and-out gambling, there are rules of the track, rules of the road.

It seems to me that on Wall Street, where you are dealing with the life savings and the hopes and dreams of our people, our businesses, and our children, that there need to be reasonable rules of the road and no more taxpayer bailouts. Let's get started and vote aye on the Boxer amendment and make this bill even better. It is a terrific bill, but we can make it even better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I commend my colleague from California who has been patient and has done a good job. I describe her statutory language as sort of the exclamation point in this. As the amendment reads, the very first line—and, again, I don't have to read it—at the end of this title includes the following. So it is at the end of the title. It is complicated to get this right, so we have a winding down and a disposition in receivership and bankruptcy in these institutions.

In case anybody had doubts about what the language does, the amendment says the word ''shall'' in every sentence. There are no ''mays.'' The taxpayer ''shall'' not be exposed. There ''shall'' be liquidation. It is very clear what we are trying to achieve. I know nobody objects.

We are on the bill. We ought to be able to start on a positive note. We are going to have times of significant division and debate on this bill coming up. I thought it might be worthwhile for the American public to witness a Senate that can actually, as it begins debate, do so with some unanimity. That doesn't happen with great frequency, but to start on that basis makes sense to me.

I hope our colleagues will agree with that conclusion and allow this amendment to be voted on as soon as we come back from our caucuses and then move to other amendments, hopefully, where there is agreement, demonstrating again that we are not fighting every single issue with each other. There is a lot of agreement about what ought to be in the bill.

Mrs. BOXER. I thank my colleague. The reason I did this, frankly, was because the other side seemed to be misunderstanding what this bill did. So I was hopeful that they would just say: Terrific; now it is clear. No losses to taxpayers—''taxpayers shall bear no losses from the exercise of any authority under this title.''

I understand Senator KYL said yesterday this was a sense of the Senate. It is clear. It is not a sense of the Senate: liquidation required, recovery of funds, taxpayers shall. There is no ''should.'' It is real. So that is why I am hopeful that if we can get started with a bipartisan vote, it will make the life of our chairman a lot easier because at least we would come forward with something on which we can stand together.

I thank the Senator so much for working with me to make sure this is clear as a bell. As the Senator says, bills are complex. And people say: Why is this bill 800 pages? Well, it is complicated because we have to amend language in so many parts of the Federal law. But this is clear. We sum it up. We sum up the title in this way.

I am excited about voting on this. I will be back after the luncheon hour to—if I need to—make the case again—not that my colleague hasn't done it for me, but I want to lift a little bit of the burden off his shoulders.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I commend the Senator from California for her amendment. As one of the people who was charged by the chairman to work on this section of how we make sure we put appropriate barriers to firms getting too large and barriers to firms being too big to fail, and should they fail, making sure taxpayers are never on the hook again, I think the amendment of the Senator from California adds that emphasis. We took the chairman's charge at his word.

This is an area where there was complete bipartisan agreement. I had the good fortune of working with my friend and colleague, the Senator from Tennessee, on this issue. We put a strong preference in the bill toward bankruptcy as the normal process, and even put into place a new series of requirements for large firms—particularly internationally significant firms—to come forward to the regulators and describe how they can unwind themselves through an orderly bankruptcy process, that being the normal process. But in the event, as we saw in 2008, there may be times, even with the best laid plans, when you may reach a level of crisis that would require resolution, if there is resolution, it should not be propping up firms the way we did it in the fall of 2008. The resolution should be a death knell for any firm that is put into that process. It should be something any logical management team or series of shareholders would want to avoid at all costs.

We put forward a process where it is postfunded. I think reasonable folks can agree on which is the best option. At the end of the day, if there are any funds used to make sure we can unwind this firm in an orderly process so that it doesn't cause any further systemic damage to the overall financial system, and indirectly to the American taxpayer, and if the financial system is shored up by that action, that any costs not recouped—if this firm goes out of business and it is being put out of business, if there are funds expended and they have to be recouped from some source, that source should not be the American taxpayer.

Again, I commend the Senator from California for her efforts with this amendment. It adds that exclamation point. Again, I cannot imagine that my colleagues on the other side, who I know share the same view, do not want to make sure taxpayers will never be exposed again by the mistakes made by Wall Street. I think this amendment is a good place to start this debate, where we have that common cause.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:27 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. GREGG. Mr. President, will the Senator yield for a second?

I ask unanimous consent that after Senator BROWN speaks, Senator MIKULSKI be recognized and then I be recognized.

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

The Senator from Massachusetts.

HONORING OUR ARMED FORCES

SERGEANT ROBERT J. BARRETT

Mr. BROWN of Massachusetts. Mr. President, I rise today to say a few words about a hero: Massachusetts Army National Guard SGT Robert J. Barrett who was killed in Afghanistan on April 19. I had the sad honor of attending his funeral this past weekend.

So everyone knows, Robert was on foot patrol south of Kabul when an IED exploded, killing him and injuring eight of his fellow soldiers of 1st Battalion, 101st Field Artillery Regiment. He was 21 years old.

Robert was from Fall River, a city of 90,000 in the southeastern part of Massachusetts. He was a long-time member of the 54th Massachusetts Volunteer Regiment. He geared his life toward helping others, especially veterans.

He was selected for the regiment's honor guard in early 2008 and took part in more than 350 events honoring our fallen soldiers, including marching in the President's inaugural parade a little more than a year ago.

His primary mission in Afghanistan was of the utmost importance. He was training Afghan soldiers so they would be able to stand up and provide security for their own country. Rather than spend his free time relaxing, he gave of his time and knowledge by volunteering at local orphanages and schools. Robert was a shining example of ''selfless service,'' one of the seven Army values.

Before his deployment, Robert wrote several lines that summarized his thoughts about his service and our mission overseas. I wish to take one final moment to read one of his thoughts:

I volunteered to put my life on the line for freedom and country. For my fellow soldiers, for my little girl, for my weeping mother and father. I am going to a land where American freedom is just a dream, a hope, a slow reality. I am an American Soldier.

That was by Robert J. Barrett before he mobilized.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise to speak on the issue of financial services. Before I do, I wish to say to the Senator from Massachusetts, Mr. BROWN, that we in Maryland express our condolences to him and his loss. We have suffered many of our own. We are comrades in arms in this moment of grief. We salute him and respect the family.

Mr. BROWN of Massachusetts. I thank the Senator from Maryland.

Ms. MIKULSKI. Mr. President, I come to the floor today to talk about an issue about which I care very deeply and have fought for all of my life. That is financial services reform.

I am not a Janie-come-lately to this issue. In 1999, I opposed the repeal of the Glass-Steagall Act which led to the crisis we have today. I was one of eight Senators to vote against the repeal of the Glass-Steagall Act which tore down the walls between conventional banking and investment banking. Had that bill been defeated in 1999, we would have not had the crisis that faced us in the last 2 years.

My family, too, has fought over generations to protect consumers and expand access to credit. At the beginning of the old century when the downtown banks would not lend to people such as my family, whom they regarded as on the other side of the tracks, my grandfather, along with other small business people in the area, got together and started a savings and loan to serve that community. They lent to people who did not have access to credit. They lent to small business owners, such as my father, who opened a grocery store. They lent to women, such as my grandmother, who opened a bakery. When tough times came during the Great Depression, this savings and loan wanted to make sure that people would not lose their homes. If you paid a nickel a week on your mortgage, you were current.

I was raised in that sense that financial institutions should be on the side of the people and they should have access to the American dream to buy a home, to start a business.

As a young social worker working in Baltimore's African-American community, I saw, once again, there was no access to credit. The African-American community was sidelined and redlined. What we saw were these local payday vendors who had names such as Happy Harry. Why was Harry so happy? It was because he was charging 18 to 20 percent interest for a loan.

I got together with the people in the community at the parish council and we were able to start a credit union so there would be access to credit and end the scamming and scheming and gouging of those hard-working people.

I continued that fight in the Senate. I helped create a task force in Baltimore to end that scheme and scam. I also worked as the Chair of the Commerce-Justice-Science Appropriations Subcommittee. I made sure in 2009, working with Senator SHELBY and listening to the comments of Senator DODD, that we put extra money in the Federal checkbook so the FBI could come after the financial fraud crowds, the mortgage fraud, the securities fraud.

It sure was not the Securities and Exchange Commission. They were too busy sitting on their wingtips while money was flying out the door with these terrible lending practices.

As we deal with this bill pending before the Senate, the Restoring American Financial Stability Act, I want you to know I support this bill. I have been a reformer and a watchdog all of my life. I have a deep suspicion of how big banks treat the little people and what they do with the little people's money. Time and time again, we see the consequences of loose regulations and wimpy and tepid enforcement. Yes, I said it, wimpy and tepid enforcement.

Time and time again, I voted for more teeth and better regulation and more enforcement. I always wanted to be sure it was Main Street that got access to credit, and I was against the unfair and abusive practices of Wall Street.

Here we are again in this financial situation where we bailed out the big banks. We bailed out the whales, we bailed out the sharks, and we have left the people in the community, the little minnows, to swim upstream and be on their own.

Now is the time to right this reform. Now is the opportunity to pass real financial reform that puts the strongest consumer protections in financial reform and to ensure that the greed of Wall Street does not trump the needs of Main Street.

We need to put government back on the side of the middle class. If we can bail out the banks, how about we make sure we protect the middle class against fraud, duplicity, and gouging? People with limited access to credit are being victimized, abused, and defrauded. It is both a crime and a shame.

Since the people who do it have no shame, maybe we have to make it a crime. In fact, I think we ought to make it a crime. When they get out of their pinstripes and start wearing orange jumpsuits and stand out in the crowd on visiting day, rather than cruising parents' weekends, maybe they will have some remorse, and maybe they will be ready to change the nature of their practices.

When I travel around my State, whether it is in diners or grocery stores, there is anger and frustration in people's voices. They are mad, and they are scared. They have watched Wall Street executives pay themselves lavish salaries while they are worried about their job and being laid off. They have watched Wall Street mortgage brokers profit off irresponsible lending while their husbands work an extra shift to make sure they can make the monthly mortgage payment. And they have watched big firms take very risky gambles with their money without any regulation. It essentially was casino economics. This is why people are mad, and they are losing trust in government. People they counted on to protect them did not.

What infuriates the people of Maryland and of this country and me is there is no remorse by Wall Street about what they did. Nothing about their behavior suggests they have learned or even care what is wrong. Look at what happened with AIG after receiving $170 billion in taxpayer money. They paid themselves $165 million in bonuses. I stood on the floor and said ''AIG'' stands for ''ain't I greedy.''

I do not want to have catchy phrases. I want to have concrete, enforceable, tough regulations. Again, what bothers me is the lack of remorse and a commitment to reform.

Right or wrong, if you are in a 12-step program, people usually say that one of the ways to right those wrongs is to say ''I am sorry'' and mean it. I did wrong and I will never do it again. I want to make amends by making it right.

Not these guys. They need us to have a tough approach to this situation. They say: We will never do anything like that again. Actually they do not even say that.

What we need to do is to make sure we have the strongest regulations. We have an opportunity now to choose between real reform or business as usual. Consumers need protection in regulation to guarantee the safety of their deposits and the availability of basic banking services. Small business needs credit to grow so that they can create a job for themselves and for those in their community. And we need to hold Wall Street accountable. We need to make sure there are no taxpayer bailouts ever again and to ensure when banks take risks, they do it with their own money, not with money out of the deposits of hard-working people.

The bill before us is an excellent bill. It provides a 21st century regulatory framework for the financial system. No more scheming, no more scamming, no more preying.

It is time to pass this bill. There are amendments pending that I think will also help to improve the bill, but I think it is time that we pull the sharks out of the tank, make sure the whales do not crush the little guy, and to make sure that the minnows get a chance and that we have an economy that is swimming.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I wish to speak briefly on the bill that is before us and how I think it can be improved.

First, I congratulate the chairman of the committee, working with the ranking member. I understand they have reached an agreement on how to do the issue of resolution, which addresses the issue of too big to fail, which is a very critical part of this bill. I congratulate them for making that type of initiative. I hope the rumors are true and that such an amendment will address strong too-big-to-fail language so the American taxpayers will not be on the hook for institutions that overextend themselves and take on too much risk but are institutions that are so large it is felt they are too big to fail, that concept will no longer be part of our lexicon, and we will essentially put an end to that. I congratulate the chairman and ranking member.

There are, however, other major issues in this bill that need to be addressed. They are substantial and rather complex. A few that are not even in the bill—for example, how we address Fannie Mae and Freddie Mac. We know that the American taxpayers today are on the hook for somewhere between $400 billion and $500 billion—$400 billion to $500 billion—that we are going to have to underwrite in order to stabilize those two entities on the credits which they have run up which have gone bad and they have purchased. That is serious.

There will be a proposal that comes from our side of the aisle. It will not totally be structured to Fannie and Freddie. It should. I would like to see that. It is too complex to do in this bill. It will at least address some of the core issues that ought to be addressed. For example, we ought to tell the American people upfront and forthrightly how much they owe. It should be put on budget. We ought to put on budget what the obligations are, because they are scoreable, relative to the costs the American taxpayers are going to have to bear to bail out and maintain Fannie and Freddie. It is going to be somewhere around $400 billion to $500 billion additional debt. It is coming. We do not want to talk about it because it affects other debt obligations of this country in a lot of different ways, primarily in crowding out.

Second, the bill has language on underwriting but it is not strong enough. If you want to look at what caused this event at the end of 2008, what caused this traumatic event which almost brought the entire financial system of America down, which almost put us into a depression and put us into a very severe recession, cost a lot of people their jobs—and there are still a lot of people experiencing trauma because of it—there are three or four main causes. I have talked about them before:

One, of course, is that I believe the money was made too easy to get, at too low a price, for too long by the Fed.

Another was the fact that the Congress specifically encouraged and, in fact, forced lenders, for all intents and purposes, to lend to people who couldn't afford the homes they were buying because it became congressional policy to do that.

Another was that people were shopping for the weakest regulators. This is what happened in the derivatives market, and the derivatives were not structured in a way that actually put capital or liquidity or margin behind derivatives.

The fourth and I think probably the most significant was that there was a total breakdown in underwriting standards. In other words, the people who were making the loans on subprime mortgages and on other types of exotic instruments so that people could buy houses who couldn't afford them were making those loans and not looking at the underlying value of the asset, and they weren't looking at the ability of the person to pay back that loan. What they were doing, quite simply, was making the loan because they were going to get a fee for it and then they were going to sell the loan, securitize it. It was going to be chopped up, sent out, and syndicated, and they didn't really care what the loan did because they were basically making a loan for the purpose of making a fee. Those were the one-off lenders.

In the banking industry, you had a complete breakdown. Banks were lending to people they knew couldn't repay when these loans reset, and they knew the value of the asset could only support that loan if there was an appreciation in the market, which was a gamble.

This happens every time we go through one of these events, by the way, one of these real estate-driven recessionary events. It happened in the late 1970s; it happened in the late 1980s when I was Governor of New Hampshire and New England went through a horrific contraction as a result of an expansive effort of lending money in the real estate markets—underwriting standards break down.

There needs to be a clear national definition of what proper underwriting standards are. Senator ISAKSON and I and a number of other people—Senator CORKER—are going to put forward an amendment in that area.

One of the core areas here that needs to be addressed and hopefully will be included in this bill and improve the bill in this area—one area of this bill that simply has to be changed if it is to be effective in doing what it is supposed to do is the language of derivatives.

Most Americans don't understand derivatives. It is understandable. They are complex products. But basically think of it this way: You are on Main Street, and you have a business—usually a fairly large business—and you are making a product. You want to be able to sell that product to somebody at the price you quote that person and make the profit you expected at that quoted price.

But there are a lot of things that affect that product that you can't control. If you are selling it to another country, you can't control what the dollar is going to do in relationship to the currency of that country—for example, if you are selling it to Brazil, whether their currency goes up or down vis-a-vis the dollar. If you enter into a contract today and can't sell your product for 6 months, your whole profit could be wiped out by the market devaluing as relates to that currency. The materials you buy to make that product may change in value or viability. The person you are getting a loan from to allow you to expand your business to build that product may have financial troubles and you may have an issue there or, vice versa, you may have an issue with that person. All of these are things which are usually beyond the ability of the individual who is making the product—and in this case, I am talking about making products—to control.

So there is something called a derivative, which is an insurance item. Basically, someone insures for you over those risks. There is a lot of complexity to this because these insurance items mutate into all sorts of different instruments. They can affect financial instruments, they can affect commodities, they can affect goods, they can affect just plain currencies, but they are critical instruments—derivatives—for making the economic engine work. They are sort of the grease you put in the economic engine to make sure it doesn't seize up, to allow the economic engine to move down the road. They are so critical, in fact, that they are approximately $600 trillion—trillion—of notional value. Notional value is not really what the risk is because there are underlying assets here, but that is a big number—a big number.

So we have to make sure that when we amend the derivatives section of this bill to try to have a stronger derivatives industry, we don't make big mistakes and basically undermine the ability of people to use this type of instrument to get credit and to make the markets work and to create jobs on Main Street because these all tie back to jobs on Main Street. Even if you are not working for the company that uses the derivatives, you are probably working for somebody who does business with a company that does derivatives. In Nashua, NH, there are a bunch of big companies that do derivatives. There are a lot more smaller companies that sell products to those companies on Main Street. So it will affect Main Street if we do this wrong because credit will contract.

The unique advantage America has is that we are the place in the world where, if you have a good idea and you are willing to take a risk yourself and you are an entrepreneur, you can usually get capital and credit to allow you to do that idea, to take that risk and thus create jobs, which is the bottom line for all of us; we want to create jobs. So derivatives play a large role in making that system work. This bill, unfortunately, adopted language which was put forward in the Agriculture Committee which literally undermines the safety and soundness of the derivatives market and, secondly, the ability of America to be a leader in the derivatives market.

Our goal here should be very simple. Our goal should be two steps: One, make our banking and financial system safer, sounder, and a system which will, to the extent we can anticipate it, avoid systemic risk. While doing that, our second goal must be to have a vibrant credit market and capital market and be the primary place in the world where people come to create credit and capital because that gives us a competitive advantage over the rest of the world. That creates jobs here in the United States. Unfortunately, this bill, as structured, doesn't accomplish that. In fact, it undermines that.

