

facility in a manner that brings us the second and third increment of problems.

I ask that the Members of this body join me in expressing their concern about a proper way to address this very complicated situation.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. DORGAN. Mr. President, will the Senator from Virginia yield for a unanimous consent request?

Mr. WARNER. Yes.

Mr. DORGAN. I ask unanimous consent that I be recognized following the presentation by the Senator from Virginia.

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

#### SYSTEMIC RISK COUNCIL

Mr. WARNER. Mr. President, I rise to address an issue I know this body will be dealing with in much greater detail in the coming weeks and months; that is, financial reeregulation.

On Monday, I am introducing legislation to establish a systemic risk council. I have worked with Chairman DODD on this issue and his staff, and I am very grateful that his discussion draft—although I have not seen the specific language—is expected to include a strong systemic oversight council which I have been advocating.

I appreciate Chairman DODD's leadership on this issue and look forward to working with him and the administration on making it a reality.

As I have articulated previously on the floor and in an opinion piece published in the Washington Post, we need to establish a framework for addressing systemic risk in our financial system. Systemic risk is not the only area we need to address but is an area where the current system has unequivocally failed.

Systemic risk is actually a number of risks united by the possibility that, if left uncontrolled, they could have consequences for the entire markets or the entire economy. We saw examples of that a year ago.

Most often, systemic risk comes from the failure of an important financial institution. But because that is not the only source, we should not expect to control systemic risks with a rigid, one-size-fits-all approach.

In order to do this, we need a body that can look across our financial system at all sources of risk, that can spot gaps or opportunities for firms to avoid regulation, and that will not be consumed by other day-to-day responsibilities or protecting its own regulatory turf.

Some have proposed that the Federal Reserve serve as the systemic risk regulator. But its monetary policy responsibilities present potential conflicts, and it has proven incapable of properly regulating large institutions.

The Federal Reserve claims to be the systemic risk regulator at the moment,

but it has obviously failed to take on that task, and we need to be careful in balancing its responsibilities and authorities in the coming years.

That is why, if we want to ensure that monetary policy and systemic risk are each managed in the best possible manner, we must recognize that institutional structures and responsibilities do matter. Doubling down on a structure of the past that has not performed well outside of its core function is not how we should confront the challenges of the future.

Our Founding Fathers opposed concentrations of power and favored a system of checks and balances. We have resisted creating an all-powerful central bank, and a council would allow for such a system of checks and balances.

The Federal Reserve is, of course, not the only agency that has not performed well in the crisis over the last year or so. The current system has failed to provide proper checks and balances and has replaced healthy competition where efficient and innovative firms flourish with a system where a handful of firms are too large to fail, can threaten the safety of the entire system, and enjoy an implicit—or maybe even more explicit—government guarantee that destroys any notion of market competition.

This failure points to another task we must take on in financial regulatory modernization. We must end the notion of too big to fail. That is why I believe we should establish a strong systemic risk oversight council, and I will be introducing legislation, as I mentioned, to do that.

A systemic risk council is not a silver bullet but avoids the pitfalls of entrusting systemic risk responsibility with one single agency that has other missions, and those other missions could serve as a source of conflict of interest.

A council could see across the horizon and have all the information and expertise flow up into it. It addresses our stovepipe problems and avoids the conflicts that come from also conducting monetary policy and helps to stave off regulatory capture.

The systemic risk oversight council I propose would consist of the Treasury Secretary, of course, the Chairman of the Federal Reserve—they would play a valuable role—and the heads of the major financial regulatory agencies, two independent members, including the chair of the council.

This chair of the council would be independently appointed by the President. It would be charged with the responsibility for working to improve our understanding and control of systemic risks. This builds on the model of the President's working group on financial markets. An independent chair, appointed by the President and approved by Congress and supported by a permanent staff, has proven to be relatively effective and ends up resembling the National Transportation Safety Board or the National Security Council.

