The outrageous case that this somehow reaches into retailers and merchants is highly offensive to me. It is the last thing I would ever suggest to my colleagues, that we somehow get into the business as Federal regulators of poring over florists and dentists and butchers and accountants and lawyers. Nothing could be further from the truth.

This goes after those businesses involved in financial services and products. It does so in a way that provides clarity, provides an opportunity for those institutions to be regulated, to know what rules they have to follow, and who is in charge of insisting that they meet those obligations.

So with that, I urge my colleagues to vote against this amendment. My hope is we will vote fairly soon. Again, we have hundreds of amendments that people want to be heard on, and we do not have all of the time in the world to deal with it. So we have to move on on these issues.

I think people understand the debate. They can read the amendment. I urge you to read 1027 in our bill, the section dealing with consumer protection, dealing with who is covered. Then we will have a vote.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DODD. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 789, the nomination of Larry Robinson to be Assistant Secretary of Commerce for Oceans and Atmosphere; that the nomination be confirmed and the motion to reconsider be considered made and laid upon the table; that any statements be printed in the RECORD; the President be immediately notified of the Senate's action, and the Senate resume legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF COMMERCE

Larry Robinson, of Florida, to be Assistant Secretary of Commerce for Oceans and Atmosphere.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

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

Mr. DORGAN. Madam President, I will join my colleague from Connecticut in opposing the amendment on the floor if it weakens the underlying bill, but I do not come to speak about that proposal at the moment. I wanted to speak about an amendment I have discussed previously on the issue of too big to fail.

There is much yet to do on this subject of too big to fail. I recall, in a room just steps from here, on a Friday, I believe it was, the Treasury Secretary leaning over the lectern in a very stern way saying to the caucus that I was involved in, if within 3 days a three-page bill granting $700 billion to the Secretary of the Treasury, with which to provide funds to stabilize some of the biggest financial institutions in the country, if that did not come about, our economy could very well collapse completely.

I remember that moment and remember thinking that it was pretty bizarre that our country got to that point: that all of a sudden 1 day, after being told month after month that the economy was strong, the economy was in good shape, that there were some ripples and hiccups here and there, but things were on course and we had confidence in the strength of the economy, that we were now being told the economy may well collapse in days unless the Congress comes up with $700 billion.

Why was that the case? Because institutions that were so large in this country, at the top of the financial industry, were so important to the economy that their failure could very well result in failure of the entire American economy. That is what is called too big to fail.

Let me show a chart that shows the six largest financial institutions in the country and what has happened to them since 1995. This is their growth as a percentage of GDP. It shows that they are getting larger and larger and larger and much larger. Even during this period of near collapse, the same institutions that were judged too large to fail and judged to represent a grave risk to the entire economy have gotten larger than just too big to fail.

We had a vote yesterday, but that cannot be the end of this discussion about how to address too big to fail. The vote yesterday was rather Byzantine, as far as I was concerned. I was not someone who was a big fan of the $50 billion to be pre-funded for resolution of too-big-to-fail companies. But having said that, to decide that the $50 billion, which would come from the very institutions that are too big to fail, should be abolished, and that the funds instead would come from the FDIC, which are initially funds from the American taxpayer, made no sense to me. Then suggesting that it will be all right because the FDIC will be repaid with the sale of assets—oh, really? Well, firms that are too big to fail that are going to get in trouble in the future are not going to have very many assets. They are going to be in trouble because of dramatic amounts of overleverage, leverage that goes far beyond their ability to continue to do business. And when the firm comes tumbling down, I fail to see where assets are going to exist in substantial quantity to repay the taxpayer.

But that was yesterday. I did not support that. That was yesterday. This issue of creating a circumstance of early warning on too-big-to-fail firms is not satisfactory to me. The only way to resolve too big to fail is to abolish too big to fail. I mean abolish too big to fail. That means having firms that are not too big to fail, that will not cause a moral hazard or a grave risk to the entire economy should they fail.

