that works for all of us; yet today Congress will pass legislation that increases government intervention in the financial markets, rations resources, limits consumer choices, and dictates wages and prices. In a time of economic recession with record unemployment and record deficits, Congress should be enacting legislation to assist our economy.

Mr. Speaker, the motives are clear. This administration and this Congress are using policy and regulation to force a government takeover of the free enterprise system.

Mr. Speaker, this Congress should be doing things to encourage employment, to encourage people to go back to work, to encourage competitiveness, to encourage our country to be prepared tomorrow; not to have record unemployment, not to spend more money for record debts, but to give America and the free enterprise system the chance and opportunity it deserves to flourish in America.

Mr. Speaker, I encourage my colleagues to vote against this rule and the underlying legislation.

I reserve the balance of my time.

Mr. McGOVERN. We have no further speakers at this time, and I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, in closing, I would like to stress that while my friends on the other side of the aisle claim to be protecting consumers with this legislation, they refuse to protect all Americans in this legislation from trial lawyers benefiting from their tax dollars, and they also voted in the committee against transparency and accountability.

Mr. Speaker, as a Nation, we have many, many, many real problems to deal with that require leadership and dedication to ensure the future of this Nation. We need to provide for jobs, encourage economic growth and spur innovation and prosperity of this Nation, not to hamper the free enterprise system. This is, without question, further government control and muzzling of the free enterprise system. Some argue that this legislation is about executive compensation; but in reality, it continues to be the government takeover of the free enterprise system.

I encourage a ''no'' vote on this structured rule and a ''no'' vote on the underlying legislation.

I yield back the balance of my time.

Mr. McGOVERN. Mr. Speaker, I yield myself the remaining time.

Mr. Speaker, as we're about to adjourn for the August recess, I think it's important to note that this is a Congress that accomplished a great deal.

We have passed 12 of our appropriations bills. We passed the historic Recovery and Reinvestment Act, which is keeping teachers and police officers employed, and stimulating economic growth throughout this country. We have passed an energy bill that, if signed into law, will create thousands and thousands of new green jobs as well as free us of our dependence on foreign oil. We have extended SCHIP, which means that more and more children have access to health care. We passed the Lilly Ledbetter Pay Equity Act bill to address the issue of discrimination of women in the workplace. Yesterday we passed a food safety bill.

So we did all of this in spite of resistance and in spite of obstructionism by many of my colleagues on the other side of the aisle. But I think it is an indication that this is a Congress that has accomplished a great deal.

Let me just say finally, Mr. Speaker, with regard to the underlying legislation, that if you like the status quo, if you want to embrace the same old, same old when it comes to corporate misbehavior, then vote against the rule and vote against the bill. If you want things to change, if you want to ensure corporate responsibility, then please support the underlying bill championed by Chairman FRANK.

With that Mr. Speaker, I urge a ''yes'' vote on the previous question and on the rule.

I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 0945

CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS ACT OF 2009

Mr. FRANK of Massachusetts. Mr. Speaker, pursuant to H. Res. 697, I call up the bill (H.R. 3269) to amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 697, the amendment in the nature of a substitute recommended by the Committee on Financial Services, now printed in the bill is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 3269

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 ''Corporate and Financial Institution Compensation Fairness Act of 2009''.

SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

(a) AMENDMENT.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

''(1) ANNUAL VOTE.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission's compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

''(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

''(A) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

''(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under paragraph (1). A vote by the shareholders shall not be binding on the issuer or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by any such person or issuer, nor to create or imply any additional fiduciary duty by any such person or issuer.

''(3) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to paragraphs (1) or (2) of this section, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

''(4) RULEMAKING.—Not later than 6 months after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue final rules to implement this subsection.

''(5) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of this subsection, where appropriate in view of the purpose of this subsection. In determining appropriate exemptions, the Commission shall take into account, among

other considerations, the potential impact on smaller reporting issuers.''.

(b) PROHIBITION ON CLAWBACKS.—

(1) PROHIBITION.—No compensation of any executive of an issuer, having been approved by a majority of shareholders pursuant to section 14(i) of the Securities Exchange Act of 1934 (as added by subsection (a)), may be subject to any clawback except—

(A) in accordance with any contract of such executive providing for such a clawback; or

(B) in the case of fraud on the part of such executive, to the extent provided by Federal or State law.

(2) REGULATIONS.—The Securities and Exchange Commission shall promulgate rules necessary to implement and enforce paragraph (1).

SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

''SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

''(a) COMMISSION RULES.—

''(1) IN GENERAL.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

''(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

''(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

''(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

''(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

''(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

''(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

''(4) DEFINITION.—As used in this section, the term 'compensation committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

''(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

''(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation.

''(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

''(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

''(3) REGULATIONS.—In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any such category.

''(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c), and

''(2) to any independent counsel or other adviser to the compensation committee.''.

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Securities Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 2 years after the rules required by the amendment made by this section take effect, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

SEC. 4. ENHANCED COMPENSATION STRUCTURE REPORTING TO REDUCE PERVERSE INCENTIVES.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the appropriate Federal regulators jointly shall prescribe regulations to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) is aligned with sound risk management;

(B) is structured to account for the time horizon of risks; and

(C) meets such other criteria as the appropriate Federal regulators jointly may determine to be appropriate to reduce unreasonable incentives offered by such institutions for employees to take undue risks that—

(i) could threaten the safety and soundness of covered financial institutions; or

(ii) could have serious adverse effects on economic conditions or financial stability.

(2) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this subsection shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this Act, and taking into account the factors described in subparagraphs (A), (B), and (C) of subsection (a)(1), the appropriate Federal regulators shall jointly prescribe regulations that prohibit any incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions that—

(1) could threaten the safety and soundness of covered financial institutions; or

(2) could have serious adverse effects on economic conditions or financial stability.

(c) ENFORCEMENT.—The provisions of this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section shall be treated as a violation of subtitle A of title V of such Act.

(d) DEFINITIONS.—As used in this section—

(1) the term ''appropriate Federal regulator'' means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

(F) the Securities and Exchange Commission; and

(G) the Federal Housing Finance Agency; and

(2) the term ''covered financial institution'' means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(e) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

(f) GAO STUDY.—

(1) STUDY REQUIRED.—

(A) IN GENERAL.—The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.

(B) FACTORS TO CONSIDER.—In carrying out the study required under subparagraph (A), the Comptroller General shall—

(i) consider compensation structures used by companies from 2000 to 2008; and

(ii) compare companies that failed, or nearly failed but for government assistance, to companies that remained viable throughout the housing and credit market crisis of 2007 and 2008, including the compensation practices of all such companies.

(C) DETERMINING COMPANIES THAT FAILED OR NEARLY FAILED.—In determining whether a company failed, or nearly failed but for government assistance, for purposes of subparagraph (B)(ii), the Comptroller General shall focus on—

(i) companies that received exceptional assistance under the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2009 (12 U.S.C. 5211 et seq.) or other forms of significant government assistance, including under the Automotive Industry Financing Program, the Targeted Investment Program, the Asset Guarantee Program, and the Systemically Significant Failing Institutions Program;

(ii) the Federal National Mortgage Association;

(iii) the Federal Home Loan Mortgage Corporation; and

(iv) companies that participated in the Security and Exchange Commission's Consolidated Supervised Entities Program as of January 2008.

(2) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Congress containing the results of the study required under paragraph (1).

The SPEAKER pro tempore. After 1 hour of debate on the bill, as amended, the amendment printed in House Report 111–237, if offered by the gentleman from Massachusetts (Mr. FRANK) or his designee, shall be considered read, and shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent. Thereafter, the amendment in the nature of a substitute printed in the report, if offered by the gentleman from New Jersey (Mr. GARRETT) or his designee, shall be considered read and shall be debatable for 30 minutes equally divided and controlled by the proponent and an opponent.

The gentleman from Massachusetts (Mr. FRANK) and the gentleman from Alabama (Mr. BACHUS) each will control 30 minutes.

The Chair will recognizes the gentleman from Massachusetts.

GENERAL LEAVE

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days on this bill to revise and extend their remarks and include therein extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. FRANK of Massachusetts. Mr. Speaker, I recognize myself for such time as I may consume.

Mr. Speaker, I have encountered gaps between rhetoric and reality in this Chamber, never one as great as the wildly distorted description of this bill that we've got before us.

Let's be very clear. There are differences between the parties here on the whole, at least as reflected in the committee vote. I think it will probably be different on the floor. There is much less difference than there used to be about one piece of it, the say-on-pay.

When the say-on-pay bill came up previously in 2007—by the way, when the Republicans were in the majority prior to 2007, on this, as on many other issues, we Democrats tried to do some reforms, predatory lending being one—we got nowhere—credit cards being another. We did try, in our Committee on Financial Services, to bring this up. The Republicans used their majority not to allow it.

In 2007, when we were in the majority, we did bring it to the floor, and it passed over the objection of most Republicans, and I will introduce into the RECORD their comments denouncing say-on-pay. But 2 years later, they have moved some. So they are now for reform on say-on-pay, many of them, although a somewhat watered-down form.

I should say there is a stark difference between us remaining on whether or not any action should be taken whatsoever by the Federal Government to restrain compensation practices that inflict excessive risk on the economy. We should be very clear; this assertion that this amounts to control of all wages and prices is nonsense. There is, of course, nothing about prices at all in the bill. As to wages, what it says is that the SEC shall impose rules that prevent excessive risk-taking, and the reference to wages is only in that context.

The amount of wages is irrelevant to the SEC. What this bill explicitly aims at is the practice whereby people are given bonuses that pay off if the gamble or the risk pays off but don't lose you anything if it doesn't. That is, there is a wide consensus that this incentivizes excessive risk for you a shorter time. If you're the head of a financial institution or you're one of the decisionmakers or you take actions that are risky and 1 month later it looks like they paid off and you get your money and then 6 months later it turns out it blew up, you don't lose any of the money you got. And if at the outset you take a risk and it costs the company a lot of money, that doesn't cost you anything.

All we are saying is that there has to be some balance to the risk-taking. And people ask, What is excessive risk? Excessive risk is when the people who take the risk pay no penalty when it goes wrong; when they have a heads they win, tails they break even situation; when the company loses money and the economy may suffer, but the decision-makers do not.

Now, one of the sillier remarks we heard was this will cause us a problem with international competition. In fact, say-on-pay, when the Republican Party overwhelmingly opposed it 2 years ago, was already borrowed from Great Britain, the United Kingdom. And we were told during 2006 that we were losing a lot of business to Great Britain, that we should cut back on Sarbanes-Oxley, for instance, because people would go to England. But England had the very proposal that they were saying was going to drive people away.

In fact, today—I will read from an article from a couple weeks ago. The Prime Minister of England says they are going to adopt plans forcing banks to hold back half of all bonuses for up to 5 years to discourage excessive risk-taking. That's our major financial competitor. And the conservative opposition is critical because it's not mandatory.

We have been in conversations with the European Union, the United Kingdom, with Canada, and others. This will be done on a coordinated basis. In fact, American salaries, American compensation has been much higher.

So, no, there is no price control; no, there is no wage control; no, it is not a problem for international competition. And by the way, as to every institution, every credit union—you heard that rhetoric—the bill exempts any institution with less than $1 billion in assets, and it gives the SEC the authority to even raise that so there's even less. But here's the nub of it: The Republican Party has reluctantly been dragged—reality sometimes has an impact—to supporting a watered-down version of say-on-pay.

Say-on-pay, by the way, says that the shareholders of the company can vote and express their opinion. The gentleman from Texas was upset that we don't have a Federal Election Commission mechanism for these votes. But why only these votes? Shareholders vote on everything. Apparently it's only when the shareholders tend to vote on pay that Republican sensibilities are trampled.

We do not, in this bill, talk about the amounts. We do say the shareholders should. We say, in consultation with all the advocacy groups who represent shareholders and pension funds and elsewhere, that the people who own the company, the shareholders, should be able to express their opinion on the compensation.

We go beyond that to say that we believe the Federal Government has interest—not in the level of compensation, that's up to the shareholders—in the structure. When you have, as we have seen, structures whereby companies lose lots of money, and they lose lots of money on particular deals, but the people who made those deals make money on them, that has a systemic negative impact on this society because it incentivizes much too much risk.

Now, what is the Republican approach to that? Nothing. They admit that these are problems. They regret that these things are happening, but their regrets won't stop the damage. In the Republican substitute there is a watering down of say on pay, but they at least acknowledge that reluctantly. But when it comes to the practice of large corporations in the financial area structuring bonuses that incentivize excessive risk, my Republican friends admit that that's the case and lament it and are adamant that we should do nothing about it. That's the big difference.

We believe that the SEC—and by the way, as to the form, it was a Republican former Member of this body, Christopher Cox, who was Chair of the SEC, proposed disclosure. He broached it first. He said we have an important public interest in knowing it.

So we are going to take the form of disclosure of compensation prescribed by a Republican Member of this House as Chairman of the SEC, with his colleagues, and let the shareholders say yes or no. We are going to go beyond that and say that the SEC should look at this and say, you know, you have a situation here where people making the decisions will have an incentive to take too much risk. If you tell people that if they take a risk and it pays off they are enriched, and if it fails miserably, they don't lose anything, they will take more risk than rationally should be taken.

You should not incentivize people to take risks where they can only benefit and never suffer a penalty. That's all this bill says. We will prevent that kind of thing from happening. We won't set amounts. We won't deal with wage controls. We won't do anything else, and we exempt institutions under $1 billion.

So I await the Republican counter. Yes, they want to water down say-on-pay, but they reluctantly accept it, but they have zero to offer with regard to the situation of excessive bonuses. And yes, we did get some reluctant agreement that we put some limits on the people who are recipients of TARP funds, but one of those who received TARP funds prospered with those funds, paid back the funds, and are now engaging in the same risky bonus practices they had before.

The Republican position, at least in committee, was to do nothing about it, zero. Ours is, have rules, not that set the limits, not that set wage controls, but simply say that you cannot structure it so that whatever level of compensation you have, you profit if the bonus pays off and you lose nothing if the bonus causes great damage to your company and the economy.

Mr. Speaker, I reserve the balance of my time.

Mr. BACHUS. Mr. Speaker, I rise in opposition to this legislation and yield myself 5 minutes.

Mr. Speaker, the American people are rightly disturbed by almost daily reports of so-called ''too big to fail'' corporations that have received billions of dollars in government assistance and have, at the same time, paid their employees billions of dollars in bonuses.

In response to those events, Republicans have introduced legislation which gets the American people out of the bailout business—that, Mr. Speaker, is our response—and prohibits the government from picking winners and losers. We believe that's the solution.

The legislation we have introduced clearly establishes a structure where failure is not rewarded and market discipline is reestablished by placing responsibility for those who engage in risky behavior squarely where it belongs, on the risk-taker, not the taxpayer. That is the Republican response.

The Obama administration takes a different approach. It continues to embrace the ''too big to fail'' doctrine. That's why we're here today. That's why we have to address executive compensation. It appoints a pay czar to oversee compensation at the growing list of companies receiving taxpayer-funded bailouts and guarantees.

Despite growing public outrage over these companies dishing out billions of dollars in government-enabled bonuses, the Obama administration and the Democratic congressional leadership steadfastly refuses to embrace Republican legislation or offer its own proposals prohibiting further taxpayer bailouts. Instead, it says that these same corporations are simply too significant to allow them to fail, which not only enables but encourages these same corporations to continue what the Obama administration concedes is more risky behavior.

