have served with Presidents, not under them.''

Senator Byrd will enter the history books as one of the Senate's true giants, but his beginnings were humble. His biography is a shining testament to the American dream. He was adopted in infancy and raised in impoverished coal-mining towns. His first job was to collect garbage scraps for his family's hogs. Although he graduated valedictorian of his 1934 high school class, at first he could not afford college. He married his high school sweetheart, Erma Ora James, with whom he enjoyed 68 happy years. The outstanding work ethic and solid values that he learned while growing up in Raleigh County helped him later devote 10 grueling years of his life to studying while simultaneously serving as a Member of Congress. When he finally earned his law degree in 1963, President John F. Kennedy awarded him his diploma.

Senator Byrd served his beloved home State with unprecedented devotion. He wrote in his autobiography that ''it has been my constant desire to improve the lives of the people who have sent me to Washington time and again.'' Virtually every county in West Virginia will long remember his hard work, dedication, and legendary contributions. Like many Americans today, I commend him for his outstanding service to his State, to our Nation, and to the institution of the Senate.

HONORING OUR ARMED FORCES

PRIVATE FIRST CLASS MICHAEL SHANE PRIDHAM, JR.

Mr. BAYH. Madam President, I rise today to honor the life of PFC Michael Shane Pridham, Jr. of the U.S. Army.

Private Pridham was assigned to the 1st Battalion, 4th Infantry Regiment. He was only 19 years old when he lost his life serving bravely in support of Operation Enduring Freedom in Qalat, Afghanistan. He was 6 weeks from completing his tour of duty.

Private Pridham—''Mikey'' as he was to known to his family and friends—was from Louisville, KY. He attended Southern High School before later earning his GED diploma through the U.S. Army.

Today, I join Private Pridham's family and friends in mourning his death. He is survived by his wife Deidre, whom he married 2 days before deploying overseas and who is expecting the couple's first child, Aliyah, in October; his father and stepmother, Michael Shane and Andrea Pridham Sr. of New Albany, IN; his mother, Keri Allen of Louisville, KY; and his brothers, Jeffrey Pridham, Joey Pridham, Kaleb Nix and Kaden Eskridge.

We take pride in the example of this American hero, even as we struggle to express our sorrow over this loss. We cherish the legacy of his service and his life.

As I search for words to honor this fallen soldier, I recall President Lincoln's words to the families of the fallen at Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.''

It is my sad duty to enter the name of PFC Michael Shane Pridham, Jr. in the RECORD of the U.S. Senate for his service to our country and for his profound commitment to freedom, democracy and peace.

I pray that Mikey's family finds comfort in the words of the prophet Isaiah, who said: ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

WALL STREET REFORM AND CONSUMER PROTECTION ACT

Mr. BROWN of Massachusetts. Madam President, I come to the floor of the Senate to talk today about the recently passed Wall Street reform bill.

I believe elected officials should come to Washington to solve problems not ignore them. The American people know that we need to enact major changes to our financial regulatory system. With the bill that passed into law earlier this month, Congress has begun the process of repairing a regulatory system that did not work as it should have and contributed to the financial meltdown that shook our economy in 2008. This action, long overdue, will help our regulatory structure catch up with the realities of the market so as to provide a more secure economy. Although no bill will ever be perfect, and I remain seriously concerned that we must take further actions if we are going to prevent another financial crisis, this bill takes important steps towards greater market transparency and consumer protection. It will help make sure that taxpayers are never again put on the hook for bailing out the financial sector. It strengthens the regulatory safety net in key respects. For these reasons, I supported cloture motions and final passage of the Wall Street Reform and Consumer Protection Act.

I did my utmost to work in a bipartisan manner on this bill, filing or cosponsoring 27 amendments, working across the aisle on almost all of them. For example, we amended the bill to remove unnecessary provisions that would have severely constricted small startup businesses around the country as they worked to raise capital from angel investors. Massachusetts is one of America's hotbeds for innovation and business startups, and I was proud to stand up for small startup businesses and the investors who help give life to their ideas. Another amendment I proposed with Senator JACK REED of Rhode Island, which was adopted 99–1, created a dedicated liaison office for military families within the Consumer Financial Protection Bureau, so that members of our Armed Forces and their families can fight back when they are targeted by unscrupulous lenders or sold fraudulent life insurance policies. As a 30-year member of the National Guard, I have seen the pain caused when members of the Guard are hit by financial predators. I was also proud to join my colleagues in supporting assessment and regulatory relief for small community banks and a safer role for the credit rating agencies in our financial system.

