

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

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

MEASURE PLACED ON THE CALENDAR—S. 3588

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

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

The assistant legislative clerk read as follows:

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

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

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

WALL STREET REFORM AND CONSUMER PROTECTION ACT—CONFERENCE REPORT

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

The assistant legislative clerk read as follows:

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

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

The Senator from Hawaii.

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

An Office of Financial Education within the Consumer Financial Protection Bureau is created by the legislation. The office is tasked with developing and implementing initiatives to educate and empower consumers. A strategy to improve financial literacy among consumers, that includes meas-

urable goals and benchmarks, must be developed. The administrator of the bureau will serve as vice-chairman of the Financial Literacy and Education Commission to ensure meaningful participation in Federal efforts intended to help educate, protect, and empower working families.

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

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

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

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

such as the mishandling of information that could have exposed ponzi schemes much earlier. We also worked with our colleagues in the other Chamber to include an ombudsman that will be appointed by and report to the investor advocate.

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

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

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

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

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

laws provide inadequate consumer protections.

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

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

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

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

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

Many of the unbanked and underbanked are low and moderate-income families that cannot afford to have their earnings diminished by reliance on these high-cost and often predatory financial services. Unbanked families are unable to save securely for education expenses, a down payment on a first home, or other future financial needs. Underbanked consumers rely on nontraditional forms of credit that often have extraordinarily high interest rates. Regular checking accounts may be too expensive for some consumers unable to maintain minimum

balances or afford monthly fees. Poor credit histories may also limit their ability to open accounts. Cultural differences or language barriers also present challenges that can hinder the ability of consumers to access financial services. I also want to clarify that in section 1204, small dollar-value loans and financial education and counseling relating to conducting transactions in and managing accounts are only examples of, and not limitations on, eligible activities.

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

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

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

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

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

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

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

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

tection Act and to vote for final passage.

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

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

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

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

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

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

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

our community banks which will allow them to be able to invest in our communities.

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

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

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

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

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

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

cluded in this bill—will require public disclosure of those payments.

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

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

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

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

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

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

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

Over the past 30 years, our regulatory framework did not keep pace with financial innovation. It was particularly impotent with regard to oversight of

the so-called shadow banking system, which evolved in large part simply to avoid regulation.

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

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

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

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

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

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

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

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

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

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

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

As I have said, Senators ENZI and BROWNBACK joined me in proposing changes to the deposit insurance program. The Independent Community Bankers of America, ICBA, the American Bankers Association, ABA, and

the National Credit Union Association, NCUA, all supported our amendment—now found in section 335 of the bill—to make the temporary increase in the federally insured deposit limit from \$100,000 to \$250,000—a permanent increase. An increase in the Federal Deposit Insurance Corporation, FDIC, and National Credit Union Share Insurance Fund, NCUSIF, limit is significant because deposit insurance has been the stabilizing force of our Nation's banking system for 75 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No. 1, enhancing U.S. energy security. The reliability of oil and gas sup-

plies is undermined by the instability caused when local populations do not receive the benefit of their resource exports. Enhancing openness in revenue flows allows for greater public scrutiny of how revenues are used. Increased transparency can help create more stable, democratic governments, as well as more reliable energy suppliers.

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

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

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

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

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

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

Even this minimalist position suggests that markets need rules. And yet we embarked on a 30-year path to deregulate financial services, to ease the rules, and remove the watchdogs. We have learned a bitter lesson that markets are not self-correcting—at least

not without catastrophic consequences. Millions of Americans have lost their jobs, their savings, their homes, and their retirement security. Businesses have been wiped out. We have gone from easy credit to no credit.

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

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

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

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

Madam President, I yield the floor.

The ACTING PRESIDENT *pro tempore*. The Senator from Georgia.

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

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

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

The newly created consumer protection bureau is an affirmation that the

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

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

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

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

house. So this bill will not eliminate risk, but it simply transfers risk from one place to another and imposes costs on market participants who had nothing to do with creating the financial crisis. I truly fear that consumers will ultimately pay the price.