One of the behaviors that the administration and Chairman FRANK identify as risky in these systematically significant corporations is executive compensation. Today we are presented with a fix, a legislative response to these bailout bonuses and the resulting public outrage. The cure-all solution bears the lofty and noble title Corporate and Financial Institution Compensation Fairness Act. It is in every way up to the challenge laid down by our former colleague, Mr. Emanuel, most recently of 1600 Pennsylvania Avenue, who said, ''Never let a crisis go to waste.''

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It is also in many ways closely akin to the recently departed cap-and-tax legislation and the ever-looming government, or should I say public option, health plan. All three are sweeping power grabs into the private sector under the guise of the government's riding to the rescue. All three rely on the government to fix the problem. All three promise to fix the problem, which to a great extent was caused by guess who? That's right, the government and lack of regulation by the government. All three will create, or more accurately duplicate, large government bureaucracies. All three represent ill-advised and in many cases incompetent government intrusions.

Just 3 weeks or 4 weeks ago, Gene Sperling, legal counsel for our Secretary of Treasury, warned, Go slow. He said this is a very difficult subject. It needs testing. It has potential for unintended consequences. Just yesterday before the Senate, the White House press spokesman Robert Gibbs stated that the Obama administration is concerned that the chairman's legislation may give the government regulators too much say on incentive-based compensation. But as the chairman said to the Rules Committee, My legislation goes beyond what the Obama administration has proposed.

Now, if that doesn't take your breath away, nothing will.

In some ways this legislation borders on the classic ''bait and switch.'' It's being sold as giving the owners of the corporation the right to set pay and compensation standards. That's the shareholders. Chairman FRANK just this week on CNBC said, Dollar amounts are for the shareholders to decide. It's up to the shareholders.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BACHUS. I yield myself an additional 2 minutes.

At the markup of this bill, he said say-on-pay empowers the shareholders, and that's where questions about amounts would come in. True, the first 6 pages of the bill give the owners, the shareholders, a non-binding vote on the pay of top executives. But then come the next 8 pages, the switch, which gives the regulators the power to decide appropriate compensation for not only just top executives but for all employees of all financial institutions above $1 billion in assets and all without regard for the shareholders' prior approval. So under the guise of empowering shareholders, it is, in fact, the government that is empowered.

One lesson we have learned from the government's arbitrary interventions over the past 18 months, and that is the converse of ''too big to fail'' is too small to save, which, of course, is the designation which applies to 99.9 percent of businesses, which have been deemed by this administration and the regulators as ''systemically unimportant or insignificant.'' But not so unimportant, not so insignificant to be totally ignored. While not significant enough to receive a bailout, they are apparently worthy of increased regulation in the form of government-mandated pay regulations and new disclosure requirements in the chairman's bill.

And, finally, on page 15, the bill designates those same government entities which are empowered to control compensation plans that would threaten the safety of financial institutions or adversely impact economic conditions or financial stability to oversee this riskiness. Look over the list and see if it inspires confidence.

The SPEAKER pro tempore. The time of the gentleman has again expired.

Mr. BACHUS. I yield myself 1 additional minute.

These are the same government agencies that regulated AIG, Countrywide, and collectively failed to prevent the worst financial calamity since the Great Depression. If it took them 30 years to catch Bernie Madoff, do you really think the SEC can do a better job of identifying inappropriate risk than the vast majority of financial institution executives whose businesses have remained solvent during these challenging times? Really, now, is there any question who is better qualified or, for that matter, who ought to be responsible for setting compensation within an American corporation?

In closing, Mr. Speaker, this bill continues the Democrat majority's tendency to go to the default solution for every problem: create a government bureaucracy to make decisions better left to private citizens and private corporations. That's what we did in cap-and-trade. That's what we did in the health care proposals. And it's this bill on executive compensation. Government bureaucrats do not know what's best for America.

For those reasons, Mr. Speaker, I urge opposition to this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself 3 minutes to deal with some of these comments.

First of all, I am struck by the fact that the gentleman, as he indicated in our markup, is sufficiently nervous about the political implications of opposing this bill and having the House take no action whatsoever to deal with the problem of risk-incentivizing bonuses but he wants to debate cap-and-trade and health care. They're not before us. What's before us is this bill. And when Members debate the bills that aren't there, it's an indication that they're a little shaky on the bills that are there.

Secondly, yes, it does say that they can deal with all wages but not in general. The gentleman reads very selectively. The language about taking action is in this context: to determine whether the compensation structure is aligned with sound risk management, is structured to account for the time horizon of risks, and will reduce unreasonable incentives by such institutions for employees to take undue risks.

It is limited in its grant of authority only to structures that incentivize excessive risk. There is no mandate here to set wages for anybody. There is no mandate to say this percentage is bonuses and that percentage is pay. It is a mandate only to act where the structure incentivizes risk, as has been recognized as part of the problem, very broadly.

I will plead guilty to one issue, yes. We are not in this case taking orders from the Obama administration. And maybe having represented a party that took orders from the Bush administration, they now wish they didn't, but that's not an example I want to follow. I am not here as a Member of Congress or as chairman of a committee to do whatever the administration says. I am here for us to put our independent judgment on it.

The gentleman closed with the key difference between us: the Republican position, as he articulates it—and I don't think it will be the unanimous position—is have the Federal Government take no action whatsoever to restrain the granting of bonuses that incentivize excessive risk. If they pay back that TARP money having benefited from it—and, by the way, on the bailout, every single bailout now underway happened under the Bush administration. But their position is, do nothing to deal with this. We take the opposite position.

Mr. Speaker, I reserve the balance of my time.

Mr. BACHUS. Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. BARRETT).

Mr. BARRETT of South Carolina. Mr. Speaker, I rise today in opposition of H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009.

Restoring confidence in our financial markets is crucial, Mr. Speaker, a component in bringing about economic recovery. And I support efforts to responsibly address the issues that led to the financial crisis that we're facing today.

However, H.R. 3269 does not do either. Instead of addressing the need for smarter regulation, this bill represents further government intrusion into the private sector that could ultimately hinder economic recovery. If this legislation is passed, it will put in place far-reaching and permanent government regulations on the compensation practices of financial institutions, crippling their ability to recruit top talent and remain competitive abroad and here at home.

Mr. Speaker, this bill goes too far by giving the Federal Government the authority to make compensation decisions for a wide range of employees in thousands of financial firms across the United States, which we can all agree is a far cry from just capping executive pay.

In tough economic times like these, we need to focus on ways to restore confidence in America's financial markets and increase the ability of American businesses through responsible policies that restore market discipline and discourage excessive risk. I firmly believe that we cannot have a successful economic recovery with the permanent overreaching regulations that this puts in place by this legislation.

I therefore urge my colleagues to join me in voting ''no'' on this legislation.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 4 minutes to a member of the committee, the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Mr. Speaker, let me just start out by saying this. We're hearing complaints from the other side that we are taking over the private enterprise system; we are taking over the free enterprise system.

Let me remind them that it wasn't us that went to the private enterprise system. It wasn't the government that went to Wall Street. Wall Street came to the government to bail them out from their behaviors.

Now, Mr. Speaker, the American landscape is absolutely littered with company after company that has been driven into the ground by executives who were greedy, who were selfish, cared only about themselves, with these huge salaries, and these companies are left to wither on the vine after they have gotten their golden parachutes and have landed elsewhere.

Somebody needs to say something about the American people. This is a free enterprise system, but it's not just free for top executives. It's free for shareholders. It's free for those men and women who have given their lives, their blood, their sweat, and their tears. And to see their companies in shambles because of excessive pay by executives who have abandoned those companies, what about their pensions? What about their retirements that have gone?

No, Mr. Speaker, this is not about taking over the private enterprise system. Mr. Speaker, this is about saving and protecting the free enterprise system so that we all can be free to participate in this system.

Mr. Speaker, what we have before us here is something because of the fact that financial firms put together compensation packages and bonuses that were based on incentives, that were laden with excessive risk, that caused our financial crisis and brought this economy to the edge of collapse and caused us here in Congress to go and get over $2 trillion of the American taxpayers' money to bail them out.

Now, the first order of business—and this is why this bill that Chairman FRANK has pushed, and I'm proud to say that we worked on this together over 3 years ago. Had we had that bill in place 3 years ago, we might not have had this financial crisis, because we would have been able to rein in the risky corporate behavior that brought about the collapse. So that's what we are doing. We're putting forward some reasonable means here.

What is more reasonable than giving the shareholders a simple say, a vote? It's nonbinding. We are not setting the salaries. Even the shareholders are not. But don't they have a right? Isn't it their company? They are the ones that are pumping the money into it.

The other feature about the bill, Mr. Speaker, that is very simple, very reasonable, is that we require these compensation committees that are on these boards to be independent. Right now it's a cozy relationship. The CEO refers to them as his board. They're handpicked. They are paid $50,000, $100,000, $200,000 to come and sit.

They need to be independent. And we have rules and regulations in the bill that allow for the regulators to determine what these conditions will be to make sure they're independent. We make sure that the consultants who come in and help set up these compensation packages are there.

The other point that we do, Mr. Speaker, is this, which is very important: we also want to make sure that as we move forward in this, that risky behavior is disclosed so that we can prevent it.

It's a very good bill, Mr. Speaker, and I urge its passage.

Mr. BACHUS. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. LANCE).

□ 1015

Mr. LANCE. Mr. Speaker, I rise out of concern for section 4 of this bill. We had an amendment in the Rules Committee that I offered with the distinguished gentleman from Georgia, and it was ruled out of order by the Rules Committee. We believe that the amendment was germane, drafted properly and submitted on time. The amendment dealt with section 4.

Regarding section 4, I believe that it is overly broad, and in particular I am concerned with the section that says, regarding incentive-based compensation, that Federal regulators can review that based upon other criteria as the appropriate Federal regulators jointly may determine to be appropriate to reduce unreasonable incentives for officers and employees to take undue risks.

In my judgment, that gives too much discretion to Federal regulators, and we should be specific as Members of Congress in the statutory basis for compensation issues.

I am also concerned that if this becomes law, that there will be a tendency for capital to move away from the United States, particularly New York, and to places like London and Asia. This is a matter I have discussed previously in the committee, and I certainly believe that we should continue to be the place in the world where this type of activity occurs.

Our amendment in no way takes away the other provisions of this bill regarding say-on-pay and the independence of compensation boards. But I am sorry that our amendment was not considered favorably in the Rules Committee and therefore will not be considered favorable here on the floor.

This morning, a report from Bloomberg indicates that the White House press secretary, Mr. Gibbs, said yesterday the administration is concerned that the measure may give regulators too much say on incentive pay. I agree with that sentiment.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself 30 seconds to say on behalf of the Obama administration, I welcome this very temporary expression of deference to their views. It will not last very long. As soon as it is politically convenient, it will disappear. So I urge them to enjoy that brief moment of graciousness.

Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. AL GREEN).

Mr. AL GREEN of Texas. Mr. Speaker, although they are not my words, we have heard that it takes an act of Congress to get many things done. I would only add to this what I have heard, it also takes a Congress willing to act. This is our opportunity to act. This is our opportunity to do what Dr. King called ''bending the arc of the moral universe toward justice.'' This piece of legislation is just, given the circumstances that we have been coping with.

There is no dispute that many CEOs have had their pay structured such that no matter what the consequences of their actions, they were going to receive enormous bonuses. I think there are two good reasons to support this legislation: one, it deals with the safety and soundness of the banking institutions. It performs perfectly if it does just this, as far as I am concerned.

If it allows a banking regulator who sees that the structure of pay is impacting the safety and soundness of the institution, if it allows this regulator to take some affirmative action to protect the safety and soundness of the institution, this piece of legislation is working. That is what it is designed to do, not to structure the pay, but to prevent the pay from causing ordinary people to have to bail out big banks.

People are expecting us to do something to prevent this from happening again. If we are going to act, this is a means by which we can act. Talking about that which we cannot do and will not do that is not on the agenda will not help us to do what we can do today. I never let what I cannot do prevent me from doing what I can do.

The second reason why I support this legislation: this legislation allows shareholders—by the way, I trust shareholders. I think people who have a vested interest in something ought to have some say. I think they ought to be able to know what the salary structure is and say something about it. And in this case it is nonbinding. There are many people who are of the opinion that nonbinding is not enough. But I trust the shareholders to have an opinion. They have but an opinion. They don't do anything to bind the corporation.

These two reasons, when combined, will help us with the safety and soundness of these institutions and give the shareholders an opportunity to know how the salaries are structured and have some say.

Finally, if we want to be a Congress that acts, we have got to have courage. These are trying times. These are difficult times. It is easy to stay with the status quo. Those who want change have got to be willing to take the risk of doing the right thing.

The arc of the moral universe bends towards justice, but it doesn't do so by itself. It does so because of people who are willing to do the right thing under unusual and extraordinary circumstances.

I am going to stand with the chairman. I believe the chairman is eminently correct. He has structured a great piece of legislation. Those who really want change will vote for this legislation. Those who want to see a better system so we don't end up with more headlines that read ''bailed out banks gave millions in executive bonuses,'' notwithstanding the fact that these banks have not been managed properly and could have been managed a lot better, these kinds of headlines are going to cause problems for a lot of people.

I am going to vote with the chairman. I am voting for the bill. It is a good bill. It is a just bill.

Mr. BACHUS. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING. Mr. Speaker, I thank the gentleman for yielding.

There are aspects of this legislation that I certainly appreciate. All Americans have been outraged—it is a word we use frequently, and we use justifiably—about some of the compensation packages we have seen from failed companies that come with tin cup in hand to the United States taxpayer looking for more.

This bill has some provisions that add increased transparency, some increased accountability; and that is good. But, unfortunately, the bad in the bill way outshadows the good.

I have always said, Mr. Speaker, what you do with your money is your business. What you do with the taxpayer money is our business.

Mr. Speaker, unfortunately, you can't just read the bumper sticker slogan. You actually have to read the legislation. So we hear speech after speech about these failed institutions taking in all of this government money.

Well, I wonder then why in committee on a party-line vote did we vote down an amendment that I brought that would have ensured that the bailout recipients, that this legislation applied to them and them only. They are the poster children in this debate, yet the legislation extends potentially to every public company in America that somehow is defined as a ''covered financial institution.''

By the way, I would say to my friends on the other side of the aisle, the best way to deal with risky pay schemes is to quit bailing them out in the first place. My friends on the other side of the aisle are enshrining us as a bailout Nation. So you complain about the taxpayers picking up the tab. I have complained about the taxpayers picking up the tab. Quit bailing them out in the first place.

Again, we have to read the bill and not just read the slogan, because if you read the bill, what you find out is, number one, this isn't just pay restrictions that go to those in the troubled Wall Street firms. Again, it is almost every covered financial institution. And guess what? If you read further into the bill, it doesn't just cover the top officers, the top executives. Every single employee, every single employee who has an ''incentive-based compensation plan'' could be covered by this.

We have already learned that somehow, with a very interpretive approach to the English language, General Motors and Chrysler have been found to be financial institutions. This means that any employee, any employee who receives a tip, a sales commission, a Christmas bonus, could have a Federal bureaucrat take it away from them. Ho ho ho.