Do you believe that is the case with this graph? Is there anything here that—as this graph shows, we have firms that are too big, far too big to fail. Is there anything here that is going to solve that in this bill? The answer is no. The only direct and effective way to address this is to decide, if you are, in fact, too big to fail, then there has to be some sort of divestiture or dissolution to bring that firm back down to a point where in size and scope such firm is not too big to fail and is not causing the kind of dramatic special risk to the country's economy that it would bring the economy down with it.

That is the only direct and effective solution. Is that radical? Well, I have an amendment that requires that if you are determined to be too big to fail, then we begin a process, over 2 years, of breaking away those parts that make you too big to fail. Is it a radical idea? I do not think so.

One-fourth of the Board of Governors of the Federal Reserve Board says we ought to do that. Richard Fisher, president of the Dallas Fed: Too big to fail is not a policy, it is a problem. Too big to fail means too big period. We ought to break them up.

Federal Reserve Bank of St. Louis, James Bullard, president and chief executive officer: I do kind of agree that too big to fail is too big to exist.

The economist, Joe Stiglitz, Nobel Prize winner: Too-big-to-fail banks have perverse incentives. If they gamble and win, they walk off with the proceeds. If they fail, taxpayers, pick up the tab.

Alan Greenspan—I seldom, if ever, agree with Alan Greenspan, but I have used a quote of his to describe where we are now. He was around sitting on his hands for a good many years while these problems developed, despite the fact that he had the authority to have avoided them. Then he has written a book acting as if he was exploring the surface of Mars while all of this went on.

But now he says: The notion that risks can be identified in a sufficiently timely manner to enable the liquidation of a large failing bank with minimum loss has proved untenable during this crisis, and I suspect in the future crises as well.

Simon Johnson, professor of entrepreneurship, the Sloan School: There is simply no evidence, and I mean no evidence, that society gains from banks having a balance sheet larger than $100 billion.

I do not know whether I agree or disagree with that. But his point is that too big to fail means too big.

Arnold King, Cato—I seldom quote Cato on the floor of the Senate. But, you know, strange bed fellows: Big banks are bad for free markets. There is a free market case for breaking up large financial institutions—that our big banks are a product not of economics but of politics.

The president of the Federal Reserve Bank of Kansas City, this is the third Fed president: I think they should be broken up. And in doing so, I think you will make the financial system itself more stable, more competitive, and I think you will have long-run benefits over our current system.

We broke up Standard Oil in this country into 23 different pieces. It turned out the 23 pieces were more valuable than Standard Oil was. I am not saying just go in and break up things just for the purpose of breaking up. I am saying this: If there is a standard by which we judge that an institution is too big to fail and causes a dramatic risk to the economy as a whole should it fail, a moral hazard, unacceptable risk to the entire economy, then it seems to me like this issue of creating early warnings and stop signs and sirens and so on is largely irrelevant.

What we need to do is do something direct and effective and something we all knew we should do; that is to say, if you are too big to fail, and judged to be so, and judged to pose those kinds of risks to our economy, then you must break off pieces. We would, over a 2-year period, require that to happen until you are not too big to fail.

Let me show a couple of quick charts. This one shows the top financial institutions: The Big Get Bigger. This chart shows the same thing, measuring assets and liabilities: The Big Get Bigger. Much, much bigger. The first chart I showed today demonstrates why, if we do not pass the amendment I suggest, we can thumb our suspenders and crow all we want in every hallway in this Capitol Building, but we will have not done what was necessary to be done to address too big to fail. We just will not do it.

So I have an amendment. I am here because I am pestering those who are lining up amendments to make certain I have a chance to debate and vote on that amendment, and that will be the test of whether this Congress has learned a lesson; whether, when someday a Treasury Secretary leans over a lectern and says: If I do not get $700 billion to bail out the big interests that ran this country into the ditch, our whole economy is going into the ditch.