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

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

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

I encourage all Members of this body to look at yesterday's Wall Street Journal. There is a front-page story on derivatives. When we come to the floor and start debating derivatives, most people's eyes glaze over because it is complex and an issue that is very difficult to understand. But in that article it explains the simplicity that the derivatives world imparts itself in. The article goes through a process of a farmer in Nebraska and his use of derivatives; then his ultimate purchaser of his product—the rancher—and how that rancher uses derivatives to eliminate risk and hopefully guarantee a profit in his business. Then it describes

how the slaughterhouse takes the product from the livestock operator, the market operator, and uses derivatives in their business; and then ultimately the guy who owns the trucking company and how he uses derivatives. It is very clear in this article that these guys' lives are going to change from a business perspective. They are not going to be able to use derivatives in the way they used them before. They had nothing to do with the financial crisis that developed in this country.

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

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

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

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

I am pleased the chairman of the Banking Committee is here, because I do want to say publicly—and I have told him this privately and I will continue to say it—that he had a very dif-

ficult job, and while we disagreed on a lot of major issues, he was always open for discussion. He allowed participation on the floor as well as discussions off the floor, and for that I thank him. He knows that I obviously cannot vote for this bill, but he has proven himself to be a very valued Member of the Senate by the way he has conducted himself throughout this whole process, and for that I thank him.

I yield the floor.

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

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

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

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

Madam President, I yield the floor.

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

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The actual provisions in the bill will benefit big Wall Street institutions because they substantially increase the amount and cost of financial regulation. Only large financial institutions will have the resources to navigate all

of the new laws and regulations that this legislation will generate. As a result, this bill, disproportionately will hurt small and medium-sized banks which had nothing to do with the crisis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This was not a result the big banks wanted. The last thing a large regu-

lated financial institution wants is a new regulator. After all, they spent years and millions of dollars developing a relationship with our current regulators.

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

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

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

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

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

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

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

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

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

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

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

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

Chamber and same city over the last several years.

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

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

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

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

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

Thirdly, of course, we tried to deal with exotic instruments that had

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

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

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

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

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

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

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

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

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

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

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

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

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

service structure of our Nation to once again give us the hope that we can see wealth created, jobs produced, and an economy that will offer opportunities for the next generation of Americans.

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

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican leader.

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

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

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

Those are just some of them. All told, this bill would impose 533 new regulations on individuals and small businesses, regulations that will inevitably lead to the kind of confusion and uncertainty that will make it even harder for struggling businesses to dig themselves out of the recession. It is

just this kind of uncertainty that will deter lending and freeze up credit as lenders wait to see how they will be affected by the new regulations. It is just this kind of uncertainty that businesses cite time and time again as one of the greatest challenges to our economic recovery.

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

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

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

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

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

Madam President, I yield the floor.

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

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

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

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

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

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

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

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

mind they deserve, the peace of mind that comes with the knowledge they will be able to keep their homes and their savings will be safe.

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

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

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

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

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

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

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

CLOTURE MOTION

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

The legislative clerk read as follows:

CLOTURE MOTION

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

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

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

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

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

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

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

[Rollcall Vote No. 206 Leg.]

YEAS—60

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

NAYS—38

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

NOT VOTING—1

Crapo

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

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

I ask unanimous consent that the postcloture time be considered expired at 2 p.m., with the time until then equally divided and controlled between Senators DODD and SHELBY or their designees; that during this period, if and when a budget point of order is raised against the conference report, then an applicable waiver of the point

of order be considered made; that at 2 p.m., the Senate proceed to vote on the motion to waive the applicable budget point of order; that if the waiver is successful, without further intervening action or debate, the Senate vote on adoption of the conference report.

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

Mr. DODD. I yield the floor.

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

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

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

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

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

There appears to be a sufficient second.

The yeas and nays were ordered.

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

The ACTING PRESIDENT pro tempore. The Senator is correct.