Critics of this approach have said you cannot convene a committee to put out a fire. But we do convene committees to prepare for and respond to large-scale crises time and again across our whole system. Experience has taught us boards and councils can work in a wide range of contexts, provided they have the right responsibilities, powers, and membership. Even the Federal Reserve and the Federal Deposit Insurance Corporation are run by boards.

In addition, I believe we should leave the real emergency powers with the regulators. The Federal Reserve should retain its 13(3) authority, though it should be tightened up. Bank regulators should retain prompt and corrective action authority, and the FDIC should retain its resolution powers. As a matter of fact, Senator CORKER and I have introduced legislation already that expands the FDIC's resolution powers to include bank holding companies.

In a crisis, however, the council should coordinate all of these regulators and their actions, as police, fire, and emergency response all coordinate in local emergencies. But the systemic risk council cannot just be a debating society, and so it would have real resources and power.

First, in addition to gathering and analyzing data, the council could help to determine how to regulate new products and markets in order to minimize regulatory gaps. Those regulatory gaps often end up with regulatory arbitrage, as we have seen recently. It would first identify gaps in the system and then have the appropriate regulators work together to fill these gaps.

With these tools, we will eliminate the huge blind spots our regulators had last fall when new and unregulated markets tail-spun out of control. We will eliminate the ability of firms to avoid regulation or find the weakest regulator by ensuring consistent treatment of activities across the financial markets.

Second, in order to address the too-big-to-fail issue, the council will work to prevent firms from becoming too large to fail. It would do this in three specific ways.

First, it would have the authority to identify large firms that could pose systemic risk if they failed but did not currently have an end-to-end prudential regulator and would assign them a Federal regulator. This could include hedge funds, insurance companies or other nonbank financial companies. Making sure those companies that have no regulatory oversight, if they fall into this category of too big to fail, have some kind of oversight is terribly important.

Second, the council would establish systemwide prudential standards for large firms, including counterparty exposure limits, increased capital requirements, reduced leverage and strengthened risk management requirements, all to make sure that while we would not set arbitrary caps

on size, we would make sure, as a firm gets too large or takes on too much excessive risk, that there are additional requirements, such as additional capital and others I outlined.

Finally, it would work with the council to ensure that any firm could fail safely—we saw in the past that there was no plan on how we would unwind a Lehman or an AIG—by working with the financial regulators, the day-to-day prudential regulators, to develop clear, written plans for the unwinding or failure of a financial company. In a sense, we would be asking some of these too-big-to-fail institutions to preapprove or put forward their own funeral plans or dissolution plans so we would know how we go through this process, should that unfortunate event take place. These plans would be made in advance of trouble and could not rely on the type of government intervention we were forced into last fall.

As I have said, the systemic risk council is not a silver bullet. Many systemic risks already lie squarely within the responsibility of our day-to-day financial regulators. We need to make sure our current regulators have clear missions, including managing risks within their institutions and regulated markets, and we must ensure these regulators do their job.

But that is only half of the answer because other systemic risks lay outside of the day-to-day prudential regulators' job description, in between the cracks of our existing regulatory system. The Systemic Risk Council's responsibilities would be clear and focused. Systemic risk would be its only job, and it would help fill in the cracks and prevent problems from becoming unmanageably large or complex.

What I am proposing today boils down to a simple, consistent, and I believe common sense idea: If we want to do something constructive about systemic risk, we should create a mechanism that can ensure our regulators do their jobs, avoid conflicts of interest, and fully leverage our existing regulatory resources to promote the proactive identification and control of systemic risks. By having this council, made up of the heads of the day-to-day prudential regulators—the Fed, the Treasury, independent members, and this independent chair appointed by the President—I believe we create this mechanism.

We need to make sure we never again put the American taxpayer into the kind of financial duress we had take place last year. I believe the Systemic Risk Council approach, working as one piece of an overall financial modernization and reregulation, will lead us in that direction.

Mr. DORGAN. Mr. President, would the Senator yield for a question?

Mr. WARNER. I would yield for a question.

