the minimum and risk-based capital standards for these institutions. Your proposal, which gives the new regulator more discretion in these areas, is an important improvement in this respect.

This was an endorsement by the Federal Reserve Board of Senator SHELBY's efforts to reform. What happened? Senator SHELBY brought it up in the Banking Committee, and it passed the committee on a straight party-line vote. All Republicans voted for increased regulations, increased accountability, increased capitalization of Freddie and Fannie, and every Democrat on the committee voted against it.

When it got to the floor, it was subject to a 60-vote filibuster. It was clear the Democrats had sent word they were not going to support it, and there was no prospect of passing the bill. Although he bill passed in committee, it never actually passed the Senate floor.

I want to say the idea that the only greed, the only mismanagement was with private bankers is not accurate. There was plenty of that. I have no grief to bear for the big guys on Wall Street. They rolled the dice. I voted against their bailout and I do not believe they should have been bailed out at all. They should have suffered the consequences. We would probably be better off today economically because we would have taken the hit and gotten it out of our system. We can dispute that. All I can say is there are other areas of greed and mismanagement.

But currently, 96 percent of home loans are backed by government institutions—Fannie, Freddie, VA, the Housing Administration. Who is to say they are always perfect? We know, as Senator MCCAIN has pointed out in his amendment to this legislation that is before us today, that we can still do more about it.

Since 96 percent of housing mortgages are now backed by government institutions, why does this legislation not deal with it? Why does it not? It completely sidesteps the issue. Why? Because we would have to deal with how to score and add to our debt another $400 billion. Is that one reason?

Is another reason because Freddie and Fannie have been so powerful politically that they have been able to fend off the oversight they should have been subjected to from the beginning? Is it a belief somehow because they are quasi-government institutions that they can do no wrong, that only private industries and institutions can do wrong?

I don't know exactly why all of this is so, but it is not dealt with, and it should be dealt with. Senator MCCAIN's legislation will deal with it. He made a speech Thursday in which he delineated the history of how this all occurred. I thought it was very valuable insight. Americans should know about this. When the government comes in and allows politics and governmental policy to override financial reality, then we can get in trouble. If you order agencies or agencies are willing to make bad loans because they think that somehow it is good policy, do people think nobody is going to have to pick up the tab some day in the future? I am afraid they are.

The situation we are in arose from the fact that richly paid GSE executives and their political supporters had no skin in the game on the loans they were making. They were getting their salaries, and they kept getting their salaries even when it became clear the firms were mismanaged and heading for disaster and were going to be bailed out by the American taxpayers. They operated recklessly and they, I believe it is fair to say, were the precipitating cause, frankly, of the collapse of the financial markets; if not the cause, one of the primary causes of it. It is unbelievable and improper that when we propose legislation to restore America's financial stability, we don't fix the Freddie and Fannie problem.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. SESSIONS. I ask unanimous consent for 30 additional seconds.

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

Mr. SESSIONS. The Wall Street Journal wrote that ''reforming the financial system without fixing Freddie and Fannie is like declaring a war on terror and ignoring al-Qaida.''

Fannie and Freddie were at the center of it. They were a cause of it. They need to be reformed, and I am disappointed that the one thing this government should be doing, which is fixing these quasi-government agencies, is not occurring.

I thank the Chair, and I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 3217, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 3217) to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Pending:

Reid (for Dodd/Lincoln) amendment No. 3739, in the nature of a substitute.

Sanders/Dodd modified amendment No. 3738 (to amendment No. 3739), to require the nonpartisan Government Accountability Office to conduct an independent audit of the Board of Governors of the Federal Reserve System that does not interfere with monetary policy, to let the American people know the names of the recipients of over $2,000,000,000,000 in taxpayer assistance from the Federal Reserve System.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SENATOR BOB BENNETT OF UTAH

Mr. DODD. Mr. President, I want to share a few thoughts, if I may, for a minute or so on the pending matter before us. But before I do that—and at a later time I will speak at greater length about this—I want to express my regrets over the decision made in Utah over the weekend regarding BOB BENNETT, our colleague.

I have served with BOB for 18 years. We have been on the Banking Committee together during that time. Obviously, we have differences of opinion on a lot of policy questions. In fact, the majority of policy questions we have had our differences on. But at critical moments, BOB BENNETT was always someone you could talk to, someone you could approach with an idea or an issue.

He went through a tough battle over the last number of weeks and did not prevail in his convention over the weekend in Utah. But I want to express to him and Joyce how much this institution will miss them in the coming year. He is a thoughtful, considerate individual. He is deliberate in his views and accessible when it comes to others' ideas. In my view, it will be a loss for the institution that he will not be back. That is coming from a Democrat on this side of the aisle.

I realize there is a contest coming up, but I didn't want the day to begin or end without expressing my disappointment over the results in Utah. I know that is probably not appropriate for Democrats, making comments about Republican races, but BOB BENNETT is one fine U.S. Senator, and he has played an invaluable role, a critical role at critical junctures over the last number of years that I have served with him.

Now, Mr. President, I want to make some comments about the bill before us. It has been nearly 7 weeks since the Banking Committee approved legislation to reform Wall Street. It has been more than 3 years since our committee began work on this very important topic. It was in January or early February of 2007 that I became chairman of the Banking Committee for the first time, and, obviously, the news even at that early date was about the mortgage foreclosure issue.

A lot of work has gone on in the Banking Committee. We have literally had dozens and dozens of hearings and meetings with people on how best to address this economic decline that we have suffered—with 8½ million jobs being lost and 7 million homes in foreclosure. In fact, over the weekend there was a report that nearly 4 million households are severely delinquent on their mortgages, and 250,000 homes have been seized—are in foreclosure—since the first 3 months of this.

Even though we have 4 million homes delinquent on their mortgages, which is the largest backlog since the crisis began, there is some positive news on job creation—290,000 jobs in the month of April, which is 121,000 more jobs created in the first few months of the year than were anticipated. We are clearly seeing an economy that seems to be improving. But when we have 4 million homes that are underwater, we also realize we are far from out of this difficulty, particularly if you are a working family.

We also, of course, saw last Thursday a market decline of 1,000 points in almost 17 minutes. The Presiding Officer and I, in fact, talked about this over the weekend, and I appreciate his insights and observations on the matter as someone who spent time working in this field before getting involved in public life. There are a number of ideas emerging as to how this happened, and my hope is that as early as next week our Banking Committee will have an informal meeting with people from the Securities and Exchange Commission and the Commodity Futures Trading Commission, as well as others, to hear what they think happened and what steps they are taking to minimize that event from occurring again.

Then, of course, over the weekend we had the stories emerging about Europe and the Euro and what was occurring in Greece and other nations in danger of going to default because of the huge debt problems that exist. Tomorrow morning, our committee will be briefed by the Federal Reserve as well as the Secretary of the Treasury on exactly what plans have been put in place in Europe.

I do not want to dwell on either of those points at this juncture except to make this point. Here we have an event totally unrelated to mismanagement of investment banks or financial institutions in the case of a market decline as precipitous as we saw Thursday and events that are beyond the borders of our own nation that will have an impact at home. We are told this is not going to have any kind of severe impact—at least we don't believe it will at this juncture. But we do live in a highly sophisticated, computerized world with this flash trading, as it is called—''high frequency trading,'' as it is referred to—where literally within microseconds buyers and sellers are matched up. What the system doesn't accommodate for is panic, unfortunately, and apparently the circuit breakers necessary in market-wide exchanges to minimize these kinds of events when they occur and also events that occur in a small country in the Mediterranean—such as Greece or Portugal or Spain or other countries—where their debt situations pose risks globally.

So what is critically important, in my view, is, while our legislation before us it not going to stop crises from occurring, what we try to do is provide our government with the necessary tools so we can respond when crises occur. No one can stop the rain from coming. It will happen. It will happen again and again. What you can do, however, is make sure the roof is going to be solid enough so it doesn't leak or that you are not going to be in a situation where, when things break down in the next crisis, no matter how modest it may be, it endangers the job creation as we saw in this country—as we are today seeing massive losses occurring, retirement accounts declining. The value of homes has gone down some 30 percent in the last several years. Again, there are some indications that things are improving here at home, and we welcome that news. But if you are one of those 8.5 million who lost a job or home or if you are a retiree who watched your savings disappear overnight, as many did in this country, then this positive news, while it is welcome, is hardly any relief to you.

So it is critically important because we are in no better shape today despite advances and the progress we have made on this bill. If something were to happen tonight or tomorrow in our own country or something happened elsewhere that would have the contagion effect, it is called, to spread here or elsewhere, we have not yet passed this legislation. We don't have any more provisions in place than we did in the fall of 2008 when the problems exploded. While we have written strong provisions in this bill that never would allow an institution to become too big to fail, the fact is that has only been adopted in a bill that has yet to be passed in this body, yet to be reconciled with the language from the other Chamber in this Congress and to be signed into law by the President.

It is important that we get this job done. We have had a good debate up until now. With the guidance of our leadership, we will begin tomorrow to consider some amendments, allowing for some adequate debate—hopefully not too long on each of these ideas. And there are a lot of ideas we have, both Democrats and Republicans. We can have our votes on these matters and either include them or exclude them on the legislation. But we need to get this job done, I hope this week—at the very latest, the end of this week—so we can work with the other body and resolve the differences and get this legislation to the President.

I would be the last one to suggest that what we have written here takes care of every imaginable situation. It doesn't at all. What it does is it ends too big to fail and puts in place a consumer protection bureau that has never existed before in our Nation so that average citizens might have some redress when a mortgage broker or company takes advantage of them. We try to put in place an early warning system so when matters like those that happened in Europe or other places occur, we can respond to them early and adequately so they don't explode and expand to affect everyone else in economy. We also deal with some of these exotic instruments that were totally unregulated and operated in the shadow economy of our Nation.

There are other provisions in the bill, but those are the four at least major goals. As I said a moment ago, I know there are other circumstances people wanted to accommodate in this legislation. But, as my colleague from New Hampshire pointed out the other day, some of these other issues are so complex, they will need adequate study, and trying to sort of hurl them into this bill or eliminate things without any alternative being proposed is not exactly the wise way to be dealing with matters as important as the financial sector of our Nation.

I am grateful to our colleagues for what they have done already. As many have pointed out, this has been a worthwhile process. It has taken a long time considering the implications—none of us, obviously, want to have the so-called unintended consequences. No matter how good we think our ideas are, we need to make sure what we are doing is not going to provoke its own set of difficulties.

We have to finish our work on this legislation, not just in recognition of what has happened but in preparation for what may happen next. As we have seen in recent days, the shocks to our system are as inevitable as rainfall. Throughout Europe, as we have seen, countries are bracing for the effects of the Greek crisis, effects which respect no boundaries and offer no safe haven for anyone. Right here at home, our market stumbled, as we saw last week with our stock market tumbling hundreds of points before righting itself.