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

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

Mrs. HUTCHISON. Madam President, I appreciate the comments of the chairman. He accommodated many of the amendments I had, particularly as it concerns community banks. That was a huge concern in the original

draft of the bill. I thank the chairman for accommodating those concerns. It did make it a better bill.

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

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

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

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

Additionally, there are a series of provisions that are troubling to me. No. 1 is this consumer protection bureau. It is using the faults of Wall

Street banks and executives to create a cumbersome new bureaucracy which will impose job-killing regulation at the expense of Main Street small businesses and families. The Consumer Financial Protection Bureau, with endless authority over all facets of our economy, is not the answer.

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

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

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

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

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

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

While Senator DODD and Senator LINCOLN say that this legislation will not

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

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

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

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

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

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

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

The American people want sensible financial reform. However, this purported financial regulatory reform legislation does not even address the root causes of the crisis: Fannie Mae and Freddie Mac. Instead, it uses the crisis to add layers of Federal bureaucracy,

and threatens to slow down our economic recovery, risking job loss and restricting access to credit.

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

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

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

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

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

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

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

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

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

While not perfect—no piece of legislation is—one of the things that gives me some confidence that the right balance has been struck is that this bill

has been criticized by both the left and the right. Some on the left, some on the Democratic side, have said the bill has not gone far enough in putting more requirements and restrictions on our financial institutions. Some of my colleagues on the Republican side, on the right, have said this bill goes too far.

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

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

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

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

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

While some said we ought to go ahead and limit the asset size of some

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

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

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

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

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

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

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

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

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

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

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

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

I want to close acknowledging again—the chairman was very kind in his remarks—I cannot think, in my short tenure in the Senate, of any other Senator who has worked harder on a piece of legislation, who has been more relentless, who has had more twists and turns, who has had more “we are there; but, oh, my gosh, we may not be there,” who has had probably more 10 o’clock, 2 o’clock in the

morning, 4 o’clock in the morning, I believe at one point, telephone calls and meetings with other Members.

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

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

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

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

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

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

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

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

There are other problems with the bill. The biggest new problem it causes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Delaware.

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

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

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

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

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

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

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

To be sure, the bill that has come out of conference includes some extremely important reforms. It establishes an independent Consumer Financial Protection Bureau with strong and autonomous rulemaking authority and the ability to enforce those rules for large banks and nonbank entities such as payday lenders and mortgage finance companies. In addition, it requires electronic trading and centralized

clearing of standardized over-the-counter derivatives contracts, as well as more robust collateral margin requirements. The bill's inclusion of the Kanjorski provision will give regulators the explicit authority to break up megabanks that pose a "grave threat" to financial stability.

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

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

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

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

Second, the legislation does not go far enough in addressing the funda-

mental problem of "too big to fail." Instead of erecting enduring statutory walls as we did in the 1930s, the bill invests the same regulators who failed to prevent the financial crisis with additional discretion and relies upon a resolution regime to successfully unwind complex and interconnected megabanks engaged across the globe. I am also disappointed that key reform provisions like the Volcker Rule and the Lincoln swaps dealers spin-off provision were scaled back in conference.

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

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

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

How quickly we forget. Time and again, I have heard people speak as if there was no big financial crisis, saying: I have a bank in my hometown that is going to have a problem with this legislation. So we should let all the banks be free to do whatever they

want to do. We had a crisis here that practically destroyed the country, the world, and these people are bringing up anecdotal evidence to give these banks more responsibility and not go after the root cause.

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

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

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

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

Just look at what happened when the structured investment vehicles, or SIVs, of Citigroup and other

megabanks began to falter. Because of the reputational consequences of liquidating these funds and allowing them to default on their funding obligations, they were bailed out by the megabanks that spawned them even though the SIVs themselves were generally separate, off-balance-sheet entities with no official backing from the banks.