That is what this legislation is all about. Again, don't get sucked in by the bumper sticker slogan. Read the legislation. That was the problem here on the original bailout. Nobody read the legislation. The government stimulus, nobody read the legislation. Well, fortunately, this isn't a 1,000-page bill. I think it is about 15 or 20 pages. I actually took the time to read it.

And if this is just about class warfare, Mr. Speaker, why doesn't this do anything about Hollywood stars who make $25 million for a movie, and yet the movie loses money? Why isn't it about a third baseman for the New York Yankees who gets $21 million and ties his worst record for striking out in the season? Why doesn't this have anything to do with the personal injury trial lawyers who make millions and millions, and their clients are doing good to make thousands?

The SPEAKER pro tempore. The time of the gentleman from Texas has expired.

Mr. BACHUS. I yield the gentleman 1 additional minute.

Mr. HENSARLING. So I hear the rhetoric from the other side of the aisle, which once again seems like a lot of recycled class warfare to me.

Another point I would make, Mr. Speaker, is we hear that we need this in order to somehow deal with safety and soundness. We need this legislation to somehow deal with systemic risk.

Well, number one, I listened very carefully to the testimony that was presented in our committee, and I am sure it is theoretically possible that there are pay structures that somehow may lend themselves to this. But, again, show me the evidence. Where is the evidence? When I look at pay structures among financial firms that failed versus those that didn't fail, I don't see the correlation.

Second of all, as we know, Mr. Speaker, the regulators have the power to regulate the liquidity and capital standards of these financial firms to make it commensurate with the risk. That is the remedy. That is the remedy, not to take Christmas bonuses away from employees.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

There is, of course, a contradiction here. When we are talking about a power, namely, to reduce excessive risk incentivizing bonuses that the Republicans want to defend, they talk about the unelected bureaucrats. The unelected bureaucrats can't be trusted. Except the gentleman from Texas, of course, just closed by saying don't worry, the unelected bureaucrats are out there to protect us.

The unelected bureaucrats in the Republican cosmology are like the Obama administration: they are either convenient whipping boys or great sources of wisdom, depending on where Republican ideology turns to them. But the gentleman from Texas just said we don't have to worry. We have those, as his colleagues called them, unelected bureaucrats to do it.

But I am interested, I have noticed a number of Members have said they don't like the bonuses. Is there a Republican proposal to deal with the bonuses that are being given?

Our proposal does not empower anybody to limit the amounts. The question is, is there a Republican proposal that would deal with what Paul Volcker and Ben Bernanke and the financial regulators in England and Warren Buffett and many others believe is a destabilizing tendency to give out bonuses that give you an incentive to take excessive risks, excessive in the sense that you benefit if the risk pays off and you don't lose.

We want people to take risks, but we want them to take risks which balance the upside and the downside, not which just look only at the upside. And I continue to point out not in that committee, not in that 12 years they controlled this place, not during this debate today, not in the Rules Committee, we have not seen a single Republican proposal to deal with bonuses.

Their position apparently is however the financial industry wants to structure bonuses, no matter what they say, that you get a bonus if it pays off in the short term and it turns sour in the long term. You get a bonus if it pays off, but you don't lose a thing if it doesn't pay off. They would leave that entirely unchanged. I think that is very dangerous to the economy, and, yes, there is a consensus among financial regulators and others that this has contributed to risk-taking.

We all believe in the free-market system and the incentives. How can it be that you acknowledge that there is a system which says to people, take a risk, because it is risk-free for you?

□ 1030

It's risk-free for the individual. It's risky for the company; and when you accumulate all those risks for the company, it's risky for the economy. We're saying, if it's risky for the company and risky for the economy, it ought to be risky for the individual. We want an alignment of risks. We don't want risk-free individuals taking big risks on behalf of those who are going to have to suffer. We have a proposal to restrain that. The Republican position on that is, do nothing. Let them keep going exactly as they have been going.

Let us return, as I said the other day, to the thrilling days of yesteryear when the lone rangers will ride again, untrammeled by any set of rules. They will be able to continue to give themselves bonuses that allow them to be free of risk. That's the deal. The company will face risk. The economy will accumulate and face risk. But the decision-makers will be free of the risks' negative side; they will gain from the risks' positive side; and like rational people, they will take more risks.

I reserve the balance of my time.

Mr. BACHUS. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. CAMPBELL).

Mr. CAMPBELL. I thank the gentleman for yielding, and I hear the chairman's comments and remarks. There is no argument with anyone, I think, on this floor that executive pay has been an issue, that there have been excesses and that there have been problems that have been created in companies and the economy with executive compensation. I think I would argue that rather than excessive risk taking, that it's more about short-term thinking instead of long-term thinking, which, by the way, is way bigger than just executive pay and is way bigger than the scope of this bill, and which this bill will not solve. But that's another issue.

The question for me is whether this is the right way to deal with it. I would argue no, because is the only problem out there in corporate governance? Is the only thing that has created problems for companies related to executive pay? No. Let's look at General Motors and Chrysler and their recent problems. Were their problems created because of executive pay? I'm not sure I've heard anybody argue that. But were their problems caused, in part at least, because of excessive union contracts? Yes. How about with retirement programs that were unfundable over time? Yes. What about other companies where perhaps there have been legal settlements that have created problems that have been fatal or resulted in companies going bankrupt? Those have occurred. How about mergers and acquisitions?

So what are we going to do? Are we going to have shareholders vote on pay, on mergers, on acquisitions, on union contracts, on retirement pay, on legal settlements, on fees to attorneys? Any of those arguably can bring a company down. Should the shareholders have a say on that? You know, obviously the shareholders are the ultimate owners of the company. If you want to give them a say on pay, fine. Then you'd better give them a say on the rest of that. But I'm not sure anybody on this floor thinks that that's the right thing to do. The best way for shareholders to express their displeasure with the management or operation of a company is through the board of directors. That's the way it has been done, and that's the way it should be done.

Mr. SCOTT of Georgia. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina (Mr. MILLER).

Mr. MILLER of North Carolina. I look forward to working with Mr. CAMPBELL on giving shareholders much more power over their own corporations. There is much more we need to do to reform corporate governance in this country. It has been one of many failings of our economy in the last year or so.

Mr. Speaker, I don't want to run corporations, but someone needs to set some rules. We need the law to set some rules. We need someone to provide some oversight. We need someone to be a watchdog of what they are doing because we have found out what happens when there are no rules, when there is no oversight, when there is no watchdog. We are now in the worst economic downturn since the Great Depression, and we have been perilously close to a financial collapse that would have left the Great Depression in the shade. And we know what caused it. It's essentially the same things that went wrong in the 1920s. Corporate executives were looting the country with predatory lending practices to make as much money as they possibly could without any regard for the consequences; and then corporate executives, in turn, were looting their companies to make as much money for themselves as they could. They weren't doing right by the American consumers. They weren't doing right by their own shareholders. They were only looking after themselves. The idea that the corporate executives were acting in the best interests of their own shareholders is simply a farce. We saw compensation for executives and other top officials who were doing very little of any value to society. In fact, their predatory lending practices were doing much more harm than good, and it wasn't even to the benefit of their shareholders because of the risks that they were creating for the corporation, that the short-term profits would lead to great risk in a very short while.

This bill is part of what we need to do. It is only part of what we need to do. This just scratches the surface. We need to make sure the financial collapse that we have seen in the last year never happens again. This bill is only part of it.

Mr. BACHUS. Mr. Speaker, I yield 3 minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong opposition to H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act. This overreaching bill, which is being sold as a response to the financial crisis, would, in effect, take away the rights of individual companies to conduct business as they see fit. It places government bureaucrats in charge of making key decisions about how businesses should be run. We can agree that some executives in this country are grossly overpaid; but allowing government to make such determinations is counter to everything that has made our country great. America has always been an economic powerhouse in the world, but this bill restricts competition through government intervention in a way that infringes on the entrepreneurial spirit of this Nation.

Section 4 of H.R. 3269 would actually allow the government to involve itself in the running of private businesses by empowering Federal regulators to prohibit compensation arrangements for all employees of all financial institutions, including banks, bank holding companies, broker dealers, credit unions and investment advisers. Even regulators under the current administration have testified that they do not intend to cap pay or set forth ''precise prescriptions for how companies should set compensation, which can often be counterproductive.'' However, the majority has ignored the administration's wishes by adding section 4 to H.R. 3269.

This bill is a vast overreach and an overreaction to the current financial crisis. Like many, I am concerned that executives at a handful of large companies, like AIG, have been awarded extravagant pay packages and bonuses even after the companies have faced failure and received assistance from the Federal Government to the tune of billions of taxpayer dollars. In these cases, when Federal assistance has been granted, I believe the Federal Government does have a right to mandate the pay structure of these firms, which is why I voted for an amendment during committee consideration of H.R. 3269 to only apply the provisions in the underlying bill to TARP recipients for the amount of time that the TARP money is outstanding. Unfortunately this amendment was rejected, leaving many financial institutions who did not contribute to the current crisis to pay for the mistakes of others.

Finally, this bill undermines the primacy of State corporate governance laws. Corporate law has typically been left up to the States, allowing this diversity to foster competition. Passing this bill would eliminate these traditions, which run against the American free market ideals we have always stood for. For this reason I support Mr. GARRETT's amendment to allow State law to preempt the underlying bill.

H.R. 3269 was introduced without a single legislative hearing to examine its far-reaching implications, despite numerous requests from myself and other Members of the Financial Services Committee. I believe this legislation may have unintended consequences on our Nation's businesses, and I urge my colleagues to vote ''no'' on the underlying bill.

Mr. FRANK of Massachusetts. Mr. Speaker, there is a little bit of an imbalance. I would ask if I could reserve for one more speaker while I work something out.

Mr. BACHUS. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. I thank my friend from Alabama for yielding me time and for leading on this issue. What we hear from the other side of the aisle is this famous old phrase ''trust us,'' right? Now we know that folks on the other side don't have any real reluctance to have the government run things. We've seen it over and over and over again. In fact, we've just heard it from one of the speakers who said, We don't want to run private companies, and then he followed that up and said, But this is only part of what we need to do.

Mr. Speaker, the bill has language in it that would, in effect, allow the Federal Government to determine pay, compensation for employees; and that might be all right if it was just companies that were receiving tax money. That might be okay. But in fact, it's not. It is so many other companies. Covered financial institutions, the definition in the bill would expose companies like CVS Caremark—that's right, drugstores—WellCare Health Plans, Value Line, Textron, McGraw-Hill Companies, Medco Health Solutions, Lowe's Corporation.

Mr. Speaker, this is another far reach by the Democrats in charge who believe that the government knows best, not just about automobile companies, not just about energy companies, not just about how to spend your money, not just about your health care—they're working on that government-run health care plan—but also private companies across this land. They believe that they ought to be able to come in and say, Okay, this is what you can make, and this is what you can't make.

If you don't believe it, just read the bill. Nobody is concerned about having shareholders give their opinions, have a say about what executives make when shareholders own part of that company. That makes a whole lot of sense. But what we do have concerns about, grave concerns, is the intervention of the Federal Government into one business after another after another. This is just another example of that. It's a terrible idea. It strikes at the very core of the free market principles that have made us the greatest Nation in the history of the world. Bad idea, Mr. Speaker. Vote ''no''.

Mr. FRANK of Massachusetts. Well, Mr. Speaker, I yield myself 15 seconds to say I welcome the gentleman from Georgia to the cause of say-on-pay. When we debated this on March 22, 2007, he was quite critical of it. So maybe 2 years from now, he will think we should do something about excessive, incentivizing bonuses.

I now yield for a question to the gentlewoman from California.

Ms. SPEIER. I thank the gentleman from Massachusetts.

In section 4 of the bill, it defines the term ''covered financial institutions'' to include depository institutions, broker dealers, credit unions and investment advisers but also authorizes the appropriate Federal regulators to designate jointly, by rule, other financial institutions that are covered. Because this authority is granted to appropriate Federal regulators, can we assume that entities not regulated by a Federal financial regulator are not intended to be ''covered financial institutions''?

Mr. FRANK of Massachusetts. Yes. As to section 4, if they are public companies, they are covered by say-on-pay. And there may be companies not now federally regulated that may become so by decision. But as of now, if they're not federally regulated, they're not covered. Of course AIG was federally regulated by the OTS, so they would have been covered. The gentlewoman is correct.

Mr. Speaker, I have no further requests for time, and I have only one more speaker. So I am going to reserve the balance of my time.

Mr. BACHUS. Mr. Speaker, let me tie up a few—what I consider loose ends about this legislation. One is the motivation. Of course we've heard that one of the motivations is that these pay schemes and arrangements could heighten risk; and then if one endorses the Obama administration approach, that would precipitate a bailout because the government would continually have to assure against some outsized risk. As I have said, the Republican approach is, simply don't bail these companies out, and then you don't have to be micromanaging every compensation decision by a company. I think there's another motivation, and I think it is a slippery slope. Chairman FRANK was on CNBC this past Tuesday, and he asked this question: is there some character defect with some people where they get hired, they give them a prestige job, but they really won't do it right unless you give them an extra bonus? Most of us don't need that.

So I'm wondering if one motivation for this legislation is so that the government can decide whether people need a bonus or don't need a bonus, whether they're deserving of a bonus. In fact, several pages of the bill does just that. Some people may not need that bonus. Other people may. That decision will be made by the list of government entities on page 15, not by the shareholders even though this bill is trotted out as a shareholder bill, not by the board of directors, not by the management who an important tool of management is to offer incentives and to incentivize performance and achievement. But apparently now it's the government who will decide whether you need a bonus or not. That, Mr. Speaker, is scary in my mind.

I reserve the balance of my time.

Mr. WATT. Mr. Speaker, I yield 1½ minutes to the gentleman from Maryland (Mr. VAN HOLLEN).

Mr. VAN HOLLEN. I thank my colleague from North Carolina for his leadership on this issue.

Mr. Speaker, in this country, we believe that hard work should be rewarded, and I think most people in this country believe in the concept of pay for performance. But what we've seen on Wall Street over the last many years is turning that concept of pay for performance on its head. We saw CEOs and the folks in the Wall Street boardrooms getting huge bonuses based on short-term gains for their companies, even while that excessive risk-taking put those institutions at risk.

□ 1045

Now, if it was just those institutions, I think we'd say, okay, let them take that risk. If they want to overpay their CEOs in the sense that the company's going to be put in jeopardy, and it was just that company at risk, okay. But what happened is this kind of excessive risk-taking went on at the biggest financial institutions of this country and put the entire economy at risk, put the financial system at risk, and at the end of the day, put all of the taxpayers in this country on the line.

So we all have a stake in changing the system. We all have a stake in making sure people get paid for performance, and not paid by putting taxpayers in the financial system at risk because, at the end of the day, we're all holding the line, not just the CEO and not just the shareholders.

So, Mr. Speaker, it's time to say, enough is enough. Let's pass this legislation to protect consumers, shareholders and the taxpayer.

Mr. BACHUS. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. ROSKAM).

Mr. ROSKAM. Mr. Speaker, I was minding my own business in my office, and I've been listening to this debate and felt like I needed to come and just point a couple of things out, some real weaknesses of this bill.