Again, as I made reference to a moment ago, the rain is coming, but we need to fix our roof so we don't all suffer as a result of the inevitability of rain. The issues raised by the crisis in Greece and last week's stock market scare require our attention—and they have it.

I have asked Senator JACK REED of Rhode Island, who chairs the subcommittee dealing with the Securities and Exchange Commission, to prepare for hearings on the stock market issue so we can get to the bottom of what happened.

As I mentioned, our staff is working to ensure our government does its part to help contain the crisis in Europe—at least to watch it and determine whether there are any spillover effects. But these events are reminders that our work on this legislation must look through the windshield at the crises to come, not just in the rearview mirror at the one from which we are now just emerging. They are a further reminder that our work does not end with this legislation.

I urge my colleagues to join us in making a final push to get this bill done so we can move on to those other emerging issues. When we do, we can face these challenges with the knowledge that we have strengthened our financial system; that although we cannot prevent crises from occurring, we can prepare for them so their effects are not felt by ordinary Americans to the extent they have been in the last number of years. That is all we are really trying to do. I always get uneasy when I hear authors of bills claim they are going to solve every problem known to mankind in that issue area. We are not, unfortunately. We do the best we can under the circumstances.

Again, last Thursday's and the weekend's events are a constant reminder that we live in an ever-shrinking world and we are affected by events far beyond our shores. It is not just because some company did something wrong. It can happen far away and yet have implications here. But we need to make sure the next generation will have tools on hand so they can spot problems early on and take steps to minimize their effects here at home when they occur. That is the goal of this bill. It is not an insignificant one; it is an important one.

I thank my colleagues. They have been extremely constructive and thoughtful over the last week or so. We had a good weekend. A lot of people stepped forward, and we were able to work out some language that I think will allow various provisions to be adopted. More work needs to be done, but I am confident we can achieve that goal.

I would be remiss if I didn't acknowledge once again my thanks to the Presiding Officer, a new Member of this body and the banking committee but he has made invaluable contributions to this product. While not a chairman of even a subcommittee yet, he has acted as a very senior Member in many ways because of the knowledge he has brought to this discussion and debate. That has been, as I said, invaluable to this chairman of the committee, and I thank him personally for his efforts in that regard.

I see my friend and colleague from Maine, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, I rise today to speak on behalf of an amendment I filed to direct regulators to impose tough risk- and size-based capital standards on financial institutions as they grow in size or engage in risky business practices. I am pleased to offer this amendment on behalf of Senator SHAHEEN and myself.

Our amendment is aimed at addressing the too-big-to-fail problem at the root of the current crisis by requiring financial firms to have adequate amounts of cash and other liquid assets to survive financial crises without turning to the taxpayers for a bailout. It is critical to our ability to avoid future crises that this amendment be adopted.

I am very pleased that the FDIC Chairman, Sheila Bair, has strongly endorsed our amendment. In a recent letter to me, Chairman Bair called this proposal:

> . . . a critical element to ensure that U.S. financial institutions hold sufficient capital to absorb losses during future periods of financial stress. With new resolution authority, taxpayers will no longer bail out large financial institutions. This makes it imperative that they have sufficient capital to stand on their own in times of adversity.

Chairman Bair also noted the importance of ensuring that bank holding companies and large nonbanks are held to the same capital and risk standards that are applied to insured banks in order to protect against excessive leverage that could destabilize our financial system. As Chairman Bair put it, ''The amendment accomplishes this goal simply and directly.''

It makes no sense that capital and risk standards for our Nation's largest financial institutions are more lenient than those that apply to small depository banks, when the failure of larger institutions is much more likely to have a broad economic impact. Yet that is currently the case. We must give the regulators the tools to end and the direction to address this problem. If financial firms, including bank holding companies, were required to meet stronger capital standards, they would be far less likely to fail and to trigger the kind of cascade of economic harm we have been experiencing since 2008.

The Collins-Shaheen amendment directs Federal regulators to impose minimum leverage and risk-based capital requirements on banks, bank holding companies, and those nonbank financial firms identified by the new Financial Stability Oversight Council for supervision by the Federal Reserve. Neither current law nor the bill before us requires regulators to adjust capital standards for risk factors as financial institutions grow in size and engage in risky practices.

The current Senate financial regulatory reform bill also does not require regulators to apply minimum capital and risk measures across financial institutions, as would be required by our amendment. As the FDIC Chairman has noted about the current financial crisis, ''Far from being a source of strength to banks . . . holding companies became a source of weakness, requiring financial support.''

She went on to caution that ''they should not be allowed to operate under consolidated capital requirements that are numerically lower and qualitatively less stringent than those that apply to insured banks.''

Our amendment would tighten the standards that would apply to larger financial institutions by requiring them to meet, at a minimum, the standards that already apply to small banks. This only makes sense. If a small bank fails, the FDIC can close down that bank over a weekend, allow it to operate, avoid a run on the bank, and deal with it in an orderly way. But if a large bank holding company fails, it is so interconnected in our economy that it sets off a cascade of dire economic consequences. That was the point that the chairman of the Banking Committee was just making. We live in such an interconnected global financial system now.

So, from my point of view, a view that is shared by the Chairman of the FDIC, it is only prudent for us to empower the regulators to impose, at a minimum, the same kinds of capital and leverage requirements and restrictions that apply to small insured banks.

I ask unanimous consent that the letter from Chairman Bair be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Ms. COLLINS. I had the privilege of serving the people of Maine as a financial regulator for 5 years about 20 years ago. This is an issue about which I care deeply and am committed to helping forge a solution to, so that never again can the problems and the excesses of Wall Street have such dire consequences for Main Street.

Increasing capital requirements as firms grow provides a disincentive to their becoming too big to fail in the first place, and ensures an adequate capital cushion in difficult economic times. Our amendment directs the regulators to establish capital standards that take size and risk into account.

Our amendment strengthens the economic foundation of large financial firms, increases oversight and accountability, and helps prevent the excesses that contributed to a deep recession that has cost millions of Americans their jobs.

Let me conclude by thanking the chairman of the Banking Committee and the ranking member of the Banking Committee and members such as the Presiding Officer and Senator CORKER and Senator GREGG for their work on this very complex issue. More than a year ago I introduced a financial regulatory reform bill. I had the pleasure of discussing the bill with the chairman of the Banking Committee, and I am pleased with much of what is in his bill at this point in the debate.

I hope we can continue to make further changes, such as the amendment I have proposed with Senator SHAHEEN, but I do want to salute the members of the Banking Committee. I know this is enormously complex and, at times, a thankless task. But it is so important. In fact, I argued that we should have dealt with financial regulatory reform last year. I think it is that important to the future of our economy. We realize we were operating with regulatory black holes that allowed, for example, trillions of dollars of credit default swaps to develop with no one having oversight or visibility as far as their impact on the financial market.

They were not regulated as insurance, even though I personally believe they act as an insurance product, nor were they regulated by the banking regulators. The creation of the Council of Regulators in this bill has not received a great deal of discussion, but I think it is one of the most important provisions in this reform, and it is one that has widespread bipartisan support. It was the key feature of the bill I introduced last year. I have discussed it with the Presiding Officer as well.

I personally still believe we need an independent chairman of that council rather than the Secretary of the Treasury. I think we need to broaden the makeup of the council to include some State regulators so that the insurance area is covered, and State securities administrators, since they play such a critical role. I think those State regulators should be brought on to the council in a nonvoting capacity given the constitutional issues. But that council is absolutely critical. I think we should add the regulator for credit unions to that council. What we want is a council with as broad an overview as possible, bringing together everyone who has a role so we do not have these regulatory gaps, these black holes developing in the future, and so that we can bring the collective wisdom of these officials to the table.

So that is an example of a provision of this bill that I think is extraordinarily important. But perhaps because it does have widespread support, it has not generated much discussion on this floor. So I wanted to mention that and salute the committee for what I think is a provision that is going to make a real difference in preventing the kinds of problems we saw that triggered the recession of 2008.

I also want to commend Senator LEVIN and Senator COBURN for their work on the Permanent Subcommittee on Investigations, the Senate's premiere investigative subcommittee which is part of the Homeland Security Governmental Affairs Committee which Senator LIEBERMAN and I have the privilege of leading. They have given us great insight into the role of everyone from sloppy mortgage brokers and bankers who threw underwriting standards out the window and made loans that never should have been made to people who could not possibly repay them.

They have looked at the role of credit rating agencies that also did not perform in the way we would like. They have looked at the role of investment banks such as Goldman Sachs. We need to take the lessons we have learned, the great depth of knowledge in this body, and work together in a bipartisan way. That is what we have been doing in the last couple of weeks.

In closing, let me just say, we have made a lot of progress. I am confident we can get there. Let's not pull the plug on this debate prematurely. There are a lot of amendments that are good-faith amendments that are still out there. Let's work through them and continue to strengthen and improve this bill which has so many excellent features to it.

At the end of the day, I hope we can vote on a bill that will command the support of 70 Members of this body. I would like it to be all 100, but let's aim for 70. In doing so we can demonstrate to the American people that we can come together and work on an issue that really matters—matters to our economy, to the American homeowners, to our small businesses, to anyone who has a retirement account. It matters to every American.

I yield the floor.

EXHIBIT 1

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, May 7, 2010.

Hon. SUSAN M. COLLINS,
Ranking Minority Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR COLLINS: I am writing to express my strong support for your amendment number 3879 to ensure strong capital requirements for our nation's financial institutions. This amendment is a critical element to ensure that U.S. financial institutions hold sufficient capital to absorb losses during future periods of financial stress. With new resolution authority, taxpayers will no longer bail out large financial institutions. This makes it imperative that they have sufficient capital to stand on their own in times of adversity.

During the crisis, FDIC-insured subsidiary banks became the source of strength both to the holding companies and holding company affiliates. Far from being a source of strength to banks as Congress intended, holding companies became a source of weakness requiring federal support. If, in the future, bank holding companies are to become sources of financial stability for insured banks, then they cannot operate under consolidated capital requirements that are numerically lower and qualitatively less stringent than those applying to insured banks. This amendment would address this issue by requiring bank holding companies to operate under capital standards at least as stringent as those applying to banks.

The crisis also demonstrated the dangers of excessive leverage undertaken by large nonbanks outside of the scope of federal bank regulation. Notable examples included the excessive leverage of the largest investment banks during the run-up to the crisis, and the extremely high leverage of Fannie Mae and Freddie Mac. To remedy this and prevent regulatory gaps and arbitrage, large nonbank financial institutions deemed to be systemic must be held to the same, or higher, capital standards as those applying to banks and bank holding companies. Again, the amendment accomplishes this goal simply and directly.

Finally, and more broadly, the crisis identified the dangers of a regulatory mindset focused exclusively on the soundness of individual banks without reference to the "big picture." For example, an individual overnight repo may be safe, but widespread financing of illiquid securities with overnight repos left the system vulnerable to a liquidity crisis. A financial system-wide view requires regulators, working in conjunction with the new Financial Services Oversight Panel, to develop capital regulations to address the risks of activities that affect the broader financial system, beyond the bank that is engaging in the activity.