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

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

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

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

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

It is estimated that various Federal agencies will be charged with writing over 200 rulemakings and dozens of studies. Many of the same regulators who failed in the run-up to the last crisis will once again be given the solemn

task of safeguarding our financial stability. Like many others, I am concerned whether they have the capacity and wherewithal to succeed in this endeavor.

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

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

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

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

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

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

It is, therefore, imperative that we build a financial system on a firmer foundation. The American economy cannot succeed—cannot succeed—unless we restore and maintain financial stability—not only restore and maintain financial stability but maintain

the credibility of our financial system. We simply cannot afford another financial crisis or continued financial instability if the American economy is to succeed in the coming decades. Getting financial regulation right and maintaining it for years to come should be one of this Nation's highest priorities because the price of failure is far too high.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

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

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

The PRESIDING OFFICER. The Senator from Delaware.

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

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

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

I thank the Senator again.

Mr. DODD. Madam President, my colleague talked about 41. There are a number of Republicans who played a very critical and supportive role on

this bill. I do not want the record to persist in suggesting that was not the case. Even people on the other side who ended up not voting for the bill—at least have not so far—added substantially to the value of this bill. In some cases, they might not want to acknowledge that, but they did.

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

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

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

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

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

What is amazing to me is what passed was what the three of them would sign on to or others would sign on to. The idea that the Senator came

with a bill—every one of my concerns I raised today, if we had gotten some help from the other side might have gone another way. But they were not going to go another way with the group we had.

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

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

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

My colleague from New Hampshire is here.

The PRESIDING OFFICER. The Senator from New Hampshire.

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

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

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

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

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

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

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

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

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

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

I am glad we have been able to work in this bipartisan manner to craft a

strong bill that reins in the reckless Wall Street conduct that brought us to the edge of financial disaster. It keeps community banks strong, and it protects consumers and taxpayers.

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

The PRESIDING OFFICER. The Senator from Connecticut.

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

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

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

I thank the Senator for her comments.

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

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

Virtually all of us have been impacted by the economic meltdown in some way: businesses shed jobs, workers' hours were cut, some folks had great difficulty making their mortgage payments when their pay was cut, small businesses lost customers and revenue in the downturn. South Dakota homeowners, regardless of whether they had a mortgage or owned their home outright, saw their equity drop, and most folks with investments for retirement or other long-term goals suf-

fered losses either through the stock market plunge, bond market turbulence, or passbook savings interest rates that hovered near zero percent. Lending at our Nation's banks contracted, spending fell, and overall consumer confidence plummeted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

First, I was pleased to see that the Volcker Rule, as modified, will permit banking entities several years to bring their full range of activities into conformance with the new rule. In particular, section 619(c)(2) ensures that the new investment restrictions under section 619(d)(1)(G)(iii) and section 619(d)(4)—including the numerical limi-

tations under section 619(d)(4)(B)(ii)—will only apply to a banking entity at the end of the period that is 2 years after the section's effective date. This date for the regulators to begin applying the new rules can also be extended into the future for up to three 1-year periods under section 619(c)(2) and can also separately be extended for illiquid funds with contractual commitments as of May 1, 2010, under section 619(c)(3), on a one-time basis for up to 5 years. Only after all of these time periods and extensions have run will any of the limitations under section 619(d)(1)(G) and section 619(d)(4) be applied by regulators.

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

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

Finally, section 619(d)(4)(I) permits certain banking entities to operate hedge and private equity funds outside of the United States provided that no ownership interest in any hedge or private equity fund is offered for sale or sold to a U.S. resident. For consistency's sake, I would expect that, apart from the U.S. marketing restrictions, these provisions will be applied by the

regulators in conformity with and incorporating the Federal Reserve's current precedents, rulings, positions, and practices under sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act so as to provide greater certainty and utilize the established legal framework for funds operated by bank holding companies outside of the United States.

The PRESIDING OFFICER. The Senator from New Hampshire.

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

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

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

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

tiatives which will hopefully mute that type of potential for another event of a systemic meltdown.