So I hope very much that we will have the opportunity to both simply and effectively do what is necessary to finally and thoughtfully address this issue of too big to fail.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Thank you, Madam President.

I see our chairman and the ranking member over here from the Banking Committee on which I serve, and I want to congratulate them for their hard work in getting this legislation to the floor. We are finally doing some work around here, and we are doing it in a bipartisan way.

I think this bill is going to improve over the course of this debate. It is an enormously important opportunity to safeguard our economy from the reckless danger that got us into this financial mess. I am hopeful we can wade through all this Washington wrangling and get something done to protect America's financial future.

There is a shared understanding of what got us here, and that is the good news. Some on Wall Street took all the risk. Yet it is the American people who paid the price. Small businesses, homeowners, and working families were forced to come in and clean up this mess.

It is our responsibility to learn the lessons from the last collapse to help this economy recover and to head off the kinds of problems that could lead to another financial crisis. In short, we have to fix this economy, ensuring there will never have to be another taxpayer-sponsored bailout.

As someone who sits on both the Agriculture and Banking Committees which share jurisdiction over this bill, I can assure you that this package reflects months of hard work and incorporates ideas and concepts from both political parties. We have examined the problems that brought us to the financial brink nearly 2 years ago, and together these two committee bills created a thoughtful and comprehensive plan to increase transparency, reduce systemic risk, and strengthen our commitment to protecting consumers.

In reviewing the merits of the bill, I think it is important to analyze how it would have addressed so many of the problems that led to the financial collapse in 2008. Too often, we do not ask the question, What problem is it we are trying to solve, and then we get busy either solving problems that did not exist or creating unintended consequences from our work. I think we have worked hard on this legislation for this not to be so.

Had this legislation been the law of the land, we would not be talking about that $700 billion taxpayer-funded rescue of our Nation's largest bank holding companies. We would have been able to see many of the dangerous trends develop earlier, and we would have required these systemically risky companies to have more capital and less debt. Had any of these companies failed, we would have resolved them without transforming them into wards of the state, like AIG.

Second, had a strong consumer protection infrastructure existed, we could have stopped the subprime mess before it spiraled out of control. For example, subprime giant Ameriquest would have been subject to meaningful rulemaking and enforcement authority. And while I prefer a wholly independent agency, this bill represents substantial and meaningful progress on a consumer protection front.

Third, had the bill's derivatives reforms been in place, it is much less likely—much less likely—that the Federal Government would have been forced to spend tens of billions of taxpayer dollars to rescue AIG from its own sloppiness and greed.

In total, the plan before us represents a strong and thoughtful measure that rewrites the rules of the road for Wall Street. And through the amendment process, we can make it even better.

For example, I think we need to ensure that certain State-chartered community banks that did little to contribute to the current crisis do not have to change their prudential regulator. In so many of our towns, community banks play an important role in providing credit to our local economies. Many of these small institutions are struggling due to this difficult economy, which means less available credit for families and small businesses. I have concerns that a change in prudential regulation may exert further pressure on these small banks which continue to serve their local communities. It is my hope we can balance the need to reduce regulatory arbitrage while preserving the existing prudential supervisory structure for some of these State-chartered banks.

I also believe it is time for us to take advantage of this opportunity to begin to move away from the last bank bailout, the TARP. While there are 100 opinions in this Chamber about how effective TARP was, there really is a broad consensus here and in the country that it is time to wind down TARP, recapture what we can for taxpayers, and prevent banks from tapping into the Treasury going forward. That is why in the coming days I will be pushing bipartisan legislation that will do exactly that. It would use recaptured TARP funds, borrowed from our children—$180 billion so far and counting—for deficit reduction, and it would take important steps to end the TARP.

More broadly, I also think we need to be aggressive about strengthening this bill to further protect consumers. I will be supporting amendments which do exactly that.