We at the FDIC remain committed to working with you towards a stronger financial system. This amendment will be an important step in accomplishing this goal.

If you have further questions or comments, please do not hesitate to contact me or Paul Nash, Deputy for External Affairs.

Sincerely,

SHEILA C. BAIR,
Chairman.

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

Mr. DODD. Before my friend and fellow New Englander leaves the floor, let me thank her for her comments, but also let me thank her for this whole notion of leverage and capital standards as well. It is something we feel equally strongly about.

We have provisions in the bill, but anything can be strengthened. We are very interested in the idea that the Senator from Maine and Senator SHAHEEN have brought to the table, and invite, at this moment, their staff and others to get with ours and take a look and see if we cannot—and I will talk to Senator SHELBY as well because it is important.

There has been some debate, and I go back and forth in this regard. I have always resisted the idea that the Senate should set accounting standards. We have had some times in the past on stock options—I recall a few years ago the debate was whether we would set the accounting standard on stock options.

I thought there was a very persuasive argument made by the industry that pointed out that we should probably consider them as a tool to attract, particularly, startup companies. But as attracted as I was to their ideas, I did not want to open the box of beginning to set accounting standards in Congress. We have competency here, but sometimes we get beyond our competency.

The issue was sort of the same on capital leverage, that we have to have stronger leverage and capital standards. The debate is, should we actually set the leverage here or do we say we want strong standards and defer to our regulators to determine exactly what that standard ought to be? Clearly, we need to have better leverage and better capital standards. If we do not, these large institutions—my colleague from Maine is absolutely correct in this regard, that we will end up then having these institutions that are interconnected. If we do not demand greater accountability through that requirement, then we expose ourselves to the very kinds of things we are seeing elsewhere.

So I thank her for this, and over the next day or so let's see if we can take a look at the Senator's amendment and adopt it as well. I thank her for her ideas as well on the oversight council we have crafted. Actually, many of us like the idea of having an independent chair. We had this debate.

The Secretary of the Treasury was not my first choice, the independent chair—but as my colleague from Maine knows, having chaired committees, when you are trying to get a committee to agree on something, the idea is the one that prevailed—having the Secretary of the Treasury was the one that prevailed, as the Presiding Officer will recall in those discussions. But, clearly, as to the idea of having the credit unions, the Senator makes a lot of sense. It is a major part of our economy, and having the State regulators at least represented at that table makes sense to me as well.

So maybe before this is over we can accommodate some of those additional ideas. But I thank the Senator immensely for her contribution, and I appreciate, as well, that she understands how long and arduous this has been to get to the best we can. When we have 100 of us here dealing with something of this magnitude, it is harder to put that together. But we are getting there. And I agree with her that we ought to be able to finish. It does not mean we are going to satisfy everyone, and it cannot go on forever, but we certainly ought to accommodate as many different ideas as we can and make our judgments on them to include them in the bill.

I thank her immensely for her contribution.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, as the debate over Wall Street enters a pivotal stage, we should ask ourselves, what is financial regulatory reform about? We all agree that one of the main objectives of the legislation is to ensure taxpayers will no longer be forced to bail out or subsidize financial institutions that engage in risky behavior. That means ending so-called too big to fail. Unfortunately, the legislation we are now considering does not mention the two institutions that have come to epitomize too big to fail. I am referring to the two government-sponsored enterprises, the so-called GSEs, Fannie Mae and Freddie Mac, which are currently in Federal conservatorship. The egregious behavior of these two institutions has rippled throughout the entire commercial banking sector and our economy as a whole.

Let's recall how central the two GSEs were to the housing bubble. Fannie and Freddie represent the dangers of what former American Enterprise Institute president Chris DeMuth has described as ''fusion enterprise,'' or the ''intermingling of politics and power with finance and commerce.'' This is a perverse business model that allows companies to reap enormous private profits while enjoying either implicit or explicit public backing. It is the model that enabled Fannie and Freddie to inflate the subprime mortgage bubble.

For years some of my colleagues and I have urged this Chamber to impose stronger regulations on Fannie and Freddie. As chairman of the Senate Republican Policy Committee, I authored several papers on the threats posed by the size of their mortgage-backed securities portfolios. I was particularly concerned that the government's implicit guarantee of these institutions permitted them to operate without adequate capital, to assume more risk than competing financial institutions, and to borrow at a below-market rate of interest. Of course, that is just what happened. Smaller companies got crushed while Fannie and Freddie engaged in increasingly risky lending with the backing of the Federal Government. Wall Street understood how it worked. So when Fannie and Freddie wanted these toxic loans, the mortgage markets would produce them. Between 2004 and 2007, Fannie and Freddie became the largest buyers of subprime and Alt-A mortgages. And although these two institutions had their own dedicated regulator, the Office of Federal Housing Enterprise Oversight still allowed the situation to spiral out of control. Fannie and Freddie made mortgages available to too many people who could not afford them. That easy credit fueled rapidly rising home prices. As prices rose, so did also the demand for even larger mortgages, so Fannie and Freddie looked for ways to make even more mortgage credit available to borrowers with a questionable ability to repay.

By 2008, the two GSEs held nearly $5 trillion in mortgages and mortgage-backed securities. They were overleveraged and too big to fail. It was a textbook example of moral hazard on a massive scale. ''Worst of all,'' M&T Bank CEO Robert Wilmers recently wrote in the Wall Street Journal, ''are the tracts of foreclosed homes left behind by households lured into inappropriate mortgages by the lax credit standards made possible by Fannie Mae and Freddie Mac.''

Congress would have done well to support a bill adopted by the Banking Committee in 2005 under then-Chairman Shelby. The bill would have established a new regulator for Fannie and Freddie and given that regulator authority to make sure the GSEs maintained adequate amounts of capital, had adequately liquidity and reserves, properly managed their interest rate risk, and controlled their asset investment portfolio growth. But the legislation was filibustered. Its opponents included then-Senator Obama.

As American Enterprise Institute scholar Peter Wallison, who has written extensively on this topic, concluded:

If legislation along the lines of the Senate committee's bill had been enacted in that year, many, if not all, the losses that Fannie and Freddie have suffered, and will suffer in the future, might have been avoided.

But, of course, we didn't avoid that fate. And today, Fannie and Freddie continue to impose on the taxpayers while accruing massive debt. In fact, their total debt outstanding, the debt held on their balance sheets or as mortgage security guarantees, is an astounding $8.1 trillion. This is debt that is not reflected on the national balance sheet. Last Wednesday, Freddie Mac announced it will need an additional capital injection of $10.6 billion. That is from the taxpayers. That is after it lost $6.7 billion during the first quarter of this year. In 10 of the last 11 quarters, Freddie Mac has lost a total of $82 billion which is twice the amount it earned over the previous 30 years.

This morning it was reported that Fannie too has asked taxpayers for more money, $8.4 billion, to cover its soaring losses. The combined government loss for both companies now stands at $145 billion, according to the Associated Press. Where will this end? Weren't we supposed to end taxpayer liability for entities too big to fail?

The McCain amendment, which we will be voting on hopefully tomorrow, will provide us with another opportunity to target the problems caused by Fannie and Freddie. The McCain amendment would end the conservatorship within 2 years and place both companies into receivership if they are not viable. It would also reduce the companies' mortgage holdings over the next 3 years, reimpose restrictions on the size of the mortgages they can buy, and force them to pay State and local taxes just as private companies do.

As the Wall Street Journal editorialized Thursday:

If the housing giants are no longer subsidized, they will become small enough to fail. That means they will stop lending money to people who can't pay them back, and in turn, they will stop endangering taxpayers. This is a genuine anti-bailout vote.

They were referring to the McCain amendment.

Let's be clear. Every day Fannie and Freddie remain in their current form is a day U.S. taxpayers are subsidizing their activities. Financial regulatory reform must include a restructuring of Fannie Mae and Freddie Mac. That is why I urge my colleagues to support the McCain amendment tomorrow and end too big to fail.

I ask unanimous consent to have printed in the RECORD the Wall Street Journal editorial titled ''What About Fan and Fred Reform?'' by Robert G. Wilmers, to which I referred.

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

[From the Wall Street Journal]

WHAT ABOUT FAN AND FRED REFORM?

(By Robert G. Wilmers)

Congress may be making progress crafting new regulations for the financial-services industry, but it has yet to begin reforming two institutions that played a key role in the 2008 credit crisis—Fannie Mae and Freddie Mac.

We cannot reform these government-sponsored enterprises unless we fully confront the extent to which their outrageous behavior and reckless business practices have affected the entire commercial banking sector and the U.S. economy as a whole.

At the end of 2009, their total debt outstanding—either held directly on their balance sheets or as guarantees on mortgage securities they'd sold to investors—was $8.1 trillion. That compares to $7.8 trillion in total marketable debt outstanding for the entire U.S. government. The debt has the implicit guarantee of the federal government but is not reflected on the national balance sheet.

The public has focused more on taxpayer bailouts of banks, auto makers and insurance companies. But the scale the rescue required in September 2008 when Fannie and Freddie were forced into conservatorship—their version of bankruptcy—was staggering. To date, the federal government has been forced to pump $126 billion into Fannie and Freddie. That's far more than AIG, which absorbed $70 billion of government largess, and General Motors and Chrysler, which shared $77 billion. Banks received $205 billion, of which $136 billion has been repaid.

Fannie and Freddie continue to operate deeply in the red, with no end in sight. The Congressional Budget Office estimated that if their operating costs and subsidies were included in our accounting of the overall federal deficit—as properly they should be—the 2009 deficit would be greater by $291 billion.

Worst of all are the tracts of foreclosed homes left behind by households lured into inappropriate mortgages by the lax credit standards made possible by Fannie Mae and Freddie Mac and their promise to purchase and securitize millions of subprime mortgages.

All this happened in the name of the ''American Dream'' of home ownership. But there's no evidence Fannie and Freddie helped much, if at all, to make this dream come true. Despite all their initiatives since the early 1970s, shortly after they were incorporated as private corporations protected by government charters, the percentage of American households owning homes has increased by merely four percentage points to 67%.

In contrast, between 1991 and 2008, home ownership in Italy and the Netherlands increased by 12 percentage points. It increased by nine points in Portugal and Greece. At least 14 other developed countries have home ownership rates higher than in the U.S. They include Hungary, Iceland, Ireland, Poland and Spain.

Canada doesn't have the equivalent of Fannie and Freddie. Nor does it permit the deduction of mortgage interest from an individual's taxes. Nevertheless, its home ownership rate is 68%. Canadian banks have weathered the financial crisis particularly well and required no government bailouts.

This mediocre U.S. home ownership record developed despite the fact that Fannie and Freddie were allowed to operate as a tax-advantaged duopoly, supposedly to allow them to lower the cost of mortgage finance. But a great deal of their taxpayer subsidy did not actually help make housing less expensive for home buyers.