First of all, I'm hearing from manufacturers, Mr. Speaker, in my district who are particularly concerned about section 4 of the bill. They're making their concerns known through the National Association of Manufacturers, and they've said that they are concerned that this bill would give authority to government regulatory agencies to review and prohibit pay arrangements for a wide range of employees and, as a result, they strongly oppose the government intervention in the internal dynamics of companies.

Look, I'm the first to say that if you took bailout money, if you took TARP money, fine, be in this category, and those are entities that the taxpayers have a right and an expectation to regulate. But when we start to use ambiguous terms, terms that are not well-defined, with all due respect to the majority, ultimately, we're creating an environment where there's going to be more government intervention.

Why is it that the National Association of Manufacturers says, Don't do this to us? They're working hard to create jobs in this country and they haven't been able to do it, in part, because of bad policies that they've seen come out of Washington, D.C., Mr. Speaker. And we can do much, much more.

Look, in a nutshell, this bill is an invitation for political meddling at its worst in the private confines of companies that are trying to work hard to create jobs and to create opportunities. You can imagine a politician getting on the phone with the regulator and saying, You know what, I'm interested in you checking into that company because I don't like them and I don't like the way that they're doing business.

We can do better. Let's send this bill back to committee. Let's vote ''no.''

Mr. WATT. Mr. Speaker, we have only one final speaker, so we'll reserve the balance of our time.

Mr. BACHUS. Mr. Speaker, at this time I would like to recognize the gentleman from New Jersey (Mr. GARRETT) for 1½ minutes.

Mr. GARRETT of New Jersey. In a few moments I'll be submitting an amendment to this bill, but before I do that, I just want to talk about someone else's comment on this bill. This is Nell Minow of the Corporate Library, someone who has been influential and involved in this issue for some period of time, as you may know, someone who no one would consider a conservative on this issue. And she just did a blog on this recently where she says, The House Financial Services Committee has recently approved this legislation. She recognizes why this is coming up, and she says, The impulse is understandable, but the standard is unworkable. What does inappropriate mean? What, while we're at it, does risk-taking mean? And the most terrifying question is, who gets to decide what they mean?

Chairman BARNEY FRANK warned earlier this month, she reminds us, and he did so again just recently, that recent news of compensation of Wall Street shows that some financial leaders yearn for the stirring years of yesteryear, and demonstrates a need to adopt legislation on executive pay. But it's a question of empowering the shareholder to decide the question of appropriate level of pay and not by the regulators.

She concludes by saying, Who is in the best position to evaluate and respond to badly designed pay packages? As someone who is very proud of 8 years of serving in government, she says she has the most utmost respect for politicians and bureaucrats, but she also recognizes their limits. The government, therefore, should not be micromanaging pay. Instead, and this is what Republicans suggest, remove the obstacles that currently prevent oversight from those who are best qualified and motivated to manage the risk, the shareholders.

Mr. WATT. Mr. Speaker, we reserve the balance of our time.

Mr. BACHUS. Mr. Speaker, it appears as if this bill is so much more than a shareholders' right to say-on-pay bill. We already have a czar, a pay czar. Are we going to have a consultant czar? You know, we're going to enable these compensation consultants, they have to go to the agencies, they meet certain criteria. Are we going to have a consultant czar? Are we going to need management czars? Are we going to need risk czars? Because these 20 pages—and 15 of it deals with risks. It deals with inappropriate behavior.

Are we going to, on the bonuses, are we going to have every bonus submitted to some government agency to review? How are you going to report those bonuses? How are you going to approve those bonuses? How long is it going to take to approve those bonuses? The administration, itself, has warned that this bill goes too far. Independent witnesses have warned that this bill goes too far.

Mr. WATT. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, the fact that we are here today debating this bill with such vociferous opposition, to me, is a commentary on how out of whack our whole system has become.

First of all, this bill is a modest bill which gives shareholders the right to make advisory votes, take advisory votes on compensation. Who are these shareholders? They're the owners of the company. They're the owners of the company, and somehow, the opponents of this bill are trying to convince the public that the owners of a company shouldn't have the right to express their opinion to the board about compensation of the officers of that company.

And the bill specifically says, and I'm reading from the bill, The shareholder vote shall not be binding on the board of directors and shall not be construed as overruling a decision of the board. We're just giving them the explicit right to advise the board about compensation.

One gentleman has said that this applies to manufacturers. It doesn't apply to manufacturers. Section 4 doesn't apply to manufacturers. And even if it did, it would apply only to the extent that they could threaten the safety and soundness of a financial institution—manufacturers are not financial institutions—and only to the extent that they could cause serious adverse effects on economic conditions or financial stability. And that, I would submit, is an appropriate Federal Government role to play, to make sure that we don't get back into the kind of meltdown that we are experiencing and have been experiencing as a result of greed and irresponsibility in the private sector.

This is not the government taking over the corporate sector, either in the financial sector or any other sector of our economy. It is a statement by the American people that it's time for us to straighten up the ship. We should pass this bill today and move on.

Mr. GRAYSON. Mr. Speaker, I would like to clarify a point regarding H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009. On page 17, the bill states "No regulation promulgated pursuant to this section shall require the recovery of incentive based compensation under compensation arrangements in effect on the date of enactment of this Act provided such compensation agreements are for a period of no more than 24 months."

The words "this section" are intended to mean the fourth section of H.R. 3269, not the section of the U.S. Code in which this provision may be found.

In addition, I would like to add into the RECORD this important statement by Leo Hindery published in the Washington Note, because it pertains to this bill.

President Obama was absolutely right a couple of weeks ago when he demanded that the compensation of the executives, managers and traders at the failed financial institutions that received bail-out cash be scrutinized by a new ''oversight council''. He was right because these are the people who saddled the rest of us with a staggering $2.8 billion or more of trading and credit losses, and yet wanted to be paid as if everything was just swell.

But he and especially his advisers were wrong not to impose specific limits on executive compensation, rather than (mostly) just guidelines. They were especially wrong not to enact permanent limits that apply to all regulated financial institutions and all public companies.

The evidence is clear that excessive executive and management compensation lies at the root of all corporate crimes and misbehavior, of most of corporate America's inattention to creating and preserving high-quality domestic jobs and fair overall employee compensation, and of almost all of the recent massive trading and credit losses.

In his speech, Obama also said that government's ''role is not to disparage wealth, but to expand its reach''. He absolutely should have added that its role is also to ''ensure wealth's fair and equitable distribution''.

For the 35 years following the end of the second world war, CEOs generally viewed responsible and fair business behavior as a critical component of the American dream. And during all those years, and in fact during most of the past century, corporate leaders in the US earned 20 to 30 times as much as their average employees. Even today, the ratio of chief executive pay to average employee earnings in all other main developed countries has remained near this level. The ratio is still only about 22 times in Britain, 20 times in Canada and 11 times in Japan.

Beginning in the 1990s, however, many US executives, with the complicity of their boards, began to treat management as a separate constituency, often the primary one. Suddenly, fair executive compensation was abandoned in hundreds of corporations and financial institutions.

In America now, the average public company chief executive earns an almost unbelievable 400 times what his average employee makes, and his officers and senior managers aren't far behind in their own compensation. And now we know that executives and senior managers in the financial services industry drink just as heartily from the same frothy trough.

Obama and Congress need to enact three changes in executive and management compensation practices, not just hope, as one of his senior advisors recently said, that some (not even all) corporations will voluntarily ''assess risk induced by [their] compensation practices''.

First, Congress needs immediately to grant public shareholders the right to call shareholders' meetings, to vote out the current board and to pass binding (not simply advisory) votes on executive compensation.

Second, Congress should establish, for all public companies, a ceiling on individual executive compensation as a reasonable multiple of average employee compensation—say, 35 times—and then penalize through tax policies those companies that elect to pay anyone in excess of this multiple.

Third, Congress should empower the Treasury to oversee the compensation practices of any entity that is regulated, whether or not it currently relies on government guarantees. This should apply to employees at the individual trader level, too.

Mr. POSEY. Mr. Speaker, I rise to express my concerns about H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009, as drafted.

It should not come as a surprise that the American public is outraged at those executives who would benefit from lavish compensation packages while failing to produce results. Worse still are those executives who would deliberately place their own interests above those for whom they are accountable. As the land of opportunity, America is a very forgiving place for risk and failure, but Americans also believe that those who fail should take responsibility for their failures.

Executives of public companies should have the fiduciary responsibility to put the long-term best interests of shareholders foremost in all their dealings, and executive compensation committees should have the same responsibility.

The bill before the House, however, goes too far. Section 4 of the bill is most troubling. As written and amended, this bill is a significant expansion of the power of the federal government to micromanage the compensation practices for executives and employees in all financial institutions over $1 billion. The bill also has a loosely defined definition of financial institutions, potentially opening the door to controlling even more companies.

Despite two requests from me and many of my colleagues on the House Financial Services Committee, the Chairman did not even hold a hearing on this legislation to address some of these questions. We were unable to inquire with federal regulators on how they would interpret their newfound duties to judge if compensation is commensurate with the vague criteria of "sound risk management." It is thus left to the imagination how the federal government would approve or disapprove the compensation packages and what other "unreasonable incentives" would be banned by unelected bureaucrats. It is bewildering, but the United States Congress is punting enormous, arbitrary power to the unelected bureaucrats to decide how much money people can earn and whether any risk they take is "unreasonable."

As we debate financial regulatory reform, it is important that we refrain from condemning the free enterprise system which has given us the greatest prosperity in the history of the world. The rise of the corporation is integral to free markets and the prosperity we enjoy. Congress should not pass legislation so sweeping as to micromanage the thousands of enterprises which create jobs in our communities and produce goods and services we want.

Unfortunately, the House has rushed a bill to the House floor that has not been fully vetted and is filled with vague language that no one fully understands. It is no wonder that so much that has passed the House has been found unacceptable by the Senate.

Mr. FRANK of Massachusetts. Mr. Speaker, Aflac was the first publicly traded company to give shareholders an opportunity to vote on executive compensation, commonly referred to as say-on-pay. Aflac CEO Daniel P. Amos explained the company's decision to voluntarily adopt the measure by saying, "Our shareholders, as owners of the company, have the right to know how executive compensation works. An advisory vote on our compensation report is a helpful avenue for our shareholders to provide feedback on our pay-for-performance compensation philosophy and pay package."

The first year of the vote, 2008, 93% of the shareholders voting approved the company's pay-for-performance compensation policies and procedures. In May of this year, 97% of the shareholders voting cast ballots in favor of the compensation policies, even though the stock price of virtually all financial companies had declined—including Aflac's. The results of both shareholder votes clearly demonstrate that shareholders appreciate Aflac's philosophy of paying for performance and the company's long history of transparency.

I submit the following for the RECORD.

[From USA TODAY, July 15, 2009]

CEOs OPENLY OPPOSE PUSH FOR SAY-ON-PAY BY SHAREHOLDERS

(By Del Jones)

Top executives have taken a relentless public thrashing as they lay off workers and fight to keep stock prices above the floor. In a suffering economy, no one seems happy with leadership, and the image of CEOs has sunk so low that their approval scores are now south of those serving in Congress. But no matter how low their image sinks, nor how shrill the outrage, executives have remained steadfast in their opposition to one thing: They are roundly against legislation that would force companies to let shareholders vote on CEO compensation packages.

''I wonder if the congressmen backing this legislation would propose similar laws governing their own compensation,'' says Steve Hafner, CEO of travel search engine Kayak. ''I'd love to vote on congressional pay and perks,''

EXEC PAY: PROPOSAL GIVES SHAREHOLDERS NON-BINDING SAY

That executives oppose congressional noodling with their pay is unsurprising. What is surprising is that they are willing to go so public in their opposition, even though passage of a so-called ''say-on-pay'' law is likely, says Dawn Wolfe, associate director of social research for Boston Common Asset Management.

President Obama, who co-sponsored say-on-pay legislation while in the Senate, remains in support, as is the Democrat-controlled Congress. Likewise the public at large. Focus groups have been describing CEO pay with words such as ''obscene'' and ''immoral'' rather than words like ''excessive'' or ''overly generous'' as in the past, says Leslie Gaines-Ross, chief reputation strategist at Weber Shandwick.

''Everyone I talk to understands say-on-pay legislation to be a question of when, not if,'' Wolfe says. ''There is a sense in the investment community that it is inevitable.''

CEOs have opinions like everyone else, but the public rarely sees that side because positions on anything controversial risk upsetting customers. When they feel compelled to take a stand at odds with the public, it is usually articulated by trade associations and lobbyists, so as to put CEOs and the companies they run at arm's length from controversy. Not this time, Even though say-on-pay legislation is almost a sure thing, CEOs and former CEOs contacted by USA TODAY spoke out against it, both forcefully and individually.

''Say-on-pay is just another government regulation and intrusion into free enterprise,'' says Howard Putnam, former CEO of Southwest and Braniff airlines.

No one likes downward pressure applied to their pay, and in this respect CEOs are no different than professional athletes, rock stars, union members, Social Security recipients—and elected officials. Howard Behar, former president of Starbucks, asks: Why not let people vote on the salaries of government workers? He says government employee unions influence politicians, who commit huge resources to pensions and raises to get re-elected.

HOW SAY-ON-PAY WOULD WORK

Say-on-pay legislation would require companies to give shareholders an up-or-down vote each year on the compensation of the top five executives of publicly traded companies. The vote would not be binding, leaving the final decision in the hands of boards of directors. However, directors are elected by shareholders and a shareholder vote against a pay package would likely pressure directors to rethink the package and make changes.

The Netherlands requires binding shareholder votes on executive pay. The U.S. law would model those in Britain, Australia, Norway, Spain and France, where the vote is non-binding. Boston Common Asset Management has been pushing shareholder say-on-pay resolutions for three years, and Wolfe says she doesn't understand the CEO opposition, as there are only two examples in Britain when shareholders voted a majority against a CEO's pay: at GlaxoSmithKline in 2003 and at home builder Bellway in 2009. It may be true that most CEOs are fairly paid, she said, which means they have nothing to fear.

Only 24 U.S. companies have implemented say-on-pay without legislation, Wolfe says. Of those, only Aflac and RiskMetrics did so without it first coming to a shareholder vote. The Securities and Exchange Commission continues to get feedback regarding say-on-pay at companies that have accepted government money under the Troubled Asset Relief Program (TARP).

At Aflac, shareholders approved the pay of CEO Dan Amos by 93% in 2008, and that approval rose to 97% this year when Amos did not accept a $2.8 million bonus even though he had met the conditions of the bonus as set by the Aflac board.

''That tells me that (shareholders) had the ability to look beyond the price of stocks and understand,'' says Amos, who supports say-on-pay at Aflac but declines to weigh in on what is best at other companies. Giving shareholders a voice ''takes away the frustration that is out there,'' he says. ''People just want to be heard.''

Sarah Anderson, director of the global economy program for the liberal think tank Institute for Policy Studies, says say-on-pay is a first step but does not go far enough to rein in abuses. She cites oil executives who had big paydays that had nothing to do with personal performance and everything to do with spikes in oil prices. But shareholders didn't ''bat an eye'' because they were happy with rising stock prices.

''Everyone, not just shareholders, has a stake in fixing the executive compensation system,'' Anderson says.

Ralph Ward, publisher of Boardroom Insider, an online newsletter about boards of directors, agrees that say-on-pay does not go far enough, because it offers shareholders ''so little substance.''

