innovation through research and development, to improve the competitiveness of the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KOHL:

S. 3606. A bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2011, and for other purposes; from the Committee on Appropriations; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ENSIGN:

S. Res. 583. A resolution expressing support for designation of 2011 as ''World Veterinary Year'' to bring attention to and show appreciation for the veterinary profession on its 250th anniversary; to the Committee on the Judiciary.

By Mr. JOHANNS:

S. Res. 584. A resolution commemorating the 2010 Special Olympics USA National Games; to the Committee on Commerce, Science, and Transportation.

ADDITIONAL COSPONSORS

S. 28

At the request of Mr. SCHUMER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 28, a bill to ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons.

S. 311

At the request of Mrs. BOXER, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 311, a bill to prohibit the application of certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to the provision of assistance under part I of the Foreign Assistance Act of 1961.

S. 653

At the request of Mr. CARDIN, the names of the Senator from New York (Mrs. GILLIBRAND), the Senator from South Carolina (Mr. GRAHAM) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of S. 653, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the writing of the Star-Spangled Banner, and for other purposes.

S. 749

At the request of Mr. COCHRAN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 749, a bill to improve and expand geographic literacy among kindergarten through grade 12 students in the United States by improving professional development programs for kindergarten through grade 12 teachers offered through institutions of higher education.

S. 831

At the request of Mr. KERRY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 831, a bill to amend title 10, United States Code, to include service after September 11, 2001, as service qualifying for the determination of a reduced eligibility age for receipt of non-regular service retired pay.

S. 850

At the request of Mr. KERRY, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 850, a bill to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

S. 887

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 887, a bill to amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States and for other purposes.

S. 1553

At the request of Mr. GRASSLEY, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1553, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1567

At the request of Mr. INHOFE, his name was added as a cosponsor of S. 1567, a bill to provide for the issuance of a Multinational Species Conservation Funds Semipostal Stamp.

S. 1674

At the request of Mr. WYDEN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 1674, a bill to provide for an exclusion under the Supplemental Security Income program and the Medicaid program for compensation provided to individuals who participate in clinical trials for rare diseases or conditions.

S. 2747

At the request of Mr. BINGAMAN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 2747, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 2982

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2982, a bill to combat international violence against women and girls.

S. 2989

At the request of Ms. LANDRIEU, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 2989, a bill to improve the Small Business Act, and for other purposes.

S. 2998

At the request of Mrs. GILLIBRAND, the name of the Senator from Vermont

(Mr. LEAHY) was added as a cosponsor of S. 2998, a bill to temporarily expand the V nonimmigrant visa category to include Haitians whose petition for a family-sponsored immigrant visa was approved on or before January 12, 2010.

S. 3151

At the request of Mr. KERRY, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 3151, a bill to establish the Office for Global Women's Issues and the Women's Development Advisor to facilitate interagency coordination and the integration of gender considerations into the strategies, programming, and associated outcomes of the Department of State and the United States Agency for International Development, and for other purposes.

S. 3199

At the request of Ms. SNOWE, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 3199, a bill to amend the Public Health Service Act regarding early detection, diagnosis, and treatment of hearing loss.

S. 3235

At the request of Mr. DORGAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 3235, a bill to amend the Act titled ''An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases'', approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

S. 3406

At the request of Mrs. HAGAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3406, a bill to amend title 10, United States Code, to eliminate the per-fiscal year calculation of days of certain active duty or active service used to reduce the minimum age at which a member of a reserve component of the uniformed services may retire for non-regular service.

S. 3414

At the request of Mr. HARKIN, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of S. 3414, a bill to ensure that the Dietary Supplement Health and Education Act of 1994 and other requirements for dietary supplements under the jurisdiction of the Food and Drug Administration are fully implemented and enforced, and for other purposes.

S. 3419

At the request of Mr. MERKLEY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 3419, a bill to exclude from consumer credit reports medical debt that has been in collection and has been fully paid or settled, and for other purposes.

S. 3424

At the request of Mr. DURBIN, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 3424, a bill to amend the Animal Welfare Act to provide further protection for puppies.

S. 3430

At the request of Ms. SNOWE, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 3430, a bill to amend the Internal Revenue Code of 1986 to expand the tip tax credit to employers of cosmetologists and to promote tax compliance in the cosmetology sector.

S. 3508

At the request of Mr. UDALL of New Mexico, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3508, a bill to strengthen the capacity of the United States to lead the international community in reversing renewable natural resource degradation trends around the world that threaten to undermine global prosperity and security and eliminate the diversity of life on Earth, and for other purposes.

S. 3510

At the request of Mr. CONRAD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 3510, a bill to amend the Internal Revenue Code of 1986 to permanently extend the 15-year recovery period for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

S. 3513

At the request of Mr. JOHANNS, his name was added as a cosponsor of S. 3513, a bill to amend the Internal Revenue Code of 1986 to extend for one year the special depreciation allowances for certain property.

S. 3519

At the request of Ms. SNOWE, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 3519, a bill to stabilize the matching requirement for participants in the Hollings Manufacturing Partnership Program.

S. 3521

At the request of Ms. MURKOWSKI, the names of the Senator from Wyoming (Mr. BARRASSO), the Senator from Louisiana (Mr. VITTER), the Senator from Wyoming (Mr. ENZI) and the Senator from Idaho (Mr. RISCH) were added as cosponsors of S. 3521, a bill to provide for the reestablishment of a domestic rare earths materials production and supply industry in the United States, and for other purposes.

S. 3561

At the request of Mr. UDALL of New Mexico, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 3561, a bill to establish centers of excellence for green infrastructure, and for other purposes.

S. 3566

At the request of Mr. LAUTENBERG, the names of the Senator from South Dakota (Mr. THUNE) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 3566, a bill to authorize certain maritime programs of the Department of Transportation, and for other purposes.

S. 3572

At the request of Mrs. LINCOLN, the names of the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from Maryland (Mr. CARDIN), the Senator from Ohio (Mr. BROWN) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 3572, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first law enforcement agency, the United States Marshals Service.

S. 3578

At the request of Mr. JOHANNS, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 3578, a bill to repeal the expansion of information reporting requirements for payments of $600 or more to corporations, and for other purposes.

S. CON. RES. 63

At the request of Mr. JOHNSON, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. Con. Res. 63, a concurrent resolution expressing the sense of Congress that Taiwan should be accorded observer status in the International Civil Aviation Organization (ICAO).

S. RES. 519

At the request of Mr. DEMINT, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. Res. 519, a resolution expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that the primary safeguards for the legal rights of children in the United States are the Constitutions of the United States and the several States, and that, because the use of international treaties to govern policy in the United States on families and children is contrary to principles of self-government and federalism, and that, because the United Nations Convention on the Rights of the Child undermines traditional principles of law in the United States regarding parents and children, the President should not transmit the Convention to the Senate for its advice and consent.

AMENDMENT NO. 4453

At the request of Mr. THUNE, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Utah (Mr. HATCH) were added as cosponsors of amendment No. 4453 intended to be proposed to H.R. 5297, an act to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

AMENDMENT NO. 4464

At the request of Mr. DEMINT, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of amendment No. 4464 intended to be proposed to H.R. 5297, an act to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JOHANNS:

S. 3593. A bill to require the Federal Government to pay the costs incurred by a State or local government in defending a State or local immigration law that survives a constitutional challenge by the Federal Government in Federal court; to the Committee on the Judiciary.

Mr. JOHANNS. Mr. President, I rise to discuss a bill I have introduced because I see a very unfair battle unfolding right in front of us. The battle I foresee is this: In one corner we have the enormous resources of the Federal Government; in the other corner, cities and States with very limited resources, especially in these economic times, but with a good-faith desire to protect their communities.

What I am speaking of today and what my legislation goes to is the Federal Government's use of litigation to insert itself into State and potentially local immigration laws.

I rise with a great deal of knowledge about this. As a former mayor and county commissioner, city council member and Governor, I know what it is like when the Federal Government swoops in and brings its power to bear on an issue. I have seen it from both sides, having also served as a member of the President's Cabinet. I know that when the resources of the Federal Government are used to weigh in with litigation, it is crushing. The administration can send in a team of lawyers and overwhelm the resources of a community or a State. Litigation brings with it a huge financial burden for cities and States. In fact, litigation can and does have a chilling effect on the local decisionmaking process, even if local leaders believe their action in good faith is appropriate and necessary.

I believe that is the exact reaction this administration is hoping to cause among communities and States across the Nation that are considering action on immigration issues.

In this case, I believe litigation is being used to send a warning to other communities, other States that might be considering taking action in this arena.