A good derivatives reform bill would essentially create an atmosphere where derivatives are more transparent, where the pricing is more transparent, and where there is standing behind the two parties to an agreement on a derivatives contract—assets, liquidity, margin—something that can be turned to should one of the parties fail to perform on the contract. This can be done by creating a reasonable exception for end-use derivatives—those are the ones where you basically have a purely commercial purpose—and if people don't fall into that reasonable exception, then requiring essentially all the other derivatives to go through what is called a clearinghouse.

The clearinghouse becomes basically the situation where the two parties to the contract—there are multiple parties to the contract—essentially put up collateral, margin, liquidity, so that the contracts are supported—the counterparties are supported. The clearinghouse itself also has to be collateralized adequately, capitalized adequately, so that it doesn't become a risk because it is going to be the insurer, basically, of these contracts—all very doable through new regulatory restructure or a modified regulatory restructure.

Then, as these contracts become more standardized or are standardized, they move over to an exchange. A lot of them could do that right now, but some simply can't because their contracts are too customized to move directly to an exchange. But over time, most of them probably will. And that is the way it should be structured.

Unfortunately, in this bill, it is directed that we set up a new process for doing these derivatives by taking basically the market makers in these derivatives—which are the swap desks—and moving them out of the financial institutions into separate institutions. Where this idea came from is hard to fathom because on its face it makes absolutely no sense. I mean, it is so counterproductive to the purpose of making the derivatives market safer, sounder, and more efficient and, as a result, a better market which creates credit in a transparent, fair, effective, and sound way. It is so counterproductive to that on its face, you would think anybody who suggested it would have it immediately pointed out that this doesn't work. But for some reason, it has found its way into this bill.

The practical effect of doing this is that you will create these separate entities. These separate entities are going to have to be capitalized because you have to have capital behind these derivatives desks. That is the whole point. You have to have something standing behind these desks to make them viable so that you don't end up with an AIG. What was the AIG problem? There was nothing behind the derivative contracts except for the name AIG. You don't want to do that again. You want capital.

It is estimated that it would cost $250 billion to set up these separate desks. What does that mean? That means that capital is not going to be available for the creation of credit. You will see an immediate contraction. It is estimated by the industry—and again, this is an industry number, not mine, so you can take it with a grain of salt—that will cause a $¾ trillion contraction in credit. That is Main Street not being able to get credit. Let's even say they have exaggerated. Say it is only going to contract 80 percent. That is still $600 billion to $700 billion of credit that is not available on Main Street to do business, to create jobs, to take risk. It is foolish to do that type of contraction and to set up this structure.

Plus, you have nobody who is going to oversight this as effectively as the people who oversight the present derivative market makers. The FDIC won't be able to get on top of this. The Fed probably will have trouble getting on top of this. You will create a less stable platform from which to view these markets, when the whole purpose of the bill was to make it more stable. It makes absolutely no sense.

This is section 106 in the Agriculture bill. I think it is section 714 in this bill. And you don't have to believe me on this. I mean, two of the major, premier regulatory agencies—which are the fair arbiters here, really; I mean, they are the umpires—have come out in a very unusual way, because they do not usually comment in the middle of a legislative process such as this, and said that this—this is my paraphrasing—is a stupid idea, a counterproductive idea, the type of idea which, if it were to be put in place, would be cutting off your nose to spite your face and we would end up with a less sound system.

Let me read to you from the commentary of the Federal Reserve staff on section 106, which is now, I believe, section 714. Here is what the Federal Reserve staff said about this approach:

> Section 106 would impair financial stability and strong prudential regulation of derivatives; would have serious consequences for the competitiveness of United States financial institutions; and would be highly disruptive and costly, both for banks and their customers.

That is pretty specific. That is pretty damning testimony as to the effect of this language. It is going to reduce our competitiveness because a lot of these derivatives will go overseas. It is going to make it much more difficult to have sound regulatory policy toward derivatives, and it will be highly disruptive and costly not only for the banks but for their customers. That is called Main Street—the people who create the jobs. This is a very inappropriate idea that has been put in this bill.

But don't just rely on the Fed if you are a Fed hater—and there appear to be a number in this body, for reasons I still have trouble fathoming. They must have something against having a sound money policy. But if you don't like the Fed, listen to the FDIC. I don't think anybody around here doesn't give great credibility to the way Sheila Bair, the Chairman of the FDIC, handled the bank crisis. Very honestly, they stepped in, they settled out a lot of major banks, and they did it in a way that was extraordinarily professional. As a result, the markets remained calm, people got their money back, and deposits were not at risk.

This is an agency which has high credibility, and this is what Chairman Sheila Bair has specifically said about this:

> If all derivatives market-making activities were moved outside the bank holding companies, most of the activities would no doubt continue, but in less regulated and more highly leveraged venues.

In other words, be much more risky.

> Such affiliates would have to rely on less stable sources of liquidity which—as we saw during the past crisis—would be destabilizing to the banking organizations in times of financial distress, which in turn would put additional pressure on the insured banks to provide stability.

In other words, bad idea. It undermines the banking industry to do it this way.

Finally: ''Thus, one unintended''—actually, this is not finally. The whole letter is three pages long and has a lot of strong points. But the final part I am going to read:

> Thus, one unintended outcome of this provision would be weakened, not strengthened, protection of the insured bank and the Deposit Insurance Fund, which I know is not the result any of us want.

That is pretty specific. So you have the Fed on one side, one of the major regulators, saying this idea doesn't work, it will undermine the structure of the banking industry. You have the FDIC on the other side saying this proposal doesn't work, it is going to undermine the insurance deposit system.

So you do not have to listen to myself or others who pointed out the failure of this section. Listen to these regulators. This section has to be removed from this bill.

There are other things that need to be done in the derivatives areas which would improve the language. For example, once you are on a clearinghouse, you should not be mandated to go directly to an exchange because it simply will not work. There needs to be an intermediary step as standardization and then the best thing to do would be to require regulators to look at these different instruments and then, if they feel they can be standardized, tell the people producing them they can be standardized and then move them over. To unilaterally say everything has to go to an exchange is, I think, going to be counterproductive and again push a lot of business offshore.

But clearly this one section is damaging to our efforts to produce a safer, sounder, more transparent derivatives regime which has adequate liquidity and capital behind it and which keeps America as the primary place to do credit in the world so our entrepreneurs can get credit at a reasonable price, so they can go out and take the risks to create the jobs in America.

I ask unanimous consent to have both these statements printed in the RECORD, and I yield the floor.

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

COMMENTS ON SENATE AGRICULTURE COMMITTEE'S OTC DERIVATIVES BILL

APRIL 24, 2010

1. Section 106 should be deleted.

a. Lending to financial market utilities. Section 106 would prohibit any federal assistance to swap dealers, major swap participants, swap exchanges, clearinghouses and central counterparties. This would appear to override the provision of Title VIII that would allow the Federal Reserve to provide emergency collateralized loans to systemically important financial market utilities, such as clearinghouses and central counterparties, to maintain financial stability and prevent serious adverse effects on the U.S. economy.

i. As systemically important post-trade ''choke points'' in the financial system, it is imperative that these utilities be able to settle each day as expected to avoid systemic problems and allow for a wide range of financial markets and institutions to operate. The failure of a systemically important utility to settle for its markets would not only call into question the soundness of the utility as a critical market infrastructure but could also create systemic liquidity disruptions for one or more markets and potentially other financial market utilities. The increased importance that Title VIII places on central counterparties and central clearinghouses to reduce risk in the financial system necessitates ensuring that short-term secured credit is available to these utilities in times of stress.

b. ''Push-out'' of bank swap activities. Section 106 would in effect prohibit banks from engaging in derivative transactions as an intermediary for customers or to hedge the bank's own exposures.

i. Title VI, which includes the so-called Volcker rule provisions, better addresses the problem of risks from derivatives activities by prohibiting any bank, as well as any company that owns a bank, from taking speculative, proprietary derivative positions that are unrelated to customer needs.

ii. Section 106 would impair financial stability and strong prudential regulation of derivatives; would have serious consequences for the competitiveness of U.S. financial institutions; and would be highly disruptive and costly, both for banks and their customers.

iii. Banks are subject to strong prudential regulation, including capital regulations that take account of a bank's exposures to derivative transactions. The Basel Committee on Banking Supervision has recently proposed tough new capital and liquidity requirements for derivatives that will further strengthen the prudential standards that apply to bank derivative activities. Titles I, III, VI, VII and VIII all add provisions further strengthening the authority of the Federal supervisory agencies to address these risks.

2. The foreign exchange swap exclusion should not be limited to non-exchange-traded non-cleared transactions.

a. The bill permits the Treasury to exclude foreign exchange swaps and forwards from coverage as ''swaps,'' but the exclusion applies only if the transaction is not listed or traded on an exchange or a swap execution facility and not cleared through a derivatives clearing organization. A substantial share of foreign exchange swaps and forwards are entered into using electronic trading platforms. The broad definition of swap execution facility appears to capture these platforms, thereby rendering the Treasury's exemptive authority largely meaningless.

b. Foreign exchange forward and swap transactions should be treated in a way comparable to other physically settled forwards for securities and nonfinancial commodities that are exempted under the bill. Foreign exchange forwards and foreign exchange swaps are delayed purchases and sales in broad and deep cash markets. Prices for foreign exchange are already readily available and transparent and that existing transparency, coupled with the breadth and depth of the foreign exchange markets, makes the foreign exchange markets not easy to manipulate.

3. Core principles for financial market utilities should not be hard-wired in the statute.

a. The bill sets out specific core principles for derivatives clearing organizations, swap execution facilities, and swap data repositories, and would not give the CFTC or SEC leeway to adjust the core principles to reflect evolving U.S. and international standards (as does the Dodd bill).

b. The current international standards for central counterparties are under review for needed changes in light of market developments, particularly in the OTC derivatives market, and are expected to change, thus potentially creating an immediate conflict with the bill.

c. Providing regulatory flexibility would permit changes to the international standards and other future refinements in risk management standards to be addressed. In addition, such flexibility would facilitate the ability of the U.S. regulatory agencies to work together to adopt consistent standards across financial market utilities that perform similar functions.

4. The definition of ''swap data repository'' is overly broad.

a. The definition (''any person that collects, calculates, prepares, or maintains information or records with respect to transaction or positions in or the terms and conditions of, swaps entered into by third parties'') appears to include entities whose purpose is not related to acting as a central record-keeping facility. For example, the definition may sweep in trade comparison services and news organizations that collect trading information.

b. Given its breadth, it will be difficult to apply core principles to such disparate activities and organizations.

5. Data-sharing among regulators is unnecessarily restricted.

a. The bill would require a swap data repository to notify the relevant Commission of any information requests from other regulators and require that those other regulators indemnify the repository and the Commission from any claims stemming from those requests. These provisions restrict access by relevant U.S. regulators to needed data.

b. These restrictions may lead foreign regulators to demand a local repository so that they can have adequate access to the data. Splitting the market data into repositories in different countries will make it significantly more difficult for regulators to get a holistic view of the market.

c. The bill allows swap data to be shared with foreign central banks, but not the U.S. central bank (the Federal Reserve).

6. Prudential regulators should retain their safety-and-soundness enforcement authority over bank swap dealers and major swap participants.

a. Section 131 provides the prudential regulators with authority to enforce the prudential requirements of the Act over bank swap dealers and major swap participants and provides the CFTC with the authority to enforce non-prudential requirements.

b. Although section 133 preserves the prudential regulators' authority under other law, the conforming amendments in section 131 limit the prudential regulators' authority under section 8 of the Federal Deposit Insurance Act over swap dealers and major swap participants.

c. In order to carry out their obligations as safety-and-soundness supervisors over banks, the prudential regulators need to retain their full Federal Deposit Insurance Act enforcement authority over bank swap dealers and major swap participants.

7. The Act should clarify that risk management is part of prudential rules.

a. Section 121 provides that the prudential regulators are to prescribe prudential requirements, including capital and margin requirements, for bank swap dealers and major swap participants. Section 121 also requires swap dealers and major swap participants to establish robust and professional risk management systems.

b. The bill is unclear about which agency should set risk management rules. These rules should be set by the prudential regulator . . .

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, April 30, 2010.

Hon. CHRISTOPHER J. DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. BLANCHE L. LINCOLN,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DODD AND CHAIRMAN LINCOLN: Thank you for reaching out to the Federal Deposit Insurance Corporation for our views on Title VII of the ''Wall Street Transparency and Accountability Act'' contained in S. 3217, the ''Restoring American Financial Stability Act of 2010.'' At the outset, I would like to express my strong support for enhanced regulation of ''over-the-counter'' (OTC) derivatives and the provisions of the bill which would require centralized clearing and exchange trading of standardized products. If this requirement is applied rigorously it will mean that most OTC contracts will be centrally cleared, a desirable improvement from the bilateral clearing processes used now. I would also like to express my wholehearted endorsement of the ultimate intent of the bill, to protect the deposit insurance fund from high risk behavior.

I would like to share some concerns with respect to section 716 of S. 3217, which would require most derivatives activities to be conducted outside of banks and bank holding companies. If enacted, this provision would require that some $294 trillion in notional amount of derivatives be moved outside of banks or from bank holding companies that own insured depository institutions, presumably to nonbank financial firms such as hedge funds and futures commission merchants, or to foreign banking organizations beyond the reach of federal regulation. I would note that credit derivatives—the riskiest—held by banks and bank holding companies (when measured by notional amount) total $25.5 trillion, or slightly less than nine percent of the total derivatives held by these entities.

At the same time, it needs to be pointed out that the vast majority of banks that use OTC derivatives confine their activity to hedging interest rate risk with straightforward interest rate derivatives. Given the continuing uncertainty surrounding future movements in interest rates and the detrimental effects that these could have on unhedged banks, I encourage you to adopt an approach that would allow banks to easily hedge with OTC derivatives. Moreover, I believe that directing standardized OTC products toward exchanges or other central clearing facilities would accomplish the stabilization of the OTC market that we seek to enhance, and would still allow banks to continue the important market-making functions that they currently perform.

In addition, I urge you to carefully consider the underlying premise of this provision—that the best way to protect the deposit insurance fund is to push higher risk activities into the so-called shadow sector. To be sure, there are certain activities, such as speculative derivatives trading, that should have no place in banks or bank holding companies. We believe the Volcker rule addresses that issue and indeed would be happy to work with you on a total ban on speculative trading, at least in the CDS market. At the same time, other types of derivatives such as customized interest rate swaps and even some CDS do have legitimate and important functions as risk management tools, and insured banks play an essential role in providing market-making functions for these products.

Banks are not perfect but we do believe that insured banks as a whole performed better during this crisis because they are subject to higher capital requirements in both the amount and quality of capital. Insured banks also are subject to ongoing prudential supervision by their primary banking regulators, as well as a second pair of eyes through the FDIC's back up supervisory role, which we are strengthening as a lesson of the crisis. If all derivatives market-making activities were moved outside of bank holding companies, most of the activity would no doubt continue, but in less regulated and more highly leveraged venues. Even pushing the activity into a bank holding company affiliate would reduce the amount and quality of capital required to be held against this activity. It would also be beyond the scrutiny of the FDIC because we do not have the same comprehensive backup authority over the affiliates of banks as we do with the banks themselves. Such affiliates would have to rely on less stable sources of liquidity, which—as we saw during the past crisis—would be destabilizing to the banking organization in times of financial distress, which in turn would put additional pressure on the insured bank to provide stability. By concentrating the activity in an affiliate of the insured bank, we could end up with less and lower quality capital, less information and oversight for the FDIC, and potentially less support for the insured bank in a time of crisis. Thus, one unintended outcome of this provision would be weakened, not strengthened, protection of the insured bank and the Deposit Insurance Fund, which I know is not the result any of us want.

A central lesson of this crisis is that it is difficult to insulate insured banks from risk taking conducted by their nonbanking affiliated entities. When the crisis hit, the shadow sector collapsed, leaving insured banks as the only source of stability. Far from serving as a source of strength, bank holding companies and their affiliates had to draw stability from their insured deposit franchises. We must be careful not to reduce even further the availability of support to insured banks from their holding companies. As a result, we believe policies going forward should recognize the damage regulatory arbitrage caused our economy and craft policies that focus on the quality and strength of regulation as opposed to the business model used to support it.

The FDIC is pleased to continue working with you on this important issue to assure that the final outcome serves all of our goals for a safer and more stable financial sector. We hope that a compromise can be achieved by perhaps moving some derivatives activity into affiliates, so long as capital standards remain as strict as they are for insured depositories and banks continue to be able to fully utilize derivatives for appropriate hedging activities.

Please do not hesitate to contact me or have your staff contact Paul Nash, Deputy Director for External Affairs.

Sincerely,

SHEILA C. BAIR.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 3749

Mr. TESTER. Mr. President, I rise today to talk about amendment No. 3749, the Tester-Hutchison amendment.

Before I talk about this amendment, I want to thank Chairman DODD for his work on a very strong Wall Street reform bill. I think his work has been very much appreciated by me and other members of the Banking Committee. I look forward to getting to this bill and making it even stronger and passing it out of this body to the President and into law.

This amendment would lift a burden inappropriately placed on our community banks in this country.

These are the banks that make rural America run. They do not deserve to be left holding the bag for the risky behavior of big banks.

What the Tester-Hutchison amendment does is hold big banks accountable for their actions by basing FDIC deposit insurance premiums on risk.

Our amendment would force big banks to pay their fair share of insurance. And it would fix the lopsided assessment system that we currently have—which unfairly burdens community banks.

The recent turmoil in the financial sector has placed significant strains on the FDIC's Deposit Insurance Fund—the first line of defense and resource tapped to provide assistance to troubled federally insured banks.

Since the beginning of 2008, the FDIC has closed 229 banks, including 7 banks last week. That has left a wake of devastation that has impacted the entire banking system.

Some of the larger failures—including those of IndyMac and Bank United—caused significant destruction. They have left the FDIC's Deposit Insurance Fund depleted and destabilized. In fact, the fund began the year with a negative balance of over $20 billion.

Why is that? We now know that some of these institutions were engaged in risky activities—some far beyond the traditional depository functions.