Substance or not, CEOs complain that say-on-pay is government intrusion into the private sector. Such consensus among CEOs is rare because they run very different companies that can be made winners and losers on a range of sensitive issues, from energy to health care. They lean Republican, but there are signs that they are increasingly blue, and 40% supported Democrats during the last presidential primary season, according to an unscientific USA TODAY survey. But when USA TODAY last month contacted 31 CEOs and former CEOs of large companies, 77% were against say-on-pay.

Are CEOs fairly compensated? Two of the 31 CEOs declined to answer, but 24 of the other 29 (83%) said yes. Five (17%) said that, in general, CEOs are overcompensated. When asked if say-on-pay would influence CEO compensation, 76% said yes.

CEO median compensation at S&P 500 companies rose 23% from 2003–2008 despite going down 7.5% to $8 million from 2007 to 2008, according to Equilar, which tracks executive compensation. John Castellani, president of the Business Roundtable, an association representing CEOs of companies with more than $5 trillion in annual revenue, says shareholders have always had the ability to enforce say-on-pay by using the shareholder resolution process. That makes legislation unnecessary, he says.

The pro-business U.S. Chamber of Commerce is also against legislation. ''The decision to allow say-on-pay votes should come, as it has, through a dialogue between shareholders, directors and management, not via a Washington mandate,'' says Tom Quaadman, the chamber's executive director for capital markets.

CEOS' ARGUMENTS AGAINST IT

CEOs say the legislation would open the door to micromanagement by largely uninformed shareholders, who understand neither the competitive market forces that drive executive pay nor the complex incentives designed by experts to get the best results. The law could drive top talent to private companies and injure the ability of U.S. companies to compete in a global market, they say.

''You cannot run companies effectively through the democratic process of voting on all things,'' says Judy Odom, former CEO of Software Spectrum. ''Independent boards should be elected, and they should do their jobs.''

While most shareholders are uninformed, some are so informed that they could use a say-on-pay law to an unfair advantage, says Andrew Puzder, CEO of CKE Restaurants, which operates Carl's Jr. and Hardee's. For example, certain investors could threaten to vote ''no'' on the CEO's pay to coerce the CEO into making decisions for short-term gain, such as delaying capital investment or taking on unnecessary debt. Such tactics could temporarily boost the stock price to the detriment of the company's long-term health, he says.

An argument could be made that CEO pay is excessive and does not drive performance, says Anders Gustafsson, CEO of publicly traded Zebra Technologies, which sells printing services to 90% of Fortune 500 companies. But he says CEOs have a significant impact on company performance and are being unfairly targeted in a bad economy because their pay is publicly disclosed.

CEOs are not unanimous in their opinions, even where it comes to pay. Patrick Byrne, CEO of Internet retailer Overstock, says he is more concerned about CEOs influencing boards than shareholders influencing CEOs.

"The CEO is hired by shareholders. He works for them, just like a farmhand works for the folks who own the ranch," says Byrne, among the CEOs who support say-on-pay legislation. He says CEOs "capture" their boards, leaving shareholders unrepresented.

Real estate developer Don Peebles, recently named by Forbes as one of the 20 wealthiest African-Americans, also supports say-on-pay. He says CEOs who have no significant ownership often have compensation packages designed to reward them on the upside, but they suffer few consequences on the downside.

"There is no real alignment of interests," Peebles says.

But Behar says he has served on eight boards and says directors are not stupid, and they are in control of CEOs.

"How will our country be better off if CEOs earn less than $2 million a year?" says Behar. "Are we trying to create a country without the opportunity to get rich? We had better be careful about the buttons we push down. We may not like the ones that pop up."

Mrs. BACHMANN. Mr. Speaker, I rise in opposition to H.R. 3269.

This misguided legislation will do nothing to restore confidence in our financial markets and could, in fact, undermine our nation's economic recovery.

The bill directs federal financial regulators to literally prohibit compensation arrangements it deems "inappropriate." But when did it become appropriate for the federal government to take on this role?

How can we not expect this to stifle the global competitiveness so vital to American companies? When American companies are subjected to rigid pay structures as set by government bureaucrats and companies in other nations are free to follow the market, common sense tells us that America's top talent will go elsewhere.

Furthermore, the bill requires an annual shareholder vote—a non-binding vote—on executive compensation, which seems terribly impractical and complex and may only exacerbate problems, not fix them. We're heading down the same road the trial lawyers have led us in the courts, and experience tells us that that road leads to a distorted market.

We've heard from groups across the nation on this—from the U.S. Chamber of Commerce, which represents more than three million American businesses and organizations, to the United Brotherhood of Carpenters union. They all say that requiring them to hold an annual shareholder vote on compensation is overly burdensome and could actually diminish proper due diligence by investors.

On average, most companies already approve these packages once every three years. The Republican alternative, which I support, would honor this real-world practice. Our substitute would also allow shareholders to opt out of the shareholder triennial advisory vote if two-thirds vote to do so. This gives the shareholders more flexibility to decide whether they actually want this "say on pay." This is real empowerment of the shareholders—not just lip service.

Finally, our substitute strikes the section of the bill which directs government bureaucrats to determine the compensation arrangements of private companies rather than its board and shareholders.

No one on our side of the aisle is for free-wheeling pay practices or lack of oversight. But, we are calling for balance. We support an alternative that would preserve American competitiveness while ensuring real transparency and disclosure over compensation packages. The majority's legislation is sound-bite governance at best, extending onerous regulatory burdens that have little more than the appearance of actual empowerment of American shareholders.

Mr. PAUL. Mr. Speaker, many Americans are justly outraged that Wall Street firms that came hat in hand to receive bailouts from the federal government rewarded their executives with lavish bonuses. But while holding those financial firms accountable to the taxpayers is a laudable aim, the legislation before us, H.R. 3269, goes far beyond this.

This is not the first time that Congress has meddled in matters of executive compensation, and unfortunately it will not be the last. Just like Congress' meddling with the economy, each intervention creates unseen problems which, when they crop up, are again addressed by legislation that creates further unseen problems, thus continuing the cycle ad infinitum. Problems with executive compensation cannot be addressed by further burdensome legislation.

The Wall Street bailouts have already given the federal government too much power in corporate boardrooms, and H.R. 3269 is yet another step in the wrong direction. While shareholder votes on compensation may be non-binding now, once the precedent of government intervention on behalf of shareholders is set, there is no reason to believe that these votes will not become binding in the future.

Perhaps even more frustrating is that enforcement of the provisions of this bill will be undertaken by overpaid bureaucrats who lack the skills to earn comparable salaries in the marketplace by providing useful products or services desired by consumers. People who shuttle between federal regulator and federally regulated firms, trading on their political connections and epitomizing the corruption endemic to the government-managed financial system, will be making decisions that affect every single public company in this country.

In order to understand the reasons behind excessive executive compensation, we need to take a look at the root causes. The salaries and bonuses raising the most ire are those from the financial sector, the sector which directly benefits from the Federal Reserve's loose monetary policy. Loose monetary policy leads to speculative bubbles which drive up stock prices and enrich executives who cash in their stock options. It makes debt cheaper, which encourages reckless business expansion. And it shuttles money from industries that produce valuable products and services to industries that are favored by the federal government. H.R. 3269 is a well-intended but misguided piece of legislation. Until we strike at the root of the problem, we will never get our financial system back on a firm footing.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in strong support of H.R. 3269, the "Corporate and Financial Institution Compensation Fairness Act of 2009". I would like to thank my colleague Representative BARNEY FRANK for introducing this resolution, as well as the cosponsors.

I stand in support of this important resolution, because it is designed to address the perverse incentives in compensation plans that encourage executives in large financial firms to take excessive risk at the expense of their companies, shareholders, employees, and ultimately the American taxpayer—risks that contributed to the recent financial collapse.

One of the solutions it offers is practically the manifestation of common sense itself—let the stockholders of the company, the people the corporate executives are supposed to be working for, have a say in how those executives should be compensated. For example, the bill requires shareholder non-binding votes on so-called "golden parachutes." It requires publicly-traded corporations to allow shareholders to take non-binding votes during annual meetings on the top five executive compensation packages. And it allows SEC to exempt small companies from the nonbinding vote requirement if it finds such an exemption necessary.

The bill also seeks to change the incentives for the sort of financial firms that brought our economy to the brink of collapse, so that those who manage the money of our countrymen are not even tempted to take us back to that precipice. The bill authorizes the SEC, along with the federal financial regulatory agencies, to develop regulations for financial firms with at least $1 billion in assets that proscribe the use of employee compensation structures that pose a risk to financial institutions and the broader economy. It also specifically, authorizes the regulations to restrict or prohibit "inappropriate or imprudently risky compensation practices" at these large financial firms, and further requires financial firms with at least $1 billion in assets to disclose to the federal regulators any compensation structures that include incentive-based elements.

The bill does not require disclosure of any individuals' compensation information; nor does it allow government pre-approval of anyone's compensation. Rather, the bill is the first step towards enacting comprehensive financial regulatory reform to make sure we never face another historic financial crisis that depletes the retirement savings of millions, locks businesses out of much-needed credit, and threatens the entire economy.

Finally, the bill requires the compensation committees of the Boards of Directors of public companies to be made up of independent directors. It further requires that these compensation consultants satisfy independence criteria established by the SEC. I would also point out that this bill will, in practice, only apply to companies already sufficiently large enough—it specifically allows the SEC to exempt small companies from the non binding vote requirement if it finds such an exemption necessary.

Not only is this bill common sense personified, it is also long overdue. Corporate culture has, in the past three decades, undergone a transformation for the worse, where the most economically powerful have come to see, not just stockholder profit, but short term profit, as the greatest good. Today, the people with most economic influence see little or no incentive in seeking anything but the next bonus.

It was not always so—from the end of World War II until the mid 1990s, prominent public and private company CEOs almost universally viewed their responsibilities as being equally split among shareholders, employees, customers, and the Nation. This broad sense of corporate responsibility was actually so widely and comfortably held that in 1981, the Business Roundtable, which is the key public policy arm of the Nation's largest public companies and their CEOs, officially endorsed a policy that said that shareholder returns had to be balanced against other considerations.

However, just as the Business Roundtable was making its policy statement, the deregulation and laissez-faire era that was born in the Reagan administration was starting to chip away at the statement's core contention. And by 2004—even after many of the myriad scandals and outright thefts that have hallmarked the last decade of American business had already come to light—the Roundtable amended its position. It said that the job of business is only to maximize the wealth of shareholders.

But even that statement did not, in any meaningful way, restrict or amend their pursuit of personal wealth, as board members effectively wrote their own paycheck. So not only were our corporate leaders explicitly no longer concerned with stakeholders other than those with the bottom line, they saw little concern for the long term well being of their company. A well-connected man could just as easily make sure the short term profits were inflated as much as possible, so it would look like he was doing a good job, and jump off when the bonuses get handed out.

We see this behavior, for example, among the companies Americans entrust their health care with. In 2001, Aetna's CEO made $3.5 million; 7 years later, it increased nearly seven-fold, to $24.3 million, making over $100 million in the past 9 years. In 2000, Coventry paid its Chief Executive $2.2 million; apparently that wasn't enough; because in 2007 they gave him nearly $15 million. In the past 9 years, ten individuals—people who are in charge of companies, whose source of profit is the denial of care to the people who take large cuts in their paychecks to give them money—made over $690 million.

In 2007, several high profile corporate executives resigned and received multimillion dollar financial packages. That year, Home Depot CEO Robert Nardelli resigned and received a severance package worth $210 million, which followed several other "golden parachutes," including the $122 million retirement package for Pfizer's former CEO, the $175 million package for KB Homes' former CEO, who retired after he was found to have manipulated the company's stock, and the $85 million severance package for Viacom's CEO who was on the job for less than a year.

That was the year our noble body tried to act. The House passed a bill that would have required publicly traded corporations, beginning this year, to allow shareholders to take a non binding vote on executive compensation and golden parachutes. Our colleagues in the Senate, however, never acted on the measure.

And, as everybody sitting in this noble body knows, the outrage has only grown. In 2008, one man—the head of a financial firm—made over $700 million. Another CEO, of the Oracle Company, made over half a billion dollars that same year. Six energy companies paid their CEOs nearly $800 billion. All told, in 2008, less than 10 individuals made over $2 billion, over 1 percent of the Gross Domestic Product of my home city of Houston.

During the worst days of the financial crisis, a raw nerve was struck when workers generally became aware, many for the first time, of the huge salaries being earned on Wall Street and on other streets far removed from Main Street. Wherever earned, excessive executive and CEO compensation, simply by being "excessive," belies the principles of a meritocracy, which is what corporations should be. Managers rise to something akin to royalty when their compensation is at unjustified levels and when the rewards of employment are not more commonly and fairly shared with the general employee base.

To conclude: This regulatory overhaul is urgently needed to avoid the possibility of a repeat of the recent financial disaster which nearly crippled our economy. It does so through common sense measures to curb executive power to write their own checks, and dis-incentivizes them from taking the mad risks that nearly brought us to ruin. It is long overdue, and becomes only more necessary as time passes. And so I support the bill.

Ms. CLARKE. Mr. Speaker, I rise in support of H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009.

This legislation is important because it encourages the corporate community to address the issue of excessive compensation to high level executives by creating greater transparency and giving investors a "say on pay." Some studies have found that as recently as 2003, CEO compensation was 500 times that of an average worker. Even in 2008, a year of significant economic decline, the median CEO salary actually increased by almost 5% with the average worker's wages went up only 2.8%.

This legislation protects the interests of investors, including pension and mutual fund participants, giving them an advisory vote on executive compensation. Today's legislation comes in response to growing concerns in the economic community that excessive executive compensation is helping to fuel systemic risk in corporate America. These luminaries, including former Fed Chairman Paul Volcker and the Group of 30 believe that compensation structures were a factor in the current financial crisis. The legislation will not affect smaller institutions such as credit unions and companies that hold less than $1 billion in assets.

I believe this legislation strikes the right balance in addressing executive compensation while protecting the rights of the companies that provide so many jobs and are so critical to New York's economy.

I urge the rest of my colleagues to support this important legislation.

The SPEAKER pro tempore. All time for debate has expired.

AMENDMENT NO. 1 OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Mr. Speaker, I offer an amendment.

The SPEAKER pro tempore (Mr. HOLDEN). The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 printed in House Report 111–237 offered by Mr. FRANK of Massachusetts:

Page 3, line 8, strike "(a) AMENDMENT.—".

Page 7, strike lines 1 through 14.

Page 17, after line 4, insert the following:

(f) LIMITATION.—No regulation promulgated pursuant to this section shall require the recovery of incentive-based compensation under compensation arrangements in effect on the date of enactment of this Act, provided such compensation agreements are for a period of no more than 24 months. Nothing in this Act shall prevent or limit the recovery of incentive-based compensation under any other applicable law.

Page 17, line 5, strike "(f)" and insert "(g)".

The SPEAKER pro tempore. Pursuant to House Resolution 697, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I yield myself 1 minute.

At the markup, the gentleman from Georgia (Mr. PRICE) offered an amendment, which I said we would be willing to accept subject to some further change. We've talked. We have not yet reached agreement, and this is going to be an entirely legitimate debate.