The administration's claim that the Federal Government has sole authority to enforce immigration laws because of the supremacy clause of the Constitution is, in fact, inconsistent with the President's own internal policies. Just last year, President Obama authored a memo, sent it out to all Federal departments and agencies, requiring serious and careful consideration when using Federal preemption of State laws.

In this memo, dated May 20, 2009, with the subject ''Preemption,'' the President stated:

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be taken only with full consideration of legitimate prerogatives of the States and with sufficient legal basis for preemption.

That seems clear. But the memo went on further to say:

Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect those circumstances and values.

Then, finally, the President goes on to say:

It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social experimental experiments without risk to the rest of the country.

Mr. President, I ask unanimous consent that a copy of this memo be printed in the RECORD.

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

THE WHITE HOUSE,
OFFICE OF THE PRESS SECRETARY,
MAY 20, 2009.

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Preemption

From our Nation's founding, the American constitutional order has been a Federal system, ensuring a strong role for both the national Government and the States. The Federal Government's role in promoting the general welfare and guarding individual liberties is critical, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

An understanding of the important role of State governments in our Federal system is reflected in longstanding practices by executive departments and agencies, which have shown respect for the traditional prerogatives of the States. In recent years, however, notwithstanding Executive Order 13132 of August 4, 1999 (Federalism), executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or an otherwise sufficient basis under applicable legal principles.

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, ''[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.''

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

(1) Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

(2) Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

(3) Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult as necessary with the Attorney General and the Office of Management and Budget's Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

Mr. JOHANNS. So if the use of Federal power to preempt a State requires such an extremely high threshold, how can one reconcile that with the administration's decision to file a lawsuit?

My bill sends a message to the administration that it cannot use the crushing force and threat and reality of litigation to intimidate local officials or to scare them into inaction.

It would allow a State or a municipal government the ability, the right, to recover attorney's fees and other court costs associated with defending a Federal challenge of their immigration laws. In other words, this straightforward legislation just simply levels the playing field between the huge power of the Federal Government in one corner, as I said, and the right of local communities in States to pass laws to protect their citizens.

It carries this simple message to any administration: If you file a lawsuit and lose, cities and States will not face depleted resources as a result.

My bill ensures that when the Federal Government takes on communities in court, the reasons are pure and based in law or else the impact on our communities will be neutralized.

The administration should focus time and resources on what is the crux of this issue; that is, securing our borders and doing the job and enforcing existing immigration laws and not using litigation as a tool to send a message.

I encourage my colleagues to sign on and cosponsor this commonsense measure and level the playing field for communities when they are forced to defend themselves against the enormous, nearly unlimited power of the Federal Government.

By Mr. NELSON of Florida:

S. 3594. A bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to mitigate the economic impact of the transition to sustainable fisheries on fishing communities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. NELSON of Florida. Mr. President, I would like to speak about fishing, a very important special pastime and industry for the Nation. Fishing in Florida is a way of life for many. The small bait and tackle shops, the hotels, the restaurants, the charter boat captains, and the parents who want to see their children marvel when they pull a fish out of the ocean for the first time rely on being able to access the water. In fact, just last week, a Washington Post article traced the path of fish caught in the Florida Keys and off of Florida's East Coast to a Whole Foods market here in the DC area. And sadly, the Deepwater Horizon has shown us how much healthy, high-quality seafood comes out of the Gulf of Mexico every year.

In 2007, the Congress reauthorized the Magnuson-Stevens Fishery Conservation and Management Act. The Magnuson Act has certainly done some good things to ensure the long-term viability of our Nation's fishery resources. But some of the provisions of the law have had major unintended consequences in Florida.

I have spoken before about the need for robust science on the status of our oceans and our fishery stocks. In fact, most recently, I worked with Gulf Coast Senators to get funding in the Supplemental Appropriations bill for fisheries science in the Gulf of Mexico. But despite the potential influx of dollars, fisheries data for the Southeast in particular, is still sparse. This lack of data has lead to a crisis in confidence amongst many in the fishing community. Here is why.

The 2007 Magnuson-Stevens Reauthorization contained a 2010 deadline to end overfishing. But the justification for that deadline rested on two assumptions. First, that there would be recent and accurate stock assessments. Second, that there would be improved catch data. I think the National Oceanic and Atmospheric Administration is doing the best they can with available resources to gather this data. However, for years good data from recreational anglers has been a challenge but because of the changes to Magnuson-Stevens, regulations are coming out faster than the data used to support them.

Having that hard and fast 2010 deadline created a situation where the resource managers are left without options. This has led to closures of large geographic areas to all fishing with no end on the horizon. These closures have devastated small businesses that rely on fishing and left many frustrated that they cannot access the same waters that they always could.

Being a native Floridian, I know that many people develop a love for the ocean and a desire to protect it after they truly experience it by swimming, fishing off their boat, or listening to the waves. This access is a necessary component of conservation because the public gains a sense of ownership and this leads to a sense of responsibility.

That is why I am filing the Fishery Conservation Transition Act today. The bill will enable individuals, businesses, and communities to make a smooth transition while the science catches up by creating a phase-in period for Federal fishing regulations and requiring enhanced data collection in the interim. It also allows for economic assistance for those who are negatively impacted by management measures.

Others have proposed different solutions to this problem, but I believe that my bill is a targeted solution that gives resource managers options to allow access to the water in a way that will also achieve conservation goals.

There are provisions in the bill that require fishery managers to use the transition time wisely and research creative solutions to complex management issues, like how to manage multispecies fisheries in a way that protects the vulnerable stocks but still allows for access. This bill is also about jobs. Small businesses that rely on the fishing industry can ride out these difficult economic times without sacrificing the resource their businesses rely on.

I hope that my colleagues in the Senate will support this effort to provide a smooth transition to sustainable fisheries, healthy economic prospects for small businesses, access to the oceans and natural resources, and robust science.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3594

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fishery Conservation Transition Act''.

SEC. 2. TRANSITION TO SUSTAINABLE FISHERIES.

(a) IN GENERAL.—Within 180 days after the close of fishing year 2010 (within the meaning given that term in the Magnuson-Stevens Fishery conservation and Management Act (16 U.S.C. 1802 et seq.), the Secretary of Commerce shall determine, with respect to each fishery for which a fishery management plan that meets the requirements of section 303(a)(15) of that Act (16 U.S.C. 1853(a)(15)) is in effect that contains a complete prohibition on the retention of stocks subject to overfishing within the fishery for the entire fishing season, whether the prohibition is sufficient to prevent or end overfishing for the stocks, or stocks undergoing overfishing, to which it applies.

(b) REMEDIAL ACTION.—If the Secretary determines that the prohibition contained in such a fishery management plan is not sufficient to prevent or end overfishing for the stocks to which it applies, the Secretary may authorize retention of fish that are not undergoing overfishing within that fishery, notwithstanding that discard mortality of stocks for which retention is prohibited may be inconsistent with provisions on ending or preventing overfishing, if, within 90 days after a determination by the Secretary under subsection (a), the Regional Fishery Management Council with jurisdiction over the fishery implements—

(1) measures to minimize bycatch and bycatch mortality to the extent practicable;

(2) an enhanced data collection requirement, such as an electronic logbook data collection system, for recreational, for hire, and commercial fishers; and

(3) a program of on-board observers for charter, for-hire, and commercial fishers that will monitor and collect data on bycatch and bycatch mortality in multispecies fisheries with prohibitions on retention on one or more species in the fisheries; and

(4) in coordination with the Secretary, other measures to ensure accountability of the fishery, including those that will substantially contribute to addressing data gaps in stock assessments.

(c) ADDITIONAL REQUIREMENTS.—The Secretary shall take such action as may be necessary to ensure that, with respect to any stock subject to overfishing in a fishery to which a determination under subsection (b) applies—

(1) a monitoring and research program to monitor the recovery of the affected stocks of fish is implemented for the fishery within 1 year after the date of enactment of this Act;

(2) a stock assessment for the overfished species within the affected stocks of fish is initiated, taking into account relevant life history of the stock, within 6 months after the date on which the Secretary makes such a determination; and

(3) the Regional Fishery Management Council with jurisdiction over the affected fishery submits a report to Congress and the Secretary detailing a long-term plan for reducing discard mortality of the affected stocks of fish to which a determination under subsection (a) applies within 2 years after the date of enactment of this Act.

(d) FURTHER ACTION REQUIRED.—If the Secretary determines that—

(1) the Regional Fishery Management Council with jurisdiction over a fishery has complied with the requirements of paragraphs (b) and (c), and

(2) the fishery management plan's prohibition on the retention of stocks subject to overfishing continues to be insufficient to prevent or end over-fishing for those stocks,

the Secretary shall take such action as may be necessary to end overfishing for the stocks to which the prohibition applies before the end of fishery year 2015.