But, because the FDIC's Deposit Insurance Fund was still based solely on the institution's deposits—rather than assets, the fund wasn't able to take into account the impact that this risky behavior would have on the fund.

In fact, under the current system, community banks pay 30 percent of total FDIC premiums while only holding 20 percent of the Nation's banking assets.

Let me repeat that Mr. President. Under the current system, community banks pay 30 percent of total FDIC premiums while only holding 20 percent of the Nation's banking assets.

Our bipartisan amendment brings some common sense back into the equation.

The FDIC—and the fund—have never faced such troubling times. In light of these failures, the FDIC was forced to make emergency, upfront assessments on all banks to protect the integrity of the Fund.

Montana banks didn't get involved in this risky behavior—they didn't offer subprime mortgages or sell sophisticated financial instruments meant to manipulate markets.

But Montana banks, like community banks around the country, have had to pay the price for the risky behavior of the larger banks that destabilized the fund.

Mike Richter, President and CEO of the State Bank of Townsend in Townsend, MT, tells me that because of the emergency assessments in December, his bank had to prepay 3 year's worth of premiums—3 years.

For the Bank of Townsend, that was a bill of $190,000 on top of the $70,000 that he already paid in 2009 assessments. I am no banker, but I know that is no way to run a business.

When I think about the impact that the community banks have in my State and the role that they play—originating mortgages and providing small businesses and farms with credit—it pains me to see them suffer as a result of the risky activities of larger banks.

That is why I have teamed up with my friend from Texas, Senator HUTCHISON, as well as Senators CONRAD, MURRAY, BURRIS, BROWN of Massachusetts, HARKIN and SHAHEEN in offering this important, bipartisan amendment.

We want to ensure that the FDIC implements a genuine risk-based assessment system to protect the health of the Deposit Insurance Fund and to ensure equity among FDIC-insured institutions.

This amendment builds on the underlying language included in the bill, directing the FDIC to base assessments on assets rather than deposits.

Specifically, the amendment would require the FDIC to implement this change, rather than permitting them to make the change as in the current language.

It also further shifts the assessment base formula to benefit community banks by eliminating ''long term unsecured debt'' as a factor in calculating assessments. And it includes language directing the FDIC to implement risk based assessments for banker's banks and custodial banks which have different structures than traditional banks.

The FDIC has already taken a step forward in recognizing the risks that larger banks pose to the Deposit Insurance Fund, voting to base their emergency assessments on a bank's assets rather than deposits.

The Independent Community Bankers of America also support this amendment. They believe that it will codify these important changes and bring greater equity to the assessment base.

In closing, let me say how much I appreciate all of the work of my colleague from Texas, Senator HUTCHISON, and how much I appreciate the committee's willingness to work with us on this important amendment.

I yield the floor.

Mr. DODD. Will my colleague yield before yielding the floor?

Mr. TESTER. I will.

Mr. DODD. Mr. President, I commend my colleague and friend and our colleague from Texas, Senator HUTCHISON. This is exactly the kind of effort we are trying to achieve in this bill. It is a complicated area of law. I appreciate the work of Senator TESTER and others. I didn't hear all. I gather it is Senator TESTER, Senator HUTCHISON, Senator SCOTT BROWN, Senator HARKIN—you have a list of Democrats and Republicans here who have worked on this amendment to bring it to this point. I support the amendment. I think this is a strong amendment that will require the FDIC, as I understand it—my colleague will correct me—to change how it charges for deposit insurance, which I think makes a lot of sense—from charging each bank's domestic deposits as it does now, to charging its total liabilities, which makes far more sense. This is a great help to community banks across the country, of which Senator TESTER has been a champion since his arrival in the Senate and as a member of our Banking Committee. The change will help ease the burden of FDIC assessments on our community banks by requiring the largest banks in the country to shoulder a little more of the responsibility to rebuild and maintain a sound deposit insurance fund.

The amendment is fundamentally about fairness, which I think is one of its most important features. Community banks, as we all know, have been victims of a severe economic recession brought on by the behavior of major Wall Street firms. This has led to a high rate of community bank failures and a sharp increase in premiums necessary to rebuild the FDIC's insurance fund. Meanwhile, the largest banks have been saved by TARP moneys and other government programs that were necessary, obviously, as we all know, to avoid the economic meltdown and catastrophe we were facing in the fall of 2008.

The change required by this amendment will lead to a far more equitable distribution of the responsibility to maintain a strong deposit insurance fund. It also will free up new resources for smaller banks to lend to households.

So on every front, this amendment is a very positive contribution to this overall bill and one of the real features Members ought to keep in mind as we try to get this bill done. Without this amendment, which I support and want to see included, this will make even additional pressures on our community banks.

I thank both our colleagues, from Montana and Texas, as well as our new Senate colleague from Massachusetts, and Senator HARKIN as well, for their contribution. As soon as we find a window here to bring this up, we wish to see this amendment get adopted and be part of the bill.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. I very much thank Senator DODD. I think he is right. It is about equity. It is about assessing the premiums for the FDIC insurance fund to the banks that pose the most risk. Community banks are not among them. They played by the rules, they have done things right, and they have not tried to manipulate the market. I very much appreciate my colleague's comments and appreciate his support.

Mr. DODD. Mr. President, we have some potential action here. I hope in a few minutes to move along. The amendment of Senator TESTER and Senator HUTCHISON is an amendment I hope we can deal with at some point fairly quickly. Again, it is one of those amendments where we have reached an agreement on both sides. My experience is when you have an agreement such as that, you better move on it.

I know there are others as well. The Boxer amendment I hope we can get up. Senator SHELBY and I have worked on a larger amendment to deal with the too-big-to-fail provisions. Again, all of us want to see language, but let me say in the absence of language, we have reached agreement. Obviously we both need to look at the language of it before we can say that categorically. But I am satisfied, as is, I believe, my colleague from Alabama, that we have reached that agreement on the too-big-to-fail provisions which, with the Boxer amendment, takes that issue completely off the table as far as any further debate goes about title I and title II of the bill.

We have other issues. Senator GREGG mentioned a couple that obviously are going to need some work and some amendments are going to be offered on those. But in my view the sooner we move along on the ones where we have agreement, such as the Tester-Hutchison amendment, and some ideas I believe our colleague from Maine, Senator SNOWE, wants to offer, we will demonstrate, I think once again, that we have the capacity to work with each other to actually advance what we are all trying to achieve, and that is reform of the financial system. My hope is rather shortly we will get to some agreements on time and bring up these efforts and not have another day go by when we are not actually dealing with specific amendments in this bill.

With that, I don't see another Member seeking recognition, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DODD. I ask unanimous consent that the pending Boxer amendment No. 3737 be temporarily set aside and that Senator SNOWE of Maine be recognized to call up two amendments, Nos. 3755 and 3757; that no amendments be in order to either amendment; that upon the conclusion of debate with respect to the Snowe amendments, they be set aside and the Boxer amendment reoccur.

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

The Senator from Maine is recognized.

AMENDMENT NO. 3755 TO AMENDMENT NO. 3739

Ms. SNOWE. Madam President, the pending amendment was set aside. I call up the Snowe amendment No. 3755.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE] proposes an amendment numbered 3755 to amendment No. 3739.

Ms. SNOWE. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To strike section 1071)

Strike section 1071.

Ms. SNOWE. Madam President, I ask unanimous consent that Senator SHAHEEN be added as a cosponsor.

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

Ms. SNOWE. I would like to thank the distinguished chairman of the Banking Committee, Senator DODD, for working with me so constructively, as well as his staff, on these two amendments I am calling up this afternoon. And I thank Senator SHELBY, as well, for agreeing to the substance of these amendments.

I think it is important to address these issues that are so fundamental to so many small businesses across the country. The first amendment I have made pending would reduce cumbersome and unnecessary restrictions on the banking industry that may potentially infringe on Americans' privacy rights and curtail the ability of financial institutions to serve their customers.

Specifically, the underlying legislation contains language that would compel banks to make the following disclosures to the Consumer Financial Protection Bureau: Banks would have to report from each deposit-taking facility, including each individual automated teller machine, a record of the number and dollar amount of the deposit accounts of customers; a geo-coding, by census tract, of the residence or business location of each customer; and a record of whether each customer is transacting commercial or residential business.

This type of detailed reporting imposes a regulatory cost on banks and provides an extraordinarily large amount of data to the Federal Government.

While many have advanced the image of banks as monolithically large entities with tens of thousands of employees spread across the globe, the vast majority of banks are small community-centered institutions. For small community banks, every dollar spent on complying with government regulations is another dollar that cannot be used for customer service or extending credit. While these existing processes may be in place at large banks—and even if not, their procurement would be relatively inexpensive—for a small bank this could have a sizeable impact on their bottom line and prove to be an extremely large regulatory burden.

In addition, the Federal Government's track record when it comes to securing its citizens' privacy data is less than stellar. As we all recall, in May of 2006 the Department of Veterans Affairs lost Social Security numbers and dates of birth of more than 26 million veterans. I cannot imagine what would occur if the sensitive deposit data that banks are required to track under this legislation was inadvertently lost.

The legislation does contain a provision requiring that the personal identities of all customers be removed, but one slip could result in the intimate financial details of bank customers being revealed to unscrupulous computer hackers.

I would note both the Independent Community Bankers Association and the Credit Union National Association are supporting this amendment due to its regulatory burden. I am pleased that we have reached agreement to have it accepted in this legislation.

AMENDMENT NO. 3757 TO AMENDMENT NO. 3739

I ask unanimous consent the pending amendment be set aside, and I call up Snowe amendment No. 3757.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE] proposes amendment No. 3755 to amendment No. 3739.

Ms. SNOWE. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for consideration of seasonal income in mortgage loans)

At the end of section 1031, add the following:

(f) CONSIDERATION OF SEASONAL INCOME.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

Ms. SNOWE. This second amendment would fix an unintended consequence of the Consumer Financial Protection Bureau in the underlying legislation, which would have the effect of choking off access to credit by small business.

According to the February 2010 survey of the National Federation of Independent Business on the state of credit:

. . . 16 percent of all small employers have a mortgage on their residence that helps to finance the(ir) business. . . .

The Small Business Administration's Office of Advocacy has calculated that there are nearly 30 million small businesses in America. Taken together, this means approximately 4.8 million small firms, hardly an unsubstantial number, rely on a home mortgage for their financing.

Many of those small business owners also make loan payments intended to reflect the cashflow of their business models. For example, innkeepers often make larger loan payments during their busier seasons, and farmers and fishermen borrow funds based on their crop or catch cycles.

As brought before the Senate, the underlying bill would prohibit lending products if the Consumer Financial Protection Bureau has a ''reasonable basis to conclude that . . . substantial injury is not outweighed by countervailing benefits to consumers.''

This means if the Consumer Financial Protection Bureau finds that the injury of a loan product is outweighed by the benefit it might create, the Bureau can prevent a financial institution from offering it.

The problem with the manner in which the bill is drafted is that it does not take into account that many entrepreneurs use home mortgage loans with customized repayment terms for business purposes. Accordingly, overzealous regulators could determine that such loans, which are consumer products, are abusive and thereby either prevent or make it extremely difficult for financial institutions to continue offering these types of critical products.

For example, a loan to a borrower with balloon payments in June, July and August and interest-only payments for the rest of the year might look suspicious to the Bureau and be declared abusive. Yet this is exactly how many seasonal firms in Maine and throughout the Nation finance their businesses.

My amendment simply preserves the ability of small business owners to use their homes as collateral and to make payments based on an alternate lending cycle by clarifying that the CFPB must allow banks to offer home loan products with customized payment terms for small businesses.

I originally raised my concern that the underlying bill could inadvertently harm small business lending during meetings with Treasury Secretary Tim Geithner and National Economic Council Chairman Larry Summers. They were both immediately receptive and agreed that the bill, if not altered, could have unintended consequences that would restrain access to capital for small businesses.

The necessity of this amendment is especially critical given the small business credit crisis that continues to plague the Nation. This fact has been underscored by numerous studies including the Federal Deposit Insurance Corporation's survey that found outstanding loan balances have dropped by the largest margin since 1942. Furthermore, the Federal Reserve's April 2010 Senior Loan Officer Opinion Survey shows that only 1.9 percent of banks surveyed had loosened credit terms for small businesses in the past quarter.

While harming small businesses, lack of access to affordable capital also has a ripple effect across the greater economy. In his April 14 testimony before the Finance Committee, Dr. Mark Zandi, the chief economist for Moody's Analytics, stated that ''small business credit (is) key to job creation.''

By preserving financing flexibility for small business owners, this amendment ensures that home equity will remain as a possible means for entrepreneurs to secure funds to start or grow their businesses. With small businesses adding two-thirds of all net new jobs, this provision will help small business owners create jobs, finance their businesses, and help us reduce our current 9.7 percent unemployment rate.

We understand how instrumental small businesses are to job creation. We have to remain deeply concerned that in the last 3 months, we have had static employment growth with a 9.7-percent unemployment rate. Small businesses are the engine that will drive this recovery and will lead us out of a jobless recovery. A jobless recovery is not a true recovery. Anything we do here, particularly on this legislation, that could affect small business's access to capital will certainly infringe upon our ability to promote job creation. I reiterated that this morning in the Finance Committee hearing, where Treasury Secretary Geithner indicated he shared my deep concerns about stagnation when it comes to lending. It is important to improve upon these regulations that are vetted in the underlying legislation.

I appreciate the chairman's effort to be flexible and to address and modify some of these issues and these constraints, and for allowing me to offer these amendments and agreeing to them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my fellow New Englander and colleague for her two amendments. They are very strong and positive contributions to the bill. She raises very worthwhile points. We have a tendency to think of small businesses all operating the same way, and they obviously don't. Particularly, the seasonal businesses have moments of peak activity and then periods when not much happens, whether we are talking about farming or fishing or tourism, other such industries. It was never our intent that they be adversely affected, but the amendment she has offered makes a huge difference in that regard. I thank her. The Consumer Financial Protection Agency to allow mortgages to be made on the basis of seasonal income is of great value.

The second amendment, 3755, on the collection of deposit account data, is a very good suggestion. The last thing we want to do is overburden the regulatory environment. The intentions were sound enough. We have an awful lot of people who go into the sort of nonbank, nontraditional sources of support financially. That was sort of the motivation behind it. Her concern, that this could be burdensome—and the last thing we need is more burdens—is worthwhile. I thank her for her contributions. I support these efforts.

I believe, at the appropriate moment, we can adopt these amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

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

Mr. LEVIN. I ask unanimous consent to speak as in morning business for 3 minutes.

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

CONGRATULATING KALAMAZOO CENTRAL HIGH SCHOOL

Mr. LEVIN. Madam President, I come to the floor to congratulate the students, faculty, staff, and parents at Kalamazoo Central High School in Kalamazoo, MI, who learned today that President Obama will deliver the commencement address for their high school next month. It is a tremendous honor to host a President, particularly this President. I am proud not only that Kalamazoo Central High has been accorded this honor but how the school earned it. More than 1,000 schools submitted applications for a competition called Race to the Top Commencement Challenge. This competition encouraged academic excellence and innovation. Evaluators narrowed the contestants down to six who were finalists. Public voting selected the final three, and the White House then announced today that the President had chosen Kalamazoo Central from those three finalists.

I am not going to make any claim that I am unbiased here, but I believe it is meaningful that this Michigan school represents what is possible for a large, urban public school, open to all students. Kalamazoo, similar to many communities in my State, is not without its challenges. The tough economic times have given public educators an extremely difficult task. Kalamazoo has had to cope with the effects of plant closings, corporate mergers, and downsizings that meant administrators have had to do more with less.

But the people of Kalamazoo have not allowed those challenges to stand in the way of excellence. Kalamazoo is the home of the Kalamazoo Promise. Every graduate of the Kalamazoo public schools is entitled to a scholarship covering a portion of their higher education costs at a Michigan public university, up to 100 percent for those who attended Kalamazoo schools from kindergarten through 12th grade. Since the Promise was established, thanks to the generosity of a small group of anonymous donors, more than 90 percent of Kalamazoo High graduates have gone on to college.

This commitment to quality education for all is nothing new to Kalamazoo. In 1873, a small group of property owners, convinced that they did not need to pay taxes to support a public high school, sued the Kalamazoo School Board. In the ''Kalamazoo Case,'' as it became known, the Michigan Supreme Court upheld the establishment of a public high school supported by tax dollars and open to all. The case settled, once and for all, the status of public education in Michigan and has been cited by courts throughout the country where public education has come under attack.

Today's announcement adds to the rich history of public education in Kalamazoo. It is a fitting honor for the students, educators, parents, and citizens of a community that has once again demonstrated its commitment to academic excellence.

I spoke after today's announcement with the principal of Kalamazoo Central High, Von Washington, and offered my congratulations. He told me the news brought cheers and excitement to the high school students and even a few tears as the word spread quickly throughout the entire Kalamazoo community—the justifiably proud community.

So we all look forward to President Obama's visit to Kalamazoo, and I know that a proud city and a proud school will offer both the best in hospitality and an example for other schools to follow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I rise to speak on my amendment with Senator TESTER because we are trying to ensure that safe community banks and large financial institutions are treated equally. I heard Senator TESTER's speech on the floor just a little while ago on our amendment, and I am very pleased we are able to put this amendment forward. I am also pleased the chairman has said he supports my amendment. I think that is a great first step for us, for the chairman to support an amendment, because we all know this bill came to the floor on good faith, the good faith that we would have amendments and we would try to address the legitimate concerns of many in our country, from small businesspeople such as dentists to food manufacturers, as well as community bankers. We don't want—and I know the chairman doesn't want and no one wants—to hurt our economy with financial reform.

I also think I can say we all have a goal of good reform that eliminates some of the things that happened a couple years ago that American taxpayers are paying dearly for right now. We don't want bailouts. We don't want taxpayer-funded bailouts of financial institutions that have taken great risk, and we certainly don't want to hurt our economy, which is not all that great right now, we all must admit. I think that going forward we must address the issues that caused the financial meltdown and stop the misuse of derivatives and get our financial house in order while also protecting our financial house.