According to a 2004 Congressional Budget Office study, the two GSEs enjoyed $23 billion in subsidies 2003—primarily in the form of lower borrowing costs and exemption from state and local taxation. But they passed on only $13 billion to home buyers. Nevertheless, one former Fannie Mae CEO, Franklin Raines, received $91 million in compensation from 1998 through 2003. In 2006, the top five Fannie Mae executives shared $34 million in compensation, while their counterparts at Freddie Mac shared $35 million. In 2009, even after the financial crash and as these two GSEs fell deeper into the red, the top five executives at Fannie Mae received $19 million in compensation, and the CEO earned $6 million.

This is not private enterprise—it's crony capitalism, in which public subsidies are turned into private riches. From 2001 through 2006, Fannie and Freddie spent $123 million to lobby Congress—the second-highest lobbying total (after the U.S. Chamber of Commerce) in the country. That lobbying was complemented by sizable direct political contributions to members of Congress.

Changing this terrible situation will not be easy. The mortgage market has come to be structured around Fannie and Freddie and powerful interests are allied with the status quo. I recall a personal conversation with a member of Congress who, despite saying he understood my concerns about the two GSEs, admitted he would never push for significant change because ''they've done so much for me, my colleagues and my staff.''

Nonetheless, Congress must get to work on the reform of Fannie Mae and Freddie Mac. A healthy housing market, a healthy financial system and even the bond rating of the federal government depend on it.

Mr. KYL. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

Mr. CRAPO. Mr. President, I stand today to discuss the McCain amendment as well. We have had a lot of debate about the financial regulatory legislation before us. A lot of the debate has focused on the content of the bill, with concerns being raised by some such as myself about whether we truly are ending too big to fail and truly are ending bailouts and whether we are going too far in creating yet again a big government response to an issue that needs to have a more effective response rather than more government, a response that will hammer Main Street, not Wall Street, and create yet again another big expansion of government in this Congress. We have seen way too much of that in way too many parts of our economy so far, and some of us are concerned about that.

But what I want to talk about today is what is noticeably absent in the bill; that is, the reform of Fannie Mae and Freddie Mac, our government-sponsored entities—actually, our government-managed entities now—and the fact that these entities are at the core of the financial crisis we are dealing with and yet are not even touched by this legislation.

Americans remain rightly outraged that their tax dollars were used to bail out irresponsible Wall Street firms and auto companies. I have voted against these bailouts, and I have been working with my colleagues to make sure we do not set the stage for yet more government bailouts. The most expensive government bailouts of all, however, will be those of Fannie Mae and Freddie Mac—the largest housing lenders that purchased home loans, packaged them into investments, and then guaranteed them against default.

I think a little history of how we got to where we are is appropriate. Congress chartered Fannie Mae and Freddie Mac to provide access to home financing by maintaining liquidity in the secondary market. According to Peter Wallison of the American Enterprise Institute:

> Their implicit, or assumed, government backing enabled them to drive all competition out of the middle-class housing sector, permitting Fannie and Freddie to acquire over $5 trillion in mortgages, which they either held in portfolios totaling approximately $1.5 trillion or securitized as mortgage backed securities.

Continuing his quote:

> In pursuing their mission to support low and middle-income housing—also called affordable housing—Fannie and Freddie assumed the credit risk on almost 11 million subprime and other high-risk mortgages and contributed substantially to the growth of a housing bubble. When the bubble began to deflate in 2007, they began to suffer huge losses.

But I want to go back and talk a little bit about the history before 2007, when it became evident to everyone what was happening to Fannie Mae and Freddie Mac in our housing markets, because it did not just become known then. As my colleague, Senator SESSIONS, has already mentioned on the floor today in his earlier remarks, the Banking Committee was heavily engaged in reviewing this issue for several years leading up to this, as was the Office of Federal Housing Enterprise Oversight at HUD and the Fed and a number of other analysts.

Senator SESSIONS quoted a letter. I believe it was from then-Chairman Greenspan of the Fed, who noted we needed to put focus on Fannie and Freddie then—this was back in the 2004 to 2005 timeframe—and that if we did not establish much tighter regulatory control over Fannie and Freddie, their excesses were going to create systemic risk that would put the taxpayer in extreme jeopardy.

The committee itself focused very heavily on this same dynamic. In May of 2006, we had established legislation that would have, had it been able to be passed on the floor of this Senate, created a strong, new regulator for Fannie Mae and Freddie Mac and begun the process of setting the right capital standards and the right regulatory environment in which we could control this excessive growth and set the process in place for us to take Fannie Mae or Freddie Mac into receivership or into trust if they eventually failed, as it began looking as if they would.

The Office of Federal Housing Enterprise Oversight completed a multiyear special examination of Fannie Mae and issued a report describing OFHEO's findings and recommendations in May of 2006. OFHEO found the following:

Fannie Mae senior management promoted a false image of the enterprise as one of the lowest risk financial institutions in the world.

A large number of Fannie Mae's accounting policies and practices did not comply with generally accepted accounting principles.

Fannie Mae had serious problems of internal control, financial reporting, and corporate governance, resulting in Fannie Mae overstating reported income and capital.

Between 1998 and 2004, Fannie Mae senior management deliberately and intentionally manipulated accounting to hit earnings targets so that senior management maximized the bonuses and other executive compensation they received.

Fannie Mae's board of directors failed to be sufficiently informed, to act independently of its chairman and other senior executives, and to exercise the requisite oversight over the enterprise's operations.

And then the final finding of the report: Despite rapid growth and changing accounting and legal requirements, Fannie Mae senior management did not make investments in accounting systems, computer systems, other infrastructure and staffing needed to support a sound internal control system, proper accounting, and GAAP-consistent financial reporting.

Again, as a result of these findings and of an increasing awareness of the threat that was being posed by the excesses at Fannie Mae and Freddie Mac, the Banking Committee, on which I served then and still serve, developed legislation to address these very excesses and to create the kind of regulatory structure in which we could control these problems.

Along with 26 of my colleagues, in May of 2006 I signed a letter to then-majority leader Bill Frist and to the chairman of the Banking Committee then, Senator RICHARD SHELBY. In the letter, we stated:

We are concerned that if effective regulatory reform legislation for the housing-finance government sponsored entities is not enacted this year—

Remember, this is 2006—

American taxpayers will continue to be exposed to the enormous risk that Fannie Mae and Freddie Mac pose to the housing market, the overall financial system, and the economy as a whole. Therefore, we offer you our support in bringing the Federal Housing Enterprise Regulatory Reform Act (S. 190) to the floor and allowing the Senate to debate the merits of this bill, which was passed by the Senate Banking Committee.

I might note that when we debated this bill back in 2006, it came out on a straight party-line vote from the Banking Committee—all the Republicans voting for it, all the Democrats opposing it.

As history shows us, we never were able to get that bill to the floor because although we had 55 Republican votes, it takes 60 votes to move legislation on the floor of the Senate in the face of filibusters, and that bill was filibustered. We were not able to get the additional support to get it past the filibuster.

I would like to quote from a recently written editorial about this chapter of the Fannie Mae-Freddie Mac history. Peter Wallison, in an April 20, 2010, editorial in the Wall Street Journal, wrote:

One chapter in this story took place in July 2005, when the Senate Banking Committee, then controlled by the Republicans, adopted tough regulatory legislation for the GSEs on a party-line vote. . . . The bill would have established a new regulator for Fannie and Freddie and given it authority to ensure that they maintained adequate capital, properly managed their interest rate risk, had adequate liquidity and reserves, and controlled their asset and investment portfolio growth.

These authorities were necessary to control the GSEs' risk-taking, but opposition by Fannie and Freddie—then the most politically powerful firms in the country—had consistently prevented reform.

He goes on to say:

The date of the Senate Banking Committee's action is important. It was in 2005 that the GSEs—which had been acquiring increasing numbers of subprime and Alt-A loans for many years in order to meet their HUD-imposed affordable housing requirements—accelerated the purchases that led to their 2008 insolvency. If legislation—

And this is the key part of the editorial—

along the lines of the Senate committee's bill had been enacted in that year, many if not all the losses that Fannie and Freddie have suffered, and will suffer in the future, might have been avoided.

What happened was the bill was stalled. Fannie and Freddie collapsed. When it became evident the losses were going to occur, there was a rush on the floor of the Senate to get back to that bill, and in 2008 the bill passed—after the horse was out of the barn. At least, though, we did get it passed in 2008, and Fannie and Freddie were taken into conservatorship.

Where are we now? The Congressional Budget Office has estimated that in the wake of the housing bubble and the unprecedented deflation in housing values that resulted, the government's cost to bail out Fannie Mae and Freddie Mac will eventually reach $381 billion. As we talk on this floor about bailouts, this is the biggest bailout of all. It exceeds, in fact, all of the other bailouts together, by far. Yet it is unlimited. I mean that literally.

Last Christmas Eve, in what was considered by many to be a Christmas Eve taxpayer massacre, the Treasury Department announced it was lifting the $400 billion loss cap on these two companies, creating a potentially unlimited liability and effectively providing the full faith and credit of the government to support their debt.

To date, the Federal Government has already provided about $126 billion to $130 billion to Fannie and Freddie. As I just indicated, the Congressional Budget Office estimates that will ultimately top $380 billion, and many believe that is a conservative number—direct taxpayer bailouts that are not even mentioned in this bill.

It reminds me of the fight back in 2005 when we were trying to get the legislation to reform Fannie and Freddie passed then, and here we are knowing what we need to do—seeing these bailouts, knowing the American taxpayers want those bailouts to stop—and we are being resisted in trying to bring an amendment just to add Fannie Mae and Freddie Mac—GSE—reform to the bill.

Last week, Freddie Mac announced it had lost $8 billion, as others on the floor have just said, in the first quarter and has requested another $10.6 billion to add to this mounting bailout.

As the government has pledged more and more money to cover these companies' losses, it has assured the public that planning is underway for overhauling these firms so that the bailouts will end. In December, the administration said it expected to release a preliminary report on how to remake Fannie and Freddie around February 1. But February 1 has come and gone, and no plan has been provided, and now we are being told it will be another year before the government proposes how to restructure these firms. Eighteen months after they were seized to prevent their collapse, the companies remain wards of the state in what has become the single costliest component of bailouts in our financial system.

In September of 2008, the Federal Housing Finance Agency placed Fannie Mae and Freddie Mac into that conservatorship I talked about, which allows the regulator to establish control and oversight of a company to put it in a sound and solvent condition. Since being placed in conservatorship, Fannie Mae and Freddie Mac have actually become a bigger part of the market, which will make reform of them even more difficult. Last quarter, Fannie Mae and Freddie Mac were responsible for funding two-thirds of all U.S. home loans. That is primarily because there is nobody else able to play in the markets these days, except for these government—now completely government—controlled and financed entities. When you add in the Federal Housing Administration, the U.S. Government is behind 96.5 percent of all loans.