SEC. 3. ECONOMIC ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 208 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (16 U.S.C. 1891b) is amended—

(1) by striking ''and'' after the semicolon in subsection (b)(6);

(2) by striking ''materia.'' in subsection (b)(7) and inserting ''materia; and'';

(3) by adding at the end of subsection (b) the following:

''(8) the economic assistance program under subsection (f).'';

(4) by striking ''and'' after the semicolon in subsection (c)(2)(A);

(5) by striking ''section.'' in subsection (c)(2)(B) and inserting ''section; and'';

(6) by adding at the end of subsection (c)(2) the following.:

''(C) fees collected under permit programs for a fishery significantly affected by a prohibition on the retention of stocks to end or prevent overfishing.''; and

(7) by adding at the end thereof the following:

''(f) ECONOMIC ASSISTANCE PROGRAM.—

'' (1) IN GENERAL.—The Secretary shall establish an economic assistance program to assist recreational and commercial fishery participants, fishing industries, and fishing communities significantly affected by a prohibition on the retention of stocks to end or prevent overfishing or rebuild overfished stocks and use amounts in the Fund to provide such assistance.

''(2) CRITERIA FOR ASSISTANCE.—In the administration of the program, the Secretary shall develop criteria for prioritizing economic assistance requests, including consideration of the conservation and management history of the fishery, the sustainability of conservation and management approaches, the magnitude of the economic impact of the retention prohibition, and community and social impacts.

''(3) APPLICATION PROCESS.—The Secretary shall develop an application process to determine eligibility for economic assistance under the program and shall consult with States whose recreational and commercial fishery participants, fishing industries, or fishing communities have been affected by the prohibition. Any person or community seeking assistance under the program shall submit an application at such time, in such manner, and containing such information and assurances as the Secretary may require.

''(4) STATE MATCHING FUNDS.—The Federal share of assistance provided under the program to recreational and commercial fishery participants, fishing industries, or fishing communities may not exceed 75 percent. Before granting assistance under the program, the Secretary shall consult with the State in which the recipient is located and request that the State provide matching funds. The Secretary may waive, in whole or in part, the matching requirement under this paragraph.''.

SEC. 4. AUTHORITY TO ACT.

(a) CLARIFICATION OF EMERGENCY AUTHORITY.—Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(c)) is amended by adding at the end the following:

''(4) For purposes of this section, an emergency is a situation that results from recent, unforeseen, or recently discovered circumstances that present serious conservation or management problems in the fishery, including ecological, economic, social, or public health interests. An emergency may include increasing or decreasing a catch limit, or modifying a time or area closure or retention prohibition in response to new science or stock assessment information, but only if such action is needed to address serious conservation or management problems in the fishery.''.

SEC. 5. FISHERY STUDIES AND REPORTS.

(a) STATUS OF FISHERY REPORT.—Section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854(e)) is amended—

(1) by inserting ''(A)'' before ''The Secretary'';

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii); and

(3) by adding at the end the following:

''(B) In the review, the Secretary shall consider—

''(i) a stock assessment conducted pursuant to subsection (c);

''(ii) an analysis of the local, regional, and national social and economic impacts on fishing communities and industries directly and indirectly related to the fishery; and

''(iii) fishery management measures to enhance the sustainability of stocks of fish that are overfished, and an evaluation of alternative management approaches that may be implemented to enhance such sustainability.

''(C) Stock assessment updates for each stock of fish that is overfished or undergoing overfishing shall be conducted at 2 year intervals, and a full stock assessment pursuant to subsection (c) shall be conducted no less frequently than once every 5 years.

''(D) The Secretary shall include a summary of reviews conducted under subparagraph (A) in the report required by paragraph (1) of this subsection. To the extent possible, the Secretary shall include in the report recommendations for actions that could be taken to encourage the sustainable management of stocks of fish listed in the Fish Stocks Sustainability Index.''.

(b) ASSESSMENT OF CURRENT MANAGEMENT MEASURES.—

(1) IN GENERAL.—The Secretary of Commerce shall conduct a study, in cooperation with the National Academy of Sciences, to determine if current fishery management measures for stocks in a multi-species fishery yield the most productive use of marine resources while effectively conserving sustainable populations and a healthy marine ecosystem. The study shall include—

(A) the identification of the statutory and regulatory impediments to achieving the maximum sustainable yield from the entire fishery;

(B) the identification of fishery independent environmental stressors on the fishery;

(C) the economic value derived from the yield in the fishery; and

(D) alternative fishery management measures and technologies which would result in increased economic and harvest yields consistent with sound conservation.

(2) REPORT.—Within 180 days after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources containing the Secretary's findings, conclusions, and recommendations.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Commerce such sums as may be necessary to carry out the provisions of this Act and the amendments made by this Act.

By Mrs. HAGAN:

S. 3596. A bill to establish the Culture of Safety Hospital Accountability Study and Demonstration Program; to the Committee on Finance.

Mrs. HAGAN. Mr. President, today I am proud to introduce the Culture of Safety Hospital Accountability Act. This bill will test alternatives to the current, inflexible system to ensure that hospitals are meeting the highest health and safety standards for their patients.

Under the current system, the Centers for Medicare and Medicaid, or CMS, requires hospitals participating in Medicare and Medicaid to comply with Conditions of Participation—health and safety standards established by CMS for the protection of Medicare and Medicaid beneficiaries. CMS contracts with State agencies to perform inspections of hospitals, nursing homes, and other health care facilities to ensure compliance.

However, there are significant deficiencies in the current system. A major concern among hospitals is CMS' assignment of Immediate Jeopardy, which puts hospitals on a 23-day fast-track to losing their Medicare and Medicaid funding. Right now, the only remedy that CMS has when a hospital receives a citation is termination. There is no flexibility to consider the incident on a case-by-case basis—or even to consider whether the hospital self-reported and immediately corrected the incident. Moreover, current procedures fail to consider the substantial resources and efforts that hospitals are already investing in quality improvement and patient safety.

Take, for example, a hospital in my State, which last year got a 23-day termination notice after they self-reported that one of their nurses had H1N1. The hospital immediately sent the nurse home and, as I mentioned, immediately reported the incident to CMS. Nevertheless, the hospital was required to undergo an inspection and submit the requisite plan of correction to CMS. The agency was not able to process the paperwork until day 22 of the 23-day notice, causing undue stress for the community as they wondered whether the hospital was going to be forced to close its doors.

In addition to the uncertainty for the hospital, the human resources required and costs incurred to implement this inflexible system are enormous. Once a hospital is cited as out of compliance with their Condition of Participation, the State CMS inspectors are required to survey the entire hospital and any other hospitals under the same CMS provider number. In the case of the hospital I just mentioned, it took State inspectors an entire week with 17 staff to survey their hospital system.

To address this inflexibility in the current system, I am introducing the Culture of Safety Hospital Accountability Act. This bill would do three things:

First, it would require the Secretary of Health and Human Services to study existing quality assurance and patient safety activities within hospitals and identify best practices that should be replicated.

Second, it would create a demonstration program among hospitals, State health care agencies, and HHS to promote and implement best practices for improving patient safety and quality of care. HHS would identify up to 6 States and not more than 24 hospitals to participate in a 3-year demonstration program.

Finally, the bill would authorize the Secretary of HHS to promulgate regulations modifying termination agreements regarding health and safety requirements with hospitals and critical access hospitals to better ensure compliance, prevent recurrence of violations, and improve internal structures and processes that address patient quality and safety.

Patient safety must be first and foremost, and it is not the intent of the demonstration project to keep CMS or State inspectors out of hospitals, nor to impair the remedies CMS needs to address quality issues. Instead, the bill will help to explore how CMS, State regulatory authorities, and hospitals can work collaboratively to address quality and safety issues in ways that will ensure the best quality of care for patients.

By Mr. CARDIN:

S. 3602. A bill to amend title 23, United States Code, to direct the Secretary to establish a comprehensive program to control and treat polluted stormwater runoff from federally funded highways and roads, and for other purposes; to the Committee on Environment and Public Works.

Mr. CARDIN. Mr. President, today I am proud to introduce legislation that will help prevent millions of gallons of pollution from entering our Nation's precious water resources. The season we are in makes my legislation particularly timely. Spring is one of the wettest times of year, and with every Spring shower polluted stormwater runoff washes a myriad of chemicals pollutants, sediment, debris, oil and grease, and other contaminates from our Nation's roads and highways into our lakes, rivers, streams, bays, and coastal waters.

Stormwater is the nation's largest source of water pollution. While rain itself contains air pollution particulates that are deposited in every drop, most stormwater pollution is picked up on the surface and carried off as runoff. Stormwater washes contaminants like oil, grease, heavy metals, nutrients, asbestos, sediments, road salts and other de-icing agents, brake dust, and road debris from the millions of miles of America's roads and into storm drains that discharge into nearby waters. Almost all of this polluted stormwater is discharged without any treatment.