What the gentleman was concerned about, and I think legitimately, was the possibility of a callback; that is, a requirement that people give back bonuses they'd already received. That would be arbitrary. Now, we hope that there will be rules adopted that will set those rules in place, and I agree that there should not be people's pay subjected unreasonably to arbitrary retroactive decisions.

But there was—and I was not aware of it at the time—an SEC decision that said that where someone had received the compensation and it subsequently turned out that the transaction was not profitable, although it appeared to be, that a return of the money that was given because of the profitability might be appropriate. So our language reflects that. It does not overturn that SEC decision. It does give some protection against arbitrary return.

I reserve the balance of my time.

Mr. PRICE of Georgia. Mr. Speaker, I claim the time in opposition.

The SPEAKER pro tempore. The gentleman from Georgia is recognized for 5 minutes.

Mr. PRICE of Georgia. Mr. Speaker, the debate on this amendment is very appropriate and germane to the actions of this entire Congress. The amendment that was offered in committee in good faith, to try to make certain that there weren't any changes that could be made retroactively to compensation packages and incentive pay, was very specific.

It said that no compensation of any executive having been approved by a majority of the shareholders may be subject to any callback, which is the retroactivity, unless it was part of the contract or unless there had been fraud committed. And that's what was accepted by committee, Mr. Speaker, accepted by committee.

The amendment was put into the bill with the caveat that the chairman wanted, potentially, a few changes. And I would quote from the chairman, who said, The impulse to retroactivity is not one of our finest and ought to be constrained. And he said, We could work together to make sure this does not derogate from the SEC prospectively to say that you can't do this kind of thing.

Well, Mr. Speaker, I'm here to tell you that there weren't any discussions before the Rules Committee met. There weren't any discussions before the amendment that we now have before us was offered as the apparently good-faith effort to the amendment that was offered and adopted in a bipartisan manner majority in the committee. And what does the new amendment say? It says, No regulation promulgated pursuant to this section shall require the recovery of incentive-based compensation under compensation arrangements in effect as of the date of the enactment of this act.

Now, what does that mean? Well, it means that the SEC, that is the Federal Government, Mr. Speaker, will be able to dictate pay, dictate pay because of the language of this amendment, to publicly held companies. Now, that may be okay if they take tax money, Federal tax money, but this would be publicly traded companies that don't take a dime of tax money.

Mr. Speaker, this is a huge step in the wrong direction. Section 4 is the area of this bill that we have great concerns about. It puts the Federal Government, it puts the SEC into the agreements for compensation for executives in publicly traded companies. It cuts at the very core of our free market system.

I would urge a ''no'' vote on the amendment.

I reserve the balance of my time.

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Mr. FRANK of Massachusetts. How much time remains?

The SPEAKER pro tempore. The gentleman from Massachusetts has 4 minutes remaining, and the gentleman from Georgia has 2½ minutes remaining.

Mr. FRANK of Massachusetts. Who has the right to close, Mr. Speaker?

The SPEAKER pro tempore. The gentleman from Georgia has the right to close.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself 30 seconds to acknowledge one thing that should have been drafted better. The word ''require'' is ambiguous here. The word should have been ''permit'' rather than ''require.'' That is, we did mean to say that you could not require the individual to give it back. We do want to restrain the SEC or anybody else from an inappropriate one. We will try to change that one word, and it will make a difference to the gentleman of Georgia, but I believe that ''permit'' would have been more appropriate. When we say ''require,'' we mean that you could not require the individual to give it back. That was it.

I now yield 2 minutes to the gentleman from North Carolina (Mr. MILLER).

Mr. MILLER of North Carolina. Mr. Speaker, it may be that the amendment was offered in good faith, but the explanation for the amendment had very little to do with what the amendment actually says. This amendment, Mr. FRANK's amendment, does accomplish the reason or the argument in favor of the amendment.

We don't think that a regulator or regulation should require the recovery of incentive-based pay where the existing contract doesn't require it. We shouldn't change contracts retroactively, existing contracts retroactively, but we also don't need to undermine the existing law that may provide for that.

Mr. FRANK mentioned the SEC. The SEC is now trying to recover money that was paid supposedly because transactions were profitable when, in fact, they weren't because of the accounting. So we don't want to reward accounting irregularities. Going forward, the regulators may well decide that an effective constraint on imprudent risk-taking is to require longer horizons for incentive-based pay.

That is the purpose of this amendment. It is what this amendment actually accomplishes. It is consistent with the reasons given in committee for the original amendment.

Mr. PRICE of Georgia. Mr. Speaker, I continue to reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, if the gentleman is going to close with his remaining time, I will just take, I think, 15 seconds to say that I've talked to the gentleman from Georgia. Again, we will still have a disagreement, but instead of ''require,'' it should say—and he and I have agreed within the limited version here—''allow'' them to require it. In other words, we don't want the SEC to be able to make an inappropriate requirement. So that will be clarified.

I will take our remaining time to say, yes, we did tentatively agree to it. There had been an SEC decision that day, which I wasn't aware of, and I did believe that the amendment as we originally agreed—and I did say to the gentleman that I thought we would want to make some further changes.

Mr. PRICE of Georgia. Will the gentleman yield?

Mr. FRANK of Massachusetts. Yes.

Mr. PRICE of Georgia. Given the agreement that you and I have reached on language, what is the posture about changing the language on this amendment? Is that a unanimous consent?

Mr. FRANK of Massachusetts. Yes.

I would ask unanimous consent, if that is permissible—we are in the whole House—to change line 2. Instead of ''require,'' it will read ''shall allow to require,'' ''shall allow the SEC to require.'' No. I take it back. Here is how I will say it: ''Shall be allowed to require.''

The SPEAKER pro tempore. Will the gentleman submit that language to the desk?

Mr. FRANK of Massachusetts. Yes.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. FRANK of Massachusetts. That's easy for you to say, Mr. Speaker.

Mr. PRICE of Georgia. Mr. Speaker, until that language has been introduced, I will reserve the balance of my time.

PARLIAMENTARY INQUIRY

Mr. PRICE of Georgia. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. PRICE of Georgia. Has the language that has been offered at the desk been introduced as business allows?

Mr. FRANK of Massachusetts. Mr. Speaker, if the gentleman would yield to me, I would ask unanimous consent to amend the bill according to that language which the gentleman has seen.

The SPEAKER pro tempore. The Clerk will report the modification.

The Clerk read as follows:

MODIFICATION TO AMENDMENT NO. 1 OFFERED BY MR. FRANK OF MASSACHUSETTS:

On line 2 of the matter proposed to be inserted, after ''shall'' insert ''be allowed to''.

The SPEAKER pro tempore. Without objection, the amendment is modified.

There was no objection.

The text of the amendment, as modified, is as follows:

Page 3, line 8, strike ''(a) AMENDMENT.—''.

Page 7, strike lines 1 through 14.

Page 17, after line 4, insert the following:

(f) LIMITATION.—No regulation promulgated pursuant to this section shall be allowed to require the recovery of incentive-based compensation under compensation arrangements in effect on the date of enactment of this Act, provided such compensation agreements are for a period of no more than 24 months. Nothing in this Act shall prevent or limit the recovery of incentive-based compensation under any other applicable law.

Page 17, line 5, strike ''(f)'' and insert ''(g)''.

Mr. PRICE of Georgia. Mr. Speaker, I thank the gentleman, the chairman, for his desire and willingness to work together on this.

That being said, the challenges with section 4 are huge. The far reach of the SEC and the ability of the Federal Government now to get into the executive compensation packages for businesses for which there is no Federal money involved is remarkable in its extent. As we know, the Democrat majority has a great desire to have the government everywhere in our lives, whether it's in financial institutions, whether it's in energy companies or whether it's that the American people have to pay to turn on and off their light switches.

I just picked up the paper this morning, Mr. Speaker, and saw that there is an op-ed in The Wall Street Journal which talks about health reform and cancer and about how, if the Federal Government is allowed to control health care, it may result in decreasing innovation in the area of cancer.

I would suggest, Mr. Speaker, that if the Federal Government is allowed in this arena that what we will see is a huge, depressing effect on the ability of businesses all across this land to be able to create the most vibrant, entrepreneurial and active businesses that inure to the benefit of the American people, that create jobs and that allow us to remain the greatest Nation in the history of the world. It's just little bits that chip away at the fabric of our Nation that make it so that it is impossible to continue to compete on an international basis.

So, Mr. Speaker, I am pleased that the chairman was willing to clarify the amendment. However, it still gets to the heart of whether or not we are going to allow the Federal Government into decisions that ought to be left in a free market and in a private-sector arrangement, so I urge the defeat of the amendment.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Massachusetts (Mr. FRANK), as modified.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. PRICE of Georgia. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to House Resolution 697, further proceedings on this question will be postponed.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 2 OFFERED BY MR. GARRETT OF NEW JERSEY

Mr. GARRETT of New Jersey. Mr. Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute No. 2 printed in House Report 111–237 offered by Mr. GARRETT of New Jersey:

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the ''Corporate and Financial Institution Compensation Fairness Act of 2009''.

SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.

(a) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) TRIENNIAL ADVISORY SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.—

''(1) IN GENERAL.—A proxy or consent or authorization for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder advisory vote, at least once every 3 years, to approve the issuer's executive compensation policies and practices as set forth pursuant to the Commission's disclosure rules. The shareholder vote shall be advisory in nature and shall not be binding on the issuer or its board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation for meetings of shareholders at which such an advisory vote on executive compensation is not to be conducted.

''(2) OPT OUT.—If not less than ⅔ of votes cast at a meeting of shareholders on a proposal to opt out of the triennial shareholder advisory vote on executive compensation required under paragraph (1) are cast in favor of such a proposal, then such shareholder advisory vote required under such paragraph shall not be required to take place for a period of 5 years following the vote approving such proposal.

''(3) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

''(A) DISCLOSURE.—In any proxy or consent solicitation material for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple tabular form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with the named executive officers (as such term is defined in the rules promulgated by the Commission) of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other dispositions of all or substantially all of the assets of the issuer, and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such named executive officer.

''(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed. A vote by the shareholders shall not be binding on the corporation or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board.''

''(4) RULEMAKING.—Not later than 1 year after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue rules and regulations to implement this subsection.''.

(b) STUDY AND REPORT.—The Securities and Exchange Commission shall conduct a study and review votes of the results of shareholder advisory votes on executive compensation held pursuant to this section and the effects of such votes. Not later than 5 years after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report to the Congress on the results of the study and review required by this subsection.

SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after section 10A the following new section:

''SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

''(a) COMMISSION RULES.—

''(1) IN GENERAL.—Effective not later than 270 days after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

''(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

''(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

''(4) NO FEDERAL PREEMPTION.—If the law of the State under which an issuer is incorporated provides for a procedure for the board of directors to establish an independent compensation committee, then such State law shall be controlling and nothing in this section shall preempt such State law.

''(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

''(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

''(2) CRITERIA.—The Commission shall, by rule, establish the criteria for determining whether a director is independent for purposes of this subsection. Such rules shall require that a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee—

''(A) accept any consulting, advisory, or other compensatory fee from the issuer; or

''(B) be an affiliated person of the issuer or any subsidiary thereof.

''(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

''(4) DEFINITION.—As used in this section, the term 'compensation committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

''(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

''(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—The charter of the compensation committee of the board of directors of an issuer shall set forth that any outside compensation consultant formally engaged or retained by the compensation committee shall meet standards for independence to be promulgated by the Commission.

''(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

''(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

''(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c); and

''(2) to any independent counsel or other adviser to the compensation committee.''.

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Security Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

The SPEAKER pro tempore. Pursuant to House Resolution 697, the gentleman from New Jersey (Mr. GARRETT) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from New Jersey.

Mr. GARRETT of New Jersey. I yield myself 4 minutes at this time.

Mr. Speaker, the American public truly should be outraged when they read the front page headlines nowadays with regard to bonuses and pay.

In The Wall Street Journal today, it's a bank bonus tab of $33 billion. You have to read the second headline, though, to realize that the $33 billion is going to the banks that received, basically, the taxpayer bailouts. The bottom line on all of this is that there is nothing in this legislation that would have prohibited this from going forward.

Now, the other side of the aisle on the floor today repeatedly says, Well, the Republican side simply has no alternative; it is just the party of ''no.'' Well, we know that that's not true. On the legislation before us today, with regard to executive compensation, both in committees and through Rules, the Republicans have proposed a number of substantive proposals, which I'll go through right now, which would address the underlying problems that we're trying to address here.

So, if you will permit me, I will now address the three or four main points in this substitute which would get at these points that, I think, outrage America with regard to compensation but which do so in a fair and just manner.

Firstly, in the underlying bill, it allows for a non-binding shareholder vote on executive compensation every year.

We propose instead that such vote should occur every 3 years. Why is that? All the expert testimony we've heard so far says that Wall Street focuses too much on the short term—on the year, on the 6 months, on the three-quarters or on the end of the quarter. Why then when compensation packages usually go longer than 1 year, usually go for 3 years, would we be requiring a vote that would once again refocus the attention on 1 year, a short period of time, as opposed to being in line with the 3-year longer time frame? So we suggest that a 3-year vote would be much more appropriate than a 1-year.

Secondly, as to the shareholders and whom we trust with these decisions, we suggest, if we are going to trust the shareholders to be making these decisions, should we not also trust them to make the decision as to whether or not to have such votes on executive compensation in the future?

So our amendment would suggest that a substitute would allow for a two-thirds vote of shareholders to opt out of the shareholder triennial advisory vote if they are so inclined. We know that this has been a position taken by a number of institutions and companies in the past because they've said that we do not want to have such power, that we do not want to involve ourselves in such decision-making.

We know that it is right now as well because we have a letter from the United Brotherhood of Carpenters which points out the very real reason of why this is. You know, they hold something like 3,603 different companies in their portfolio. They said if they were going to have to make this decision either every 1 year or every 3 years—and considering the due diligence that they would have to engage in—this commitment would be a severe challenge to their fiduciary responsibilities. So, if they want to opt out of this, shouldn't we give them that ability if two-thirds of the voters decide to do so?

Thirdly, State law. The other side of the aisle speaks about State law and about hypocrisy on this issue. Should we be preempting State law in this situation or, as to those States that have already engaged in this area, should they not be able to speak up and have their voices heard and not be preempted by the Federal Government?

Fourthly, and most importantly, is section 4. This section goes well beyond what the administration has already talked about. The administration says they do not really like what this section is in the bill and that they did not propose this section.

So our substitute says that we should be deleting section 4 of the bill, which would allow government bureaucrats rather than shareholders. The bottom line on this one is: Who is it that the other side really trusts to make these decisions? Is it the shareholders, as we saw in the first three sections of this bill, who would make the decisions, and that we would suggest they should be in the position to make the decisions, or is it the bureaucrats whom they think should be able to make these decisions? Is it the same bureaucrats, in the past, over at the SEC, who totally missed the whole Madoff situation, who should be making decisions as opposed to the stockholders? Is it the same bureaucrats who were the regulators for AIG and who totally missed that situation? Is that who they trust instead?

So we would suggest all four points are substantive amendments to this, and we would appreciate their consideration.

I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. Mr. Speaker, I support the bill. I wish it went a bit further, and I, of course, oppose Mr. GARRETT's amendment.