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

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

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

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

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

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

First, the derivatives language in this bill is not well thought out. It just isn't. Most people don't understand what derivatives are, but let's describe them as the grease that gets credit going in this country and everywhere. It is basically insurance products that

allow people to do business and make sure they can insure over the risks that they have in a business. This bill creates a new regime for how we handle derivatives in this country.

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

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

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

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

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

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

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

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

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

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

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

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

problems in the industry did exist and should have been addressed.

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

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

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

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

Who pays for that? Well, the consumer pays for it. Clearly, that gets passed through. This is one of those Rube Goldberg ideas that can only

come out of a government entity. They used to say: You know, the government produces a camel when it is supposed to be producing a horse.

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

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

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

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

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

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

These loans were being made not for the purposes of actually recovering the

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

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

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

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

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

In my opinion, this bill has some pluses. I know this was worked very hard and I admire the efforts of the Senator from Connecticut and actually the chairman in the House, Congressman FRANK from Massachusetts. But the negatives of this bill unfortunately are too significant to ignore, especially in the area of the short-term credit contraction that is going to occur, the

poorly structured derivatives language, the Consumer Protection Agency—which I think is going to end up being counterproductive to consumers—and the failure to take up the Freddie and Fannie issue, and the failure to do stronger underwriting standards.

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

I yield the floor.

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

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

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

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

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

The PRESIDING OFFICER. Is there objection?

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

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

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

Could you make it a little less than 20?

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

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

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

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

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

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

The PRESIDING OFFICER. Is there objection?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut

Mr. DODD. Mr. President, before my friend, the chairman of the Budget Committee, leaves, let me thank him immensely for his analysis of this

issue. He has it, as we saw as well, exactly right. In fact, it is not only repaying 100 percent but with interest. There is an interest requirement, that if we borrow from the taxpayers in order to wind down substantially risky firms, then not only do you get paid back, but the interest on the cost of that money is also part of the deal. So it is 100 percent-plus coming back to the Treasury.

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Oregon is recognized.

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

I yield to Senator LEVIN.

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

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

I yield the floor to my colleague, Senator MERKLEY.

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

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

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

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

amount of capital could provide a sufficient buffer in such situations.

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

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

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

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

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

Section 619's prohibitions and restrictions on proprietary trading are set forth in a new section 13 to the Bank Holding Company Act of 1956, and subsection (a), paragraph (1) establishes the basic principle clearly: a banking entity shall not "engage in proprietary trading" or "acquire or retain . . . ownership interest[s] in or sponsor a hedge fund or private equity fund", unless otherwise provided in the section.

Paragraph (2) establishes the principle for nonbank financial companies supervised by the Board by subjecting their proprietary trading activities to quantitative restrictions and additional capital charges. Such quantitative limits and capital charges are to be set by the regulators to address risks similar to those which lead to the flat prohibition for banking entities.

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

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

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

business functions of the nonbank financial firm. These restrictions should become stricter as size, leverage, and other factors increase. As with banking entities, these restrictions should also help reduce the size and risk of these financial firms.

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

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

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

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

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

ital charges and held for longer periods.

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

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

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

2008 crisis. That is why setting limits on involvement in hedge funds and private equity funds is critical to protecting against risks arising from asset management services.

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

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

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

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

Subparagraph (d)(1)(B) permits underwriting and market-making-related

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

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

We note, however, that "market-making-related" is not a term whose definition is without limits. It does not implicitly cover every time a firm buys an existing financial instrument with the intent to later sell it, nor does it cover situations in which a firm creates or underwrites a new security with the intent to market it to a client. Testimony by Goldman Sachs Chairman Lloyd Blankfein and other Goldman executives during a hearing before the Permanent Subcommittee on Investigations seemed to suggest

that any time the firm created a new mortgage related security and began soliciting clients to buy it, the firm was "making a market" for the security. But one-sided marketing or selling securities is not equivalent to providing a two-sided market for clients buying and selling existing securities. The reality was that Goldman Sachs was creating new securities for sale to clients and building large speculative positions in high-risk instruments, including credit default swaps. Such speculative activities are the essence of proprietary trading and cannot be properly considered within the coverage of the terms "market-making" or "market-making-related."