When rain falls on these hard, impervious surfaces it often has no where to go but down the channels created by curbs and retaining walls, into storm drains and into the nearest natural water body. According to research compiled by the National Oceanic & Atmospheric Administration's, NOAA, National Geophysical Data Center, the U.S. is covered by more than 112,600 square kilometers of impervious surfaces. That is a space larger than the State of Ohio. With 985,139 miles of federal aid highways stretching from every corner of the country, polluted highway runoff is no small problem facing our nation's waters.

The effects of polluted stormwater runoff are real. For example, the Anacostia River—Washington's ''other'' and often forgotten river—can be seen from the Capitol Dome as it flows out of Prince George's County, Maryland, and into the District and on to its confluence with the Potomac. Runoff from within the 176 square mile watershed of the Anacostia, most of which is in Maryland, but also includes the east side of DC and the entire Capitol complex, all makes its way into the Anacostia. The stormwater that enters the Anacostia is extremely polluted from the thousands of acres of road surfaces that cover the watershed, which exacerbates the incidence of combined sewer overflows and has impaired the Anacostia for many years. It is no coincidence that the U.S. Fish & Wildlife Service has found the Anacostia's bottom-feeder catfish to have the highest incidence of liver tumors than any other population of catfish in the country. The cause of the tumors are the high levels of polycyclic aromatic hydrocarbons, a by-product of fuel combustion, that come from vehicle tailpipe emissions and are deposited on the road and in the air and then washed into the river with every shower or thunderstorm.

This is not a problem unique to Maryland or the Chesapeake Bay region, nor is it a problem unique to urban environments as opposed to rural environments. Polluted runoff is a problem that affects any watershed where impervious paved road and highway surfaces have altered the natural hydrology of a watershed. Over time, Federal highway policy has come to recognize the drastic impacts highways and surface transportation can have on the environment and on water quality. Title 23 of the U.S. Code states: ''transportation should play a significant role in promoting economic growth, improving the environment, and sustaining the quality of life'' through the use of ''context sensitive solutions.'' The Intermodal Surface Transportation Efficiency Act, ISTEA, authorized using transportation enhancement funds for ''environmental mitigation to address water pollution due to highway runoff.'' It's important to note, however, that this is just one of 12 types of eligible enhancement projects and only 1.1 percent of enhancement project funds have gone toward environmental mitigation projects since 1992.

In 2008, at the request of the House Transportation & Infrastructure Committee, the Government Accountability Office issued a report examining key issues and challenges that need to be addressed in the next reauthorization of the transportation bill. That report highlighted the clear link between transportation policy and the environment. Taking a policy approach to require that the planning, design, and construction of highways are done in an environmentally responsible manner, with an eye toward mitigating the water quality impacts highways have on our Nation's water resources, will help address this issue and better meet our Nation's transportation goals. This legislation also helps advance the October 5, 2009, Executive Order affirming that Federal policy and Federal agencies shall ''conserve and protect water resources through efficiency, reuse, and stormwater management; eliminate waste, recycle, and prevent pollution; and leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products and services.''

The approach my legislation takes to mitigate polluted highway runoff is through the implementation of a minimum design standard, developed by the United States Department of Transportation, that requires the maintenance or restoration of the predevelopment hydrology of a Federal-aid highway project site. This same approach was made law by the Energy Independence & Security Act of 2007 for the development of new Federal buildings and facilities.

My bill would require that all significant Federal highway projects must be planned and designed ''to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the project site with regard to the temperature, rate, chemical composition, volume and duration of flow'' of stormwater. This would be achieved by approaches that avoid and minimize alteration of natural features and hydrology and maximize the use of onsite pollution control measures using existing terrain and natural features.

My bill also recognizes that geography and other physical characteristics of the land may not always allow on-site treatment of polluted highway runoff. When conditions are impracticable my legislation would allow for an ''appropriate off-site runoff pollution mitigation program'' within the watershed of a Federal-aid highway project site that can protect against the water quality impacts of the project.

The Clean Water Act requires that we protect the waters of the United States. As with most pollution abatement strategies, preventing stormwater pollution is cheaper, more effective, and easier to implement than trying to clean up and remediate the problem after the contamination has occurred.

Not addressing stormwater pollution at its source just kicks the proverbial can down the road for someone else's attention. When water resources are contaminated by polluted highway runoff, mitigating the pollution, which is a preventable discharge in the first place, should not be the responsibility of local governments, wastewater treatment facilities, or drinking water utilities.

Water pollution has many sources and our Nation's highways produce a tremendous volume of contaminated stormwater. Time and time again, experience has taught us that addressing pollution at its source is the most effective means of abating pollution. It is time we applied this principle to our Nation's Federal-aid highways. I urge my colleagues to support my legislation and help move our country closer to meeting the goals of the Clean Water Act and the goals of our national transportation policy.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3602

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Safe Treatment of Polluted Stormwater Runoff Act'' or the ''STOPS Runoff Act''.

SEC. 2. FEDERAL-AID HIGHWAY RUNOFF POLLUTION MANAGEMENT PROGRAM.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is amended by adding at the end the following:

''§ 330. Federal-aid highway runoff pollution management program

''(a) ESTABLISHMENT.—The Secretary shall establish a Federal-aid highway runoff pollution management program to ensure that covered projects are constructed in accordance with minimum standards designed to protect surface and ground water quality.

''(b) PROJECT APPROVAL.—The Secretary may approve a covered project of a State under section 106 only if the State provides assurances satisfactory to the Secretary that the State will construct the project in accordance with the minimum standards described in subsection (c).

''(c) MINIMUM STANDARDS.—The following minimum standards shall apply to the construction of covered projects to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the project site with regard to the temperature, rate, chemical composition, volume and duration of flow:

''(1) Avoid and minimize alteration of natural features and hydrology and maximize use of pollution source control measures that utilize existing terrain and natural features and reduce chemical introduction to reduce creation of pollution on the project site.

''(2) Maximize capture of highway runoff pollution on the project site through pretreatment and treatment, including environmental site design techniques and other control measures that promote evapotransporation and infiltration.

''(3) Prevent any remaining highway runoff pollution not addressed under paragraphs (1) and (2) to the maximum extent practicable by implementing one or more of the following control measures selected through a watershed-based environmental management or equivalent approach:

''(A) Pretreatment and treatment of runoff with appropriate control measures on the project site.

''(B) Discharge of highway runoff pollution directly to an off-site control measure under the control of the State with documented capacity to provide functionally and quantitatively equivalent management of runoff pollution to that required to achieve the minimum standards of this subsection for the design life of the project.

''(C) If the control measures in subparagraphs (A) and (B) are found impracticable based on site conditions or other appropriate factors, and an appropriate off-site runoff pollution mitigation program is in place, contribution to a mitigation program that will produce functionally and quantitatively equivalent management of runoff pollution to that required to achieve the minimum standards. Under this subparagraph, priority shall be given to off-site control measures that address the impacts of runoff pollution to waterways that are listed as impaired in the same or adjacent 8-digit Hydrologic Unit Code as the project site.

''(d) GUIDANCE.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, with the concurrence of the Administrator of the Environmental Protection Agency, shall publish guidance to assist States in complying with the requirements of this section.

''(2) CONTENTS OF GUIDANCE.—The guidance shall include guidelines for the establishment of State processes and programs that will be used to assist in managing highway runoff pollution from covered projects in accordance with the minimum standards described in subsection (c), including—

''(A) guidance to help States integrate the planning, selection, design, and long-term operation and maintenance of control measures consistent with the minimum standards in the overall project planning process;

''(B) creation of a watershed-based environmental management approach to assist projects in achieving consistency with the minimum standards;

''(C) guidelines for the development and utilization of off-site runoff pollution mitigation programs to achieve compliance with the minimum standards; and

''(D) provisions for State inspection, monitoring, and reporting to document State compliance and project consistency with this section.

''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect the applicability of any provision of Federal, State, or local law that is more stringent than the requirements of this section.

''(f) REPORTING.—The Secretary shall require each State to report annually to the Secretary on the highway runoff pollution reductions achieved for covered projects carried out by the State after the date of enactment of this section.

''(g) DEFINITIONS.—In this section, the following definitions apply:

''(1) CONTROL MEASURE.—The term 'control measure' means a program, structural or nonstructural management practice, operational procedure, or policy on or off the project site that is intended to control, reduce, or prevent highway runoff pollution.

''(2) COVERED PROJECT.—The term 'covered project' means a project carried out under this title for—

''(A) construction of a new highway or associated facility;

''(B) construction of a Federal-aid highway runoff control measure retrofit; or

''(C) construction of a significant Federal-aid highway improvement.