So that is what the Hutchison-Tester amendment tries to do. We want to ensure that large banks pay their fair share in deposit insurance premiums and community banks are not over-assessed and, therefore, can continue to provide lending and depository services to creditworthy American families and small businesses. I am very pleased we have a group of cosponsors. Senator TESTER and I are joined by Senator BURRIS, Senator CONRAD, and Senator HARKIN in this amendment.

While much debate has centered on systemic risk and the $50 billion fund to unwind large financial firms, the Hutchison-Tester amendment focuses on bringing parity to the existing FDIC deposit insurance fund. Our amendment will reform the FDIC's assessment base to ensure that banks pay assessments into the deposit insurance fund based on the risk they pose to the banking system.

Currently, the FDIC levies deposit insurance premiums on a bank's total domestic deposits. Unfortunately, domestic deposits are not the best measure to analyze the safety of banks. Financial assets, other than deposits, also create risk in the system but are not considered in determining FDIC assessments. Yet because the system does not charge assessments based on assets, it doesn't fairly assess all the risks in the system.

Community banks with less than $10 billion in assets rely heavily on customer deposits for funding, which penalizes these safe institutions by forcing them to pay deposit insurance premiums above and beyond the risk they pose to the banking system. How? Despite making up just 20 percent of the Nation's assets, these community banks contribute 30 percent of the premiums to the deposit insurance fund. At the same time, large banks hold 80 percent of the banking industry's assets but pay 70 percent of the premiums.

We must fix this inequity. This is a clear imbalance. We must ensure that banks of all sizes pay deposit insurance premiums based on the risk they pose to the system. The Hutchison-Tester amendment will do this by requiring the FDIC to change the assessment base to one which is a more accurate measure—a bank's total assets less tangible capital. This change will broaden the assessment base from $8.5 trillion to $11.5 trillion, and it will better measure the risk a bank poses.

Throughout Senator DODD's legislation, a bright line asset test is used to measure risk to the system. A bank's assets include its loans outstanding and securities held. One need only look back over the last 2 years to realize that assets show a bank's exposure to risk. It wasn't a bank's deposits that contributed to the financial meltdown. Instead, the meltdown was caused by bad mortgages that were packaged up into risky mortgage-backed securities and used to create derivatives. These risky financial instruments, and the large banks which created and held them, were what led to the financial crisis.

Our amendment is especially timely because of the great strains placed on the deposit insurance fund because of the crisis. Numerous banks have failed over the past 2 years, forcing the FDIC to dip more and more into the fund to cover insured deposits of customers.

In February 2009, with the fund already in a precarious state and more failures expected, the FDIC made an unprecedented move and levied a $5 billion special assessment on all insured institutions. Originally, the FDIC intended this assessment to be eight basis points of an institution's domestic deposits.

This assessment stood to penalize community banks by forcing them to pay for the faults of others, despite having nothing to do with the risky practices that caused the crisis and ensuing bank failures. To add insult to injury, community banks would have paid a disproportionate amount based on domestic deposits in the assessment base.

The FDIC had the regulatory authority to broaden its base to total assets. I raised this point with the FDIC following the announcement of their assessment. I was pleased the FDIC listened. They altered their special assessment to a base of total assets less tangible capital.

As a result, the assessment was lowered to 5 percent of assets—a move which ensured that large banks with heavy assets paid an assessment which fairly accounted for the added risk they posed to the banking system. So I applaud Chairman Sheila Bair for making that decision.

However, the broader base was only used one time and the FDIC has now reverted to the traditional annual premium based on domestic deposits assessments. The Dodd bill continues to give the FDIC the authority to continue using this narrow base of domestic deposits.

The Hutchison-Tester amendment will put in place a statute which ensures that we will have the fair assessment. That will be the mandate. There will not be options to create this unlevel playing field between the big banks and the community banks. It just makes sure the community banks will never have to pay a higher portion of the deposit insurance when they have a lower amount of the assets. Our amendment levels the playing field.

Since the beginning of 2008, 229 banks from across the United States have failed, and because of these failures, it has left the deposit insurance fund below the statutory minimum requirement, despite last spring's special assessment. The discouraging state of the fund has led the FDIC to make yet another unprecedented move. The FDIC is requiring its banks to prepay deposit insurance premiums, all due over the next 3 years, by the end of this fiscal year. We must act now to ensure that these prepaid deposit premiums and all premiums in the future are assessed proportionately so banks pay premiums based on the risk they pose.

I ask my colleagues to support the Hutchison-Tester amendment, to bring additional parity between banks on Wall Street and those on Main Street.

I thank my colleagues who have cosponsored the amendment. I thank the chairman for supporting the amendment. This is one step we can take. I would love for the first amendment taken up to be one that would have bipartisan support, and I hope it is overwhelming support, because our community banks did not participate in the financial meltdown and are not at fault. Yet they are paying a much heavier price. But if we ask the small businesspeople in Texas and probably in most parts of the country where are they getting the loans they need for their businesses to continue to operate, it is mostly from community banks. It is the community banks that have stepped forward in this crisis and have done the best they could to make sure that in every way possible we keep our economy growing with small businesses that are the economic engine of America. So I hope we can have a time agreement very shortly and be able to vote on the Hutchison-Tester amendment, and I look forward to working on this bill for the next few weeks.

There are many amendments that I think are quite legitimate that will help this bill to be one that will fix what was bad in our economic system that caused the financial meltdown but at the same time will protect the legitimate uses of the derivatives, the legitimate banking concerns of our community banks, our Main Street banks, our small businesses needs, and certainly not create another new level of government bureaucracy piled on top of banks that are already regulated. I just hope we don't do overkill, as I would say the Sarbanes-Oxley bill did, which was passed in the aftermath of the Enron scandal. Back then I think there was overkill that hopefully we will be able to go back and address so we keep the bad things from happening, while assuring that our economy can go forward and compete not only in the communities across our Nation but globally.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, very briefly, let me thank my colleague from Texas. I already commented when Senator TESTER of Montana spoke, but I will again thank her and the Senator from Montana and others cosponsoring this amendment. It is a very solid contribution to the bill.

Again, I think the idea of considering the total liabilities obviously makes a lot more sense. It alleviates the burden financially on smaller institutions. It adds that larger institutions have a greater capacity to share more equitably in these costs. Whether it is in our State or not, we read accounts of—as we have seen over the last year and a half—small banks having to close their doors. The pressures on the FDIC are mounting. Again, you don't want to keep adding assessments on institutions that are already trying to lend to businesses in their communities, to provide mortgages and the like.

This is a very constructive amendment and a very solid idea to add to the bill. I thank the Senator from Texas and the Senator from Montana and the others involved. As soon as we work out time agreements, hopefully we can conclude and give the Senator from Texas a couple of minutes before we vote. It is exactly the way I want to manage this bill, if I can. There is a lot of commonality and many common interests, and too often the public only sees the fights we have and they don't realize how many issues we agree on. We are making the effort to try to reach agreements with each other. Obviously, it is not as interesting a story when we agree. It is not as exciting as when there is a brawl on the floor over some issue. I appreciate the media's appreciation of the brawls, but my intention is to limit that and get us to the point where we have common interests in putting a good bill together. Senator HUTCHISON's contribution to this amendment does exactly that, just as our colleague from Maine, who talked about her amendment a moment ago. Senator WARNER has also been very helpful in this bill. I see Senator WHITEHOUSE here. He is also interested in the subject matter. I thank my colleague from Texas.

Mrs. HUTCHISON. Madam President, there is certainly one thing we can all agree on, and that is our assessment of the media and what they really like to write about. I hope we can make progress on this bill and do something good for our country and the economy. I think we have the same goals, and if we really work for the next 3 weeks or so trying to get amendments through, that would be great.

Mr. DODD. Madam President, one of the important things about this amendment is this: There will be amendments offered in which we will take things out of the bill or put things in, but this is an idea which has great value as a freestanding idea in many ways. That is why it has great value. This is something we clearly need to do. You can talk about other parts of the bill, but this is an idea that brings value to the bill—significant value, in my view, in light of the economic circumstances we are in. I appreciate this amendment more than kind of a strike something in the bill or modify something. This adds real value to the legislation. I am appreciative of that.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Madam President, I had planned to offer an amendment this afternoon. I have been informed by the managers that the amendment slots are full at the moment. I wish to speak about my amendment and then return to the floor at the earliest opportunity to offer it for a vote.

First, I say to the chairman of the Banking Committee that the bill we are currently debating would do great things to regulate an out-of-control Wall Street, to end the pernicious practice of too big to fail, and to provide for regular consumers an independent financial protection agency to look out for their interests against all the big sharks and lobbyists and lawyers who are ganged up against them on consumer debt. I appreciate the work Chairman DODD and Chairman LINCOLN have done, and I look forward to continuing to work with them on this important piece of legislation.

My amendment is cosponsored by Senators MERKLEY, DURBIN, SANDERS, LEVIN, BURRIS, FRANKEN, BROWN of Ohio, and MENENDEZ, and we are continuing to solicit cosponsorships. We are also receiving endorsements from outside of this body.

The amendment would address an area that is not yet covered by the Wall Street reform bill; that is, runaway credit card interest rates. It would do so not by imposing new restrictions on lending but, rather, by restoring historic State powers—powers that were eliminated in the relatively recent past.

Madam President, when you and I were growing up, a credit card offer with a 20-percent or 30-percent interest rate might have been a matter to bring to the attention of the authorities. Such interest rates were illegal under the laws of most, if not all, of the 50 States. Laws against charging excessive interest rates go much further back than our youth, however. The Code of Hammurabi in the third millennium B.C. limited interest rates. Hindu laws of the second century B.C. limited interest rates. Roman law limited interest rates. So when America was established, there was already a long tradition of protecting citizens against excessive interest rates, and that tradition carried to the founding of the United States of America.

For the first 202 years of our Republic, each State had the sovereign power to enforce usury laws against any lender doing business with its citizens. During those two centuries, our economy grew and flourished, and lenders profited while complying with those laws.

Then, in 1978 came an apparently uneventful Supreme Court case. It was little noticed at the time it was decided. The case was called Marquette National Bank of Minneapolis v. First of Omaha Service Corporation. The Supreme Court there had to determine what the word ''located'' meant in an old statute, the National Bank Act of 1863—whether it meant that the transaction between a bank in one State and a consumer in another State was governed by the law of the bank State or of the consumer State. The resolution was that the term ''located'' referred to the location of the bank and not the location of the consumer. This meant that in a transaction between a bank in one State and a consumer in another, the transaction would be governed by the State in which the bank was domiciled.

Well, it did not take long for the big banks to see the loophole this very narrow decision created. This loophole was never sanctioned by Congress, apparently never intended by the Supreme Court, but it was a significant loophole. It allowed banks to, for the first time in the Nation's history, avoid interest rate restrictions by the States of their consumers. It allowed them to get through that loophole by reorganizing as national banks and moving to States with comparatively weak consumer protection.

Once the banks figured out that loophole, what is called ''a race to the bottom'' ensued. Bank credit card centers moved to States with the worst consumer protections, and in some cases States made their consumer protections even worse in order to attract that business to their State. The result of that is that today the credit card divisions of major banks are based in just a few States. That deal with the bank State causes consumers in all other States to be denied their traditional, historic, lawful protection against outrageous interest rates and fees.

With millennia of interest rate protections behind us and hundreds of years of protection by the sovereign States of our Nation, the current system that has developed since that 1978 decision is the oddity in our history.

My amendment would do nothing more than reinstate the historic, longstanding powers of our sovereign States to protect their citizens against excessive usurious interest rates. Let me be clear about what this amendment would not do. It would not mandate anything. It would not even recommend interest rate caps. It would not impose any other lending limitations. It would just restore to our sovereign States the power they enjoyed for over 200 years from the founding of the Republic—the power to say: Enough. Thirty percent or 50 percent or 100 percent is too much interest to be charged to its citizens.

The current system is unfair to consumers, but it is also unfair to local banks—banks that continue to be bound by the laws of the State in which they are located. A small local bank has to play by the rules of fair interest rates. The gigantic national credit card companies can avoid having any rules at all. That is not fair. We need to level the playing field to eliminate this unfair and lucrative advantage for Wall Street banks against our local Main Street community banks.

To make sure lenders cannot find another statute to use to once again avoid State law, my amendment would apply to all types of consumer lending institutions and not just national banks. So no more changing your charter or your means of business to avoid limitations on gouging your customers.

My amendment gives State legislatures ample time to revise their usury statutes if they wish and gives lenders ample time to adjust. The amendment would not go into effect until 1 year after the President signs the bill into law.

In the meantime, it is worth noting that most States' usury laws are around or above 18 percent. Presently, federally regulated credit unions do quite well under a Federal 18 percent interest rate cap. So there should not be a large shock when this amendment goes into effect as law. It is the 30-percent-and-over interest rates that are the recent anomaly, the historic peculiarity, the oddity, and cruelty to consumers that States have traditionally been able to defend against.

We should go back to the historic norm, the way the Founding Fathers saw things under the doctrine of federalism, and close this modern bureaucratic loophole that allows big Wall Street banks to gouge local citizens and compete unfairly with local banks.

I ask my colleagues for their consideration of this amendment and urge them to support it. I think it is a good amendment.

I see the distinguished majority whip on the floor. I yield back my time so that he may speak.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I thank the Senator. I hope to join him as a cosponsor. It wasn't that long ago—the Senator will remember—when we had a debate on the floor about credit card reform. People across America said: There are some things going on with credit cards that aren't fair and right, and we need you to police these credit cards and make sure they don't do outrageous things and charge people unreasonably.

I think we made some progress in the law we passed, but we made one critical error: we gave the credit card companies a long grace period to adjust to the changes. If you will notice, over the last year or so you received notices—I got them at my home in Springfield, IL—from credit card companies saying they were going to raise interest rates on the credit cards before the new law went into effect. My wife saved them and said: Mr. Smart Senator, how did you let this happen? It turned out that we had no control on those interest rates during that period of time and very little after the reform bill.

What the Senator from Rhode Island is challenging us to look at is this: What is a reasonable amount to charge for an interest rate? His decision—and I concur with it—is, let's let each State make that decision.

Thirty-two years ago, the Supreme Court incorrectly removed the authority of States to make that decision. They said: If your credit card company is located in State X, you are bound by the laws of State X when it comes to interest rates for all of your customers across the United States. You don't have to change for a customer living in Arkansas, which has a cap on interest rates, or for a customer living in Illinois. You just take the law of State X and that is the law you apply to your customers.

The Senator from Rhode Island says: Why would we allow that? Why don't we let standards be established by each State? He doesn't dictate the standard—whether it is 5, 10, or 100 percent. That will still be up to the State. He doesn't say it will happen overnight. He gives a year for them to phase it in.

It will also level the playing field for a lot of community banks and local financial institutions in each State bound by State law.

When the community banks in Illinois are doing business with me as a resident of Illinois, there are laws that can apply, and in other States as well. But when it comes to credit cards, they can charge me whatever they want because the States they say they do business in have no rules whatsoever.

The net result of this most people understand. If the interest rates are not regulated, if they literally go to the high heavens, people end up paying enormous sums of money. The penalties involved go through the roof as well.

This is a legitimate issue and a legitimate subject for us to raise. I believe, as the Senator from Rhode Island does, that there is a reasonable level of interest rates where a reputable institution can make a good profit. Beyond that, it turns out to be a trap that a lot of people fall into because they do not realize there is no ceiling whatsoever on the interest rates they are being charged.

There will be other amendments on this financial stability bill. This is one that I think most people will understand completely. The law of your State will determine the interest rate you are going to pay on your credit card, not the law of some other State. I do not think it is an unreasonable amendment. It is a very reasonable one. It reduces the cost for families and businesses and the life they lead, and it gives to each State the authority to decide what that limit will be within each State. For those who argue against Federal control, the Senator from Rhode Island is taking this right back to the local level where the decisions will be made.

I am happy to support his amendment, and I encourage my colleagues to join us in cosponsoring it.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I thank the Senate majority whip for cosponsoring our legislation. I appreciate his support immensely. He has a wonderful way of making things clear and helping people understand how basic and simple and historic this amendment is. It takes us back to the way the country was through the vast majority of its history.

The ''greatest generation'' served in World War II, came home, and went to college and built the society we now live in under these rules. George Washington and his men at Valley Forge served under these rules. The Civil War took place and the Korean war took place under these rules. There are 202 years of solid history behind this issue.

I will close with an appeal to my colleagues to continue to show interest in this legislation, in particular my colleagues on the other side of the aisle. If you believe in States rights, this is a good piece of legislation.

If you believe in States as laboratories of democracy, as centers of innovation, as places where you multiply times 50 the chance of getting the right answer when you allow a little bit of innovation to take place, you should support this legislation.

If you take comfort in more than 200 years of solid American history proving that this is the right way to go, you should support this amendment.

If you want to protect consumers in your State from out-of-State banks that are out of control and have no restrictions on interest rates they can charge your consumers, you should support this amendment.

If you think the Federal Government has too much power and you want the States to have more say about what can take place with its own citizens, you should support this amendment.

I look forward to continuing to push for a vote on this amendment. I think it is an important one.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SCHUMER. Mr. President, more than 18 months after the collapse of Lehman Brothers put our financial system into a deep freeze, we are at a crossroads in history. We can continue to turn a blind eye to the very real threat that excessive risk taking and reckless deregulation pose to our economy or we can choose to learn from the financial disaster that nearly brought our economy to a screeching halt. I urge my colleagues to choose reform.

We can't wait any longer to take on the challenge of overhauling the rules of the road for our financial system. We have a regulatory system based on the 1930s and 1970s and a financial world in the year 2010. We have an economic imperative to pass a strong set of financial reforms. The shock waves in the real economy that resulted from the financial crisis are still being felt today by the millions of Americans who can't find a job or are facing foreclosure, who can't pay their children's college tuition or have to put off retirement because their savings have been decimated.

We have 9.7 percent unemployment in this country, not because of any reform proposal that has yet to become law but because of an irresponsibility in the financial system and a broken-down financial regulatory system that was last updated in the 1930s and allowed too many firms, and even whole markets, to slip through the cracks. If we do nothing, we will surely find ourselves facing a similar crisis in the not too distant future.