What we have seen here is literally another government takeover. We have seen the government take over in the health care industry. We have seen the government take over in the auto industry. We have seen the government takeover of AIG and the insurance industry. We have seen the government take over in multiple parts of our financial industries and a greater government takeover being proposed in this bill. Yet we have the literal government control and management of Fannie Mae and Freddie Mac going unabated and unaddressed in the legislation that is before us.

What does the legislation do?

The longer Fannie Mae and Freddie Mac are allowed to operate in their current role—as political rather than business entities—the greater the financial losses will be for taxpayers and, frankly, the greater the risk they will simply continue endlessly in government control and government management, with the government managing yet one other big part of our economy perpetually.

That is why the McCain amendment requires the current conservatorship of the companies to end in the next 2½ years and begin the process of shrinking their portfolios. If the companies are not viable at the end of that period, they would be placed into receivership, which is a form of bankruptcy restriction.

Without a hard deadline, I am very concerned Congress will not act and, just like back in 2005, we will find gridlock here in the Senate stopping us from moving forward and be left with a nationalized Fannie Mae and Freddie Mac.

The amendment would also reestablish the $200 billion cap and accelerate the 10-percent reductions of the mortgage portfolios, effectively requiring the companies to shrink those portfolios by holding a combined $100 billion from their current levels. This will also limit the losses taxpayers will face as a result of the blank check given by the administration in lifting all caps on December 24 of last year.

It also includes Fannie Mae and Freddie Mac as a part of the Federal budget as long as either institution is under conservatorship or receivership. This is going to show the American people the true picture of how much of our national debt has increased by the bailout of these institutions.

As an aside here, as most people probably did not realize, the Senate Budget Committee recently acted on a proposed budget for the Congress this year. We were supposed to have declared and created a budget for us to operate under months ago, but because of, I think, an unwillingness to literally put it out there—how much money this government is spending—the committee and the Senate have not acted on a budget yet. But the Budget Committee actually did finally act on one. I didn't vote for it. It is more spending—trying to spend ourselves into prosperity again as the last budget was—but at least we acted.

In that Budget Committee process, I brought forth an amendment to require that Fannie Mae and Freddie Mac debt be added to our national debt calculations. Why would I do that? According to the Congressional Budget Office Director Douglas Elmendorf:

After the U.S. Government assumed control in 2008 of Fannie Mae and Freddie Mac, two Federally-chartered institutions that provided credit guarantees for almost half—

and by the way, as I indicated, now it is two-thirds—

of all the outstanding residential mortgages in the United States, the Congressional Budget Office concluded that the institutions had effectively become government entities whose operations should be included in the Federal budget.

So here we have the Director of the Congressional Budget Office saying we run these companies, we are financially backing these companies, we should at least include them in our budget.

The purpose of my amendment then—and the same language that is in this amendment on the floor today—is to include in the debt calculations of the budget resolution the debt obligations of Fannie Mae and Freddie Mac. This allows the American people to see a true picture of how much our national debt has been increased by the bailout of these institutions. At the end of calendar year 2009, per the financial statements, those figures are $774 billion for Fannie Mae and $781 billion for Freddie Mac, for a total of $1.555 trillion of debt. That is debt the United States holds today that is not being disclosed to the American public as part of our debt because of our interesting budget procedures.

To put into perspective how large these entities are, their combined total books of business are nearly $5.5 trillion. The Congressional Budget Office has estimated that in the wake of the housing bubble and the unprecedented deflation in housing values that resulted, the government's cost to bail out Fannie Mae and Freddie Mac, as I indicated earlier, will eventually reach $381 billion, and that estimate may be too optimistic.

I also already mentioned that last Christmas Eve the Treasury lifted the cap. We actually had a cap so that the taxpayer was at least protected at $400 billion. Last Christmas Eve—and I told my colleagues earlier some called it the ''Christmas Eve Taxpayer Massacre''—Treasury lifted that cap so there now is no limit to the amount of debt we will assume and pay for as taxpayers as a result of this bailout of Fannie Mae and Freddie Mac. According to a January 2010 CBO background paper entitled ''CBO's Budgetary Treatment of Fannie Mae and Freddie Mac,'' CBO:

believes that the Federal Government's current financial and operational relationship with Fannie Mae and Freddie Mac warrants their inclusion in the budget.

By contrast, the administration has taken a different approach by continuing to treat Fannie Mae and Freddie Mac as outside the Federal budget, recording and projecting outlays equal to amounts of any cash infusions made by Treasury into the entities.

The Office of Management and Budget of the U.S. Government fiscal year 2011 states:

Under the approach in the budget—

This is the President's budget—

all of the GSEs' transactions with the public are nonbudgetary because the GSEs are not considered to be government agencies.

So we have the administration saying they are not considered to be government agencies, and, therefore, we aren't going to consider their debt and their financing, and we have the Congressional Budget Office saying they should be. CBO has included the GSEs in its budget baseline, but does not include the debt in its calculations because of their narrow view of how to calculate the Federal debt.

In light of all these facts, I think it is evident that we need to have transparency and we need to start telling the American people exactly what it means, that we have taken Fannie Mae and Freddie Mac into receivership, and that we are not going to put their finances in the Federal budget.

Going back to what the amendment we are debating here today does, in addition to putting Fannie Mae and Freddie Mac in the budget, it establishes a Senate-confirmed special inspector general within the Government Accountability Office with responsibility for investigating and reporting to Congress on decisions made with respect to the conservatorships of Fannie Mae and Freddie Mac, and this special inspector general would provide quarterly reports to Congress. There is no one politically accountable to the public for the operation of these multitrillion-dollar entities since the President has yet to nominate anyone to officially run the Federal Housing Finance Agency and the Office of Special Inspector General. The office of the Special Inspector General for the Troubled Asset Relief Program has done a good job to inform the public and Congress about TARP, and we should follow this model with Fannie Mae and Freddie Mac. It is not credible to say we are protecting the taxpayer and fixing mortgage financing and do nothing about Fannie Mae and Freddie Mac.

Let me conclude by reading from a couple of editorials. If you scan the news today about this issue, you will see editorials across this country. I think one of them said ''the silence on this issue is deafening.'' Others have said there is a huge hole in the legislation. The title of another one: ''Congress Remains Missing In Action on Two Key Causes of the Financial Crisis.''

I wish to read from one of the Wall Street Journal editorials on May 6 of this year. In part it says:

One sign that the White House financial reform is less potent than its advertising claims is that it doesn't even attempt to reform the two companies at the heart of the housing mania and panic—Fannie Mae and Freddie Mac. So we are glad to see that yesterday GOP Senators John McCain, Richard Shelby, and Judd Gregg introduced a Fannie and Freddie reform amendment.

Going on, it says:

The Financial Crisis Inquiry Commission spent yesterday focusing on financial leverage using Bear Stearns as an example. But Fannie Mae and Freddie Mac were twice as leveraged as Bear and much larger as a share of the mortgage market. Fan and Fred owned or guaranteed $5 trillion in mortgages and mortgage-backed securities when they collapsed in September of 2008.

This is a quote that has been read on the floor before, but it is exactly applicable.

Again, quoting the editorial:

Reforming the financial system without fixing Fannie and Freddie is like declaring war on terror and ignoring the al-Qaida. Unreformed, they are sure to kill the taxpayers again. Only yesterday—

this was on May 6—

Freddie said it had lost $8 billion in the first quarter—

which I have already mentioned.

Going on to another editorial, this one also in the Wall Street Journal by Robert Wilmers—and I quote just a part of it:

At the end of 2009, their total debt outstanding—either held directly by their balance sheets or as guarantees on mortgage securities they'd sold to investors—was $8.1 trillion. That compares to $7.8 trillion in total marketable debt outstanding for the entire U.S. Government. The debt has the implicit guarantee of the federal government but is not reflected on the national balance sheet.

The public has focused more on taxpayer bailouts of banks, auto makers and insurance companies. But the scale of the rescue required in September 2008 when Fannie and Freddie were forced into conservatorship—their version of bankruptcy—was staggering. To date, the federal government has been forced to pump $126 billion into Fannie and Freddie. That's far more than AIG, which absorbed $70 billion of government largess, and General Motors and Chrysler, which shared $77 billion. Banks received $205 billion, of which $136 billion has been repaid.

Fannie and Freddie continue to operate in the red, with no end in sight. The Congressional Budget Office estimated that if their operating costs and subsidies were included in our accounting of the overall deficit—as properly they should be—the 2009 deficit would be greater by $291 billion.

The point is simple. This bill is alleged to be focused on trying to solve the problem of bailouts. We will hear Senators on this floor say day in and day out that this bill will end bailouts and stop too big to fail. Yet the two largest enterprises which were at the core of the financial crisis are exempt from the provisions of the legislation. They are not even mentioned in the legislation. Apparently, they are too big to fail, because we in this Senate will not put them into a track of being resolved properly.

As I indicated earlier, I am concerned that the same outcome is going to happen now that happened back in 2005 and 2006 when we tried before their collapse to put some restraint into place, and that we will not act, the net result of which will be that we will, in effect, nationalize Fannie and Freddie and have a huge portion of our Nation's mortgage market be run by the government.

The McCain amendment will simply give us a track to move forward to stop that result from happening, and I encourage all of my colleagues to consider strongly supporting this amendment. If we don't, then I don't think we can honestly call this a bill that truly ends the bailouts in our country.

Thank you very much, Mr. President. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRANKEN. 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. FRANKEN. Mr. President, I rise to speak again on the problem of credit rating agencies and the inherent conflicts of interest that drive the industry. The underlying Wall Street reform bill takes some steps in the right direction, but I believe we can go much further in addressing the fundamental problem—the opportunity to shop around for the highest rating.

Currently, a bank that issues a security can shop its product around to one of the three biggest credit rating agencies—all three of them—seeking out the highest possible rating. The credit rating agency promising the highest rating will get hired. This process ensures that the credit rating agency will not just be evaluating the risk of the financial product, it will be weighing its own business interests when offering up a rating. If the agency hands out a AAA rating, the customer will come back again; the banks will come back again. That incentive affects the ultimate rating the product receives. This ratings shopping leads to major conflicts of interest, and it was one of the major causes of the financial meltdown.

You have probably heard of something in our court system called forum shopping. It is when an attorney seeks out the judge who will be most sympathetic to the case. If a prosecutor is bringing a case against a defendant for drunk driving, that prosecutor might negotiate with the court clerk to get the judge known for being tough on drunk drivers. You can imagine the problems forum shopping has created and the corruption it has bred.

The courts have identified forum shopping as a practice that manipulates outcomes and undermines public confidence in the courts. Given these problems, the courts have sought out ways to reduce forum shopping. In fact, the majority of Federal courts now use some variation of a random drawing to match cases with judges, though each district court has discretion to make its own specific rules. Accommodations can be made for particular circumstances. For example, a subset of qualified judges can be set aside for particularly complex criminal cases, and the caseload of each judge can be taken into account. But overall, the primary selection method in most Federal courts is a rotating assignment system.