Mr. DORGAN. I want to talk about jobs today, but the Senator piqued my interest by talking about too big to fail. Some believe—and I am one of

those who believe—that too big to fail means you are too big. As you know, in Great Britain this week they decided to begin taking apart institutions that are too big to fail. And I know there are other approaches here in trying to deal with systemic risk and a variety of approaches to try to address the issue, but has the Senator had thoughts about whether too big to fail is just flatout too big?

Mr. WARNER. I am very familiar with what happened in the UK, with the situation with the Bank of Scotland, which had received governmental assistance—somewhat similar to the banks that had received our TARP financing. They came in and said: We are going to start to break up this institution. Former Fed Chair Paul Volcker has suggested that certain banks should perhaps be prohibited from taking on excessive risk activities, in a sense going back almost to a Glass-Steagall approach. Those are both areas that I believe warrant further consideration.

Our approach here has been to say that while it is hard, in this interconnected financial system we have where institutions crisscross all across the world, to put an arbitrary size cap on it, what we can do, by putting this type of Systemic Risk Council in place, we can put barriers and a price of getting too large by having added capital requirements; by having this designation that you have to show us a dissolution plan and that the Systemic Risk Council would weigh in; by assuring that if you take on too much risk activities on your own trading desk, there is a higher price to pay for that.

There are these other examples, as you mentioned, that we will be debating through this whole process. I know the Senator has raised this issue at times on the floor as well, and I will solicit his advice and comments. And perhaps we need to go even beyond that in looking at, as I think you appropriately pointed out, at the end of the day, does too big to fail mean just too big? It is a hard place to draw a line. But I thank the Senator for his question, and I yield my time.

Mr. DORGAN. The Senator from Virginia is very thoughtful on these issues. I know the workshops he has been putting on are very helpful. As we try to work through these with respect to resolution and other authorities, it is very important for us to try to use the best ideas that exist in this Chamber to put together an approach that would prevent ever again what happened last year and the year before.

So I have some thoughts about the use of the Fed with respect to systemic risk and other things, and I will speak about them later. But my interest was piqued by the Senator's discussion on the floor because I think this is very important. If we don't find ways to put the foundation back under this economic system of ours, people aren't going to have confidence going forward. Part of financial reform is to es-

tablish that confidence, and I think the work the Senator from Virginia has been doing is extraordinary work.

My hope is that at the end stage we can probably come closer to the side of, if you are too big to fail, you are probably too big, because too big to fail is almost, by definition, no-fault capitalism. But between here and there, there are a lot of interesting and useful ideas that are being developed, and the Senator from Virginia is in the middle of them, and I appreciate his work.

Mr. WARNER. I thank the Senator from North Dakota for his comments, and I look forward to working with him. I think this is clearly an area where we will find common cause with our colleagues on the other side of the aisle. Never again should the American taxpayer have to pick up the burden from institutions that have been financially irresponsible and then from those financial irresponsibilities that pose a systemic risk where we the taxpayers are left basically holding the bag.

So I thank the Senator for his comments, and I look forward to working with him on this very important issue.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from North Dakota.

#### JOBS AND THE ECONOMY

Mr. DORGAN. Mr. President, I would like to comment this morning about the information that was released this morning on unemployment. The unemployment level has now gone to 10.2 percent. That is an antiseptic number. It doesn't mean so much as a number, but it sure means a whole lot to the folks who have lost their jobs.

We are now at a point where we have had a massive number of job losses since this economic decline began. This is the steepest economic decline since the Great Depression.

In the same couple of weeks where we have learned that the economy has once again begun to grow—that is good news—we also know that people are still losing their jobs, and that is bad news. An economic recovery that is a jobless recovery, in my judgment, is not a real economic recovery.

We are working on a lot of things here in the Senate, all very important—health care, climate change—but in my judgment, the most important thing for this Congress and this government to do is to try to restart this economic engine in a way that creates real jobs, puts our economy back on track, produces real, significant jobs that pay well, and that puts the American people to work in order to make a living and to care for their families. When that happens, we will have achieved something significant.

Let me say quickly, as I have said before, this President has been in office less than 10 months. He inherited an unbelievable economic mess—the deepest economic downturn since the Great Depression. So I understand that. I