When it comes to Wall Street reform, we simply cannot afford to delay any longer. Recently, the TARP inspector general underscored this point better than I could. He stated:

> [E]ven if TARP saved our financial system from driving off a cliff back in 2008, absent meaningful reform, we are still driving on the same winding mountain road, but this time in a faster car.

In short, bailing out companies has made the future risk to our financial system even worse, by creating the moral hazard that a financial firm that participates in risky behavior is going to somehow be bailed out by the government, by the taxpayer. This Wall Street reform package takes a strong step toward restoring some degree of sanity in our financial system and making that moral hazard a thing of the past.

Finally, Coloradans and the American people are expecting us to act. I am confident we are going to succeed. Lobbyists may have been able to slow down Wall Street reform temporarily, but the American people want it, as well they should. We are getting closer and closer every day to sustaining a workable bill that can pass this Chamber and that we can eventually send to the President for his signature. We cannot allow the status quo to maintain its grip on our financial system. We have to work together and pass this groundbreaking reform package.

I want to close, again, by thanking the chairman of the Banking Committee, who is here in the Chamber, for his leadership throughout the months, not just on this issue but on health care as well but particularly for sticking with this issue. I do not think we would be having this debate right now were it not for the work the chairman did. As a member of the Banking Committee, I appreciate it very much.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, before turning to my colleague from New York, let me say how fortunate I have been as chairman of the committee to have Senator BENNET as a member of our committee. I want to thank him immensely. He is a new member of the committee, but, again—like the Presiding Officer, like my other colleague from New York—I cannot tell you how valuable it has been having people who understand this issue and who bring to this Chamber a previous life rich with the experience of understanding these issues. So let me thank the people of Colorado for having the Senator here. What a difference the Senator has made in the consideration of this legislation.

Some of the newest members of the committee—and I think my colleague, the senior Senator from New York, would acknowledge this—some of the newest members of our committee made some of the most valuable contributions to this product, which is further evidence that you do not have to be here that long. In fact, sometimes maybe the shorter time you are here, you bring that kind of fresh experience from our States and across the country.

So I did not want the moment to pass without expressing to MICHAEL BENNET of Colorado my deep, deep appreciation. I say to the Senator, I thank you for your leadership, your thoughtfulness, and the contributions you have made not only to this product but to others during your tenure.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. First, Madam President, I wish to join my friend from Connecticut in praising Senator BENNET, who has had an amazing effect and a steady hand in bringing this bill to the floor. I also thank my colleague from Virginia, Senator WARNER. The new Members have had a tremendous effect on this bill. This reflects the way the Senate works these days, and I think it is all for the better. Having their input and experience has been vital.

But, Mr. Chairman, I would also say that you are full of fresh ideas and vim and vigor. Just because you have been around here a long time does not mean that——

Mr. DODD. Thank you.

Mr. SCHUMER. In fact, you have had the wisdom to encourage some of our new Members to actively participate, and confidence to do that as well.

I also do not want to fail to note my colleague from New York, Senator GILLIBRAND, the Presiding Officer, who has done a fabulous job, too, particularly on the agriculture portion of the bill on the committee on which she sits.

AMENDMENT NO. 3826

Madam President, I come to the floor today and rise against the consumer amendment posed by Senator SHELBY that is before us. I come to the floor to speak about the need for a strong independent consumer watchdog. I am here to talk about the proposal put forward by some of my Republican colleagues to place a new consumer protection division within the FDIC and significantly reduce the ability of that division to carry out its mission.

The amendment before us greatly weakens the bill in terms of consumer protections. In fact, it is not just a step backward from the bill before us, it is a step backward from the status quo. If we were to pass the amendment on the floor, consumer protections, weak as they are today, would be even weaker. This amendment would leave the consumer naked and unprotected. This amendment strips the bill of some of its strongest protections. Not every financial institution preys on consumers, but those that do would be given too free a hand if this amendment were to pass. I urge strong opposition to it.