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

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

While this subparagraph is intended to permit banking entities to utilize their trading accounts to hedge, the phrase "in connection with and related to individual or aggregated positions . . ." was added between amendment 4101 and the final version in the conference report in order to ensure that the hedge applied to specific, identifiable assets, whether it be on an individual or aggregate basis. Moreover, hedges must be to reduce "specific risks" to the banking entity arising from these positions. This formulation is meant to focus banking entities on traditional hedges and prevent propri-

etary speculation under the guise of general "hedging." For example, for a bank with a significant set of loans to a foreign country, a foreign exchange swap may be an appropriate hedging strategy. On the other hand, purchasing commodity futures to "hedge" inflation risks that may generally impact the banking entity may be nothing more than proprietary trading under another name. Distinguishing between true hedges and covert proprietary trades may be one of the more challenging areas for regulators, and will require clear identification by financial firms of the specific assets and risks being hedged, research and analysis of market best practices, and reasonable regulatory judgment calls. Vigorous and robust regulatory oversight of this issue will be essential to the prevent "hedging" from being used as a loophole in the ban on proprietary trading.

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

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

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

However, to prevent abuse, firms seeking to rely on this insurance-related exception must meet two essential qualifications. First, only trading for the general account of the insurance firm would qualify. Second, the

trading must be subject to adequate State-level insurance regulation. Trading by insurance companies or their affiliates that is not subject to insurance company investment regulations will not qualify for protection here.

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

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

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

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

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

Fourth, by stating that a firm may not organize and offer a hedge fund or private equity fund with the firm's name on it, clause (vi) of subparagraph

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

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

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

Subparagraphs (H) and (I) recognize rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States to engage in activities permitted under relevant foreign law. However, these subparagraphs are not intended to permit a U.S. banking entity to avoid the restrictions on proprietary trading simply by setting up an offshore subsidiary or reincorporating offshore, and regulators

should enforce them accordingly. In addition, the subparagraphs seek to maintain a level playing field by prohibiting a foreign bank from improperly offering its hedge fund and private equity fund services to U.S. persons when such offering could not be made in the United States.

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

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

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

With respect to the definition of high-risk assets and high-risk trading strategies, regulators should pay close attention to the characteristics of assets and trading strategies that have contributed to substantial financial loss, bank failures, bankruptcies, or the collapse of financial firms or financial markets in the past, including but not limited to the crisis of 2008 and the financial crisis of 1998. In assessing high-risk assets and high-risk trading strategies, particular attention should be paid to the transparency of the markets, the availability of consistent pricing information, the depth of the markets, and the risk characteristics

of the assets and strategies themselves, including any embedded leverage. Further, these characteristics should be evaluated in times of extreme market stress, such as those experienced recently. With respect to trading strategies, attention should be paid to the role that certain types of trading strategies play in times of relative market calm, as well as times of extreme market stress. While investment advisors may freely deploy high-risk strategies for their clients, attention should be paid to ensure that firms do not utilize them for their own proprietary activities. Barring high risk strategies may be particularly critical when policing market-making-related and hedging activities, as well as trading otherwise permitted under subparagraph (d)(1)(A). In this context, however, it is irrelevant whether or not a firm provides market liquidity: high-risk assets and high-risk trading strategies are never permitted.

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

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

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

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

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

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

Subsection (f), paragraph (3) permits the Board to allow a very limited exception to paragraph (1) for the provision of certain limited services under the rubric of "prime brokerage" between the banking entity and a third-party-advised fund in which the fund managed, sponsored, or advised by the banking entity has taken an ownership interest. Essentially, it was argued

that a banking entity should not be prohibited, under proper restrictions, from providing limited services to unaffiliated funds, but in which its own advised fund may invest. Accordingly, paragraph (3) is intended to only cover third-party funds, and should not be used as a means of evading the general prohibition provided in paragraph (1). Put simply, a firm may not create tiered structures and rely upon paragraph (3) to provide these types of services to funds for which it serves as investment advisor.