Senator DODD and my colleagues on the Banking Committee have put together a bill with strong forward-looking reforms that make our financial system stronger and more stable so it can return to its fundamental role—helping our economy grow and innovate and create jobs. The bill lays out new rules of the road, fills gaps in our regulations, and protects consumers and investors. Most importantly, by creating a new resolution authority—which I know my colleague from Virginia, who is sitting on the floor here now, has worked very hard on—this bill ensures that taxpayers will never again have to bail out large financial institutions. Firms that fail, will fail, period. There will be no rescue or bailout, only an orderly unwinding that forces stockholders and bondholders to suffer, not taxpayers.

As a New Yorker, I see the connection between Wall Street and Main Street every day. The financial industry is responsible for 500,000 jobs in New York City, and most of them are not the kind of fancy, high-paying jobs you read about or see in the movies. The average salary for these jobs is about $70,000. But I realize the financial system plays a special role far beyond Manhattan. There are many analogies. It is the heart of the economy, the lifeblood, the circulatory system, the engine of the economy or the oil that greases the gears. Whatever image you choose, it is absolutely critical to helping businesses grow and innovate and create new jobs. So our reform must be forward thinking and strong but not punitive or vindictive or vengeful, because that will hurt the whole economy.

With the special status of the financial system come special responsibilities. The industry has reacted to many of the new proposals by arguing that they will kill innovation. But because we can make cars that go 200 miles per hour doesn't mean we shouldn't have speed limits. In general, I think this bill strikes the necessary balance between maintaining an innovative and competitive financial system while ensuring that the recklessness that occurred by some on Wall Street will never again threaten the financial health of Americans on Main Street. Make no mistake about it, these reforms will be good for both Wall Street and Main Street.

The bill will create a financial system where consumers and investors on Main Street can have confidence in the products and services they receive and where they put their money; a financial system focused on getting capital into the real economy, so people can start new businesses and grow their existing ones. At the same time, the certainty and stability that reform will provide will make our financial system even more attractive to investors around the world and will help keep America at the forefront of the world's economy.

I believe this bill will strengthen jobs and income creation in my State of New York, not leak it, because it will make the system stronger. It will make people have more confidence in that system, and money from around the world will flow into New York, which is the capital of the financial system for our Nation and our world.

The bill Senator DODD put together is stronger in many ways than most people expected it to be a couple of months ago. It contains several core reforms that will go a long way toward fixing the problems that crept up in our financial system over decades. The bill would make sure taxpayers never again have to foot the bill when large institutions fail; make sure every large financial institution has a regulator looking over its shoulder to prevent excesses, and a council of regulators looking at risks across the whole system; make sure derivatives—which, when abused, can put the whole system at risk—are traded transparently, at the very least, and on an exchange whenever possible.

I should note this is a huge change from the way the derivatives market works now. We would go from a totally unregulated market to one that is regulated, where regulators know every trade that happens and risks can't build up in the system without anyone knowing better.

The bill will also make sure there are stronger consumer protections to ensure institutions can't take advantage of average Americans in their mortgages, credit cards, or other financial instruments. It would give investors additional power to hold their boards accountable so they are not asleep at the wheel the next time their management is loading up the company with risk.

Like many of my colleagues, however, I believe there are areas of the bill I wish to see improved, and I will continue to work with my colleagues on the floor to do that. First, I wish to see even stronger consumer protection in the financial services area, and I am working with Senators REID and DURBIN and others to strengthen this part of the bill. This is an area where I have worked hard for decades now in Congress, both in the House and Senate. It is clear to me we can't force Congress to pass a new law every time a credit card company figures out a way to skirt the old laws. We need an independent agency whose only mission is to protect consumers, and that agency needs to write and enforce rulings across the board for all financial institutions.

I am sponsoring an amendment to expand the enforcement authority of the Consumer Protection Bureau over all nonbanks, such as payday lenders and rent-to-own companies, to make sure consumers are protected no matter who they rely on for financial services.

In the area of consumers, small companies can rip off consumers just the way large companies can. And while large companies can pose a greater risk to the system as a whole, small companies can pose every bit as great a risk to the individual consumer, and the distinction between the two is faceted and unfair.

I also think the bill could go farther in dealing with credit rating agencies, and I am working with Senator FRANKEN on a proposal that would reduce the conflicts of interest inherent in their current business model. There are other changes I will proposal as well.

In conclusion, we have many tasks in front of us if we are to rebuild the American economy, but a stronger financial system focused on the needs of the real economy is crucial in that effort. There should be no doubt that part of putting us back on the path to prosperity requires instituting smart, thoughtful financial reforms.

Mr. President, I yield the floor.

ENEMY COMBATANTS

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I wish to share a few remarks about the recent arrest of the Faisal Shahzad, the individual who allegedly attempted to detonate a car bomb in Times Square in a plot to kill a lot of Americans.

I have been asked about that incident several times over the last several days, and I think I was incorrect in making comments to reporters and even to friends about the precise legal situation in which we are involved. Let me briefly summarize what I think the current state of the law is, and all of us will then be better able to respond to the questions we may be asked.

The Christmas Day bombing suspect, Umar Farouk Abdulmutallab, as was established pretty quickly, is an unprivileged enemy belligerent and is thus eligible to be tried for his offenses and detained as a person at war against the United States. Mr. Abdulmutallab is an individual who could be held as a prisoner of war, if the military so chooses, for so long as the hostilities continue, just as we did in World War II and every war the United States has been part of. Also, the military would be entitled to try Mr. Abdulmutallab, the Christmas Day bomber, by military commission. That is what we would normally do, and that is what was done in World War II when we caught Nazi saboteurs plotting to blow up targets in the U.S.

I believed the administration made a mistake when they treated Mr. Abdulmutallab as a civilian criminal and provided him Miranda rights and appointed him a lawyer, which we have to do if we are going to treat somebody as a criminal rather than an unprivileged enemy belligerent. I believe firmly that was an error, and the normal procedure should be for these types of individuals to be tried or detained by the military because they are not criminals, they are warriors.

Yesterday's arrest of the Times Square bombing suspect, Faisal Shahzad, raises similar questions. My initial thought was that the Supreme Court has clearly held that a U.S. citizen who has joined the enemy to fight against this country can be designated as an unlawful enemy belligerent and could be detained for the duration of hostilities. That is a fact Abraham Lincoln never had any doubt about when he took people prisoners. I guess George Washington, when there was the Whiskey Rebellion, he never had any doubt he had the ability to attack, destroy, or arrest people when they were at war with the United States. Fortunately, he did not have to go so far, but that is the kind of thing the Supreme Court reaffirmed in Hamdi v. Rumsfeld.

In the Hamdi case, Justice Sandra Day O'Connor, who wrote the opinion, made clear that a citizen who has taken up arms in hostilities against the United States can be designated as an unlawful enemy combatant—''unlawful enemy belligerent'' is the phrase she used—and she wrote the opinion which said:

> There is no bar to this Nation's holding one of its own citizens as an enemy combatant. . . . A citizen, no less than an alien, can be ''part of or supporting forces hostile to the United States or coalition partners'' and ''engaged in an armed conflict against the United States''; such a citizen, if released, would pose the same threat to returning to the front during the ongoing conflict.

That is perfectly sound and perfectly reasonable. She concluded that Mr. Hamdi, who was captured alongside the Taliban in Afghanistan but who was an American citizen, could be detained for the duration of the hostilities authorized by the Authorization for the Use of Military Force that Congress passed, authorizing military force against him in order to keep him from rejoining the enemy.

We have had quite a number of people who have been released from Guantanamo, who have been captured in the process, who have returned to the combat and attacked us. So it is clear that under Hamdi, the administration has the authority to detain the Times Square terror suspect as an unprivileged enemy combatant if he can be linked to our terrorist enemies within the definitions of the Military Commission's Act.

But I want to be clear. There is a distinction: this suspect, unlike the Christmas Day bomber and the 9/11 plotters, cannot be tried via military commission under current law. He can be detained by the military, but not tried by military commission. In previous conflicts, military commissions were used to try civilians who took up arms against the United States in ways that violated the rules of war. For example, Herbert Haupt was one of the Nazi saboteurs who was prosecuted via military commission after plotting to blow up targets within the United States in the early months of World War II. He was a naturalized U.S. citizen, and the U.S. Supreme Court, in the landmark case of ex parte Quirin, allowed the commission to go forward with his trial, and I think he was executed. A number of the people involved in that case—most of those who sneaked into the country by submarine, as I recall, off our coast, to blow up our cities and infrastructure and kill civilians—were tried for being in violation of the rules of law, very much unlike a German soldier who was captured on the battlefield during the Battle of the Bulge. They were detained as prisoners of war throughout the war. Because these people had violated the rules of war they could be tried by a military commission.

But what happened in the Haupt case ex parte Quirin is no longer law. Since 2006, the Military Commissions Act that Congress passed required and made it clear that the military commission trials are only available for alien unprivileged enemy belligerents. Accordingly, the Times Square bombing suspect who appears to be a citizen must be prosecuted, if he is prosecuted and tried at all, in Federal court—if the reports are accurate that he is a citizen.

I want to be sure. I think we have this matter straight. I believe an alien unlawful belligerent who is captured should not be treated like a criminal. They should not be appointed a lawyer that day to tell them don't say anything. They should not be advised of their rights because they are prisoners of war. If their actions amount to a violation of the rules of war, an alien unlawful enemy belligerent can be tried in civilian court, if we choose, or tried by a military commission. But if they are a citizen and they are caught under these circumstances, they can be detained in military custody, but they can't be tried by a military commission. They can only be tried by the civilian courts in civilian trials.

With regard to the matter of Miranda warnings, Miranda is not a constitutional requirement. It was never part of American law until recently—40 years ago, 50 years ago. No nation in the world I think—except perhaps one, I forget which one—provides that you have to warn people they have a right to remain silent. We can ask them questions. They can remain silent. We can't force them to talk, but we don't have to read them the Constitution before we ask them questions. But we do.

So, to me, it makes no sense that we would provide this extra constitutional right to unlawful enemy alien combatants like a Christmas Day bomber. They should be detained by military custody. If they need to be tried, the choice should be made between whether to be tried in civilian courts or military courts. The ability to obtain good intelligence about the operation is more enhanced, in my view, without any doubt—even though sometimes people who are given the Miranda rights talk—but there is no doubt we will have less people talking if they are appointed lawyers and read Miranda rights than if we don't.

Since war is won or lost so often on the question of who has the best intelligence, we should not provide lawyers to individuals who are at war with us and seek to destroy our country and kill innocent men, women, and children.

I think that is the basic state of the law today. I have been a bit confused myself, and I am glad my staff has helped me get correct.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, this week, as the Senate moves forward with consideration of Wall Street reform legislation, I am optimistic that legislation will be passed that reforms our financial system and prevents those who nearly brought down the economy from ever being able to do that again.

As we have heard many times over the last several weeks, the bill creates a mechanism to monitor the economy for nationwide trends and risky patterns that could lead to problems. It establishes a consumer watchdog dedicated to identifying and preventing lending trends that are harmful to consumers. In addition to preventing future bailouts, the bill also requires that most financial speculation be done in the open, while addressing the underlying problem that allowed the banks to go casino-crazy in the first place. It also brings derivatives into a transparent marketplace. I believe all these changes will make the American financial system more transparent, accountable and responsive to future risks.

It has been discouraging to see some Members and special interests opposed to these changes. In fact, I believe it is hard to argue against these reforms with a straight face. Yet those against reforming Wall Street have been doing just that, asserting that making markets fair and transparent will somehow hurt the economy. These reforms will help, not hurt, American consumers, small banks and small businesses.

As I have said before, our community banks in South Dakota, and across the Nation, have acted responsibly. It was the actions of large, interconnected financial institutions that endangered our economy and received Federal bailouts.

This bill eliminates the likelihood that the government would once again be forced to throw billions of dollars at Wall Street or run the risk of bringing down our entire economy.

The community banks in South Dakota, and across the country, are a vital part of our economy, as they reinvest money back into the communities they serve. This legislation will help community banks since it levels the playing field between banks and nonbank financials, such as mortgage lenders.

In addition, the bill fills many regulatory gaps, helping solve the problem of charter shopping, meaning financial institutions will no longer be able to choose the regulator they think will be the friendliest.

I would also like to see the legislation go further in some areas, such as the registration of private equity and venture capital with the SEC, in addition to hedge fund registration.

I also believe the legislation fills important regulatory gaps relating to insurance regulation. This legislation establishes the Office of National Insurance, and gives this office the ability to negotiate international agreements, a task that is currently a struggle for our country in a global marketplace.

These provisions will give us a better picture of what is happening in this national and international industry, something we do not have now. We should resist efforts to take authority away from the Office of National Insurance.

This bill has had substantial input from Republicans and Democrats. As the legislation process moves forward, I hope that bipartisan language on investor protection can be retained, that we can find common ground on national preemption and State AG enforcement, and that additional good ideas from both sides of the aisle can be incorporated into this legislation through the amendment process.

I believe all Members of this body want to support bipartisan legislation to reform Wall Street. But, as we seek bipartisan consensus, we should assess all amendments from a Main Street, commonsense perspective.

South Dakota's small farms, ranches and business operate with transparency and accountability. It is time for that same transparency and accountability to be extended to Wall Street.

Taxpayers, consumers, and businesses across our Nation have been affected by the gambling of Wall Street. The fallout of Wall Street's recklessness has affected all of us, whether it is job loss, foreclosure, loss of retirement funds, or decreased access to a loan or other type of credit.

Nearly 2 years have passed since the financial crisis. It is time to move forward and fix our failed system of financial services regulation.

A young South Dakotan was in my office last week, and said that he thought this bill represents South Dakota values, because he was raised with the value that you should be careful with your money, and even more careful with someone else's money. That is something that Wall Street forgot.

Any legislation that passes this body must make our markets safer, better protect consumers, create a level playing field for industry, and remind Wall Street that our Nation's economy is not something they are free to gamble away.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I just wish to say to my friend how much I appreciate his involvement and support and effort over the past many months that we have worked in this area, since the collapse of our economy back in the fall of—well, it began earlier than that, actually, as we witnessed early in 2007 the mortgage crisis occurring across the country.

Senator JOHNSON has been tremendously helpful and valuable. He is my seatmate on the Banking Committee. We have been sitting next to each other on that committee for the past 3 years and working on these issues together. He brought great value to this debate and discussion, contributed significantly to the product before us, and I wished to thank him for that.

We have some work to do, obviously, in the next number of days on this bill. But it is a good bill. I appreciate his comments about how it has been a bill crafted not by one member, not by a chairman of a committee but by a group of us on that committee, Democrats as well as Republicans who contributed to this bill.

So I thank him for his work.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I know the Senator from Connecticut has been on the floor all of this day managing a piece of legislation, and it appears to be kind of a lonely process here. He is managing what is a very important piece of legislation dealing with financial reform or Wall Street reform. I know he is perhaps as frustrated as everybody else that we are not making more progress and voting on amendments. I know work is going on behind the scenes as well.

I hope we will be able to move ahead and get a good piece of legislation through the Senate. I don't know what time it will take, but what is far more important is that we get it right. The consequences of not making the changes necessary would be that we would experience again at some point in the future the kind of financial crisis we have seen in the last couple years. It is a significant crisis for a lot of Americans—about $15 trillion of lost value, but that is an aggregate number that doesn't mean much.

What means something is that millions of people are losing their jobs, their homes, and many are losing hope. That is the consequence of this kind of very deep recession—the deepest recession since the Great Depression.

Following the Great Depression, if you read the economic history of the country, you will find that a number of very aggressive pieces of legislation were put into place to protect our country and make certain that could not happen again. Those pieces of legislation enacted into law lasted for a long time—70 or 80 years—to protect this country's economic interests. But what happened was that a number of people decided they were old-fashioned provisions and needed to be modernized, so we had modernization legislation that I did not support. We had to modernize the system. That modernization a decade ago caused massive problems. So now we are back having experienced the last couple of years and a very deep recession that is not a natural economic disaster; it is manmade. I think it is caused by the most unprecedented greed this country has ever seen among some of its largest financial institutions.

It is important to say that banking is critical to this country's economic existence. You need production and you need finance. I don't think we ought to suggest—and nobody has—that finance is not worthwhile. It is very important. You can't produce or have businesses without the ability to provide finance for those businesses. But over a couple of centuries of economic history in this country, sometimes producers have had the upper hand; sometimes those in the finance production have had the upper hand. For the last 15, 20 years, those in finance production in this country have had an unbelievable amount of clout and sway and the upper hand. That has caused us serious problems.

Today, I am not talking about the origins of this latest economic wreck—I have done that many times before—but starting with the subprime loan scandal that permeated much of the country, there was unbelievable greed and excess, securitization of bad mortgages that were rated AAA and passed from one to another, from mortgage bankers, to hedge funds, to investment banks, and back and forth.

Then even that wasn't enough. They were passing a bunch of bad paper around where everybody was making big fees, not knowing what they were buying, and buying things they would not get from people who never had it.

That wasn't enough. Then we created synthetic securities and naked swaps. I guess that was a natural extension by those who were greedy enough to believe you have to have something to trade no matter what the circumstances. So they created instruments—debt instruments, securities, and others—that had no value. They were debt instruments related to values of things that were extraneous, so there was no insurable interest.

A naked credit default swap is something that has no insurable interest on either end. It is simply two people who have decided to bet on whether a bondholder over there may or may not default, despite the fact that neither of these people has an economic interest in the bond. They are just making a wager. They could have just as well put it on black or red at the roulette wheel or played the craps table or played blackjack. It is not an investment; it is just betting.

That all went on, and there was a dramatic amount of new leverage and borrowing. I cannot begin to describe the excess that occurred. I guess the final circumstance for me to see what was wrong with all of this was that in 2008 the ''Wall Street'' firms earned a net negative of about $36 billion, that is, they had $36 billion of losses, and still paid, I believe, $17 billion in bonuses. That represents sort of the most egregious excesses you can imagine.

The question now and the circumstance that exists that I know the Senator from Connecticut cares a lot about is how do we restore confidence? How do we restore some confidence for the American people going forward? If we do not have confidence, this economy is not going to expand and rebound.

The answer is, we put together a piece of legislation called Wall Street or financial reform and construct it the right way to try to make certain the things that were done cannot be done again, to make certain the kind of economic wreck that occurred cannot happen again.