Let me explain. One of the roots of this financial crisis was, undoubtedly, that total failure of our consumer protection regime. Americans were sold products they did not understand and could not afford by mortgage originators eager for a fee and happy to sell those loans off into the great securitization machine which was given a virtual carte blanche by the credit rating agencies.

After the events of the last several years, no one can argue that fundamental reform of our consumer protection regime is not necessary. No one can argue the status quo is the way to go. The status quo simply will not do. There is no accountability in the current system. Consumer protection is split among seven different regulatory agencies. For that reason, I was an early supporter of efforts to create a truly independent consumer protection agency, and I am still working with many of my colleagues, including Senator JACK REED and Senator DURBIN, to strengthen the provisions of the bill proposed by Chairman DODD.

One of the key authorities of any new consumer protection division or agency is that it must be able to adopt rules to protect consumers without being overruled by banking regulators who would rather allow banks to pad their bottom lines by fleecing consumers with hidden fees.

Some argue that you cannot split consumer protection from safety and soundness. But historically, in the present setup, every time there is a conflict, the consumer loses. Consumers deserve an accountable regulator with oversight of consumer financial products as its primary objective, not as an afterthought.

The Republican proposal being discussed is totally inadequate. It would allow the same bank regulators, who have stood in the way of meaningful consumer protections for years, to veto consumer protection rules proposed by the head of the new division.

For example, the Comptroller of the Currency, who publicly opposed the Fed's new credit card rules, would, under the Shelby amendment, get to vote on future credit card rules. So the regulators who do not really care—some of them—about consumer protection would be given veto power.

The division would have no examination or enforcement power over any bank of any size or any of its affiliates. Some of the worst actors in the subprime mess were bank affiliates or subsidiaries. Even worse, it could only do examinations of nonbank consumer finance companies if they ''demonstrate a pattern or practice of violations'' of consumer law—in other words, only after consumers have been harmed repeatedly. That is what one could call too little, too late. Even the Fed recently deleted this requirement from rules governing subprime mortgages because it hampered enforceability of those rules so severely.

Even the banks want the new consumer division to be able to enforce its rules at nonbanks. This is amazing. Some of the most rapacious institutions that prey on consumers are not banks. They operate outside the scope of the Federal regulatory authorities. They are often responsible for many of the most egregious abuses and predatory lending practices. Many of the products provided to consumers by these nonbanks played a direct role in the financial crisis. And many of these businesses—payday lenders, rent-to-own companies—currently operate below the radar screen to prey on vulnerable communities. How can we exempt some of these payday lenders and rent-to-own companies? I have seen them prey on poor people in my State. How can we exempt them from regulation when they often are worse than many of the financial institutions?

The Republican amendment would also prohibit the consumer division from issuing any rules ''that affect any underwriting standards'' of deposit institutions and their affiliates. After the crisis we just went through, which was in large part created by bad mortgage underwriting standards, I cannot believe anyone can propose this with a straight face because—let me repeat what it does. The consumer division cannot issue rules ''that affect any underwriting standards'' of deposit institutions. It is saying: Let's repeat the mortgage crisis. It makes no sense.

If this consumer division were in place in 2008—the one proposed by my colleagues here—it would not have had the power to write the mortgage rules establishing the minimum ability to pay standards the Fed issued. As we know, the Fed was not an extreme watchdog in any sense. I have worked long and hard in the area of consumer protection. I have worked with these regulators. I have seen how slowly they work. It took more than 10 years to get them to go along with the so-called Schumer box, where credit card interest rates were made clear and visible to prospective credit card purchasers. It worked. But why did it take so long? Then, when the banks came with new ways of getting around the rules, again, it took me forever to get the Fed to move because the Fed, frankly—and Chairman Bernanke to his credit admitted this—did not make consumer protection a high enough priority.