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

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

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

Pursuant to subsection (c), paragraph (1), most provisions of section 619 become effective 12 months after the issuance of final rules pursuant to subsection (b), but in no case later than 2 years after the enactment of the Dodd-Frank Act. Paragraph (c)(2) provides a 2-year period following effective date of the provision during which entities must bring their activities into conformity with the law, which may be extended for up to 3 more years. Special illiquid funds may, if necessary, receive one 5-year extension and may

also continue to honor certain contractual commitments during the transition period. The purpose of this extended wind-down period is to minimize market disruption while still steadily moving firms away from the risks of the restricted activities.

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

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

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

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

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

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

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

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

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

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

Senator JACK REED and his staff did yeoman’s work in advancing this cause. We further tip our hat to our tireless and vocal colleague, Senator

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

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

I yield the floor to Senator MERKLEY.

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

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

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

I see my colleague from North Dakota is here. I suggest the absence of a

quorum and ask unanimous consent that the time be equally divided among both sides.

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

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

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

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

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

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

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

One more important point on budget scoring and the liquidation authority.

CBO cannot factor in the costs to our nation of a failure to address the possibility of future bailouts. We have lived through that nightmare and it has cost our country dearly.

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

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

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

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

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

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

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

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

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

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

We end TARP in the conference report. With the comprehensive financial reform put in place under this bill, we think it is the right time to bring TARP to a close, ending it earlier than

had been planned. I think that is something everyone should be happy about. And ending TARP saves the government money. That is not just my conclusion. It is the conclusion of the Congressional Budget Office, \$11 billion in savings.

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

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

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

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

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

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

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

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

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

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

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

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

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

A key measure of the strength of the insurance fund is the reserve ratio, which is the amount in the DIF as a percentage of the industry's estimated insured deposits. Current

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

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

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

Sincerely,

SHEILA C. BAIR.

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

INTENT BEHIND SECTIONS 691–621

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

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

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

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

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

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

some rewards for designing and selling malfunctioning vehicles that undermine the asset-backed securities markets. It is for that reason that we prohibit those entities from engaging in transactions that would involve or result in material conflicts of interest with the purchasers of their products.

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

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

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

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

Mr. DODD. I thank the Senator, and I strongly concur with the intentions and interpretations set forth by the principal authors of these provisions, Senators MERKLEY and LEVIN, as reflecting the legislative intent of the conference committee. I thank Senators MERKLEY and LEVIN for their

leadership, which was so essential in achieving the conference report provisions governing proprietary trading and prohibiting conflicts of interest.

ASSESSING INDIVIDUAL ENTITIES

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

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

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

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

SECTION 603 TRUST COMPANIES

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

Mr. DODD. I would be glad to clarify the nature of trust companies subject to the moratorium under section 603(a). The moratorium applies to an institution that is directly or indirectly owned or controlled by a commercial firm that functions solely in a trust or fiduciary capacity and is exempt from the definition of a bank in the Bank Holding Company Act. It does not apply to a nondepository trust com-

pany that does not have FDIC insurance and that does not offer demand deposit accounts or other deposits that may be withdrawn by check or similar means for payment to third parties.

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

NONBANK FINANCIAL COMPANIES

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

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

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

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

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

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

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

PREEMPTION STANDARD

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

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

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

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

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

NONBANK FINANCIAL COMPANIES

Mr. KERRY. Mr. President, the conference report to accompany H.R. 4173, the Dodd-Frank Wall Street reform bill, creates a mechanism through which the Financial Stability Oversight Council may determine that material financial distress at a U.S. nonbank financial company could pose such a threat to the financial stability of the United States that the company should be supervised by the Board of Governors of the Federal Reserve System and should be subject to heightened prudential standards. It is my understanding that in making such a determination, the Congress intends that the council should focus on risk factors