My colleague from the Banking Committee, the chairman of the Banking Committee, Senator DODD, and others have done quite a good job of putting together a piece of legislation that moves in that direction. It can be improved, in my judgment, and perhaps will be. I know he will agree with that as well. There are other ideas that can be brought to the floor of the Senate on this legislation.

I am going to talk about two of them ever so briefly—actually three, but one of them will be very quick.

Senator GRASSLEY and I intend to offer an amendment that says to the Federal Reserve Board: You must disclose to whom you were providing emergency assistance during the financial debacle on Wall Street, including loans out of the discount window to investment banks for the first time in history. You must disclose whom you provided loans to, what the terms were, and how much those loans amounted to. Two Federal courts—the district court and now the appeals court—have ordered the Fed to do so. The American people, they said, deserve to know. The Fed announced they intend to appeal that once again.

Tomorrow, Senator GRASSLEY and I will offer an amendment that says the law will require them to make that disclosure. The American people deserve to know.

On the other two issues, one is on too big to fail. This is central to the bill. There are a lot of ideas about too big to fail. Mine is, I think, the most direct, the most decisive, and the most effective.

If the Financial Stability Oversight Council decides that an institution is too big to fail—that is, by definition, the construct and size of that organization would create a moral hazard to this country, would create unacceptable risks and grave risks to the entire future of the American economy—if that is the case, if that is the judgment, then it seems to me you have to pare back portions of that enterprise until it is not any longer too big to fail and causing grave risk to the future of this economy.

In my judgment, the most direct and reasonable thing to do is to simply require that you restructure and require divestiture, where necessary, of those portions of an institution that have become too big to fail and cause a grave risk to the future of this country's economy, should they fail.

I will be offering that amendment. I know it is different than some others. My colleagues, Senator BROWN and Senator KAUFMAN, have an amendment which I will vote for and support as well on this issue. I think this is probably the most direct and probably the most effective amendment on the issue of too big to fail.

Finally, I am going to offer an amendment that would ban what are called naked credit default swaps. If people want to gamble, just bet one another. There are plenty of places to do that in America. Las Vegas comes to mind. Atlantic City comes to mind. It seems to me, we should not mistake betting for investing. We ought to get back to basics in our financial institutions.

I think we have something close to $25 trillion of credit default swaps that exist now. I don't know what percent of them have no insurable interest, that represent just wagers, just flatout bets rather than investments. In England, a study suggested that about 80 percent of credit default swaps are what are called naked credit default swaps with no insurable interest. If that is the case on this side, we are talking about a notional value of perhaps $16 trillion, $17 trillion of instruments out there that simply allow for the making of wagers that have nothing at all to do with the insurable interest and bonds.

I mentioned earlier that Mr. Pearlstein, who writes for the Washington Post, once observed a pretty simple question: Why should there be more insurance policies to insure bonds than there are bonds to insure? The answer is obvious. They created these excess insurance policies that have no insurable interest so people could just gamble. It is fine if you are gambling with your own money, but once you start gambling with the taxpayers' money, if you are a federally insured bank and the taxpayers are going to bear the risk, that is a different matter.

I am going to offer these amendments. I say, again, as I said when I started, all of us who come to this debate about financial reform or Wall Street reform understand that an effective, functioning system of finance in this country is essential to the well-being of America. I do not think anybody wants to take apart a system of finance that has the different levels of FDIC insured banking, commercial banking, investment banking, venture capitals, hedge funds—all those are important to this country's long-term future. I personally would like to see hedge funds and derivatives regulated. I have talked about that with Senator FEINSTEIN and others for a long time. It is very important that we have a system of finance that has the confidence of the American people and that we need in order to finance the production in this country.

Ultimately, all of us would like the productive sector to be repaired, to grow and hire people once again, employ people, and have ''Made in America'' put on products once again. All of us would like to see that happen. That will not happen unless we have a working system of finance as well.

We had a hearing where representatives from three businesses came to that hearing. All three were small- to medium-sized businesses. All three had sailed through this deep recession, with some difficulty, but were still profitable. All three were ready to expand, ready to hire more people, and none of them could find any financing to do it. None of them have been delinquent. All of them had existing banking enterprises with which they had a relationship and always paid back everything they owed. They had never been delinquent. Yet they could not find the funding to expand their business and hire more people. That is what is wrong.

Even today, by the way, some of these record profits that are coming from some of the biggest financial institutions are coming not as a result of their lending money to people but as a result of their trading, in many cases in some of the same securities that caused some of the same problems a couple years ago and over the last decade.

This reform legislation is essential. This is one of the most important pieces of legislation we will have considered in this Congress—probably the most important. In many ways, the consequences of what we do will be with us for a decade or more. That is why it is important to get this right.

I say to my colleague from Connecticut, I wish to be helpful to him. He has written a piece of legislation that has much to commend it. This Senate owes him a debt of thanks and the Banking Committee a debt of thanks. That does not mean we cannot offer amendments that might improve pieces here and there. But this is an awfully good start.

My hope is, Senator DODD will have sufficient cooperation in the Senate to begin getting votes on amendments so we can get through this, have the debate, and get the best ideas that everybody has to offer and get a piece of legislation that will give the American people some confidence once again.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Madam President, I wish to speak as in morning business for 15 minutes.

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

EXTENSION OF THE BIODIESEL TAX CREDIT

Mr. GRASSLEY. Madam President, last Tuesday, President Obama traveled to Iowa. He visited counties and towns that have been hit particularly hard by the economic downturn. While Iowa's average unemployment rate stands at 6.8 percent, Lee County's unemployment rate stands near 11 percent. Wapello County's unemployment rate is at 9.5 percent. These were the counties that President Obama visited. Over 1,000 jobs have been lost in each of the 3 counties he visited since the recession began.

The visit to Iowa was billed as an effort to highlight the steps taken to achieve long-term growth and prosperity by creating a new, clean energy economy.

During his trip, the President visited a Siemens wind blade manufacturing facility in Fort Madison. I had the opportunity to visit there about a year and a half ago. The President touted Iowa's leadership in the production of wind energy. This Siemens facility is a great facility. I recall just a few years ago speaking to Siemens manufacturing when they were looking for a site for their first wind production facility in the United States. I told the executives at Siemens they would not be disappointed if they chose Fort Madison for their facility because Iowans are some of the hardest working and honest people in the country.

I am particularly proud of the second-in-the-Nation status of Iowa's wind production. I first authored and won enactment of the wind production tax credit in 1992. This incentive has led to the exponential growth in the production of wind across our entire United States.

It has also helped my State of Iowa to become a leader in the production of wind energy component manufacturing.

The emerging wind industry has created thousands of jobs in recent years in the cities of Newton, West Branch, Cedar Rapids, and Fort Madison.

When President Obama says energy security should be a top priority, I agree with our President. When he says we need to rely more on homegrown fuels and clean energy, I agree with our President. When he says our security and our economy depend on making America more energy independent, I agree with our President.

During a subsequent visit to an ethanol facility in Missouri, President Obama stated unequivocally that his administration would ensure the domestic biofuel industry would be successful. The President and I are in strong agreement that renewable biofuels are a key part of our future.

Unfortunately, I believe President Obama missed an important opportunity to make a push for the message of the biodiesel tax credit. While the President was in Iowa touting green jobs, this Democratic Congress has, in effect, sent pink slips to about 18,000 people who depend on the production of biodiesel for their livelihood.

On December 31, 2009, the biodiesel tax credit, which is essential to keep a young bioindustry competitive, expired. In anticipation of the expiration of the tax credit, Senator CANTWELL and I introduced a long-term extension in August of 2009. That bill was never considered last year.

In December, as the expiration loomed, I came to the Senate floor to implore my colleagues to put partisan politics aside and pass a clean extension of the biodiesel tax credit because, without an extension, I knew the industry would come to a grinding halt, and it has.

For whatever reason, the Democratic leadership in the House and the Senate have never considered this extension a priority. Now the industry is experiencing the dire situation I predicted.

On January 1 of this year, about 23,000 people were employed in the biodiesel industry. Because of the lapse in the credit, nearly every biodiesel facility in the country is idle or operating at a fraction of capacity. Nearly all of Iowa's 15 biodiesel refineries have completely halted production. This has led to the loss of about 2,000 jobs in Iowa alone.

The thousands of jobs created by the wind industry in Iowa have essentially been offset by the thousands of jobs lost in the biodiesel industry.

You do not have to take my word for the dire state of the industry. A $50 million biodiesel facility in Farley, IA—that is in northeast Iowa—announced that they just laid off 23 workers and cut the pay of the rest of the staff. Renewable Energy Group laid off 9 employees in a facility in Ralston, IA, and 13 in Newton, IA. Ironically, the Newton biodiesel facility is 1 mile down the road from a wind manufacturing facility that President Obama visited on Earth Day just last year. During President Obama's trip to Iowa, he was within a few miles of three biodiesel facilities that are idle: one in Keokuk, IA, one in Washington, IA, and another in Crawfordsville, IA.

According to a press release from the Iowa Renewable Fuels Association, an Iowan affiliated with biodiesel industry was able to speak to President Obama very briefly following a townhall session in Ottumwa, IA. Mr. Albin, vice president at Renewable Energy Group, told President Obama that plants are idle and 90 percent of the biodiesel employees have been laid off simply as a result of the tax credit lapse. According to Mr. Albin, President Obama assured him that he would not let the biodiesel industry die.

He recalls the President saying something like this—and I want to quote what I suppose was a paraphrase by Mr. Albin:

> I'm the President and I promise I will do whatever I can. Look, I'm on your side, but I've got a Congress to deal with.

Well, I can understand what the President would say. I happen to believe that in my 4 years of serving with then-Senator Obama, that Senator Obama, now President Obama, is very sincere about the promotion of ethanol and biodiesel or biofuels—whatever you want to call it. In fact, I had the good occasion of working with then-Senator Obama on a Senate bill when I was still chairman of the Finance Committee to promote the tax credit that is now in place so that filling stations can get a tax credit for putting in for E85 ethanol, as an example. So I don't question President Obama's response to Mr. Albin. Of course, we do have checks and balances in government and the President has Congress to deal with. But I hope President Obama will take strong action to insert himself into this debate in the Congress.

It seems that even President Obama, from this quote, is frustrated by the lack of action by the Democratic congressional leadership on this issue.

Mr. President, I ask unanimous consent to have printed in the RECORD this press release from Iowa RFA at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRASSLEY. The board president of Western Iowa Energy in Wall Lake, IA, recently stated:

> Due to the continued lapse of the biodiesel tax credit, Western Iowa Energy continues to suffer from significantly limited sales and reduced sales forecasts. Due to these market conditions, we have made the difficult decision to idle our facility. Today we are laying off 15 full-time employees. This represents more than 50 percent of our staff.

On February 10, Senator BAUCUS, chairman of the Finance Committee, and I worked in a bipartisan fashion to develop an $84 billion jobs package that included a 1-year extension of several energy tax credits, including the biodiesel tax incentive. Before the ink was even dry on the paper, Majority Leader REID scuttled our bipartisan package in favor of a partisan approach. That delayed passage of an extension in the Senate for well over a month, until the month of March.

Now it has been languishing for 6 weeks. Where is the urgency? This Congress jammed through a stimulus bill that spent $800 billion to keep the unemployment rate below 8 percent, and of course it didn't stay below 8 percent. Yet we can't find the time to pass a simple tax extension that will likely reinstate 20,000 jobs overnight. We are 4 months delinquent in our obligation to these biofuel producers with no end game in sight. The lack of action on this issue defies logic or common sense.

So while the Democratic leadership talks about creating green jobs, their action has led to job cuts. Americans are unemployed today because of the action—or more aptly the inaction—of the Democratic congressional leadership, particularly on this biodiesel issue.

The United States is more dependent upon foreign oil because of the inaction of the Congress. Automobiles are producing more pollution because we have essentially eliminated this renewable, cleaner-burning biofuel. Rural economies are being stripped of the economic gain of this value-added agricultural product.

So I urge the Senate to take immediate action to extend this tax incentive and reduce our dependence upon foreign oil and save green jobs.

Mr. President, I yield the floor.

EXHIBIT 1

PRESIDENT OBAMA GETS BIODIESEL MESSAGE IN OTTUMWA

IRFA SECRETARY ALBIN USES 90 SECONDS WITH THE PRESIDENT TO SHARE URGENCY OF TAX CREDIT

OTTUMWA, IA.—During his Iowa visit on April 27, 2010, President Barack Obama heard firsthand of the urgency to reinstate the biodiesel tax credit from Brad Albin, Vice President at Renewable Energy Group and Secretary of the Iowa Renewable Fuels Association (IRFA).

Following President Obama's speech and town hall session at Indian Hills Community College, Albin grabbed the President's attention. During a 90 second exchange, Albin shared the message of the biodiesel industry's state of disruption and uncertainty resulting from the lapse of the federal biodiesel blenders tax credit since January 1, 2010.

''I shook his hand and told him that we're losing jobs as we stand here, which seemed to get his attention,'' explained Albin, who had been sitting in the second row. ''I told him about plants idling and that more than 90 percent of manufacturing staff at U.S. biodiesel plants have been laid off as a result of the tax credit lapse.''

President Obama acknowledged that his biodiesel tax credit updates are coming through USDA Secretary Vilsack. The President continued to listen as Albin explained that for 20 years Americans have worked to meet the challenge of increasing energy independence, that farmers and families have invested billions, and that now companies are bleeding to death or bankrupt. Albin further explained that the five month lapse of the tax credit could not have come at a worse time as the Renewable Fuels Standard goes into effect July 1, 2010.

''We're going to die without this tax credit,'' Albin added even after the President's assurances. ''The President then responded, 'We won't let you die.' ''

''Those that know me know I want to make sure my message is clearly understood; so as the President was walking away to shake another hand, I asked him if he could commit to the tax credit being in place by May 31,'' Albin said. May 31, 2010, the start of the Memorial Day recess, is the date Chairman Sander Levin of the House Ways and Means Committee promised as a reinstatement deadline for the biodiesel tax credit during an energy hearing earlier this month.

''The President heard me ask him again about the May 31 date. He turned back to me and said, 'I'm the President and I promise I'll do whatever I can,' '' Albin recalled of the exchange. ''President Obama then assured me of his commitment to clean energy by saying, 'Look, I'm on your side, but I've got a Congress to deal with.' ''

''I believe he now has our urgent message straight from the state where the tax credit lapse is having the most impact—the nation's top biodiesel state,'' Albin said. ''It really was a miracle to be in that right spot at the right moment to be able to get the biodiesel message straight to the President of the United States of America.''

The Iowa Renewable Fuels Association was formed in 2002 to represent the state's ethanol and biodiesel producers. The trade group fosters the development and growth of the renewable fuels industry in Iowa through education, promotion, legislation and infrastructure development.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. FRANKEN. Mr. President, I rise today to discuss an amendment that I have just filed. But before I begin, I would like to thank Chairman DODD for his exemplary work on this Wall Street reform bill. It is the result of months of tireless work and many hours of negotiation by Chairman DODD and his staff.

This Wall Street reform bill will vastly improve the regulatory structure currently on the books. It creates a strong consumer watchdog within the Fed—a bureau that will put consumers first, ahead of Wall Street profits. This bill also brings derivatives out of the shadows and onto exchanges so that Wall Street's bets upon bets never again threaten to bring down our entire economy. This bill accomplishes many things and brings us a long way toward robust reform.

But there is one area we need to make stronger. We need to go further in addressing the rampant problems plaguing the credit rating industry. That is why I intend to introduce an amendment to change the way the initial credit ratings are assigned and encourage competition within the credit rating industry.

Currently, Wall Street firms that issue complex securities request and purchase ratings from nationally recognized statistical rating organizations—or NRSROs. I am sure all of you are familiar with them—Moody's, Standard & Poor's, and Fitch. What you may not know is that there are actually a handful of other credit rating agencies doing the same work. But the big three agencies have effectively shut all others out of the market. It is easy to see how.

In the current system, the issuer of the bond pays the credit rating agency. So there is an incentive to rate every product that comes across your desk as AAA. If you give a risky product a low rating, the issuer can just go to one of the other agencies and shop around for a better rating. Guess which agency that issuer is going to go back to the next time? Of course, the agency that gave them the higher rating. Does anyone see a problem? I do.

Well, the problem is that the entire credit rating structure is basically one enormous conflict of interest. Issuers want high ratings, and raters want business. The market offers incentives for inflated ratings not accurate ratings. These perverse incentives have driven the behavior of all participants. Any rating agency looking to enter the market with better methods or any rating agency that refuses to inflate its ratings will never be able to compete.

My friend and colleague, Senator LEVIN, held a hearing not long ago in the Permanent Subcommittee on Investigations. His PSI investigative team unearthed some very unsavory e-mail exchanges between issuers and raters—e-mails which implied that an issuer could obtain a higher rating if he paid more money. And money—money—is what drove this industry not performance. As an example, the New York Times reported Sunday that 93 percent of AAA-rated subprime mortgage-backed securities issued in 2006 have since been downgraded to junk status.

This might be easy to dismiss if these junk bonds simply cost some Wall Street speculators a few bucks here and there. But, in fact, these junk securities permeated the entire market. These junk securities were in older workers' pension funds and working peoples' retirement funds. These junk bonds contributed to the loss of $3.4 trillion in retirement savings during this crisis.

To me, it is obvious we need an entirely different model. My amendment, which I am introducing with Senators SCHUMER and NELSON, would finally encourage competition and—get this—accuracy, in an industry that has little of either. Specifically, my amendment creates a credit rating agency board—a self-regulatory organization—tasked with developing a system in which the board assigns a rating agency to provide a product's initial rating. Requiring an initial rating by an agency not of the issuer's choosing will put a check on the accuracy of ratings. Simple.

My amendment leaves flexibility to the board to determine assignment process. But the board will be inclined to make the process one that incentivizes accuracy because the representatives of the investor community will make up a majority of the board—for example, pension fund managers and endowment directors; folks who have a vested interest in the AAA bonds they have selected actually performing as AAA bonds. The board gets to design the assignment process it sees fit. It can be random, it can be based on a formula, just as long as the issuer doesn't get to choose the rating agency.