So we need, in my judgment, an independent agency. That would be the best solution. Second best would be an agency, even if it is within the Fed, that is largely independent in both the rules it can promulgate and its enforcement. We need strong, forward-looking financial reform. I have always said I want the reform to be constructive, not punitive. But if we go through all this and fail to leave consumers better protected than they were before this crisis, we will have totally failed in our mission to serve the American people.

I strongly urge that this amendment be rejected by a large and hopefully bipartisan majority.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I am glad the Senate is finally considering the critically important issue of financial regulatory reform. Few things are as important as ensuring we never again suffer the kind of meltdown of the financial markets that shoved our economy into the worst recession since the Great Depression. I think it still remains to be seen if this bill will do that. While it certainly includes some good reforms, more needs to be done, and the track record of Congress in this area is, at best, checkered.

For the last 30 years, Presidents and Congresses have consistently given into Wall Street lobbyists and weakened essential safeguards. As has been the case in so many areas, members of both political parties are to blame. Legislation that paved the way for the creation of massive Wall Street entities and removed essential protections for our economy passed with overwhelming bipartisan support. From the savings and loan crisis in the late 1980s to the more recent financial crisis that triggered the horrible economic downturn from which we are still recovering, those three decades of bipartisan blunders have been devastating to our Nation. The price of those blunders has been paid by homeowners, Main Street businesses, retirees, and millions of families facing an uncertain economic future.

The impact of the recent financial crisis on the Nation's economy has been enormous. Millions have lost their jobs and millions more who are lucky enough to have a job are forced to work fewer hours than they want and need to work. According to a study done by the Pew Trust, the financial crisis caused American households an average of nearly $5,800 in lost income. Of course, families lost a significant amount of their personal savings. As a nation, we lost $7.4 trillion in stock wealth between July 2008 and March 2009 and another $3.4 trillion in real estate wealth during that same time. We simply cannot afford to continue down the path policymakers have set over the past 30 years.

The test for this legislation then is a simple one: Whether it will prevent another financial crisis. Central to that test will be how this bill will address too big to fail. This is a critical issue that has been growing for some time now as increased economic concentration in the financial services sector has put more and more financial assets under the control of fewer and fewer decisionmakers.

Years ago, a former Senator from Wisconsin, William Proxmire, noted that as banking assets become more concentrated, the banking system itself becomes less stable, as there is greater potential for systemwide failures. Sadly, Senator Proxmire was absolutely right, as recent events have proved. Even beyond the issue of systemic stability, the trend toward further concentration of economic power and economic decisionmaking, especially in the financial sector, simply is not healthy for the Nation's economy.

Banks have a very special role in our free market system: They are rationers of capital. When fewer and fewer banks are making more and more of the critical decisions about where capital is allocated, then there is an increased risk that many worthy enterprises will not receive the capital needed to grow and flourish. For years, a strength of the American banking system was the strong community and local nature of that system. Locally made decisions made by locally owned financial institutions—institutions whose economic prospects are tied to the financial health of the community they serve—have long played a critical role in the economic development of our Nation and especially for our smaller communities and rural areas.

But we have moved away from that system. Directly as a result of policy changes made by Congress and regulators, banking assets are controlled by fewer and fewer institutions, and the diminishment of that locally owned and controlled capital has not benefited either businesses or consumers. Of course, most dramatically, taxpayers across the country must now realize that Senator Proxmire's warning about the concentration of banking assets proved to be all too prescient when President Bush and Congress decided to bail out those mammoth financial institutions rather than allowing them to fail. That was a bailout I strongly opposed.

The trend toward increased concentration of capital was greatly accelerated in 1994 by the enactment of the Riegle-Neal Interstate Banking and Branching Act and especially in 1999 by the enactment of the Gramm-Leach-Bliley Act, which tore down the protective firewalls between commercial banking and Wall Street investment firms.

Those firewalls had been established in the wake of the country's last great financial crisis 80 years ago by the Banking Act of 1933, the famous reform measure also known as the Glass-Steagall Act.