Since the Senate Committee on Banking, Housing, and Urban Affairs did not hold a full markup of the bill before it came to the Senate floor, I spent a lot of time exploring how certain provisions were drafted and how they might work if enacted into law. One of those areas was the so-called Volcker rule. I believe that the principles behind the Volcker rule, which was proposed in earnest only after the House had passed its own Wall Street Reform bill, are very well-intentioned and in many respects will be quite effective. The Volcker rule was conceived as a way to limit certain risky proprietary trading activities so that Wall Street firms start to look more like the safe banks, mutual funds, and insurance companies we have in Massachusetts. After the collapse the country suffered, no one can argue with a straight face anymore that all banks should be able to take huge risks on anything they want, whenever they want, without any regard to the consequences. This was an important issue for financial institutions and regulators across the country. Senator KAY HAGAN of North Carolina also worked hard to find the right balance within the Volcker rule for bank asset management, and I would like to associate my views with her statements in the Senate RECORD on this topic.

Without changes, the original Senate bill would have unreasonably regulated limited purpose trusts—institutions throughout our Nation that never should have been captured in the regulatory ''net'' of Volcker rule bank regulation. Since the drafting did not match the intent, this problem was addressed by clarifying that these companies should not be subject to bank holding company oversight or the Volcker rule restrictions by virtue of operating a limited purpose trust regardless of charter. In other words, bank regulation should only apply to the trust itself, not its parent and affiliates. Without this clarification, the Volcker rule restrictions, as well as the capital requirements under the adopted Collins amendment, would have led to widespread disruption in providing products and services to customers and investors, job losses, and uncertainty around the nation. The final version of the legislation appropriately does not regulate institutions with limited

trusts—including mutual funds and insurance companies—because these institutions do not take customer deposits, make loans, or access the Fed discount window.

The original Volcker rule also would have gone too far in preventing banks from offering appropriate investment services to their clients as a limited and safe part of their business model. At a time of deep economic uncertainty, when millions of Americans are looking for work, this could have a devastating impact on jobs in Massachusetts and across the country while unfairly targeting safe institutions and driving their business to riskier ventures. Even the Glass-Steagall law clearly permitted banks to serve as investment advisers, and yet the original Volcker rule language threatened the ability of banks to offer these services, including seeding new investment funds that they then offer to clients.

Bank-affiliated investment funds are sponsored for clients and comprised almost entirely of client money. Most are not excessively speculative or risky investment vehicles—they include simple cash funds, stock index funds, and other nonleveraged strategies. Preventing banks from offering such services, which provide banks with a steady source of fee income, will make the banks more reliant on other more volatile revenue streams—a danger the bill was supposed to head off. Furthermore, in order to remain in the asset management business, these banks must be allowed to invest a very small amount alongside their clients in these funds so that all interests are aligned. Many large state pension plans, as well as large endowments and foundations, value such ''skin in the game'' investments as a key factor in deciding with whom they will place their money.

If banks can't offer these services or invest a small amount to seed funds and keep skin in the game, institutional investors will be forced to take their money elsewhere, and in many cases, that will be to less regulated hedge and private equity funds. In negotiations during Senate consideration of the legislation, I advocated for limiting the maximum aggregate investment level in all bank affiliated funds to somewhere in the vicinity of 5 percent of a bank's tier 1 capital. In the end, the final compromise landed on 3 percent. Although it could be higher, this is an appropriate role for alternative asset management within the banking industry.

To put this number in perspective, even if all of these investments collapsed, the bank losses would equal only half of the typical losses charged off from bank retail lending operations last year. To address concerns that fresh bank capital could be put at risk in the event of a fund failure, the final language makes it explicit that these investment funds are segregated and that it is against the law for the banks to bail them out. It is also important to remember that new systemic risk authorities have been created to identify and halt activities at key firms that threaten financial stability.

One other area of remaining uncertainty that has been left to the regulators is the treatment of bank investments in venture capital funds. Regulators should carefully consider whether banks that focus overwhelmingly on lending to and investing in start-up technology companies should be captured by one-size-fits-all restrictions under the Volcker rule. I believe they should not be. Venture capital investments help entrepreneurs get the financing they need to create new jobs. Unfairly restricting this type of capital formation is the last thing we should be doing in this economy.

Another area of potential confusion is in the language governing ''fund of funds.'' These are funds that invest in a wide range of other investment partnerships, hedge funds or private equity funds, so that investors can benefit from the good investment ideas of a variety of funds. Banks' investments in the fund of funds that they sponsor for clients are to be limited under this bill to only 3 percent of the fund. But that fund, which will be comprised of, at a minimum, 97 percent client money, under Dodd-Frank, is not restricted as a percentage of any of those investment partnerships, hedge funds, or private equity funds that it might be invested in, because the bank's exposure is still limited to 3 percent in the original fund, mitigating any chance of a concentration risk or bailout incentive.