This rotating assignment system is used in my home State of Minnesota. New York, the home State of Senator SCHUMER, who is joining me on this amendment, also uses a rotating system. The use of a rotating assignment system limits opportunities for forum shopping, increases public confidence in the court system, and reduces corruption.

Let's return to the problem of credit rating agencies. I have filed an amendment that seeks to reduce the conflicts of interest inherent in the issuer-pays model. In this model, issuers of financial products have incentives to shop around for the best ratings possible. In order to retain business, credit rating agencies will issue ratings high enough to keep issuers coming back, as I said. The system incentivizes high ratings, not accurate ratings.

The same solution used to address forum shopping in the courts can also be applied to reduce ratings shopping in the credit rating industries. My amendment allows for the same types of discretion awarded to individual district courts.

A court can develop special provisions for the assignment of particularly complex cases. My amendment would allow a new credit rating agency board to designate certain ratings agencies as being qualified to rate the most complex products. A court can take into account the existing caseload of a particular judge. My amendment allows the board to take into account the institutional and technical capacity of credit raters.

The rotating assignment model used in the court system can be used in the rating system. It hasn't eliminated every problem, but it has gone a long way to reduce the corruption and conflicts of interest in selecting judges for particular cases.

My amendment will not eliminate every problem facing the credit rating agency industry, but it will go a long way toward reducing ratings shopping. Ratings shopping is the root of the problem, and it is what allows issuers to bargain with credit raters. If a credit ratee knows the issuer cannot simply walk away and turn to another rating agency, there is no pressure to issue a high rating just to retain the business transaction.

My amendment will not reduce competition, nor does it seek to put any rating agency out of business—quite the opposite. My amendment actually will increase and incentivize true competition. By allowing a board to assign more work to credit raters producing accurate ratings and assign less work to those producing inaccurate ratings, the market will finally reward accuracy and no longer reward ratings inflation, which was the case during this whole fiasco and what led to it. It is only by limiting ratings shopping and adjusting the market's incentives that we will finally have credit rating agencies in which the public can have faith.

The Wall Street reform bill includes many important provisions addressing the credit rating agency problem, such as increased disclosures and improved postrating surveillance, but I believe it doesn't get to the root of the problem. When the stability of such a significant part of our economy is based, for better or worse, on the accuracy of these ratings, we can't take any more chances.

I thank Senator SCHUMER and Senator NELSON for helping me lead this reform and Senator WICKER, who has recently joined our effort. I also appreciate that Senators JOHNSON, WHITEHOUSE, BROWN, MURRAY, MERKLEY, BINGAMAN, LAUTENBERG, SHAHEEN, CASEY, and SANDERS support this approach and have joined as cosponsors. I look forward to other colleagues joining us, and, ultimately, I hope this bipartisan amendment will be taken up and passed by the Senate.

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. McCONNELL. 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. McCONNELL. Mr. President, I am going to proceed for a few moments on my leader time.

The PRESIDING OFFICER. The Senator is recognized.

TREATMENT OF TERRORISTS

Mr. McCONNELL. Mr. President, we continue to learn more about the terrorist who attempted to kill scores of innocent Americans in Times Square earlier this month.

The President's assistant for counterterrorism, John Brennan, now says Faisal Shahzad was working on behalf of the Pakistan Taliban, or TTP, all along.

What this event and the aftermath have shown is that the administration has what can most charitably be described as an evolving strategy on dealing with captured terrorists.

This was perfectly clear over the weekend when Attorney General Holder said in reference to the Times Square bomber that America is ''now dealing with international terrorists,'' and this may require changes to when and how terrorists are issued Miranda warnings.

Now dealing with international terrorists? I remind the Attorney General that we have been very much at war with international terrorism for a long time and that we face threats in this war from those who attacked us on 9/11, al-Qaida's associated groups, those who attack our troops every day in Afghanistan and Iraq, the man who tried to blow up a plane over Detroit on Christmas, and men such as the one who plotted to maim and kill Americans in Times Square.

Once the administration realizes this, a lot of other questions will become a lot clearer. Unfortunately, the administration seems too often to have a trial-and-error approach.

On Guantanamo, they tried to close it and realized it was not that easy. On the question of the proper venue for trials, they announced they would try 9/11 mastermind Khaleid Sheikh Mohammed in New York City and then realized maybe that was not a good idea. When it came to the Christmas Day bomber, they treated him like a common criminal and then realized that might not have been the best route either.

Now, after learning the Times Square bomber is actually a tool of the Pakistani Taliban, they are wondering out loud again if they should revisit their approach to administering Miranda warnings.

Let's make it easy for the Attorney General. Every terrorist—every single one of them—every terrorist should be treated like one.

In the first months of the administration, the President signed Executive orders ending the CIA's interrogation program, demanding the closure of Guantanamo within a year, and essentially putting the Attorney General in charge of the war on terror.

More than a year after these Executive orders were signed and after several failed terrorist attacks on the homeland, the administration finally—finally—seems to realize the war on terror is not a simple matter of law enforcement. A clear and forceful strategy is needed just as much at home as it is needed abroad.

Republicans have been saying this all along. It is time the administration decides on a strategy that recognizes the implications of the war we are in and the dangers we face, not only abroad but right at home.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I wish to take a few minutes, if I may. I listened with some interest this afternoon, as I did last week, to my colleague and friend from Arizona talk about his amendment regarding government-sponsored enterprises, specifically Fannie and Freddie. I wish to respond to some of those comments and some comments today about these two agencies and their value, their present condition, and what needs to be done.

First, there is a little revisionist history in all of this that seems to be important. In 2005, the House Financial Services Committee, under the leadership of Mike Oxley, a Republican from Ohio, chairman of the committee, passed bipartisan legislation dealing with Fannie Mae and Freddie Mac. Senate Democrats picked up that proposal. It stalled in the committee over here despite support for it. The Republican-controlled committee then passed a bill. They never filed it, never brought it up for a vote on the floor of the Senate in 2005.

I became chairman of the Banking Committee in 2007. As the Presiding Officer will recall, when he arrived in 2008, we had a significant number of hearings and discussions about Fannie and Freddie. In the summer of 2008, the Banking Committee passed a comprehensive overhaul of the regulations of Fannie and Freddie, including establishment of a tough new regulator, the FHFA, limited portfolio holdings of Fannie and Freddie, and we increased their capital requirements. The authority to put Fannie and Freddie into receivership was also adopted. We required internal controls and risk management and reviving and approving new products.

The committee voted 19 to 2 on a very strong bipartisan basis in the summer of 2008, and overwhelmingly on the floor, this body supported those efforts by a vote of 72 to 13. That was in the summer and fall of 2008.

When I hear the comments being made that nothing has been done about Fannie and Freddie—Mike Oxley tried and failed. I cannot repeat on the floor of the Chamber the words Mike Oxley used to describe the minority's handling of reform when he was accused later of not having an effective reform package. The Republican chairman of that committee had very strong language to describe the failure of our Republican friends to pick up his efforts, his bipartisan efforts, in 2005. As I say, in 2008, by a vote of 72 to 13, this body adopted the committee's recommendations—adopted 19 to 2 in the Banking Committee—to put strong regulations over Fannie and Freddie. So that is as a backdrop.

I will be the first to recognize that more needs to be done, clearly, in terms of coming up with a whole new financing structure for the housing market. There is no doubt about that. But as my colleague from New Hampshire has pointed out—and while it wasn't part of the whole reform package included in this 1,400-page bill because it probably would have doubled the size of this legislation—the issue is far too complex at this juncture to include those kinds of reforms in this bill. That is not to suggest they do not need to be done, but it will take a separate undertaking, it seems to me and most who have looked at it, to decide what is that alternative idea.

So when we have the McCain amendment, as in the Ensign amendment the other night, I would urge my colleagues to vote against it. All their amendments do is to get rid of Fannie and Freddie. There is no alternative idea here. The McCain amendment says that in 24 months you have to get rid of Fannie and Freddie. Well, that is a nice idea, but what are the implications if we get rid of it?

Today, 97 percent of all mortgages are backed by Fannie and Freddie. If you want to see interest rates go up, if you get rid of the only entity that is purchasing these mortgages today—and that is Fannie and Freddie, by and large—who will purchase them? If they are not purchased, what happens to interest rates and home values? If you think the market took a plunge last Thursday, adopt the McCain amendment. It is a reckless amendment. There is no alternative whatsoever included in that proposal.

Let me identify the three major problems with it, aside from the fact it doesn't offer any alternative whatsoever as to how we end up with a financing mechanism for housing in this country. Remember, we are the only Nation on the face of the planet today that provides a 30-year, fixed-rate mortgage for homeowners. It is the reason why we have had a relatively high percentage of our population in home ownership. It also is the single largest wealth creator for most families—home ownership—not to mention the value it is to a family, a neighborhood, a community.

When people have an equity interest—when they can accrue equity over time—it leads to long-term financial security, retirement security, and it has made a difference in how middle-income families have been able to afford a higher education for their children. All these benefits accrue. No other Nation on Earth provides that kind of stability and long-term security that we have in the housing market, and it doesn't happen miraculously. It happens because we have had a financing mechanism that has provided for that kind of assurance at a relatively low cost.

So when you look at the amendment, it severs all Federal involvement with these mortgage securitization, government-sponsored enterprises within 24 months. That is the McCain amendment. Before people jump on board with what a great idea this is, consider the implications and then be prepared to explain them when they happen. There is no reform here. It just gets rids of something without replacing it with anything, except somehow the private market is going to pick up. There is no private market for that today, and we need an alternative idea. Some have mentioned a public utility concept, others have mentioned various other ideas, all of which we have listened to. But, frankly, there is a lot of debate about what that alternative ought to be.

So to draft a bill to take in all these other ideas for housing, frankly, as the Senator from New Hampshire has said, was far too complex, given all the other challenges we are faced with in this legislation, to try to deal with too big to fail, consumer protection, finally getting some clarity and regulation over exotic instruments, providing some long-term radar system, as we describe it, to identify problems as they emerge, whether in Greece or someplace else, not to mention all the other provisions, dealing with underwriting standards, capital requirements, leverage, and all the rest. This bill is 1,400 pages, not to mention the bill passed out of the Agriculture Committee, which adds, of course, a whole other title VII to the bill.

So when you consider what is in here, I hope my colleagues will be careful before they jump on what is a politically charged issue and understand what the implications may be if it is adopted. The McCain amendment, as I said, is reckless, it is poorly thought out, it poses significant risk to the housing markets that have only recently begun to stabilize, by the way. We are seeing just in the last few weeks that finally prices are beginning to move up in the housing area, new stakeholders are occurring, and things are beginning to move in the right direction.