First, his amendment significantly weakens the say-on-pay provisions. That's right. It weakens a provision, which, itself, simply provides for nonbinding resolutions; but the core of the Garrett amendment is that it eliminates the provision in the bill which is designed to provide very modest restrictions on some very peculiar and pernicious compensation formulas that have been used on Wall Street. Now let us look at how narrow this provision is.

It applies only to financial institutions and then only to those with over $1 billion. It does not prohibit $1 million-dollar-a-month salaries. It does not prohibit $10 million-dollar-a-month salaries. It allows an executive to get a kajillion stock options and another kajillion shares of restricted stock. This bill is not an overall limit on compensation on Wall Street.

What it does is it prohibits those compensation formulas that provide an incentive for taking extreme risks, risks that are bad for our economy, risks that are bad for the company.

Now, the Group of 30, led by Paul Volcker, found and reported that there are numerous examples of misaligned incentives, of incentives that contribute to instability and to cyclicality in financial markets. The crisis has driven home the importance of aligning compensation practices with the incentives and controls in a firm's risk-management program, aligning pay with long-term shareholder interests rather than with short-term returns that cannot be sustained and which entail greater risk.

□ 1115

So this is a provision not designed, not intended to limit the overall financial compensation in financial institutions, not designed to prevent enormous bonuses. But the bonuses must not, by themselves, be designed to undermine the economy or the company.

Now, this is a small step that we can take to make sure we don't have another financial meltdown.

Let me respond to Mr. HENSARLING and others who came to this floor and basically said all we have to do is make sure there are no further bailouts. Well, I opposed the Wall Street bailout, but I'm not going to join with those who say the only problem we had in September of 2008 is that we voted for the bill.

We've got to act to prevent the next financial meltdown, and it is not enough to come to this floor and say, Well, it's okay to have another September 2008 as long as we vote against some future bailout bill twice instead of once.

The goal is not to defeat the TARP bill. The goal is to prevent the conditions which caused so many to think that it was necessary and for all of us to recognize that we faced a great financial crisis.

The way to do that is to vote down this amendment and make sure that some very peculiar, very pernicious incentive formulas are not used to cause those on Wall Street to feel that if they could only take the most enormous risk, they can maximize their compensation.

Mr. GARRETT of New Jersey. I yield 3 minutes to the gentleman from Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. Mr. Speaker, I rise in support of the Garrett substitute. This is a reasonable and thoughtful substitute. Republicans on the Financial Services Committee are here to bring good ideas to the table to try to work with the majority to ensure that our markets operate with transparency and integrity.

Our substitute includes a non-binding shareholder vote on executive legislation. Rather than vote every year, though, our substitute aligns the vote with standard time frames of compensation packages and ensures that institutional investors who represent the shareholders in casting their votes will be able to have proper time to do the due diligence necessary to make meaningful votes.

The substitute allows shareholders who don't want to be involved in these votes to opt out. Makes sense to me. If I don't want to particularly be involved in that, give me the opportunity.

Finally, the substitute ensures that the Federal Government cannot decide to pay for employees or financial institutions. Determining pay practices is not the role of government. As we work together to reform the financial regulatory structure, debating compensation practices may make some feel better, but it doesn't fix the cause of our financial crises. While we and the public may not like to hear about some of the large salaries and bonuses others have earned, we have to ask ourselves how much did these compensation practices really contribute to the problem.

The most important tool available to regulators is the ability to set capital standards for financial institutions, not the ability to tell financial institutions how they can pay or how much they should pay their employees. We need regulators to ensure capital and leverage ratios at financial institutions match the risk that those entities are taking on. That's what regulators should focus on, not deciding whether or not a certain incentive practice is appropriate or not.

Ohio State University finance professor Rene Stulz recently released a finished study comparing bank performance last year and CEO incentives leading up to the crisis. Professor Stulz is quoted in today's New York Times: ''It's hard to believe that regulators will be better at devising compensation plans with proper incentives,'' he says. ''Properly designed capital requirements are a much more efficient approach to regulate the risk of financial institutions than fiddling with compensation.''

When we allow Federal regulators to decide how much employees of financial institutions get paid, the government is overreaching. Congress should be working to encourage well-managed, well-run, and well-capitalized financial institutions. This bill does the opposite.

Support the commonsense Garrett substitute.

Mr. FRANK of Massachusetts. I yield myself 3 minutes.

First, I had been taking as given that the President's press secretary said he had some problems with the bill. I know Mr. Sperling did, and as I said, we have the Republicans in a temporary mode of obedience to the President. A little bit of a culture gap there. They thought it was still George Bush. They are used to snapping to attention for President Bush. Apparently, a little of that left over for President Obama. I think we should have been independent in both cases.

I read the transcript of the press conference. Mr. Gibbs said nothing negative about this. He was asked if he would sign this bill. He said, Well, there are some pieces of it we are moving and it will go through the Senate. And when he didn't fully answer it, he got a tough follow-up question about whether or not they were trying to avoid spilling beer on the President's children's table.

I do also want to talk about say-on-pay, which the Republicans are now embracing.

Here's what the gentleman from Alabama, the ranking member of the committee, had to say as a prediction when we debated this in March of 2007:

Evidence that free-market forces are already at work to correct any excesses in the system should give this committee real pause before it seeks to impose a legislative fix that could, like past efforts in this area, have unintended and negative consequences.

In March, well over 2 years ago, the gentleman from Alabama confidently predicted that free-market forces are already at work to correct pay excesses. So apparently the gentleman from Alabama was correct, there have been no pay excesses in 2½ years. We've all been hallucinating. He was wrong then, and he's wrong now. Now they're wrong on different levels. They've now had to acknowledge the importance of say-on-pay.

I also would repeat when I say the Republicans have no version. They want to weaken say-on-pay, but with regard to the bonus structure that gives people an incentive to take risks because the decision-maker is risk free, even though the company is at risk, the Republican position is zero. There has not been in any of our deliberations any Republican approach to how you deal with the incentive to take excessive risk. No way, no how.

They have reluctantly agreed to say-on-pay, although they want to water it down, and that's to the argument that an annual vote focuses you short term. Of course not. There is an annual proxy vote. It goes on the proxy. It doesn't require you—if you've got a 3-year contract, then every year it would still be approved.

So this notion that it focuses on the shorter term is, of course, wholly inaccurate because it simply says you put it on the proxy every year. Some companies will have annual contracts, some biennial, and they are voted on. And if they are triennial, there is nothing at issue.

But again, the central point is this. The purpose of this amendment—there are two. We can say on paper but more importantly have the Federal Government say nothing whatsoever about the bonus structure. Those financial institutions that received TARP money and paid it back and now want to do these bonuses in ways that will recreate the risk will be entirely free to do so under this amendment.

Mr. GARRETT of New Jersey. I am pleased to yield 3 minutes to a leader in advocating for those free-market principles that made this country as great as it is, the gentleman from Texas (Mr. HENSARLING.)

Mr. HENSARLING. Mr. Speaker, to quote the distinguished chairman of the Financial Services Committee, he was wrong then, he is wrong now to say that Republicans have no program to deal with excessive risk and compensation packages. Yes, we do have a program: end the bailouts. End the TARP program. If you quit bailing out risky behavior, Mr. Speaker, you receive less risky behavior.

Second of all, the gentleman is also wrong as far as the Republicans having no program otherwise we wouldn't have this substitute that we are debating at the moment. I also heard the gentleman from North Carolina earlier say, Well, we need to have the underlying legislation because shareholders have no right to have a say-on-pay. Wrong again, Mr. Speaker. Shareholders have the right. They can have a say-on-pay by electing directors who will fire the management. They have a say to invest elsewhere.

Their bill says we have to have mandatory say-on-pay. Now, we can debate the merits of it, but the gentleman from North Carolina was simply, clearly wrong.

I also want to say to my friends on the other side of the aisle, when I listen to, again, the logic that we have to have a new Federal regulation that somehow will regulate risky incentive pay structures, again, all of the rhetoric has to do with Wall Street. But guess what? Read the bill. Look at the interpretation.

Financial institutions. Chrysler and GM have been found to be financial institutions. We have had testimony when they came looking for the taxpayer bailout that the UAW, the United Auto Workers, had a pay structure that was 40 percent higher than their competitors.

So now we have a law here that will allow Federal regulators, I assume, to come in and say, Folks at the UAW, your incentive structure is contributing to the demise of Chrysler and GM. So we're going to have to come down and take down your wage rates.

Read the bill, Mr. Speaker. This isn't restricted to the top executives. And if anybody believes this is restricted to Wall Street, then why did Chrysler and why did GM get coverage under a statute that described institutions?

So, Mr. Speaker, what we have is a Federal Government that is now taking over our auto companies, telling us what kind of automobiles we can drive. They're taking over our mortgage companies, telling us whether or not we can even enjoy a mortgage. They now want to control access to our family doctor, and now they want to decide for millions and millions of Americans whether or not they can ever receive a sales commission or a Christmas bonus that they may view as too risky.

What is risky is too much politization of our economy. What is risky is too much government control of our economy. We have had enough.

Mr. FRANK of Massachusetts. Mr. Speaker, just briefly, the gentleman talked about the bailout of General Motors and Chrysler which, of course, was under the Bush administration. The fact that the Bush administration decided to initiate a bailout of General Motors and Chrysler is not binding on this legislation. They are not under financial regulators and wouldn't be covered under this bill.

I now yield 3 minutes to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Let me say this: Mr. GARRETT's amendment is sort of like not having a say-on-pay but maybe just a little whisper. Mr. GARRETT's amendment goes at the heart and the soul of this bill and that is this: that we must have a very strong, definitive say-so from the shareholders.

Now, Mr. HENSARLING, the gentleman from Texas, pointed out about the bailouts and how we're to prevent this. This measure that we have is designed to prevent this same situation from happening again. In section 4, as he pointed out, the reason we need section 4—and let us remember what section 4 is: section 4, again, is the heart and soul of this because it spells out how we're going to go about preventing bonuses tied to incentives that have dragged down this economy and brought us into the financial situation we have.

He questions the regulators. Maybe the American people might need to know who we're talking about. We're not talking about somebody over here inexperienced we're just going to set up. Who are these regulators? These regulators are the Federal Reserve Bank whose duty it is to regulate our economy. It is the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation that has to go in afterwards and fix banks and declare bankruptcy of banks. The Office of Thrift Supervision, the National Credit Union Administration Board and the Security and Exchange Commission and the Federal housing agencies.

What is this awesome power we're giving to them? It's spelled out very simply. What we want them to do is simply we will require these regulators to prohibit certain compensation structures at large financial institutions if they could have a serious adverse effect on financial instability. That's what we are trying to do. We're trying to prevent the same thing from happening again.

And then, secondly, we will require Federal regulations to write rules requiring Federal institutions to simply disclose their incentive-based pay plans, incentives that are tied to risk behavior.

□ 1130

Mr. Speaker, what has happened that brought this on here is a simple case, AIG. They went and they set up a little department with 430 employees out of Connecticut and over into Europe and assigned them risky behavior and signed their rewards to that risky behavior for their bonuses. The company came down. We had to bail them out. And you know who had to pay for those bonuses? The taxpayers. This bill is designed to prevent that. This amendment is designed to gut it.

Vote down the amendment.

Mr. GARRETT of New Jersey. I yield 2½ minutes to the ranking member, the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Speaker, we continue to hear this mantra that this is all about shareholders and empowering them with rights, but then you sort of give them a crumb, you give them a non-binding right to have a vote on pay and then you follow that up with 12 or 14 pages where you give the government all sorts of powers, powers to regulate pay bonuses. And you do that, you give the shareholders the right to have a non-binding say on the top executives, but then you give the government, in the back door, the last 15 pages of the bill, 14 pages, you give them the right to set the pay for every rank-and-file employee. And you also do it under the guise that these companies are so big and so systemically important that they may fail. And that's right, they may. But then you do all the other 99 percent of the companies that aren't going to fail.

Now, Chairman FRANK, last month, invited, I think, one of his favorite witnesses, Nell Minow, who is a leading shareholder rights advocate, to testify on his say-for-pay bill. And she came and she testified favorably. And then he added this government say-on-pay, where the government will make the decisions. Well, just yesterday, we had what we call a ''man bites dog'' moment. She came out and she posted this on her Web site. She now opposes, vehemently opposes, section 4 of the bill, the government say-on-pay.

She states, The standard is unworkable. What does inappropriate mean? Boy, I agree. Deciding whatever bonus or whatever incentive pay or whatever commission is inappropriate. She asked the same question that we asked, Who is in the best position to evaluate and respond to badly designed pay packages? Here's her answer, the entire answer: ''I have the utmost respect for politicians and bureaucrats, but I also recognize their limits. The government should not micromanage pay.''

And that is what this debate is about: Are you going to let the government do it, the board of directors do it, or are you going to let the shareholders do it? Obviously, you go to the default position that you went to on health care, cap-and-trade, and now financial services: Let the government decide.

Mr. FRANK of Massachusetts. Mr. Speaker, I will take 30 seconds to say, apparently the gentleman from Alabama only has witnesses if he's sure he will agree with everything they've ever said. He says it's ''man bites dog'' because we had an honest witness with whom we agreed in some parts and disagreed on others. Apparently, the notion of having a witness that you haven't totally vetted for everything she's ever said is new to the gentleman from Alabama.

I will continue to invite witnesses that I think are useful, even if I don't always agree with them. And I would repeat that the gentleman from Alabama's say on this—he was against say-on-pay. He says it's just not much, but it was enough for him to say it was going to cause real problems 2½ years ago. And I repeat his view on pay, in March of 2007, Evidence that free market forces are already at work to create any excesses should give this committee pause, but seeks to oppose a legislative fix that could have unintended and negative consequences. He was talking about that insignificant say-on-pay.

I yield 1 minute to the gentleman from Indiana (Mr. CARSON).

Mr. CARSON of Indiana. Mr. Speaker, today I've heard a number of interesting accusations about what this legislation would do if passed. I have heard that the government will sit in board rooms and set caps on pay. But of course my constituents are accustomed to hearing these kinds of false arguments from those who wish to maintain the status quo.

My constituents sent me to Congress to move beyond the status quo of a broken financial regulatory structure. They sent me to enact commonsense reforms like those included in the legislation we're discussing today, Mr. Speaker. They know that average families have cut back, work longer hours, and have saved their money during this crisis. Meanwhile, Wall Street execs have acted irresponsibly and enjoy the lavish compensation packages that have allowed their companies to fail.

So I am proud to be an original cosponsor of this bill that will bring about a new era of responsibility on Wall Street. I encourage my colleagues to do the same.

Mr. GARRETT of New Jersey. Mr. Speaker, may I inquire as to how much time is remaining and who will be closing?

The SPEAKER pro tempore. The gentleman from Massachusetts has the right to close.

The gentleman from New Jersey has 3 minutes remaining, and the gentleman from Massachusetts has 3¼ minutes remaining.

PARLIAMENTARY INQUIRY

Mr. GARRETT of New Jersey. Parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. GARRETT of New Jersey. As far as the procedure for determining who closes, is it not the author of the amendment?

The SPEAKER pro tempore. A manager controlling time in opposition has the right to close the debate.

Mr. FRANK of Massachusetts. Parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Did the gentleman not notice that Mr. PRICE had the right to close because he was defending the committee on the amendment that I offered?

Mr. GARRETT of New Jersey. I yield myself the remaining 3 minutes.