''(3) FEDERAL-AID HIGHWAY RUNOFF CONTROL MEASURE RETROFIT.—The term 'Federal-aid highway runoff control measure retrofit' means the installation or modification of a control measure for highway runoff pollution serving a Federal-aid highway or associated facility originally constructed before the date of enactment of this section.

''(4) HIGHWAY RUNOFF POLLUTION.—The term 'highway runoff pollution' means in relation to a Federal-aid highway, associated facility, or control measure retrofit projects one or more of the following—

''(A) a discharge of sediment, metals, bacteria, chemicals, nutrients, or oil and grease in runoff; or

''(B) a discharge of peak flow rate, water temperature, and volume of runoff that exceeds predevelopment amounts generated from a Federal-aid highway, associated facility, or control measure retrofit project that violates the water quality standards of the receiving water set by the Federal Water Pollution Control Act (33 U.S.C. 125 et seq.) and related State programs.

''(5) SIGNIFICANT FEDERAL-AID HIGHWAY IMPROVEMENT.—The term 'significant Federal-aid highway improvement' means the rehabilitation, reconstruction, reconfiguration, renovation, or major resurfacing of an existing Federal-aid highway or associated facility that disturbs 5 or more acres of land.

''(6) WATERSHED-BASED ENVIRONMENTAL MANAGEMENT APPROACH.—The term 'watershed-based environmental management approach' means an approach under which—

''(A) the selection of solutions that prevent or minimize the environmental impact of an individual project is made within the broader context of the environmental protection and restoration goals of any watershed that drains the project site, rather than selecting solutions solely based on site level considerations; and

''(B) priority consideration is given to—

''(i) protection of drinking water supplies;

''(ii) protection and restoration of waterways listed by a State as impaired in accordance with section 303(d) of the Federal Water Pollution Control Act (33 U.S.C. 1313(d));

''(iii) preservation of aquatic ecosystems and fisheries; and

''(iv) cost-effective expenditure of Federal funds.''.

(b) EFFECTIVE DATE.—The provisions of this legislation will be effective and applicable to construction of Federal-Aid Highway projects as defined in subsection (g)(2) 1 year after enactment.

(c) CLERICAL AMENDMENT.—The analysis for chapter 3 is amended by adding at the end the following:

''330. Federal-aid highway runoff pollution management program.''.

By Ms. CANTWELL:

S. 3603. A bill to amend the Oil Pollution Act of 1990 to establish the Federal Oil Spill Research Committee and to amend the Federal Water Pollution Control Act to include in a response plan certain planned and demonstrated investments in research relating to discharges of oil and to modify the dates by which a response plan is required to be updated; to the Committee on Commerce, Science, and Transportation.

Mr. President, over 21 years ago the tanker *Exxon Valdez*, en route from Valdez, Alaska, to Los Angeles, failed to turn back into the shipping lane after detouring to avoid ice. At 12:04 a.m., it ran aground on Bligh Reef in Prince William Sound.

Within six hours, the *Exxon Valdez* spilled 11 million gallons of crude oil into the Sound's pristine waters and wrote itself into the history books as—at that time—the worst oil spill ever in U.S. waters. Eventually, oil covered 11,000 square miles of ocean.

The environmental and economic damage is impossible to both fathom and assess; countless seabirds, marine mammals, and fish were killed. As a result, companies like the Chugach Alaska Corporation went bankrupt. There were huge losses to recreational sports, fisheries, and tourism. And 21 years later there is still oil in the area.

Today, we are re-living a similar nightmare—only this time on an even larger scale. The BP oil spill in the Gulf of Mexico, triggered by the explosion of the Deepwater Horizon oil rig and the failure of its safety systems, has shattered all previous records as the single largest marine oil spill in our Nation's history. Even today, oil continues to gush from the uncapped well, furthering the devastation to the Gulf of Mexico's environment and economy.

The *Exxon Valdez* showed us just how unprepared we were in 1989, and the BP oil spill is showing us today how unprepared we are in 2010. While the Oil Pollution Act of 1990 has been successful in achieving many of its policy goals, the BP oil spill is proving to us that oil spill response technology remains largely stagnant, and that our response infrastructure remains inadequate.

This is why I rise today to introduce the Oil Spill Technology and Research Act.

This legislation is designed to address the massive gap in oil spill research and development that has contributed to our inability to respond to the BP oil spill. It will: put mechanisms in place that will foster continuous research and development on oil spill response methods and technologies; provide an incentive structure for translating new technologies from ideas into reality; and continuously add new layers to our oil spill safety net.

This is an important step in the right direction to improve our Nation's ability to contain and clean up oil spills in the future.

It is a proclamation that we are not going to allow complacency back at the wheel, nor are we going to allow politics to get in the way of doing what is right.

Twenty-one years ago we saw the devastating costs of complacency, and we are living that nightmare again today. It is up to us to ensure that this country's environment, economy, and people are protected with the greatest rigor that we can muster. Our oceans, coasts, and citizens deserve nothing less.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3603

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Oil Spill Technology and Research Act of 2010''.

SEC. 2. FEDERAL OIL SPILL RESEARCH COMMITTEE.

(a) IN GENERAL.—Section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) is amended to read as follows:

''SEC. 7001. FEDERAL OIL SPILL RESEARCH COMMITTEE.

''(a) ESTABLISHMENT.—There is established a committee, to be known as the 'Federal Oil Spill Research Committee' (referred to in this section as the 'Committee').

''(b) MEMBERSHIP.—

''(1) COMPOSITION.—The Committee shall be composed of—

''(A) at least 1 representative of the National Oceanic and Atmospheric Administration;

''(B) at least 1 representative of the Coast Guard;

''(C) at least 1 representative of the Environmental Protection Agency; and

''(D) at least 1 representative of each of such other Federal agencies as the President considers to be appropriate.

''(2) CHAIRPERSON.—The Under Secretary of Commerce for Oceans and Atmosphere (referred to in this section as the 'Under Secretary') shall designate a Chairperson from among members of the Committee who represent the National Oceanic and Atmospheric Administration.

''(3) MEETINGS.—At a minimum, the members of the Committee shall meet once each quarter.

''(c) DUTIES OF THE COMMITTEE.—

''(1) RESEARCH.—The Committee shall—

''(A) coordinate a comprehensive program of oil pollution research, technology development, and demonstration among the Federal agencies, in cooperation and coordination with industry, institutions of higher education, research institutions, State governments, tribal governments, and other countries, as the Committee considers to be appropriate; and

''(B) foster cost-effective research mechanisms, including the joint funding of research.

''(2) REPORTS ON CURRENT STATE OF OIL DISCHARGE PREVENTION AND RESPONSE CAPABILITIES.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Oil Spill Technology and Research Act of 2010, the Committee shall submit to Congress a report on the state of oil discharge prevention and response capabilities that—

''(i) identifies current research programs conducted by governments, universities, and corporate entities;

''(ii) assesses the current status of knowledge on oil pollution prevention, response, and mitigation technologies;

''(iii) establishes national research priorities and goals for oil pollution technology development relating to prevention, response, mitigation, and environmental effects;

''(iv) identifies regional oil pollution research needs and priorities for a coordinated program of research at the regional level developed in consultation with the State and local governments and Indian tribes;

''(v) assesses the current state of discharge response equipment, and determines areas in need of improvement, including with respect to the quantity, age, quality, and effectiveness of equipment, or necessary technological improvements;

''(vi) assesses—

''(I) the current state of real-time data available to mariners, including data on water level, currents, and weather (including predictions); and

''(II) whether a lack of timely information increases the risk of oil discharges; and

''(vii) includes such other information or recommendations as the Committee determines to be appropriate.

''(B) 5-YEAR UPDATES.—Not later than 5 years after the date of enactment of the Oil Spill Technology and Research Act of 2010, and every 5 years thereafter, the Committee shall submit to Congress a report updating the information contained in the previous report submitted under subparagraph (A).

''(d) RESEARCH AND DEVELOPMENT PROGRAM.—

''(1) IN GENERAL.—In carrying out the duties of the Committee under subsection (c)(1), the Committee shall establish a program to conduct oil pollution research and development.

''(2) PROGRAM ELEMENTS.—The program established under paragraph (1) shall provide for research, development, and demonstration of new or improved technologies and methods that are effective in preventing, detecting, or responding to, mitigating, and restoring damage from oil discharges and that protect the environment, including each of the following:

''(A) High priority research areas described in the reports under subsection (c)(2).

''(B) Environmental effects of acute and chronic oil discharges on coastal and marine resources, including impacts on protected areas and protected species.