Finally—and this should go without saying—I want to make it clear that throughout all the negotiations to write the legislative language of the conference report, it was always clear to me that the Volcker rule was never intended to prohibit banks from offering alternative investment options as a part of a company-wide retirement plan, or as an offering to ERISA customers. Any other regulatory treatment would be arbitrarily punitive and would have no public policy impact. The legislation is clear on this, but I would also like to point out that the FDIC-sanctioned traditional bond and equity market investments made by small community banks for the purpose of diversification are not the intended target of Volcker rule restrictions.

I want to spend a moment or two discussing consumer protection—one of the most controversial elements of this bill. During the crisis, more than half of the people who ended up in subprime mortgages with ballooning rates would have qualified for more conventional fixed rate loans. Some of that was caused by consumer greed, but it was also because of bad incentives and deceptive practices where the true costs of loans were hidden in the fine print. The new CFPB has the power to use its broad authority to simplify and dramatically improve the quality of information going to the consumer, and I expect that's how they will use their authority. I also expect that unifying financial consumer protection under one roof at the Federal Reserve will help to simplify and consolidate some of the compliance burdens on our financial institutions. Talking to local bankers, it is clear that banks are being forced to spend a lot more money and time on compliance. I worry about community banks' ability to compete in this area with the bigger banks. I am hopeful that the CFPB will improve the current state of affairs on both of these fronts.

There are a number of other provisions in the bill that bear review. Section 113 of the conference report details multiple criteria that must be considered by the Financial Stability Oversight Council to determine that an institution is a ''nonbank financial company supervised by the Board of Governors.'' These criteria should not be given equal weighting. In fact, the Council should place most of the weight on one important measure—the leverage of the financial institution. If the recent financial crisis has proven anything, it has demonstrated the systemic de-stabilization that can be caused when too many firms are overleveraged, with only a slim cushion available to absorb losses. Excessive leverage is by far the most dangerous characteristic for any business. A poorly run company that faces numerous problems can feel relatively safe if it has limited leverage; conversely, a thriving, profitable company that has excessive leverage can be wiped out after a single stumble. As a result, leverage should be the primary consideration when deciding whether to put a financial institution into the special category of ''nonbank financial company supervised by the Board of Governors.''

I also believe that the size of an institution should be de-emphasized as a consideration for making determinations as to which companies are ''nonbank financial companies supervised by the Board of Governors.'' There is nothing inherently destabilizing or risky about the size of a large company. If anything, size usually coincides with significant benefits, including economies of scale and a diverse portfolio of assets. The Council and regulators should be very careful not to use size as a proxy for risk or it will capture some very healthy companies in the Fed supervisory web while simultaneously discouraging the growth of up-and-coming firms. Size is not as important a factor when it comes to the safety and soundness of an institution and it should be given less weight as a consideration.

Furthermore, considering the burdens that come with being categorized a ''nonbank financial company supervised by the Board of Governors,'' it is critical that the Council make its determinations on a company-by-company basis and not attempt to make determinations by grouping multiple

institutions together based solely on a set of similar characteristics. For instance, the Council should never make a determination that all firms in a financial subsector that are above a predefined size should be ''nonbank financial companies supervised by the Board of Governors.'' This would inevitably subject otherwise healthy firms to a long list of unnecessary regulations and will distract regulators from focusing on the most potentially problematic financial firms and activities.

In title II of the bill, the orderly liquidation authority includes provisions that allow the FDIC to unwind firms that threaten stability. While I repeatedly supported amendments that would have relied more heavily on the bankruptcy code rather than this approach, I also believe that if used appropriately, resolution authorities can be an important and useful tool in unwinding financial institutions that threaten market stability. I will be watching closely as these provisions are implemented by the FDIC. Under this section, the FDIC has the power to ''take any action'' to provide disparate treatment to similarly situated creditors if the FDIC ''determines that such action is necessary to maximize the value of assets of the covered financial company; to initiate and continue operations essential to the receivership of the financial company; to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company.''