Mr. Speaker, the final question, I guess, is who do we trust. Who do we trust to deal with the situation of pay?

The gentleman just spoke on the floor with regard to protecting the interests of his constituents. You know, it doesn't really matter who your constituents are, whether they are the CEO at the top of the ladder, someone in between, the receptionist, anywhere along the line as far as pay scale, this bill will affect them and will affect their ability as far as what their compensation is. It will affect the ability of the Federal Government to dictate what their compensation will be. Government bureaucrats will be making those decisions in the future as opposed to the people involved with the company. Large income or small, bureaucrats will be the ones at hand to make those final decisions.

The odd thing about this legislation, as we read through it and as you look at our amendment to try to address this problem, is that the underlying bill gives with one hand and takes with the other. As has been previously indicated, it gives with one hand in a tacit approach to say that the shareholders should be able to make these decisions, but then it takes that right back again when it says, then, When the government decides that those shareholders made an incorrect decision, some bureaucrat at the SEC or the Federal Reserve or someplace else will overrule that decision and take that power away from them.

It says in the committee, on the one hand, that States should have some say in some aspects of financial service regulation matters, such as with the VFPA, where they do not want to preempt State rights, but here they want to step in and preempt those States, States that may have had a long history of dealing with such situations as executive pay compensation, or States that may want to address it in the future, but the underlying bill says that they will preempt that.

That is why we have come up with an alternative. We have come up with a solution. We are not the ''party of no,'' we are the party of reform, a party that says we should address this on a longer period of time, a party that says that we should allow the shareholders to be able to decide these issues, a party that says that when it comes to compensation, the Federal Government should not be intermeddling.

Now, there was an article in The New York Times recently. It quoted from Alan Blinder, a Princeton economist and former Vice Chairman of the Fed who wrote recently for the Wall Street Journal with regard to this. He said, The executives, lawyers, and accountants who design compensation systems are imaginative, skilled, and definitely not disinterested. Congress and government bureaucrats won't beat them at their own game. Congress has tried to do this in the past when they set the issue with regard to deductibility for executive compensation at $1 million. It had the unintended consequence of setting $1 million as the floor, and Wall Street then went from compensation packages greatly exceeding this. We may well see the same thing with this underlying legislation as well.

In the headlines that I started the hour out with, Bank Bonuses $33 Billion, money that is actually coming from the very taxpayers who are watching us here right now, this underlying legislation will not change that. Despite the fact that the gentleman from Texas tried to limit this legislation to try to address this legislation to situations as TARP companies, this legislation will not solve this. Our substitute will.

Our substitute will return the power to the individual. It will return the power to the corporation and, most importantly, return the power to the shareholder and take it from the government bureaucrat.

Mr. FRANK of Massachusetts. I yield our remaining time to a leading member of the committee, the gentleman from Colorado (Mr. PERLMUTTER).

Mr. PERLMUTTER. Mr. Speaker, I appreciate the comments of my friend from New Jersey, but I would say the word that comes to mind is ''amnesia.'' My friends on the Republican side of the aisle have amnesia. They have amnesia over how the Bush administration tried to deregulate everything, tried to make government smaller and more ineffective so that we could have Ponzi schemes as existed under Madoff. That occurred under the George Bush administration. We had the failure with Katrina, and we had the biggest collapse in the banking sector ever because of deregulation and a belief that the free market could do anything it wanted to do.

Now, this bill is very mild. What it allows, Mr. Speaker, is it allows shareholders to have a say on what the officers of the company make in terms of salary, the owners having a say on pay. What could be more American and more free enterprise than that?

What it does allow is the board of directors to overrule the shareholders if they think that's appropriate. But we need to have the ownership of the company have a say on what their executives make so that it doesn't get out of line and that there is no back-scratching going on.

The second piece that my friends complain about and that the substitute is designed to gut is that the Federal banking regulators have a say on the commissions and the bonuses and the stock options that exist. And where we saw this most specifically was in mortgages. Lots of mortgages sold, lots of commissions made, lots of stock options went straight through the roof, but there was a time bomb in those mortgages 4 or 5 years down the road that caused all those mortgages to fail and companies and banks to collapse.

We're not going to allow that anymore. We're not going to allow the taxpayer to be holding the bag the way we've had to hold the bag this last fall. It is a time for reasonable regulation to restore confidence in our financial system. That's what this bill does. The substitute amendment guts that.

I urge a ''no'' vote on the substitute and a ''yes'' vote on say-on-pay.

PARLIAMENTARY INQUIRY

Mr. GARRETT of New Jersey. Parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. GARRETT of New Jersey. Can the Chair indicate how much time is remaining?

The SPEAKER pro tempore. All time for debate on the amendment has expired.

Does a Member seek unanimous consent to extend the debate?

Mr. GARRETT of New Jersey. Yes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. FRANK of Massachusetts. Let me reserve the right to object.

Members want to get out of here. I cannot be responsible for keeping Members here.

Apparently there is an effort—I don't think we ought to keep everybody in the dark about all this. There is apparently an effort to negotiate a unanimous consent agreement involving another bill, so they are asking us to delay this. I am perfectly willing to do this as long as people know it's not our fault. We were ready to get finished. There is a bipartisan leadership request that we wait another 10 minutes. I am perfectly prepared once people understand that, but I do think this kind of whisper-whisper, nobody will know is not a good way to go, so let's be honest about it.

The SPEAKER pro tempore. Without objection, debate will be extended by 5 minutes on each side of the aisle.

Mr. FRANK of Massachusetts. Mr. Speaker, I reserve my time. I have, at most, one further speaker.

Mr. GARRETT of New Jersey. I yield myself such time as I may consume.

I appreciate the gentleman from Massachusetts for working with the respective parties in order to ameliorate any situation that is going on outside of this area. And just as the gentleman says, it's nothing on your side of the aisle in the Chambers today at fault, and I guess we would say the same thing for those who are sitting here right now as well.

I left my last comments with the question of who do you trust and what do we need to do in order to address this situation. I will step back from that for a moment to look to the larger issue here that we are trying to uncover.

I commend the gentleman for the number of hearings that we have had over the last several weeks to try to delve into the various matters that dealt with the fiscal crisis we are currently facing in this country.

□ 1145

One of the takeaways, though, that I have had from those myriad of hearings that we have had is that the underlying concern of the Members of the House on both sides of the aisle is to try to get at the root cause of what was it that actually brought us to the current financial situation that we find in this country today.

We have heard a number of experts from think tanks, from Wall Street, from across the country expound upon where they believe what the underlying cause was. We have heard some who said it was with regard to GSEs, Fannie Mae and Freddie Mac, the fact that there was excessive leverage there allowed this to occur. There was someone who just spoke on the other side of the aisle who is in the chair right now who said that it was all due to deregulation, although I always raise the question whether or not they could cite those specific actions by Congress of deregulation other than the issue of Gramm-Leach-Bliley with regard to deregulation. And we have heard other areas as far as excesses both by government and Wall Street.

But through all those debates, I have yet to recall anyone who could provide any factual evidence, any factual proof, other than just their opinion, that the underlying cause was because of excessive pay by various corporations in this country. No one, certainly, brought up the idea that the problems that brought us here were due to excessive pay outside of the financial sector. So then we have to look at the underlying legislation and answer the question, what is it we are trying to get to here?

In the major portion of the legislation, which goes to allowing shareholders' rights to vote with regard to executive compensation outside of the financial sector, no evidence whatsoever that that brought us to the situation. So we ask why is that even in the underlying bill?

Now, we do try to attempt to reform it, inasmuch as that is all we can do at this point, by putting on a 3-year extension as opposed to a 1-year period of time. We also tried to reform their idea to say that States that have already looked into these issues should have the prerogative to continue with their legislation, that they are more knowledgeable, they have been more engaged, they follow the trends more in their States in their corporations in this area.

So we tried to reform and improve the legislation in that area as well. We also tried to reform it in a last way to say that, for those corporations that say that we have looked at this situation, our shareholders have digested the information and realize it would not be to the benefit of the corporation or the shareholders themselves, and over two-thirds of those shareholders say that they do not want to engage in setting pay but rather would allow it to return to where it has always historically been in this country, and that is by management and by the directors, we put that in the legislation as well.

But, still, the underlying bill takes all those powers away from the shareholders, from the management, from the directors, and it does so without any evidence that they were at all a cause of the problem.

Now, section 4 does, arguably, go to financial institutions, and it goes to those institutions that, arguably, could be, some would say, a cause of our current situation. But we already had regulation in place for most of those financial institutions. We already had regulators who were supposed to be doing their job. We had regulators over at SEC with regard to the Madoff situation. And, unfortunately, we know all too well they failed in that job. Despite the fact that there was testimony that evidence was presented to them, handed to them, documenting why that Madoff situation was out there and why the SEC should be involved, the regulators missed it.

We saw it as well with regard to regulators missing it over at AIG as well. Those regulators had authority to regulate those institutions as well, but did they do so? No. They missed it completely with regard to the whole AIG situation.

Now, the other side of the aisle seems to say that that was then and this is now, that the same regulators who missed Madoff, the same regulators who missed AIG, the same regulators who missed executive compensation and other problems in the past, now, all of a sudden, we are going to expand it even further and say we are going to give those regulators even broader authority for financial institutions, however they may be defined in the future, because this bill realizes that it may be expanded further. They now entrust those regulators.

We would conclude that we should trust the shareholders, the American people, more than we should trust the bureaucrats.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself 5 minutes.

First of all, let me emphasize when the gentleman from New Jersey says ''trust the shareholders,'' that's a conversion. We are born-again shareholder advocates, because in 2006 when the Republicans controlled this institution, they would not even on the Financial Services Committee allow it to come up. We had a petition under the rules for a hearing. Then we asked for a markup and they refused it.

Then in 2007 the gentleman from Alabama, the gentleman from New Jersey, and the others, they all opposed say-on-pay. The gentleman from Alabama told us in 2007 that the free enterprise system was taking care of pay excess. He said that in March of 2007. All of the problems that we've had with pay in the interim apparently were figments of our imagination. The gentleman from Alabama had such confidence in the free enterprise system 2½ years ago, he told us they weren't going to happen. And say-on-pay now, oh, it's not a big deal. It was a big enough deal for them to oppose it.

By the way, let me say to the gentleman from New Jersey, here's the problem: No, it's not so much conscious acts of deregulation as nonregulation. What happened was new things grew up in the economy, particularly in the area of subprime mortgage and the way of packaging them and sending them around. And some of us in the minority wanted to change it. There were party differences.

In 2004 my friend from North Carolina (Mr. MILLER) who was here earlier, he spoke with people at the Center For Responsible Lending in North Carolina who told us in 2004 trouble was coming. By the way, trouble was coming because of an excessive encouragement of low-income people to buy homes, not from the CRA and not from liberal Democrats, but from the Bush administration. The gentleman from Texas (Mr. HENSARLING) inserted an amendment which we adopted. In 2002 the Bush administration sped this up. In 2004, over my objection among others, the Bush Administration directed Fannie Mae and Freddie Mac to substantially increase the number of subprime mortgages they were buying and for people below income. That's in the amendment that Mr. HENSARLING offered that we adopted.

And some of us saw the problem at that point. I hadn't seen a problem with Fannie Mae and Freddie Mac before, but I did in 2004 become worried. I joined the gentleman Mr. Oxley in trying to pass a bill, although I had a housing problem on the floor. The gentleman from Alabama voted with Mr. Oxley and many others did. Other Republicans thought Mr. Oxley was too soft, and we then got into an intra-Republican dispute on Fannie Mae and Freddie Mac where the House passed the bill, the House under the Republicans, supported by the overwhelming majority of Republicans, every amendment offering to toughen it up rejected by an overwhelming majority of Republicans.

And the Republican Senate had a difference. Ironically, the Democrats in the Senate agreed with Mr. Oxley. The Republicans in the Senate agreed with Mr. Bush. No bill.

We also tried, as I said, to do something about subprime lending. The gentleman from North Carolina pushed for legislation. The gentleman from Alabama, to his credit, was somewhat interested in working with us on it. But the Republicans were overruled by the then-majority leader, Mr. DeLay, who used the rhetoric we're hearing today: keep the bureaucrats out of it and let the free enterprise system do it. That was the prevailing philosophy of the Republicans who ruled this House in 2004 and 2005.

So when some of us, including the gentleman from Alabama (Mr. BACHUS), tried to work on legislation to restrict subprime lending, Mr. BACHUS was even chairman of the subcommittee, and he was overruled. The chairman of the committee, Mr. Oxley, was told, No, we don't do that. We're Republicans. We believe in free enterprise.

So it was a conscious decision not to do anything about——

Mr. LEWIS of California. Will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. LEWIS of California. I wish the gentleman would start over. I'm finding it difficult to understand your very rapid speech. Will you slow down a little bit?

Mr. FRANK of Massachusetts. No. I tell you, to the gentleman from California, he's going to have to speed up. I'm not going to slow down. But if he waits a couple of days, there's a very competent transcriber here. He'll be able to read it, and maybe we can even get it put into large type for the gentleman from California.

And now, the gentleman's having tried to interrupt me because that's what people do when they don't like what you're saying, I will return to the tale of how the Republicans told us not to do subprime lending. And we had legislation working. If we had been able in 2005 to get that legislation done, we could have retarded the depths of the crisis. So, yes, there were regulators who didn't do their job, but there were conscious decisions not to regulate.

There was a bill passed, by the way, in 1994 by a Democratic Congress, replaced in 1995 by a Republican Congress, which gave the Federal Reserve the authority to regulate mortgages of the kind that caused trouble. Alan Greenspan, supported by the Republicans in Congress, refused to use that authority. It was when he continued to refuse that some of us tried to do something. So, yes, that's where we got this, because a Republican commitment to never doing anything of the sort that they are talking about now that let subprime mortgages flourish.

The SPEAKER pro tempore. All time has expired.

Pursuant to House Resolution 697, the previous question is ordered on the bill, as amended, and on the amendment in the nature of a substitute printed in House Report 111–237 offered by the gentleman from New Jersey (Mr. GARRETT).

The question is on the amendment offered by the gentleman from New Jersey (Mr. GARRETT).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. GARRETT of New Jersey. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to House Resolution 697, further proceedings on this question will be postponed.

Pursuant to clause 1(c) of rule XIX, further proceedings on the bill will be postponed.

☐ 1200

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. FRANK of Massachusetts. Is there some way that I can convey to the membership that this incredible intrusion on their time is in no way the responsibility of the Financial Services Committee, that we are ready to go to a vote and we are as much the victim as anybody else of this—whatever it is?

The SPEAKER pro tempore. The gentleman may seek time to address the body.

Mr. FRANK of Massachusetts. Well, I don't want to inflict further excess on the body.

SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 2009

Mr. PERLMUTTER. Mr. Speaker, I ask unanimous consent that the Speaker be authorized on this legislative day to entertain a motion to suspend the rules relating to H.R. 3435.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. OBEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3435) making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3435

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2009, and for other purposes, namely:

DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

CONSUMER ASSISTANCE TO RECYCLE AND SAVE PROGRAM

(TRANSFER OF FUNDS)

For an additional amount for ''Consumer Assistance to Recycle and Save Program'' to carry out the Consumer Assistance to Recycle and Save Program established by the Consumer Assistance to Recycle and Save