You can say a lot of things, but if you don't have stability in the housing market, this recovery will not occur. It is a critical component of recovery and to pull the rug out from underneath this particular effort right now would be a major blow to our economy and I think would set us back on our heels at the worst possible moment. As I said earlier, major reforms to the housing financing system are clearly necessary. I will be the first to acknowledge that—all should. As we can't go back to the system of the past and the status quo of the GSEs under Federal conservatorship—by the way, Fannie and Freddie are under conservatorship because of our 2008 legislation—it is untenable. We can't continue with that, and we need to replace it, but such changes must be thoughtful and deliberate.

In the near term, we must ensure that changes affecting the Federal role in Fannie and Freddie do not jeopardize the fragile economic recovery. Over the long term, we must be careful in structuring the housing financing system in a way that guarantees continued mortgage liquidity with minimum economic disruptions.

The McCain amendment falls short in several respects. First of all, it imposes significant risk to our economic recovery. Some 95 to 97 percent of mortgage originations are currently backed by the Federal Government—95 to 97 percent, the vast majority of this coming through Fannie and Freddie. The McCain amendment would cause significant uncertainty among investors and GSE-issued mortgage-backed securities, threatening the primary source of mortgage credit that we have at this time. Pull away the credit we have, what replaces it? In this amendment, nothing, without offering any alternative sources of liquidity. Such a precipitous drop in mortgage liquidity could severely threaten this fragile recovery we are presently feeling.

Second, the McCain amendment fails to ensure sufficient mortgage credit would be available in the future. Private securitization of the GSEs account for, as I said, some $9 trillion of the $14 trillion in total outstanding mortgages in the United States today. With the future of private securitization highly uncertain—in fact, that is a mild statement given the present economic circumstances—policymakers seeking to reform the housing financing system must ensure that the system of the future will provide sufficient liquidity to meet the mortgage needs of all Americans. The McCain amendment would eliminate existing sources of mortgage liquidity while remaining silent on the more difficult question of how to replace them.

So you may not like what you have here, but you are replacing it with nothing. What are the alternatives to go to in the housing market?

Thirdly, the McCain amendment neglects to replace the public purposes served by GSEs. The GSEs were poorly run, but they clearly served a number of public purposes, such as making the 30-year fixed-rate mortgage broadly available for American home buyers. This does not go to the question of the underwriting standards. That was a disaster with unregulated brokers and mortgage companies. But putting aside that question, which we address—and there are other ideas on how to further address the underwriting requirements—there is the idea that the average family in this country could purchase and have a chance to get in that starter home, to put them on the pathway to home ownership and all that means to families—what it has meant to our country to make that available, not just to the affluent and the well-heeled but to families even at the lower end of the economic spectrum—to have that kind of job that could provide that income to support a mortgage; what it means to be able to say to your family: We own our home. This is where we live. We have a vested interest in our community, in our neighborhood.

You can talk to anyone about social policy and home equity interest in a neighborhood, and it changes a neighborhood. It makes a difference. So when you start stripping away, pulling out the rug from underneath the financing scheme for doing this today, the mechanism for doing it, then you undermine the very ability to have that long-term, stable mortgage that a family can count on. Watching their equity grow, under normal circumstances, makes such a difference. It is why this economic disaster we have been through over the last couple years is so harmful.

I said earlier there are 4 million homes today that are underwater—4 million of them underwater—and 250,000 homes in the first 3 months of this year have been seized because of the economic conditions. So housing is critical. It is where this crisis began because of the shoddy underwriting requirements that are out there and luring people into subprime mortgages. By the way, that is the alternative. When you strip away the financing mechanism, what you are left with is subprime lending. That is what goes on, luring people into those circumstances.

So, Mr. President, you are entitled to your own opinion but not your own facts in this debate. The fact is, there was an effort in 2005, led by a Republican chairman in the housing committee in the House, and he has some very choice words for those who suggest that effort wasn't real to make a change here. I regret deeply that Mr.

Oxley didn't prevail in his ideas here in the Senate. He passed it in the House, but it was squashed over here.

Then, in 2008, as I said, by votes of 19 to 2 and 72 to 13 on the floor of this Chamber, we did pass legislation that provided for a comprehensive overhaul of the regulation of Fannie and Freddie. It made a substantial change, but far more needs to be done. I acknowledge that, clearly. But let's not, in the face of that acknowledgment, strip away that ability in this bill, within 24 months, without replacing it with anything, putting our economic recovery at great risk. I predict to you, as certain as I am standing here, if the McCain amendment were to pass, that is the outcome, count on it, in my view.

So I caution my colleagues, despite the political mantra associated with all this, we are in a very delicate time. It is very important that we use our heads and carefully deliberate on how we are moving. By a vote of 59 to 35, we rejected the Ensign amendment last week. It was the right outcome. If we reverse that vote tomorrow or in the next day—whenever the McCain amendment comes up—and we will have a side-by-side amendment, by the way, to explain what the committee is doing further and what needs to be done to get us on the right track so people can be supportive of some alternative ideas here—then I think we will set ourselves back.

In light of what has happened in Europe over the weekend, still may unfold here, right now we don't need to be sending messages to the markets without any alternative ideas in place as to how to come up with a housing finance system that is as worthy of the very people who counted on that ability to have that fixed-rate mortgage, to watch their family prosper and grow and become stable, as this has over the years.

I know others want to be heard on probably other matters, but this is a very important issue, and my hope is my colleagues will pay careful attention to this and not succumb to the temporary temptation to follow because there are some groups out there that have never liked this anyway. They have never liked the idea of this program. Clearly, as I say, reforms are needed.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Oregon.

Mr. MERKLEY. Mr. President, I am honored to rise to address the Volcker amendment, which I am pleased to be able to cosponsor with my colleague and friend who is now presiding over the Senate. I thank Senator LEVIN for the outstanding job he has done in shining the light on the need for financial reform through his Permanent Subcommittee on Investigations.

I also wish to thank Senator DODD for shepherding this important financial reform and bringing such a significant and solid bill to the floor of the Senate, and I thank him for working with several of us to strengthen the approach proposed in the Volcker amendment. I look forward to having a chance to present that on the floor and appreciate very much Senator DODD's support.

The goal of our financial system is to efficiently aggregate and allocate capital. That is sometimes done through banks that make loans, and that is sometimes done through pools of investors who put their money together and ask managers to find the highest return. But these two functions of lending and high-risk investing, although both critical to the capital system of aggregating and allocating our dollars, are in fact very different. This Volcker amendment is all about creating the right balance between these two so they work collectively to make a more efficient, stronger financial system rather than working at odds with each other.

This bill has three components. The first is to get high-risk trading out of our banks on which families and small businesses depend. The second is to establish higher capital requirements for high-risk investing or hedge funds. The third is to eliminate conflicts of interest, conflicts of interest that have proceeded to undermine the integrity of our securities system.

I want to try to give kind of an analogy so we can all get our hands around these functions; that is, to try to imagine you are collecting fireworks. Fireworks are a wonderful thing, and you might want to have them for the Fourth of July or for New Year's. But you do not store them in your living room because, if they were to accidentally go off, you would burn down your house. The fireworks in this example is your high-risk investing, and your living room represents the lending depository banks that power up our economy by making their loans in our communities to our businesses and our families.

To continue that analogy, you would want those fireworks stored not only not in your living room but not in any of the bedrooms of your house or any of the other rooms. You would want them stored out in your shed, in this case outside the bank holding company, so if the high-risk investments do explode or go down you don't burn down your house. This leads to the second part of the Volcker amendment which says, while you are storing them in your shed, you should make it more fire resistant. Maybe that means putting in a sprinkler system or some other system. That is the second part. But the third part is to say those who design and sell the fireworks should not simultaneously be developing and designing fuses designed to fail and then taking bets that the fireworks would go off prematurely. This is a conflict-of-interest issue on which recent hearings have shined such a bright light.

Turning, then, to this high-risk trading and the challenges it presented to our financial system, what I am putting up right now is a chart that shows the impact of high-risk trading on the meltdown that occurred in 2008 and 2009. We have Lehman Brothers that lost $30 billion in trading; Merrill Lynch lost $20 billion in trading; Morgan Stanley over $10 billion; JPMorgan Chase over $10 billion, Goldman Sachs over $4 billion, and Bank of America over $7 billion. High-risk trading primarily on mortgage securities and derivatives of those securities blew a hole through almost every major Wall Street financial investment institution.

I do not think anyone should, in light of these facts, be able to say that high-risk investing has nothing to do with the current crisis. It has pretty much everything to do with it, and that is why the Government stepped in to provide financial relief to these firms—huge amounts of money. Lehman Brothers went down because we didn't step in to assist them. Merrill Lynch basically was saved by being purchased by Bank of America which had a tremendous bailout; that is, $45 billion. Morgan Stanley got $10 billion in TARP funds; JPMorgan Chase, $25 billion; Goldman Sachs, $10 billion; and, of course, the list goes on.

This high-risk investing does not belong in our lending depository institutions. A bank that has access to the discount window of the Fed, a bank that has access to insured deposits, deposits insured by Uncle Sam, that bank should not be diverting those funds into the temptation of high-risk investing. Similarly, they should not be proceeding to allow the high-risk investing to blow up the lending side of a financial organization.

The risk of an investment house going down is certainly higher during a recession. It is very high in a severe recession. That is just the time we need banks to be able to continue lending, to not let lending seize up.

I can tell you, back home in Oregon business after business has come forward and said: Our credit line was cut in half or we went to refinance a commercial loan and the bank said we will not do it because the value has dropped or we can't make any more loans in that sector or perhaps we can't make any more loans at all because we have reached our leverage limits.

Lending seized up in America, and it is a key factor in prolonging this recession. These are the reasons that, if you want to have high-risk investing with the money from pools of investors—that is an important part of the capital allocation but do it at a safe distance from the lending depository function.

The second piece of this—and back to my analogy that this is when you put the high-risk investing in the woodshed—is that you also make the woodshed more resilient, and that is enabling the regulators to say that as an investment house becomes more systemically significant those regulators can raise or will raise the capital requirements necessary so that the leverage decreases as the firms become larger. This greatly reduces the chance that an investment house will go down during a recession or go down because of bad loans because they are putting up more capital against those investments.

I want to come to the third part, the conflict-of-interest provisions. They will also be addressed at greater length by my colleague. By the way, I ask unanimous consent Senator LEVIN be allowed to follow directly behind me.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MERKLEY. Mr. President, he will elaborate on these provisions, but I want to put up my third chart because at the hearings my colleague had focused attention on a real challenge. Through those hearings some have observed that Goldman Sachs has become an ''iconic image of bankers with conflicts of interest.'' Let me try to again address that.

If you are selling fireworks, you should not be in the business of designing bad fuses to put on those fireworks and then betting the fireworks will go off accidentally or, as another person has put it, if you are selling cars, you should not be selling cars without brakes and taking out insurance on the owners. That fundamentally undermines the integrity of the market, whether it is the fireworks market or car market. But those are analogies for our financial market.