Prior to Glass-Steagall, devastating financial panics had been a regular feature of our economy, but that changed with the enactment of that momentous legislation, which stabilized our banking system by implementing two key reforms. First, it established an insurance system for deposits, reassuring bank customers that their deposits were safe and, thus, forestalling bank runs. Second, it erected a firewall between securities underwriting and commercial banking so financial firms had to choose which business to be in. That firewall was a crucial part of establishing another protection—deposit insurance—because it prevented banks that accepted FDIC-insured deposits from making these speculative bets with that money.

The Gramm-Leach-Bliley Act tore down that firewall, as well as the firewall that separated insurance from Wall Street banks, and we have seen the disastrous results of that policy. I voted against tearing down the firewall that separated Main Street from the Wall Street banks. I did it for the same reason I voted against the Wall Street bailout: because I listened to the people of Wisconsin who did not want to give Wall Street more and more power. Wall Street was gambling with the money of hard-working families and too many Members of Congress voted to let them do it. I didn't support it before and I will not support it now. We have to get this legislation right and protect the people of Wisconsin and every State—protect them from something such as this ever happening again.

So I was pleased to join the Senator from Washington, Ms. CANTWELL, and the Senator from Arizona, Mr. MCCAIN, in introducing legislation to correct that enormous mistake Congress made in passing Gramm-Leach-Bliley. I look forward to supporting an amendment to this measure based on the Cantwell-McCain-Feingold bill.

The measure before us seeks to make up for the lack of a protective firewall between the speculative investment bets made by Wall Street firms and the safety net-backed activities of commercial banking by imposing greater regulatory oversight. We have seen how creative financial firms can be at eluding regulation when so much profit is at stake. No amount of regulatory oversight can take the place of the legal firewall established by Glass-Steagall. So when it is offered, I urge my colleagues to support Senator CANTWELL's amendment to restore that sensible protection. Rebuilding the Glass-Steagall firewall is essential in preventing another financial crisis.

But even if we restore Glass-Steagall, there are additional steps we should take to address too big to fail in this bill. I am pleased to be joining the Senator from North Dakota in offering his amendment to address the problem directly by requiring that no financial entity be permitted to become so large that its failure threatens the financial stability of the United States. I am also looking forward to supporting an amendment that will be offered by the Senator from Ohio, Mr. BROWN, and the Senator from Delaware, Mr. KAUFMAN, who is in the Chamber, that proposes bright line limits on the size of financial institutions. The disposition of those three proposals I have just reviewed will go a long way in determining my vote for the final version of this measure. I very much want to craft in this body a bill that can prevent the kind of crisis we experienced in the past, but the bill before us needs some work before we can legitimately make that claim.

I thank the President and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, the Republican side has submitted a consumer protection amendment that can be briefly summarized: Buyer beware because they won't help you. This flows from the very simple premise that they have announced from the very beginning of these discussions and deliberations they do not want an independent consumer protection agency that has the authority to make rules and enforce rules to protect consumers. So what they have suggested is a classic bait and switch. We will create an ''agency'' within the FDIC, and then we will deny them the power to regulate most of the financial sectors and institutions that affect the daily lives of Americans: payday lenders, car loans, all those things. They are just off the table. So it amounts to a gesture, not good legislative policy.

We are working, and we have been working—and Senator DODD has taken the lead—to ensure that there is real consumer protection built into this Wall Street reform legislation. We believe consumers need information to make good choices. The thrust of our efforts is to ensure that the agency is able to provide that information through simplified forms, through simple products, through those mechanisms that allow men and women who are engaged in raising children, keeping jobs, coaching Little League, to understand what they are putting their resources into.

That is not what the Republican amendment is proposing to do. They are creating a six-person council within the FDIC with no real independence and even less authority, and one could question why the FDIC is the logical place to put in a council such as this. They would create an oversight agency but exempt, as I said, virtually an entire financial sector or sectors from oversight. It is not like a watchdog; it is like a lapdog. It is bureaucracy with no bite.