The board will select a subset of qualified credit rating agencies to be eligible for the assignment pool. The board will be required to monitor the performance of the agencies in the pool. If the board so chooses, it can reward good performance with more rating assignments. It can recognize poor performance with fewer rating assignments. If the rater is bad enough, that might even be zero assignments.

My amendment gives the SEC a year and a half to carefully implement this new system with input from the board members. The result will be increased competition among the credit raters, generally, and incentives to produce accurate ratings, not inflated ratings. The amendment does not prohibit an issuer from then seeking a second or a third or a fourth rating from an agency of its choice.

But rating agencies will be disinclined to give inflated ratings to a product if the initial rating reflects its true value. Some smaller credit rating agencies, which haven't taken part in the inflated ratings game, would finally have a chance to compete. An assignment mechanism for initial ratings will break up today's credit rating oligopoly, promote real competition, and produce more accurate ratings. More accurate ratings will decrease risk and create more stability in our financial system. And that is what this is all about.

Now, Wall Street lobbyists may claim this issue is too complex for Congress to address, but imagine that your child came home from school one day saying their chemistry teacher was offering an A to anyone who wanted to skip the final exam and instead pay $100.

You don't need to know anything about chemistry to understand that this system of rewards is harmful. Not only is the teacher making easy money, but nobody is holding the student accountable for doing good work.

Now I don't know any teachers that corrupt. But the credit rating agencies have demonstrated that they have blindly followed the perverse incentives of the current market. Congress should not sit idly by and let the credit rating industry continue to expose our economy to great risk just because Wall Street insists the problem doesn't have an easy solution. Now, my amendment may not fix the entire system, but it will provide checks, encourage accuracy, and increase competition.

And there is no need to take my word for it—the idea in my amendment was actually first proposed by several well-respected academics. Matthew Richardson, a leading expert and professor of applied financial economics at NYU's Stern School of Business, supports this proposal, and has been integral in the development of my amendment, and I would like to thank him for his assistance.

Economist Paul Krugman has suggested this model as a step toward improvement. And so has economist Dean Baker. Americans for Financial Reform, which includes the Nation's most prominent consumer groups, supports it.

I would like to thank my colleagues, Senator SCHUMER and Senator NELSON, for their leadership on this issue and for their expertise in helping me craft this amendment. I also thank my colleagues, Senators BROWN, WHITEHOUSE, and MURRAY for joining us in cosponsoring it.

Going forward, I hope that more of my colleagues will join with us in taking action to restore integrity to the credit rating industry.

I yield the floor.

Ms. MIKULSKI. Mr. President, if there is one thing that we should all be able to agree on, it is that the American taxpayer should never again have to bail out a Wall Street firm. We need to be fighting for Main Street, not Wall Street, and the Boxer amendment is a step in the right direction on that path.

This amendment sends a clear message to Wall Street firms that they can no longer take risks with our financial security and then expect the taxpayers to be there to prop them up. Wall Street must be held accountable. It is time to end to taxpayer bailouts once and for all.

When I talk to people in Maryland, I hear their frustration and I feel their anger. They want to know, why should AIG receive a bailout, when nobody is bailing out them from this economic crisis? They wonder, who is on their side? Who is going to bail out their stagnant wages? Who is going to bail them out when they are trying to pay their utilities and put gas in the car? And, seniors wonder who will bail them out as they try to make sure they do not lose their income.

This amendment shows that we heard their concerns and we are on their side. It sends a message to Wall Street that their time of running around acting like masters of the universe—with irresponsible lending practices and risky investments—has come to an end. And, it sends a message to American families and small businesses that their government is looking out for them. We are here fighting for them—fighting so that consumers can be sure that their deposits are safe; fighting so that small businesses have access to the credit they need to create and retain jobs; and fighting to make sure that taxpayers' money is protected.

We teach our kids at a young age that they will be held responsible for their own actions. When they make a mess, they must take responsibility and clean it up. We must pass this amendment so that corporate America can see that the same lesson applies to them, and to show the taxpayers that we are serious about being stewards of their money. This amendment makes sure that if a Wall Street firm gets in trouble, they will be required by law to clean up their own mess. If a company gets in trouble from this point forward, the responsibility will be placed where it belongs—on the financial sector. No longer will taxpayers be standing by.

I support the Boxer amendment because I believe it is time to put an end to all taxpayer bailouts.

Mrs. FEINSTEIN. I have filed an amendment to the Wall Street reform bill before us that would remove one barrier between the unemployed and a job.

Forty-seven percent of employers use credit reports to screen at least some potential hires, according to the Society for Human Resource Management. Thirteen percent of employers checked the credit history of all hires.

Unfortunately, many of our country's 15 million unemployed are facing more challenges than ever. For instance, some have seen their credit drop precipitously as a result of the economic downturn. In some cases, their credit history is affecting their ability to find employment.

My amendment would prohibit employers from using a consumer credit report as a condition of employment. It would impact potential hires and current workers.

Put simply, an employer would not be able to hire or fire someone based upon their credit history.

I certainly understand that some jobs require workers to display a pattern of financial responsibility. To that end, my amendment would exempt those applying for the following:

Positions at financial institutions, including banks and credit unions, that require substantive work with customer accounts and funds; jobs that require a national security or Federal Deposit Insurance Corporation clearance; State or local government jobs that otherwise require a credit report; and, positions otherwise requiring credit checks by law.

This amendment is similar to a bill introduced in the House of Representatives by Representative STEVE COHEN known as the Equal Employment for All Act, H.R. 3149.

Why is this legislation needed? As of March 2010, 15 million Americans continue to struggle with unemployment, and over 2.3 million of them live in my State alone.

It is critical that obstacles to employment be removed for these victims of the economic downturn.

During these difficult times, many unemployed Americans have seen their credit scores reduced precipitously for events largely outside of their control. These events include bankruptcy, foreclosure, and credit card debt.

Millions of American homeowners have also experienced foreclosure over the past 3 years. Through the first 3 months of this year alone, 216,000 have been filed in California. Last year, more than 1 million foreclosures were filed in my State.

Foreclosures can have a devastating impact on one's credit history. Moreover, responsible alternatives to foreclosure, such as a short sale or loan modification can also affect a homeowner's credit.

A short sale can reduce a homeowner's credit score between 200 to 300 points, according to the Third Way.

And in a report prepared by First American CoreLogic, in February 2010, 35 percent of California homeowners were underwater, or owed more on their mortgage than the value of their home. This means that short sales, in which a homeowner sells a home for less than they owe, will likely continue as an alternative to foreclosure.

According to the National Bankruptcy Research Center, more than 1.4 million individuals and businesses filed for bankruptcy in 2009. This is a 32-percent increase over the prior year 2008.

Federal Reserve statistics show that average credit card debt in the U.S. per household is over $16,000.

These are disturbing trends, and display a pattern of difficult financial situations facing many Americans.

Unfortunately, if you have lost your job in this economy, these circumstances are often out of your control. But, they should not impede your ability to find another job.

I have received many heartbreaking letters from Californians facing these situations. They can't pay off debt because their debt is limiting their ability to find work.

For example, a chemist from San Diego wrote to me about her student loans, which have ballooned from $60,000 to $110,000. At the time she wrote, she had been unemployed for 15 months.

But, she feels she cannot find a job in the field she trained for due to her poor credit score.

A former job recruiter from Corona wrote to share her firsthand experience with this practice, which prevented her from hiring well-qualified, experienced candidates. This constituent, herself now unemployed and late on her mortgage payment, is worried that her credit will now prevent her from finding a new job in the recruiting field.

These are just two examples of how credit history is posing an unnecessary obstacle for the long-term unemployed.

An April 9, 2010, article in the New York Times highlighted the issue that my amendment seeks to address.

It cited testimony provided by an executive of the credit bureau TransUnion before the Oregon legislature. He stated that he was not aware of research linking job performance to the contents of a worker's credit report.

Research by Professor Jerry K. Palmer of Eastern Kentucky University has also found no correlation between worker performance and the strength of their credit report.

While credit bureaus argue that credit background checks are a helpful tool in preventing employee theft and workplace violence, little evidence supports that conclusion.

To be clear, I recognize that in some cases, a credit history is important. Mortgage brokers or bank employees working with deposits should be able to demonstrate a responsible credit history.

That is why my bill would exempt these industries from the prohibition in my amendment.

The unemployment situation in California is untenable. It is my goal to develop fiscally responsible solutions to help those in need.

My amendment does just that.

Workers should not be prevented from a job they are well-qualified for, on account of reasons beyond their control.

If my colleagues have concerns about this legislation, I am happy to work with them to improve it.

I hope this amendment will be adopted and provide assurance to workers that their credit will not keep them out of work.

Mr. President, I have also filed an amendment to the Wall Street Reform legislation that would require the Consumer Financial Protection Bureau to undertake a study on the availability of credit to the unemployed.

An article in the Los Angeles Times in March 2010 highlighted a disturbing new trend in the payday lending industry targeting the unemployed. Specifically, payday lenders are providing cash advances to individuals using unemployment checks as collateral.

This is a troubling practice, especially for those surviving solely on their unemployment benefits.

In California, payday loans can carry interest rates of up to 459 percent.

In light of this, I believe more must be done to ensure reasonable and fair credit terms are available to the unemployed.

This Wall Street Reform bill creates a research unit within the Bureau of Consumer Financial Protection housed at the Federal Reserve.

My amendment would require this unit to conduct a study on the following:

The effects of payday lending on the unemployed; the potential impacts, both positive and negative, of providing payday loans to individuals using their unemployment checks as collateral; alternative credit options for the unemployed, including the accessibility and costs associated with them; and policy recommendations that the Bureau of Consumer Financial Protection could implement to prevent unscrupulous lending practices.

This report would be completed within 1-year of the bill's enactment and be made available to the public.

To be clear, my amendment would not provide the Bureau of Consumer Financial Protection with any new authorities, nor require it to carry out the study's recommendations. It is intended as a guide for the Bureau as it works on rules to protect consumers, notably the unemployed, from deceptive and predatory lending practices.

In California, those individuals who turn to cash advances from payday lenders can expect to pay roughly $15 in fees for every $100 they borrow.

This interest rate, when expressed in terms of an annual percentage rate, amounts to 459 percent. While this is the maximum rate that may be charged for a payday loan in California, some States, such as Delaware and Wisconsin, have no interest rate limit at all.

The maximum payday loan that can be extended to a borrower at any one time in California is $300.

So in practical terms, a borrower wishing to take out the maximum $300 payday loan will pay $45 in fees just to borrow $255.

Often, borrowers must take out additional payday loans in order to pay off their current debts. In 2006, approximately 450,000 borrowers in California made more than six back-to-back payday loans.

Such reliance on this form of credit can lead some working families to fall into a harmful spiral of debt.

Over 2.3 million people in California are out work and roughly 100,000 of them have reached the 99-week maximum for receiving unemployment benefits.

The average unemployed Californian receives roughly $300 a week in benefits, which is also the State's limit for a payday loan.

Typically, payday loans are offered as advances on paychecks and should be used in cases of emergency. Such cases include falling short on bills or rent during a difficult month.

However, unemployment, especially in this economy, can be long-term. Payday loans may not offer a sustainable solution.

Unemployment is one of the underlying factors contributing to the rise in foreclosures throughout our country. In California alone, over 215,000 foreclosures were filed in just the first 3 months of this year. In tough months, those facing the dual threat of unemployment and foreclosure need to access credit more than ever.

And now, payday lenders have made it easier for the unemployed to fall into a cycle of debt.

By offering cash advances on their primary source of income, Federal or State unemployment benefit checks, payday lenders are specifically targeting this vulnerable group of borrowers.

Now is not the time to be doing this.

Such high loan fees are a burden for those surviving solely on their unemployment benefits.

So why is this study important?

Studies and reports on the effects of payday lending are already available, some of which consider its benefits and others its burden to borrowers. But the study required by my amendment should offer much more than just the pros and cons of payday lending.

I hope this study will determine if payday lending practices, including cash advances on unemployment checks, are useful credit options for the unemployed.

If they provide a benefit, I hope the study's recommendations will make these loans more fair and reasonable to borrowers.

If not, the study should review and recommend alternative credit options for the unemployed.

As I mentioned, we all agree this is not the time to be exploiting the unemployed. Many of the unemployed are experiencing some desperate financial straits right now.

I believe policymakers should be provided with clear options to help improve the financial situation for them.

Mr. WYDEN. Mr. President, along with Senator GRASSLEY, I am introducing as an amendment to the financial reform bill, S. 3217, our bipartisan resolution to amend Senate rules to eliminate secret holds.

The legislation now before the Senate is intended to bring greater openness and accountability to Wall Street and other financial institutions. At the same time the Senate is reforming how financial markets do business, there is no better time for the Senate to reform the process for how the Senate conducts its own business.

Under current Senate rules, it is still possible for Senators to use secret holds to block legislation or nominations from coming to the floor without having to give any reason. There is no openness or accountability to anyone when a Senator places a secret hold.

The Senate should not have a double standard that requires greater openness and accountability on Wall Street while tolerating a practice that keeps both the public and colleagues in the dark with no accountability to anyone.

That is why Senator GRASSLEY and I are offering our bipartisan proposal to end the practice of secret Senate holds as an amendment to the financial reform bill. Because our amendment would eliminate secret holds by amending Senate rules, I hereby give notice of our intent to amend the Senate rules by filing the Wyden-Grassley amendment to S. 3217.

I urge colleagues to support this bipartisan reform of Senate rules.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

IN PRAISE OF KENNETH CONCEPCION

Mr. KAUFMAN. Mr. President, I rise once again to recognize the service of one of America's Great Federal Employees.

So many of our outstanding Federal employees spend their careers in our uniformed services, standing at the ready to guard our liberties and protect lives. One of these services has a unique mission that combines coastal defense, maritime search and rescue, and environmental protection.

I am speaking about the U.S. Coast Guard.

The 42,000 men and women who serve in the Coast Guard embody the highest principles of our nation. Their dual responsibilities in both civil and military matters require Guardians to demonstrate flexibility, patience, and resolve.

This year is 95th anniversary of the Coast Guard's creation from the old Revenue Cutter Service. That earlier service evolved from our nation's first maritime force in the infant years of our republic.

The Federal employee I have selected to honor this week served as Chief of U.S. Flag Deepdraft Vessels and Plan Review for the Coast Guard at the time of the September 11 attacks.

Kenneth Concepcion was based on Staten Island, within view of the twin towers of the World Trade Center. On that fateful morning, Kenneth was the first Coast Guard employee on the scene, arriving at New York's Pier Eleven just 20 minutes after the collapse of the second tower.

What he found there was disorder and masses of frightened people with no way to get home. Kenneth took charge and recruited NYPD officers and Transportation Department officials to help him organize the crowds into lines based on intended destination. He assumed control of all the vessels at the pier and prioritized the safe evacuation of first-responders who had been injured in the attacks.

Thanks to Kenneth's leadership and steady hand, the Coast Guard was able to evacuate 70,000 people from Lower Manhattan that morning to points across the Hudson River. In addition, he made sure that commercial ships continued to have safe passage in and out of New York Harbor, keeping some of America's vital ports open for business.

But Kenneth's heroism doesn't end there. Two months after the attacks, American Airlines flight 587 crashed tragically near JFK airport in Queens. Kenneth served as the on-scene coordinator for the maritime recovery of debris. Under his leadership, and as a result of his ability to get different agencies to work well together, all significant debris from the crash was recovered in less than 2 days.

Our Coast Guard members, like Kenneth Concepcion, stand ever at the ready to keep our maritime interests safe and to serve as our Nation's first line of search and rescue when disaster strikes. We rely on them to protect us, and I hope my colleagues will join me in thanking Kenneth and all members of the Coast Guard for their service to our Nation.

They are all truly great Federal employees.

REMEMBERING KENNETH EDWARD CARFINE

Before I yield the floor, I want to note with sadness the passing of one of my previous honorees.

On October 19 of last year, I stood at this desk and spoke about an outstanding employee from the Department of the Treasury, Kenneth Edward Carfine.

He served in the Treasury Department since 1973 and worked over the last 37 years in banking, cash management, payments, check claims, and government-wide accounting.

Recently, he had served under the Fiscal Assistant Secretary as an adviser to senior department officials. Ken's intellect and diligence had been critical to the Treasury's economic recovery efforts. He helped shape how the Treasury deals with debt financing, cash management, trust fund administration, and a range of services.

One of his lasting legacies will be the ability to use a national debit card to receive Social Security benefits—a program he helped implement.

Kenneth Edward Carfine lost his battle to cancer last week. He is survived by his wife of over 40 years, Deborah, as well as by his two sons, Ken Jr. and Greg, their families, and his two granddaughters.

Ken worked at the Treasury Department for 37 years, and I know there literally must be hundreds of Treasury employees, past and present, who are grieving deeply today for this incredibly fine person and dedicated public servant. His passing is a great loss for all of them, the Department and for the nation he served so ably.

My thoughts are with his family, friends and colleagues at the Treasury Department, and I hope my Senate colleagues will join me in offering our condolences.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The clerk proceeded to call the roll.

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

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

Mr. INHOFE. Mr. President, with all of the trauma that is going on right now with the oilspill and all of the other problems that are out there and, of course, the bill under consideration, I ask unanimous consent that I be recognized as in morning business for 15 minutes.

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

EPA LEAD PAINT RULES

Mr. INHOFE. On April 22, a new EPA lead-based paint rule went into effect that has caused all kinds of serious problems, not just in my State of Oklahoma but throughout the country. My office has received an incredible number of calls and e-mails from constituents, from homeowners, from contractors, to landlords, to plumbers, all trying to get information about a rule that, in most cases, they had never heard of until last week. I think everyone in this Chamber stands strongly behind the intent of the rule, which is to protect women who might be pregnant, children, and others from harmful effects of lead. With over 20 kids and grandkids, I understand that. I appreciate the importance of the rule and the potential it has to future decrease lead exposure. But, as even the Obama administration admits, implementation of the rule has been painfully slow and seriously flawed.

Specifically, the rule requires that renovations to homes built before 1978 that disturb more than 6 square feet of surface area have to be supervised by a certified renovator and conducted by a certified renovation firm. In order to be certified, contractors have to submit an application with a fee to the

EPA and complete a training course for instruction on lead-safe workplaces. Now, that sounds simple enough. There is one serious problem; that is, there aren't any instructors around to certify these people.