''(C) Long-term effects of major discharges and the long-term cumulative effects of smaller endemic discharges.

''(D) New technologies to detect accidental or intentional overboard discharges.

''(E) Response, containment, and removal capabilities, such as improved booms, oil skimmers, and storage capacity.

''(F) Oil discharge risk assessment methods, including the identification of areas of high risk and potential risk reductions for the prevention of discharges.

''(G) Capabilities for predicting the environmental fate, transport, and effects of oil discharges, including prediction of the effectiveness of discharge response systems to contain and remove oil discharges.

''(H) Methods to restore and rehabilitate natural resources and ecosystem functions damaged by oil discharges.

''(I) Research and training, in consultation with the National Response Team, to improve the ability of industry and the Federal Government to remove an oil discharge quickly and effectively.

''(J) Oil pollution technology evaluation.

''(K) Any other priorities identified by the Committee.

''(3) IMPLEMENTATION PLAN.—

''(A) IN GENERAL.—Not later than 180 days after the date of submission of the report under subsection (c)(2)(A), the Committee shall submit to Congress a plan for the implementation of the program required by paragraph (1).

''(B) ASSESSMENT BY NATIONAL ACADEMY OF SCIENCES.—The Chairperson of the Committee, acting through the Administrator of the National Oceanic and Atmospheric Administration, shall enter into an arrangement with the National Academy of Sciences under which the National Academy of Sciences shall—

''(i) provide advice and guidance in the preparation and development of the plan required by subparagraph (A); and

''(ii) assess the adequacy of the plan as submitted, and submit a report to Congress on the conclusions of the assessment.

"(e) GRANT PROGRAM IN SUPPORT OF RESEARCH AND DEVELOPMENT PROGRAM.—

"(1) IN GENERAL.—The Under Secretary of Commerce shall manage a program of competitive grants to universities or other research institutions, or groups of universities or research institutions, for the purposes of conducting the program established under subsection (d).

"(2) APPLICATIONS AND CONDITIONS.—In conducting the program, the Under Secretary—

"(A) shall establish a notification and application procedure;

"(B) may establish such conditions and require such assurances as are appropriate to ensure the efficiency and integrity of the grant program; and

"(C) may provide grants under the program on a matching or nonmatching basis.

"(f) ADVICE AND GUIDANCE.—

"(1) IN GENERAL.—The Committee shall accept comments and input from State and local governments, Indian tribes, industry representatives, and other stakeholders in carrying out the duties of the Committee under subsection (c).

"(2) ADVISORY COUNCIL.—The Committee may establish an Advisory Council consisting of nongovernment experts and stakeholders for the purpose of providing guidance to the Committee on matters under this section.

"(g) FACILITATION.—The Committee may develop joint partnerships or enter into memoranda of agreement or memoranda of understanding with institutions of higher education, States, and other entities to facilitate the research program required by subsection (d).

"(h) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of the Oil Spill Technology and Research Act of 2010, and annually thereafter, the Chairperson of the Committee shall submit to Congress a report that describes—

"(1) the activities carried out under this section during the preceding fiscal year; and

"(2) the activities that are proposed to be carried out under this section for the fiscal year during which the report is submitted.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce to carry out this section—

"(1) $200,000 for fiscal year 2010, to remain available until expended, for use in entering into arrangements with the National Academy of Sciences and for paying other expenses incurred in developing the reports and research program under this section; and

"(2) $2,000,000 for each of fiscal years 2010 through 2012, to remain available until expended.".

(b) TERMINATION OF AUTHORITY OF INTERAGENCY COMMITTEE.—

(1) IN GENERAL.—The Interagency Coordinating Committee on Oil Pollution Research established under section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) (as in effect on the day before the date of enactment of this Act), and all authority of that Committee, terminate on the date of enactment of this Act.

(2) FUNDING.—Any funds made available for the Interagency Coordinating Committee on Oil Pollution Research described in paragraph (1) and remaining available as of the date of enactment of this Act shall be transferred to and available for use by the Federal Oil Spill Research Committee (as established by the amendment made by subsection (a)), without further appropriation or fiscal year limitation.

SEC. 3. RESPONSE PLAN UPDATE REQUIREMENT.

Section 311(j)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)) is amended—

(1) in subparagraph (D)—

(A) by striking clause (v) and inserting the following:

"(v)(I) be updated at least every 5 years;

"(II) require the use of the best available technology and methods to contain and remove, to the maximum extent practicable, a worst-case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge; and

"(III) be resubmitted for approval upon each update (which shall be considered to be a significant change to the response plan) under this clause;";

(B) in clause (vi), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(vii) include planned and demonstrated investments in research relating to oil discharges, risk assessment, and development of technologies for oil discharge response and prevention.".

(2) by adding at the end the following:

"(J) TECHNOLOGY STANDARDS.—The Coast Guard may establish requirements and issue guidance for the use of best available technology and methods under subparagraph (D)(v), which technology and methods shall be based on performance metrics and standards, to the maximum extent practicable.".

SEC. 4. OIL DISCHARGE TECHNOLOGY INVESTMENT.

(a) IN GENERAL.—The Secretary of the Department in which the Coast Guard is operating (referred to in this section as the "Secretary") shall establish a program for the formal evaluation and validation of oil pollution containment and removal methods and technologies.

(b) APPROVAL.—

(1) IN GENERAL.—The program shall establish a process for new methods and technologies to be submitted, evaluated, and gain validation for use in responses to discharges of oil and inclusion in response plans.

(2) CONSIDERATION OF CAPABILITY.—Following each validation of a method or technology described in paragraph (1), the Secretary shall consider whether the method or technology meets a performance capability warranting designation of a new standard for best available technology or methods.

(3) LACK OF VALIDATION.—The lack of validation of a method or technology under this section shall not preclude—

(A) the use of the method or technology in response to a discharge of oil; or

(B) the inclusion of the method or technology in a response plan.

(c) TECHNOLOGY CLEARINGHOUSE.—Each technology and method validated under this section shall be included in the comprehensive list of discharge removal resources maintained through the National Response Unit of the Coast Guard.

(d) CONSULTATION.—In carrying out this section, the Secretary shall consult with—

(1) the Secretary of the Interior;

(2) the Administrator of the National Oceanic and Atmospheric Administration;

(3) the Administrator of the Environmental Protection Agency; and

(4) the Secretary of Transportation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 583—EXPRESSING SUPPORT FOR DESIGNATION OF 2011 AS "WORLD VETERINARY YEAR" TO BRING ATTENTION TO AND SHOW APPRECIATION FOR THE VETERINARY PROFESSION ON ITS 250TH ANNIVERSARY

Mr. ENSIGN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 583

Whereas the first veterinary school in the world was founded in Lyon, France, in 1761;

Whereas 2011 will mark the 250th anniversary of veterinary education and the founding of the veterinary medical profession;

Whereas 2011 will mark the beginnings of comparative biopathology, a basic tenet of the "one health" concept;

Whereas veterinarians have played an integral role in discovering the causes of numerous diseases that affect the people of the United States, such as salmonellosis, West Nile Virus, yellow fever, and malaria;

Whereas veterinarians provide valuable public health service through preventive medicine, control of zoonotic diseases, and scientific research;

Whereas veterinarians have advanced human and animal health by inventing and refining techniques and instrumentations such as artificial hips, bone plates, splints, and arthroscopy;

Whereas veterinarians play an integral role in protecting the quality and security of the herd and food supply of the Nation;

Whereas military veterinarians provide crucial assistance to the agricultural independence of developing nations around the world;

Whereas disaster relief veterinarians provide public health service and veterinary medical support to animals and humans displaced and ravaged by disasters;

Whereas veterinarians are dedicated to preserving the human-animal bond and promoting the highest standards of science-based, ethical animal welfare;

Whereas 2011 would be an appropriate year to designate as "World Veterinary Year" to bring attention to and show appreciation for the veterinary profession on its 250th anniversary; and

Whereas colleagues in the United States will join veterinarians from around the world to celebrate this momentous occasion: Now, therefore, be it

Resolved, That the Senate—

(1) supports the designation of 2011 as "World Veterinary Year";

(2) supports the goals and ideals of World Veterinary Year of bringing attention to and expressing appreciation for the contributions that the veterinary profession has made and continues to make to animal health, public health, animal welfare, and food safety; and

(3) requests that the President issue a proclamation calling upon the people of the United States to observe 2011 as World Veterinary Year with appropriate programs, ceremonies, and activities.