Integrity is so important. International capital flows to systems with integrity. It was after the Great Depression that we established reforms on Wall Street that led to decades in which the international community saw the American markets as the best organized, best policed safe place—no scams or minimal scams—that they could put their money.

We want Wall Street to be able to continue to attract and aggregate and allocate that capital. That is an essential function.

I note that this group of three commonsense reforms on this chart, going back to these three pieces—getting the high-risk trading out of the banks, increasing the capital requirements for investment firms that become systemically significant, and ending the conflicts of interest in securities—these commonsense reforms have a lot of support.

In addition to Senator LEVIN, I thank 15 cosponsors who have jumped in to join this effort: Senator BROWN, Senator KAUFMAN, Senator SHAHEEN, Senator FEINSTEIN, Senator CASEY, Senator BILL NELSON, Senator BURRIS, Senator BEGICH, Senator INOUYE, Senator WHITEHOUSE, Senator MCCASKILL, Senator MARK UDALL, Senator MIKULSKI, Senator SANDERS, and Senator TOM UDALL. I encourage my colleagues on both sides of the aisle to consider jumping in to support these commonsense reforms.

I note also that the supporters for this amendment include Paul Volcker; they include John Reed, the former chair and CEO of Citibank; they include the Independent Community Bankers of America, who recognize that community banks do better if the Wall Street system has integrity in allocating capital. The Main Street Alliance of Small Businesses supports this amendment, the AFL/CIO supports it, Americans for Financial Reform, and a dozen other organizations.

I also note that a group has solicited support online. Here I have 25,000 individuals from across the country, all 50 States, who sent this petition to the Senate. This is from the Progressive Change Campaign Committee, and these 25,000 citizens say:

> The big Wall Street banks gambled away our money on a reckless housing bubble and then insisted we spend more money bailing them out. We need you to support the Merkley-Levin proposal to end this risky gambling and other conflicts of interest.

I conclude by saying we have a responsibility, following this great recession we are in now, to redesign the rules of the road for Wall Street, to increase integrity, to increase transparency, to decrease the conflicts of interest, and to make it work in the most efficient possible way. It is with that spirit these three commonsense proposals have been laid out.

It has been a privilege to partner with the Presiding Officer, Senator CARL LEVIN, in this effort.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

Mr. LEVIN. Mr. President, first, let me commend the Presiding Officer. Senator MERKLEY has been an avid leader in doing something significantly important to end the role of proprietary trading, which is something that helped create a housing bubble, expanded that bubble, and the bubble burst and helped to sink this economy. This amendment we are offering is aimed at trying to rein in the excesses of those proprietary trades. It does it in a way which makes a lot of sense. A lot of work went into it.

The Banking Committee, Senator DODD, his staff, our staffs, and many other staffs and people outside of this body have worked very hard to make sure this will be a practical amendment. It is. I am proud to cosponsor it with the Presiding Officer, Senator MERKLEY, who has been such a great leader.

As recent hearings that I chaired at the Permanent Subcommittee on Investigations demonstrated, many things caused the financial crisis that started the recession that we are climbing out of. But up and down the financial system—upstream, from mortgage brokers hustling dubious mortgages, to Wall Street firms downstream that sliced and diced securities, betting on those risky mortgages—there were failures and mistakes piled on top of plain old-fashioned fraud.

At its heart, the financial crisis is a story of extreme greed and excessive risk. In the pursuit of ever larger profits, financial institutions took on ever-increasing risk while ignoring the danger that risk represented. When their bets failed and the risks came crashing down upon them, the financial system teetered on the brink of collapse. The economy plunged into what has become known as the great recession. Millions of Americans lost their jobs and homes, and taxpayers had to spend hundreds of billions of dollars to keep things from getting even worse. We cannot allow a repeat.

The bill from Senator DODD is a huge step in avoiding that repeat. We simply must never again allow Wall Street firms seeking to boost their bottom lines, borrowing millions, or billions in this case, of dollars, making risky bets and risky trades, pocketing the winnings when their bets go well, and going to taxpayers for salvation when the bets go south. That is surely true of what is known as proprietary trading.

Too often, before and during the crisis and even today, financial institutions trade financial instruments often using large amounts of borrowed money to make risky bets for their own benefit, not on behalf of their clients.

Today, Senator MERKLEY and I, along with our cosponsors, are introducing an amendment to Senator DODD's financial regulatory reform bill that seeks to limit the damage these proprietary transactions can inflict on our economy and end the conflicts of interest which too often accompany them.

I ask unanimous consent that Senator JACK REED be added as a cosponsor of our amendment.

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

Mr. LEVIN. Proprietary trading brings high amounts of risk directly into the financial infrastructure and has repeatedly and severely damaged the financial system. It was a large part of the banking collapse of 1929, which is why Glass-Steagall restrictions separating investment banks from commercial banks were enacted. In 1998, as Glass-Steagall was being weakened, proprietary trading in complex derivatives left the major Wall Street banks facing billions in losses. The Federal Reserve organized the first massive bailout of a too big to fail nonbank, Long-Term Capital Management. And in our current crisis, proprietary trading in subprime securities and derivatives was the critical factor in the failure of major Wall Street firms in 2008.

By April 2008, the Nation's largest financial firms had suffered $230 billion in losses based on their proprietary trading. And by the end of 2008, the taxpayers were forced to put up hundreds of billions of dollars in TARP funds to avoid the collapse of our economy. Lehman Brothers is one example. In 1998, it had ''only'' $28 billion in proprietary holdings. By 2007, its proprietary holdings had soared to $313 billion. When the values of these holdings declined in 2007 and 2008, Lehman Brothers lost $32 billion, its losses exceeded its net worth, and by September 2008, the firm had collapsed in the largest bankruptcy in history.

Senator MERKLEY and I propose an amendment that addresses these issues in the following ways:

First, commercial banks and their affiliates would be barred from high-risk proprietary trading. The risk to the federal deposit fund is simply too great to allow commercial banks to gamble as they can today.

This prohibition will not inhibit these institutions from serving their customers. Our amendment expressly permits carefully specified client-based transactions. That means that banks, through their broker-dealer affiliates, could buy or sell securities and other instruments as requested by clients. Those affiliates can also, for example, act as underwriter for a client issuing new stocks or bonds, provided those transactions are not allowed to endanger the safety and soundness of the bank.

Second, we limit proprietary trades at the largest nonbank financial institutions. These institutions would be required to keep enough capital on hand to ensure that they, and not the taxpayers, would cover their trading losses. That would limit the size of their proprietary activities. The regulators overseeing the financial system would be tasked with specifying the capital levels these institutions would be required to maintain, as well as limits on the amount of proprietary trading they could do, in order to protect the stability of the system. These restrictions would address one of the chronic problems that led to the crisis, that of financial institutions borrowing heavily to make their risky trades by leveraging their own funds, and jeopardizing the entire financial system when their risks overcame their own funds.

Third, we would address one of the most dramatic findings of our subcommittee's recent hearings, that of firms betting against financial instruments they are assembling and selling. As our hearing on investment banks showed, Goldman Sachs assembled and sold mortgage-related financial instruments, then placed large bets, for the firm's own accounts, against those very same instruments. In one case highlighted at the hearing, involving risky mortgage-backed securities, a Goldman trader bragged in an email that, although the firm lost $2.5 million when the securities failed, Goldman made $5 million on a bet placed against those very same securities. The conflict of interest prohibition in our amendment is intended to prevent firms that assemble, underwrite, place or sponsor these instruments from making proprietary bets against those same instruments.

Assembling and selling financial instruments to its clients while betting against those same instruments did injury to Goldman's clients. The fact that the firm described these instruments, in its own emails, as ''junk,'' added insult to injury. This isn't market making, bringing together two customers, a buyer and a seller, as Goldman executives claimed during our hearing. This is Goldman Sachs acting as its own secret client, betting against its customers. When members of the subcommittee asked Goldman executives about that conflict of interest, they answered by saying that we just understand, that this is how business is done on Wall Street. We understand all too well how business has been done on Wall Street. And that is why we must end the self-dealing and put a cop back on the beat on Wall Street.

Our amendment would protect depositors and taxpayers from the risk of proprietary trading at commercial banks. It will protect taxpayers from the dilemma of having to pay for Wall Street's risky bets, or watch our financial system disintegrate. And it would protect investors and the financial system at large from the conflicts of interest that too often represent business as usual on Wall Street. It will strengthen protections already in place in the bill before us, and add new ones to guard the stability of a financial system on which our economy and American jobs depend.

Senator MERKLEY and I have worked closely with a number of colleagues, including Senator DODD, as well as officials from the Treasury Department and the Securities and Exchange Commission, to ensure that our legislation would address the problems we seek to address without endangering legitimate market activity and activity on behalf of clients. It has been endorsed by former Federal Reserve Chairman Paul Volcker; business leaders such as John Reed, the former Chair and CEO of Citibank; and major organizations calling for real Wall Street reform, including the Independent Community Bankers of America, Americans for Financial Reform, and the AFL–CIO.

There is nothing wrong with Wall Street firms making a profit. What we oppose is the notion that in seeking such profit, these financial institutions can put depositors, clients, taxpayers, and the very safety of our financial system at risk. What we oppose is conflict of interest. I hope our colleagues will support these commonsense safeguards to strengthen the financial system and our economy.

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

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

Mr. DODD. Madam President, I ask unanimous consent that on Tuesday, May 11, after any leader time, the Senate resume consideration of S. 3217, and debate concurrently the pending Sanders amendment No. 3738 and the Vitter amendment No. 3760; that prior to a vote in relation to each amendment, there be a total debate limit of 80 minutes, with 20 minutes each under the control of Senators SANDERS, VITTER, SHELBY, and DODD, or their designees; that upon the use or yielding back of all time, the Senate proceed to a vote in relation to the Sanders amendment, followed by a vote in relation to the Vitter amendment, with no amendment in order to either amendment.

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

MORNING BUSINESS

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

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

ADDITIONAL STATEMENTS

TRIBUTE TO MARC MORIN

• Mr. GREGG. Madam President, today I wish to recognize Marc Morin of Bow, NH. Since December 20, 2000, Marc has been a member of the New Hampshire Board of Professional Engineers and has ably served as its chairman since July 15, 2004. In August of this year, he will step down from that position, and I would like to take this opportunity to thank him for the professionalism and dedication he has demonstrated over the last 10 years.

The Board of Professional Engineers has the important mission of protecting the public's safety and insuring the State's engineers follow the proper operating rules and regulations. Because of his reputation as an environmental engineer in the private sector, Marc was an excellent choice as board chairman. His educational accomplishments, such as holding a master of science in water resource engineering, underscore his ability to understand and apply the often complex licensing and due process requirements the board must oversee.

My wife Kathy and I have had the pleasure of knowing Marc's wife's family for many years. He has ben a great example of the strong commitment to public service and volunteerism for which New Hampshire is so well known. While his leadership on the