What is worse than that, those who violate the rule; that is, they go and they try to do something to their own home, if it was a home that was built prior to 1978, if they violate this, they can be fined up to $37,500 a day. Just imagine how hysterical people are, not just in Oklahoma but throughout the country.

There are not nearly enough contractors who have been certified, and that is because there are far too few people certified to teach the classes.

That is why today, with 23 cosponsors, I am introducing legislation, S. 3296, to remedy this implementation travesty. This bill provides additional time for contractors and others to get certified so they can become qualified to go ahead and do these things and not be subjected to fines. It actually extends the time for a period of 1 year or until the EPA can have enough people to certify people around the country so that this can be done.

The need for the bill is on display in Oklahoma, where, until yesterday, no one was teaching classes publicly. Keep in mind, no one is teaching these classes. Yet, if they try to do any renovation, they can be fined up to $37,500 a day.

I am pleased to hear that Metro Tech of Oklahoma City has finally received its certification from the EPA and will begin teaching classes on May 13. I should note that because the demand is so high, they anticipate having full classes until July.

Because access to courses is so limited, renovators and contractors cannot be trained and they cannot pass along the benefits of their lead-safe work practices to homeowners and help protect pregnant women and children from further lead exposure. Without enough certified renovators, we will simply not get the benefits this rule can provide.

Let me give you a couple of statistics to help illustrate the problem. As of April 22—that was implementation day—the EPA had only accredited 204 training providers. Those providers have conducted more than 6,900 courses. They trained an estimated 160,000 people in the construction and remodeling industries to use lead-safe work practices. This is far too few people to ensure everyone who works on a pre-1978 home, including roofers, plumbers, painters, general contractors, or just individual homeowners, can have access to training to get certification they have to have.

Let me share with you a few examples from Oklahoma.

Paul Kane, executive vice president and CEO of the Home Builders Association of Greater Tulsa, was in my office with a number of Oklahoma homebuilders the day before the rule was implemented. That would have been April 21. During our meeting, I was pleased that Cass Sunstein, head of the Obama administration's Office of Information and Regulatory Affairs, was available to hear from my constituents about their concerns with the rule.

As the Tulsa World reported:

> Kane explained the difficulty local contractors are having in getting certified, adding that only one trainer in the entire State of Oklahoma has been certified, and that that person has been certified only a few weeks. Moreover, he told Sunstein, that person is not offering training to the public but is limiting his classes to his own organization.

So we have one guy who can teach these classes in the State of Oklahoma. Yet there are literally thousands out there who are out of work until such time as they can go back and start working again.

I really appreciate the fact that Mr. Sunstein was listening to the concerns of my Oklahoma constituents. He told us he recognized that the implementation of the rule was causing economic hardship. He raised the possibility of providing a 60-day delay to help sort out of some of the implementation problems. In the end, however, this option was not workable, and we simply ran out of options to stop the rule from going into effect. Now, that was the day before the rule became finalized. But we certainly appreciate his attention, looking into it, and we are going to try to work with his staff.

My staff also spoke with a property owner who rents homes to low-income residents in Tulsa. He has been unable to get contractors out to his properties to replace carpet or even paint because they do not have EPA certification, which means they can get fined by the agency if they work without it. So it is no surprise that my constituent is concerned that his housing units could fall into disrepair and that people would lose their access to affordable housing—not not only losing access to affordable housing but exposing people to lead paint.

Additionally, we heard from a painter in Oklahoma City who has experienced delays in getting trained for the simple reason that his trainer has not yet been certified by the EPA. This issue reaches far beyond Oklahoma. There are a number of Senators, Republicans and Democrats, who have expressed concerns about the implementation of the rule. Several Members weighed in before the rule went into effect. Senators BYRON DORGAN and KENT CONRAD of North Dakota and a bipartisan group of Members of the House of Representatives sent a letter outlining these concerns to the EPA.

During a recent EPW subcommittee hearing, Senator AMY KLOBUCHAR urged the EPA to come up with a solution that will ensure contractors have the opportunity to come into compliance with this rule. We are talking about everybody, Members of the House, the Senate, Democrats, Republicans. They are all affected the same.

The issue has also been raised before the Senate Energy and Natural Resources Committee. In testimony before the committee on March 11, Bob Hanbury, speaking on behalf of the National Association of Home Builders, raised concerns about potential conflicts between Homestar and the lead rule. Members may recall that Homestar is one of President Obama's signature issues. It is a program that helps homeowners increase the energy efficiency of their homes. But Mr. Hanbury believes the lead rule won't allow the Star program to move forward.

As we can see, there were plenty of concerns raised about the lead rule implementation before it went into effect. Nevertheless, EPA repeatedly said, in the 2-year period leading up to the rule, that it could meet these implementation challenges. As the ranking member of the committee with jurisdiction over the EPA, I wrote to the EPA two times that I believed EPA appeared to be far from prepared. In both cases, EPA said they were ready. In a June 3, 2009 letter responding to my concerns, the EPA wrote:

> I agree that both EPA and the regulated community have a great deal of preparation in front of us as we approach next April's deadline. I am confident, however, that the ten months between now and April of 2010 will allow us to meet these deadlines.

That was a year ago. Of course, it didn't happen.

In a letter dated December 1, 2009, EPA wrote me explaining:

> We are confident there will be enough training providers to meet the demand. EPA does not plan to revise the April 2010 effective date [for the] rule.

The EPA also stated in the letter:

> Currently, the capacity for training is in excess of the demand as several training courses have been canceled for lack of attendance.

What they are saying is they have been providing all these people, but it is just flat not true. In light of this situation, what can lawmakers do to help provide guidance for constituents back home?

First and foremost, we have to get out the word. I have raised the issue both in my travel around Oklahoma and on Oklahoma radio. Last week I sent out a ''Dear Colleague'' letter to all Senators with information to help them navigate the confusion associated with the rule's implementation. Included are Web links to EPA's Web site which take constituents to important information about the lead rule as well as the rule itself. It also provides a link to the EPA and the Ad Council's new Web site, www. Leadfreekids.org, which is a consumer friendly Web page with information on protecting yourself from lead. I wish also to commend the coverage of the rule by the Tulsa World. The paper's reporting has informed the public and even resulted in more classes being taught throughout Oklahoma.

Further, along with Senator COBURN and some 23 of my fellow Senators, I have introduced S. 3296 to delay the implementation of the rule by several months, giving contractors, trainers, and the EPA breathing room to get more people through classes. The EPA has said the people have had a year to get ready for this rule. However, the first training class wasn't even held until June 16, 2009. Renovation firms could not apply for certification until October of last year. Our bill would delay the implementation and give people time to comply with this.

This is in a way bureaucracy at its worst. We say we are going to demand that no one is going to be able to do something to their very own home if it disturbs as much as 6 square feet. And if they do, they could be fined $37,500 a day. Imagine how frightening that is. Yet they don't have enough instructors to teach people to be certificated. This is one we have to address.

I think the only thing we can do right now is to get an extension. That is what I am doing with this Senate bill. I certainly call on my colleagues, Democrats and Republicans. The problem I am pointing out in Oklahoma is not just in Oklahoma; it is in all States. We will have to address this thing, get something done, or we have a lot of risk out there. We have children and pregnant women who could be at risk of exposure to lead and lead paint. Of course, one of the things that is almost as bad is the fact that we have literally, only in Oklahoma, thousands of people out of work because they cannot do renovation. Most of the homes they deal with are pre-1978. It is something that will have to be dealt with. I certainly encourage others to join the cause to relieve us of this problem. The rule will affect more than 70 million homes. The implementation of this rule to date has been a disaster. Congress will have to ensure that enough people are trained and certified. That way, the rule can do what it is supposed to do—protect the health of young people and pregnant women.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I am forever amazed at my friends on the other side of the aisle. They have clearly established themselves as the party of no. America knows that. But what they have done on this bill dealing with Wall Street reform is hard to comprehend. We started on this bill a week before last. We filed cloture on it. On Monday, we had a cloture vote last week; Tuesday, a cloture vote last week; Wednesday, a cloture vote last week. Finally, they said: OK, we don't need any more cloture votes. Let's start legislating on the bill.

Tomorrow is Wednesday. It has been a week. Nothing has happened. Why? Because the party of no says no to everything we try. Listen to this one. This is something. They will not let us vote on amendments the Republicans have offered and amendments we have agreed to they would not let us vote on.

I came to the floor of the Senate today to let everyone know the frustration the American people must feel and the frustration many people feel in the Senate as a result of the party of no continually doing what they are doing. I want to make sure everyone understands the facts in more detail than what I have given.

On Thursday, April 15, Wall Street reform legislation was introduced and placed on the Legislative Calendar. Thursday, April 22, I sought consent to proceed to that bill. The Republicans objected, and I was forced to file cloture. I don't want to get into a lot of the procedural problems we have, but remember, the Republicans have caused us to file cloture almost 100 times this Congress. So everyone understands, it is more than just a word—"filibustering." That is what they have done almost 100 times.

I moved to the bill. They would not let me—I had taken it off the calendar and tried to bring it to the floor. They said no. I had to file a motion signed by 17 or 18 Senators. It took 2 days for that to ripen before we could vote on it. Once we voted on it and we got cloture, they got another 30 hours. So in this instance, they had a new game.

They said: Go ahead and move to the bill. We are not going to use the 30 hours. We are going to use a week. We have done nothing for a week waiting for this phantom amendment they think is floating around here someplace, this so-called Shelby amendment.

Monday, April 26, when my cloture motion had ripened, we failed to get cloture 57 to 41. We did some other things—moved to reconsider, some parliamentary maneuvers so we could get this bill moving along. Tuesday, April 27, cloture failed, 57 to 41, the same vote as the day before. Wednesday, April 28, cloture vote failed, 56 to 42. One of their Members, I guess, was gone or maybe somebody switched a vote. I really don't know. Remember, each time I voted on the prevailing side. I had to change my vote so I could move to reconsider.

So on April 28, after the cloture vote failed, they said: OK, we give up. You can start legislating for the American people. But that wasn't being fair and square with the American people. They had no intention of doing that. They are stalling on everything we do. We know they have said publicly they want health care to be Obama's Waterloo.

So just to be very clear, we were ready to start debate on this last Monday—actually, frankly, the Thursday before that. Even though we were able to overcome the objections to begin this debate, we now find many of the same parties are preventing us from making any progress on this important legislation.

One Senator I saw quoted in the newspaper last week said I had stopped—I had told that person I was going to move to a certain bill—a Republican Senator—and that Senator said: He hasn't done that. I wrote that person a letter today going over the long list of filibusters to prevent us from moving to that and many other pieces of legislation.

We haven't had a single vote on this legislation, not a single vote. People are waiting around on both sides, I am told, to offer amendments. We can't get votes on even the amendments we have agreed to and one Senator SNOWE has offered.

We have to finish this legislation. We have provisions that are expiring at the end of this month that are extremely important. A jobs bill—the expiring provisions and all the stuff we have put in that bill that we passed once before are extremely important to our country and will create lots and lots of jobs. But we can't get to that because of what is going on here. Food safety—we can't get to that. Why? Because the Republicans are stopping us from moving to anything.

I had a conference call just from the sparsely populated State of Nevada with a few of the people who have suffered terrible injuries as a result of eating contaminated food.

One little girl has missed a year of school. Her growth is stunted. People have spent—one woman I talked to—or I talked to her husband because they were getting first aid. They went home. She had been in the hospital for months and months from eating contaminated food. We are trying to do something about that. We can't do that. It is a bipartisan bill. It is nothing the Democrats are trying to jam down the throats of the Republicans. They won't let us move to anything.

Scores of nominations. The House has passed more than 300 measures that are stuck over here because the Republicans won't let us move to them, measures in years passed that would pass by unanimous consent.

I hope everyone understands. I know my caucus understands what is going on, but I hope the Republicans will accept reality and understand why we are not going to have all of the amendments they want to offer be able to be offered. We are not going to be on the bill that long. We can't be. We are trying to do something with this legislation that will change America forever for the better. What has happened as a result of Wall Street doing business not in the shadows but in the dark of night, the blackest dark you could ever see is where they have been doing their work, causing people in Colorado, in Nevada, and all over this country to suffer irreparable damage. People have lost their homes, their jobs as a result of what went on in Wall Street, the shady deals that are worse than any illegal gambling game that was ever conducted in America. That is what they were doing up there: betting our money—our money. If they win, they keep our money. If they lose, they want more of our money. We are trying to stop that. That is what this legislation is all about. This is a good bill.

Obviously, from the shenanigans the Republicans have performed on this legislation, they don't want us to do anything about Wall Street reform; otherwise, they wouldn't have done all of these efforts to stop us from moving to the bill. We want to hold Wall Street accountable. We want to end taxpayer bailouts. We want to guarantee the taxpayers will never again be forced to bail out reckless Wall Street. We want to end too big to fail, restrict new capital and leverage requirements to prevent firms from becoming too big to fail.

As I said before, and I say again: We want to bring sunlight and transparency to these shadowy markets where Wall Street executives make gambles that threaten our entire economy, the same laws that are in effect basically today that were in effect when Wall Street crashed and caused us all this harm. We are trying to change that so it can't happen again. We want to rein in these big shots who have unlimited control of money and get these huge bonuses—not bonuses of $50,000, which is huge in most people's lives, but they get bonuses in the hundreds of millions of dollars.

We want to protect consumers. We want to put a new cop on the beat, a consumer protection entity that will look at all of these different financial shenanigans that are going on. We want to make sure people who get something in the mail from—however they get it. They take them out and they look at it, they can't understand it. We want it in plain, simple English so the American people can understand what they are being asked to sign. We want to protect consumers from these hidden fees, abusive terms, and deceptive practices that are running rampant in America.

So despite the party of no saying no again and again, we are going to be patient and do our best to work through this. Chairman DODD is working with, it seems, this never-ending amendment the ranking member wants. It has been weeks and weeks. Remember, there have been negotiations going on in this matter for months—not weeks, not days—months. I guess the Republicans are saying, until that amendment comes, there is not going to be anything else happening on this bill. That is the decision they have made. They won't even let us set amendments aside and move to amendments that are agreed upon.

There is only so much I can do—we can do—in the face of determined obstructionism that is so clearly the brand the Republicans have now.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

RECOGNIZING DePAUL UNIVERSITY

Mr. DURBIN. Mr. President, I rise today to honor the memories of St. Vincent DePaul and St. Louise de Marillac and to note their legacy on DePaul University in Chicago. This year DePaul is marking the 350th anniversary of the deaths of St. Vincent and St. Louise.

Providing access to social services such as health care and education, St. Vincent and St. Louise attended to the needs of those afflicted by poverty, illness, and injustice in the 17th century. St. Vincent DePaul and St. Louise de Marillac dedicated their lives to serving the underprivileged. It was by their example that the Vincentians founded DePaul University in Chicago, Illinois in 1898.

DePaul University was established with a fundamental mission centered on service and civic engagement, ensuring academic excellence, providing access to affordable education, and promoting respect for the dignity of all persons. The spirit of St. Vincent and St. Louise lives admirably in the University's traditions. Since its founding, DePaul has been a home for students struggling to attain their dreams for higher education. Historically, DePaul has educated many students who would have otherwise seen the door to college closed for them. DePaul was one of the first universities to admit female students in a coed setting. The university also has a long and distinguished history of providing an education to first-generation college students and children of immigrants.

Today, DePaul is one of the largest and most diverse private institutions in the Nation. The student body of over 25,000 represents a wide variety of religious, geographical, ethnic, and economic backgrounds that honor the memory of St. Vincent and St. Louise. And DePaul passes the noble tradition of serving others on to its students. Students at DePaul live the legacy of St. Vincent and St. Louise when they participate in community service through a variety of university-wide programs, including the annual Vincentian Service Day.

The year 2010 marks the 350th anniversary of the deaths of St. Vincent and St. Louise. Today, a commitment to service and a celebration of diversity is more important than ever before in our Nation. DePaul embodies these goals. The University continues to promote socially responsible leadership in its students and upholds its Vincentian mission to make education accessible for all students regardless of family background or financial means.

Mr. President, I commend DePaul's celebration of the 350th anniversary of St. Vincent and St. Louise and praise their continuing pursuit of excellence in higher education.

MEDICARE DIABETES SELF-MANAGEMENT TRAINING ACT

Mrs. SHAHEEN. Mr. President, I rise today to talk about the Medicare Diabetes Self-Management Training Act, a bill I have recently introduced along with Senators STABENOW, HAGAN, FRANKEN and LANDRIEU. This bill will improve the lives of Medicare beneficiaries with diabetes by improving their access to high quality information and care from certified diabetes educators.

Diabetes affects many individuals and families in New Hampshire and across the country. My own family was touched by the disease in 2007 when my eldest granddaughter Elle was diagnosed with type 1 diabetes. We have experienced firsthand the challenges that diabetics and their families confront in having to continuously monitor and manage blood sugar levels, administer daily injections, and face a lifetime of worrying about the possibility of serious complications arising from the disease. Diabetes can be managed effectively but it requires a sustained coordinated team effort among patients and their health care providers. Certified diabetes educators, as defined by the American Association of Diabetes Educators, ''are licensed healthcare professionals who specialize in educating people with diabetes about their condition. The training, counseling and support that diabetes educators provide to patients is known as diabetes education or diabetes self-management training.'' This education teaches patients how to stay healthy, and the diabetes educator is an important part of the health care team.

Take for example a case from Raymond, NH. The patient, Rachel, is 45 years old and has type 2 diabetes. For years she struggled, trying to understand how her eating habits and lack of physical activity negatively impacted her diabetes and general health. Her medical provider followed all the appropriate American Diabetes Association guidelines, tried several oral medications and insulin, but in spite of this, Rachel's diabetes remained poorly controlled. In fact, not only were her blood sugar levels elevated, but she was already starting to suffer from complications related to diabetes.

However, once Rachel began working with a certified diabetes educator, CDE, things started turning around. The CDE was able to assess and accommodate Rachel's individual learning style and barriers to change. Through ongoing support and positive reinforcement, Rachel began to recognize her ability to control her diabetes with a few lifestyle changes. Successful, long-