SENATE RESOLUTION 584—COMMEMORATING THE 2010 SPECIAL OLYMPICS USA NATIONAL GAMES

Mr. JOHANNS submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 584

Whereas the 2010 Special Olympics USA National Games will be held in Lincoln, Nebraska, from July 18 to July 23, 2010;

Whereas nearly 4,000 athletes and coaches from 49 State delegations will participate in the Games;

Whereas approximately 30,000 people, including families and friends of the athletes, and enthusiastic supporters, are expected to visit or attend the Games;

Whereas more than 8,500 volunteers will contribute time and talent to make the Games a success;

Whereas, for decades, the Special Olympics has provided athletes with a unique opportunity to participate in athletic competition while developing confidence, skill, and determination;

Whereas the 2010 Special Olympics USA National Games continues the great tradition begun by Eunice Shriver in 1968, and proves the belief of Ms. Shriver that through sports, people with intellectual disabilities ''can realize their potential for growth'';

Whereas 70 Nebraska communities are participating in the Law Enforcement Torch Run, in which law enforcement officials from the State of Nebraska and across the United States carry the ''Flame of Hope'' through Nebraska; and

Whereas the State of Nebraska, the city of Lincoln, and more than 100 State and local businesses and organizations have made major contributions and opened their doors so that people from across the United States can participate in and enjoy the 2010 Special Olympics USA National Games: Now, therefore, be it

Resolved, That the Senate—

(1) applauds the participants and coaches of the 2010 Special Olympics USA National Games, as well as the volunteers and law enforcement officers who support the Games; and

(2) thanks all the people who contributed to the Games for their generous efforts and gifts to make the Games a reality.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4477. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table.

SA 4478. Mr. BENNET submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4479. Mr. CARPER (for himself, Mr. SCHUMER, Mr. CARDIN, Mr. LIEBERMAN, and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4480. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4481. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4482. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4483. Ms. SNOWE (for herself, Mr. GRASSLEY, Mr. ENZI, Mr. ISAKSON, and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4477. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE V—MISCELLANEOUS

SEC. ____. SENSE OF THE SENATE REGARDING THE RECESS APPOINTMENT OF DR. DONALD BERWICK.

(a) FINDINGS.—The Senate makes the following findings:

(1) On April 19, 2010, the President nominated Dr. Donald Berwick to serve as the Administrator of the Centers for Medicare & Medicaid Services (in this section referred to as ''CMS'') in the Department of Health and Human Services. As of that date, the position was vacant for the first 16 months of the Obama Administration.

(2) Since that date, Dr. Berwick has been undergoing the bipartisan nomination investigation review process of the Committee on Finance of the Senate (in this section referred to as the ''Senate Finance Committee'') and there has been ongoing activity as the Senate Finance Committee continues to gather and review information from Dr. Berwick.

(3) The Senate Finance Committee review process for the Berwick nomination was proceeding normally. A hearing on the nomination of Dr. Berwick had been requested and no objections had been raised to having the hearing.

(4) On July 7, 2010, less than 3 months after the nomination and without a Senate Finance Committee hearing taking place, the President recess-appointed Dr. Berwick to serve as the Administrator of CMS. Dr. Berwick was sworn in on July 12, 2010.

(5) The appointment of the Administrator of CMS is subject to Senate confirmation under article II, section 2, clause 2 of the Constitution. Dr. Berwick's nomination was referred to the Senate Finance Committee which has jurisdiction over health programs under the Social Security Act and the responsibility to examine Presidential nominees related to these programs.

(6) It is especially true that Dr. Berwick's nomination should have undergone the Senate Finance Committee nomination review process in light of the significant responsibilities of the Administrator of CMS.

(7) CMS is responsible for the health care of more than 100,000,000 Americans, and is one of the largest agencies in the Federal Government.

(8) The recently enacted Patient Protection and Affordable Care Act (commonly referred to as the ''health care reform law'') significantly increases the responsibilities of CMS, including half a trillion dollars in Medicare provider cuts and the largest expansion of the Medicaid program since its inception.

(9) The manner in which an individual nominated to serve as the Administrator of CMS intends to carry out these responsibilities is a serious matter and warrants a thorough review. A thorough review is especially needed for Dr. Berwick's appointment in light of statements he has made in the past about health care rationing as well as the role of government in health care.

(10) By recess-appointing Dr. Berwick, the President has attempted to short circuit the requirement of article II, section 2, clause 2 of the Constitution that he appoint officers of the United States ''by and with the Advice and Consent of the Senate''.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the recess appointment of Dr. Donald Berwick, while consideration of his nomination to serve as Administrator of CMS was proceeding normally through the Senate Finance Committee nomination review process, constitutes an abuse of power by the President; and

(2) notwithstanding his recess appointment to that position, Dr. Donald Berwick should appear before the Senate Finance Committee and respond to questions by members about his qualifications to serve as Administrator of CMS.

SA 4478. Mr. BENNET submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title II, add the following:

PART V—OTHER PROVISIONS

SEC. ____. CREDIT FOR EMPLOYER-PROVIDED CLEAN ENERGY JOB TRAINING PROGRAMS.

(a) PURPOSES.—The purposes of this section are—

(1) to meet the growing need for a workforce that is trained and prepared to fill jobs in clean energy industries;

(2) to assist employers to transition their workforce towards the clean energy economy; and

(3) to provide incentives for employers to play a role in the training, preparation, and development of their workforce for the clean energy economy.

(b) CREDIT.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 45S. EMPLOYER-PROVIDED CLEAN ENERGY JOB TRAINING PROGRAMS.

"(a) IN GENERAL.—For the purposes of section 38, in the case of an eligible employer, the employer-provided clean energy job training credit determined under this section for the taxable year is an amount equal to 25 percent of qualified education program expenses paid by the eligible employer for such taxable year.

"(b) LIMITATION.—The credit allowed under subsection (a) for any taxable year shall not exceed $500 with respect to any full-time employee of the eligible employer that participates in a qualified education program during such taxable year.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EDUCATION PROGRAM EXPENSES.—The term 'qualified education program expenses' means expenses paid or incurred by an eligible employer for participation of full-time employees in a qualified education program.

"(2) QUALIFIED EDUCATION PROGRAM.—The term 'qualified education program' means adult education (within the meaning of section 203 of the Adult Education and Family Literacy Act) and job training that is—

"(A) provided—

"(i) by a provider that is identified as an eligible provider in accordance with section 122 of the Workforce Investment Act of 1998, or

"(ii) in a curriculum approved by the Assistant Secretary of Labor for Employment Training,

"(B) certified by the Assistant Secretary of Labor for Employment Training for purposes of this section, and

"(C) provided to full-time employees of the eligible employer who will be employed in clean energy jobs (as defined in subsection (d)) and will require such education and training in order to fulfill their employment responsibilities in such jobs.

"(3) ELIGIBLE EMPLOYER.—

"(A) IN GENERAL.—The term 'eligible employer' means, with respect to any taxable year, any employer which employed an average of at least 1 but not more than 500 full-time employees on business days during the preceding taxable year.

"(B) EMPLOYERS NOT IN EXISTENCE DURING PRECEDING YEAR.—If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of full-time employees that it is reasonably expected such employer will employ on business days in the current year.

"(C) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

"(D) AGGREGATION RULE.—All persons treated as a single employer under subsection (a) or (b) or section 52, or subsection (m) or (o) of section 414, shall be treated as one person.

"(4) FULL-TIME EMPLOYMENT.—An employee shall be considered full-time if such employee is employed at least 30 hours per week for 25 or more calendar weeks in the taxable year.

"(d) CLEAN ENERGY JOB.—

"(1) IN GENERAL.—The term 'clean energy job' means a job directly connected with producing electric energy generated by a renewable energy resource.

"(2) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, ocean, tidal, geothermal energy, landfill gas, incremental hydropower, or hydrokinetic energy.

"(3) INCREMENTAL HYDROPOWER.—The term 'incremental hydropower' means additional generation that is achieved from increased efficiency or additions of capacity made on or after—

"(A) the date of enactment of this section; or

"(B) the effective date of an existing applicable State renewable portfolio standard program at a hydroelectric facility that was placed in service before that date.

"(e) DENIAL OF DOUBLE BENEFIT.—No deduction or credit shall be allowed under any other provision of this chapter for any amount taken into account in determining the credit under this section.

"(f) ELECTION TO HAVE CREDIT NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary may by regulations prescribe) to have this section not apply for any taxable year.

"(g) TERMINATION.—This section shall not apply to any expenses incurred after December 31, 2014.".

(c) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended—

(1) by striking "plus" at the end of paragraph (35);

(2) by striking the period at the end of paragraph (36) and inserting ", plus"; and

(3) by adding at the end the following new paragraph:

"(37) the employer-provided clean energy job training credit determined under section 45S(a).".

(d) CONFORMING AMENDMENT.—Section 6501(m) of the Internal Revenue Code of 1986 is amended by inserting "'45S(f),'" after "'45H(g),'".