Without clear rule writing, this language could be wrongly interpreted to include a range of unnecessary, arbitrary actions to favor certain creditors. Instead, the FDIC should only provide disparate treatment to similarly situated creditors if the sole purpose of the action is to cover the cost of indispensable services required to keep the physical operations of the financial institution or bridge financial company functioning during the early stages of liquidation. Examples of such services include the delivery of electricity, computer maintenance and janitorial services. The flexibility in these provisions should not be used by the FDIC to provide disparate treatment to holders of financial instruments, especially financial instruments that are widely distributed and held by multiple parties. For instance, issuances of loans, notes and bonds are normally held by various parties. The FDIC should not use its authority to discriminate among holders of the same instrument or holders that own different instruments that hold the same unsecured priority. In other words, it would be a clear abuse of these provisions if the FDIC makes a determination to provide disparate treatment to similarly situated creditors based on ''who'' owns the claim. The FDIC should take all necessary precautions to avoid even the impression of playing political favorites.

The expectation of receiving a financial return consistent with similarly situated creditors is a bedrock principal of American capitalism. It is my hope and expectation that the FDIC will fulfill its obligations and report to Congress any actions that involve any different treatment of similarly situated creditors under resolution authority. The FDIC should disclose the details of any parties given disparate treatment and the categories and names of similarly situated parties that did not receive the benefits of this treatment; how much, in absolute dollars, and as a percentage of its claim, a favored recipient of the disparate treatment received, and how that compares to the returns realized—or may be realized—by similarly situated creditors who did not receive the favorable treatment; and a thorough explanation as to why the treatment was necessary to maintain the physical operations of the financial institution or relevant entity, including an analysis of any conflicts of interest that the FDIC, or related government authorities, may have had when providing the disparate treatment.

I also want to be clear about my views on derivatives regulation. The derivatives title of the law is extremely important, and if implemented appropriately, will bring much needed transparency and accountability to a market that played a central role in the near collapse of our financial services sector in the fall of 2008. This bill appropriately regulates large Wall Street swap dealers for the first time by subjecting them to new clearing, capital and margin requirements. But these provisions also could significantly impact thousands of end-user firms that use derivatives to reduce their exposure to risk rather than merely to speculate. It is very important that we manage how this bill impacts these Main Street businesses. If the regulations imposed on swap dealers are inappropriately extended to Main Street businesses that are only trying to hedge risks, we could unwittingly exacerbate the economic challenges we still face. Many experts think that greater transparency will drive risk-management costs down for businesses in the long run, but the government clearly needs to go about the implementation of these provisions very carefully.

While the conference report has many good features, it also suffers from a glaring omission: any attempt to regulate government-sponsored enterprises—Fannie Mae and Freddie Mac. These institutions played a key role in triggering the financial crisis we suffered. To date, over $140 billion of taxpayer funds have been spent bailing out Fannie and Freddie, and estimates of additional risk to taxpayers runs into the hundreds of billions of dollars. We clearly need to address these institutions, which risk burdening future generations of Americans with mountains of debt. I look forward to working on this issue as soon as Congress and the administration move forward on legislative proposals.

I believe we had a choice: do nothing or try to address a real problem that shook the very financial foundation of our country. While the bill was far from perfect, the final version was vastly improved from the version we started with at the beginning of the process. I believe it includes important measures that will help prevent another financial meltdown like the one in 2008 that left millions of Americans out of work and saw our economy take its worst dip since the Great Depression. Equally important, the bill is not funded through higher taxes, which is something I could not support at a time when nearly one in ten Americans is unemployed and our economy is still struggling.

ADDITIONAL STATEMENTS

NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATION

● Mr. BUNNING. Madam President, I would like to recognize the 50th anniversary of the National Association of State Boating Law Administrators, NASBLA, a Kentucky-based nonprofit organization.

Recreational boating is one of America's most popular pastimes with over 13,000,000 recreational vessels registered nationwide, of which 200,000 are in my home State of Kentucky. In 1958, Congress recognized the growing interest in recreational boating, and passed the Federal Boating Act, which led to the creation of the National Association of State Boating Law Administrators in 1960. NASBLA is a national, nonprofit association of State officials responsible for the development and implementation of State boating programs.

NASBLA's mission is to strengthen the ability of State and territorial boating authorities to ensure a safe, secure, and enjoyable recreational environment. NASBLA addresses its mission by fostering partnerships among States, the Coast Guard, and others to streamline boating laws, maintain national education standards, strengthen homeland security on our waterways, and communicate to Federal agencies on behalf of the States' boating programs. The tireless work of NASBLA has helped to significantly reduce the number of recreational boating fatalities since 1970. However, even with such progress in safety, there is still room for improvement. In 2008, recreational boating accidents still claimed the lives of 709 Americans, of which more than half may have been saved with the proper use of a personal flotation device.

Due to the efforts of the National Association of State Boating Law Administrators and its members over the last