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 45S. Employer-provided clean energy job training programs.".

(f) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall promulgate regulations implementing the provisions of this section.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SA 4479. Mr. CARPER (for himself, Mr. SCHUMER, Mr. CARDIN, Mr. LIEBERMAN, and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, insert the following:

Subtitle C—Other Relief

SEC. —. INCREASED EXCLUSION AMOUNT FOR COMMUTER TRANSIT BENEFITS AND TRANSIT PASSES.

Paragraph (2) of section 132(f) of the Internal Revenue Code of 1986 is amended by striking "January 1, 2011" and inserting "January 1, 2012".

SA 4480. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 177, line 16, insert "and planned outreach efforts to women-owned businesses, veteran-owned businesses, and minority-owned businesses" before ", where appropriate".

SA 4481. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 193, line 8, before the period insert "including, to the extent possible based on the available reporting data, details on lending to women-owned businesses, veteran-owned businesses, and minority-owned businesses".

SA 4482. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 199, line 6, strike "The Secretary" and insert "Not later than 1 year after the date of enactment of this Act, and every year thereafter for 5 years, the Secretary".

On page 199, line 10, insert "and every year thereafter for 5 years," before "the Secretary shall submit".

On page 199, between lines 19 and 20, insert the following:

(d) APPROPRIATE ACTION.—If the Secretary determines that the Program has not effectively served women-owned businesses, veteran-owned businesses, or minority-owned businesses, the Secretary may formulate a plan to redress the needs of the affected businesses.

SA 4483. Ms. SNOWE (for herself, Mr. GRASSLEY, Mr. ENZI, Mr. ISAKSON, and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 4402 proposed by Mr. REID (for Mr.

BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 128, between lines 19 and 20, insert the following:

SEC. 1704. SMALL BUSINESS LOAN GUARANTEE ENHANCEMENT EXTENSIONS.

(a) APPROPRIATION.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, for an additional amount for ''Small Business Administration—Business Loans Program Account'', $480,000,000, to remain available through December 31, 2010, for the cost of—

(1) fee reductions and eliminations under section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151), as amended by this section; and

(2) loan guarantees under section 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 152), as amended by this section.

Such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

(b) EXTENSION OF PROGRAMS.—

(1) FEES.—Section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151) is amended by striking ''September 30, 2010'' each place it appears and inserting ''December 31, 2010''.

(2) LOAN GUARANTEES.—Section 502(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 153) is amended by striking ''May 31, 2010'' and inserting ''December 31, 2010''.

(c) APPROPRIATION.—There is appropriated for an additional amount, out of any funds in the Treasury not otherwise appropriated, for administrative expenses to carry out sections 501 and 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), $5,000,000, to remain available until expended, which may be transferred and merged with the appropriation for ''Small Business Administration—Salaries and Expenses''.

(d) USE OF STIMULUS FUNDS TO OFFSET SPENDING.—Notwithstanding section 5 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 116), $485,000,000 is rescinded on a pro rata basis, by account, from unobligated amounts appropriated or made available under division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 116) (other than under title X of division A of such Act) in order to offset the increase in spending resulting from subsections (a) and (c) of this section. The Director of the Office of Management and Budget shall report to each congressional committee the amounts rescinded under this subsection within the jurisdiction of such committee.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a business meeting scheduled before the Committee on Energy and Natural Resources, previously announced for July 15th, has been rescheduled and will not be held on Wednesday, July 21, 2010, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the business meeting is to consider pending legislation.

For further information, please contact Sam Fowler or Amanda Kelly.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on July 15, 2010, at 9:30 a.m.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on July 15, 2010, at 9:00 a.m.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on July 15, 2010, at 10:00 a.m. in Room 253 of the Russell Senate Office Building.

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

COMMITTEE ON FINANCE

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on July 15, 2010, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Choosing to Work During Retirement and the Impact on Social Security.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on July 15, 2010, at 2:30 p.m. to hold a hearing entitled ''The New START Treaty: Maintaining a Safe, Secure and Effective Nuclear Arsenal.''

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

COMMITTEE ON THE JUDICIARY

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on July 15, 2010, at 4 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Nominations.''

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

SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY, AND INSURANCE

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Subcommittee on Consumer Protection, Product Safety, and Insurance of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on July 15, 2010, at 2 p.m., in room 253 of the Russell Senate Office Building.

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

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security be authorized to meet during the session of the Senate on July 15, 2010, at 10 a.m., to conduct a hearing entitled, ''Preventing and Recovering Government Payment Errors.''

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on July 15, 2010, at 2:30 p.m., to conduct a hearing entitled ''The Federal Government's Role in Empowering Americans to Make Informed Financial Decisions.''

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

PRIVILEGES OF THE FLOOR

Mr. SPECTER. Mr. President, I ask unanimous consent that floor privileges be given to Linda Hoffa, a detailee in my office, for the remainder of this Congress.

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

NOTICE: REGISTRATION OF MASS MAILINGS

The filing date for 2010 second quarter Mass Mailings is Monday, July 26, 2010. If your office did no mass mailings during this period, please submit a form that states ''none.''

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, D.C. 20510–7116.

The Public Records office will be open from 9:00 a.m. to 6:00 p.m. on the filing date to accept these filings. For further information, please contact the Public Records office.

UNANIMOUS-CONSENT AGREEMENT—H.R. 4213

Mr. DORGAN. Mr. President, I ask unanimous consent that at 2:30 p.m. on Tuesday, July 20, the Senate resume consideration of the House message to company H.R. 4213; that the motion to reconsider be agreed to and the Senate then proceed to vote on the motion to invoke cloture on the motion to concur in the House amendment to the Senate amendment to H.R. 4213, with amendment No. 4425.

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

EXECUTIVE SESSION

TAX CONVENTION WITH MALTA

PROTOCOL AMENDING TAX CONVENTION WITH NEW ZEALAND

Mr. DORGAN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 3 and 4, treaty documents 111–1 and 111–3; that the treaties be considered as having advanced through the various parliamentary stages up to and including the presentation of the resolution of ratification; that any committee reservations and declarations be agreed to as applicable; that any statements be printed in the RECORD; further, that when the votes on the resolutions of ratification are taken, the motions to reconsider be considered made and laid upon the table en bloc; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

Mr. DORGAN. Mr. President, I ask for a division vote on each of the resolutions of ratification.

The PRESIDING OFFICER. A division vote has been requested. On treaty document 111–1, all those in favor stand and be counted.

All those opposed stand and be counted.

On a division, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification on treaty document 111–1 is agreed to.

The question is now on treaty document 111–3. All those in favor stand and be counted.

All those opposed stand and be counted.

Two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

Under the previous order, the motions to reconsider are considered made and laid upon the table en bloc.

The resolutions of ratification are as follows:

The Senate approved the following treaties on the Executive Calendar:

Tax Convention with Malta (Treaty Doc. 111–1)

TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION:

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION

The Senate advises and consents to the ratification of the Convention Between the Government of the United States of America and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on August 8, 2008, at Valletta (the ''Convention'') (Treaty Doc. 111–1), subject to the declaration of section 2.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration:

The Convention is self-executing.

Protocol Amending Tax Convention with New Zealand (Treaty Doc. 111–3)

TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION

The Senate advises and consents to the ratification of the Protocol Amending the Convention between the United States of America and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on December 1, 2008, at Washington (the ''Protocol'') (Treaty Doc. 111–3), subject to the declaration of section 2.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration:

The Protocol is self-executing.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MEASURE READ FIRST TIME—H.R. 5712

Mr. DORGAN. Mr. President, I understand that H.R. 5712 has been received from the House and is at the desk.

The PRESIDING OFFICER. The Senator is correct.

The clerk will read the title of the bill for the first time.

The assistant legislative clerk read as follows:

A bill (H.R. 5712) to provide for certain clarifications and extensions under Medicare, Medicaid, and the Children's Health Insurance Program.

Mr. DORGAN. Mr. President, I ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will be read for the second time on the next legislative day.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDERS FOR MONDAY, JULY 19, 2010

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m. on Monday, July 19; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and, following any leader remarks, the Senate then proceed to a period for the transaction of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each; that following morning business, the Senate resume consideration of H.R. 5297, the small business jobs bill.

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

PROGRAM

Mr. DURBIN. Mr. President, there will be no rollcall votes during Monday's session of the Senate. Senators should expect the next vote to occur at approximately 2:30 p.m. on Tuesday, July 20. That vote will be on the motion to invoke cloture with respect to H.R. 4213, which extends unemployment benefits through November.

ADJOURNMENT UNTIL MONDAY, JULY 19, 2010, AT 2 P.M.

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:33 p.m., adjourned until Monday, July 19, 2010, at 2 p.m.