The Dodd bill, in contrast, contains a very robust consumer protection provision. It creates a Consumer Financial Protection Bureau with resources—I wish to emphasize resources—and authority to prohibit abusive practices and deceptive financial products, ranging from credit card companies to mortgage brokers to banks and to others. For example, it would hold the credit card companies accountable and eliminate unfair lending practices, such as penalty fees for paying off your debt on time.

One of the big efforts we are undertaking is increased transparency for Wall Street, and this consumer protection agency will provide that protection to consumers. Basic economics, Econ 101: In a competitive marketplace, one of the presumptions is perfect information. We have seen, frankly, that individuals on Wall Street have made billions of dollars operating on imperfect information; in fact, one could even suggest deliberately manipulating products so they have the information and the consumer doesn't.

I think we were all taken aback when we were listening to the hearings conducted by Senator LEVIN which talked about Goldman Sachs, and their trader, Fabrice Tourre, described the system in rather evocative terms. In his words:

> More and more leverage in the system, the entire system is about to crumble any moment . . . the only potential survivor the fabulous Fab . . . standing in the middle of all these complex, highly leveraged, exotic trades he created without necessarily understanding all the implications of those monstrosities.

Well, that seems, to me, very chilling—the fact that somebody would admit they didn't even know the products they were selling to consumers—who assumed not only that they knew but also that they would not be deliberately misleading them. That is an example. The example doesn't stop on Wall Street. It extends out to Main Street, to people with credit arrangements, payday lenders, organizations charging huge interest charges, and it is designed to exploit consumers.

The Republican proposal does little, if anything, to prevent that. I hope, on a bipartisan basis, as Senator SCHUMER suggested, we reject this amendment. It is, as they say in some places, all hat and no cattle. We have an agency, but we have no enforcement powers. We have an agency, but they can't enforce their rules and regulations on certain sectors; i.e., most of the sectors. So if we want to protect consumers and if we want to have efficient markets—I think one of the inaccurate premises that some people are suggesting is that consumer protection somehow is bad for business. I argue strenuously that consumer protection is very good for business.

If you take care of the consumer, if they feel, and you provide, valued and good service—that used to be the American sort of maxim. That used to be the American byword for business: the consumer is always right; the consumer comes first.

In the Republican legislation, the consumer comes last, not first. The consumer should come first. I hope this amendment will be rejected and that we support not only the underlying Dodd bill, but I think it can be improved. I commend the Senator from Connecticut who has done a remarkable job crafting the consumer protection agency. To accept the Republican amendment would be to turn our backs on consumers and reject essentially the old American maxim that the consumer is always right and the consumer comes first, and it will leave everybody in this country where we are today: buyer beware of the monstrosities in the marketplace.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. KAUFMAN. Madam President, I also commend Chairman DODD for his work on this bill. We have a good bill. I will be opposing the amendment presently on the Senate floor. We need a strong, independent consumer product finance protection agency. I have heard many different proposals to put the consumer product finance protection agency here, there, and everywhere. The problem with putting it in any institution like the FDIC or the Fed is that those institutions' No. 1 responsibility is, and should be, the safety and soundness of the banks and financial institutions they are regulating. That is their key charge.

I think the reason the Fed had a consumer product agency, which did not act to help consumers during the recent meltdown, was that they first were concerned about safety and soundness.

At the same time, we have to be very careful we don't put an undue burden on community banks. They were not involved in what happened. We should make sure while we are looking out for consumers that we don't overregulate these local banks.

We have a good bill. I think the too-big-to-fail part we are getting around to. The recent amendments on the resolution that if, in fact, the bank gets in trouble, we can resolve it, is a good approach. I am sure we will be talking about it more. It is a good approach to deal with the too-big part of too big to fail. We have not done enough on the too-big part of too big to fail.

Let me go over a chart that shows how big these banks have become. This is the average assets of our major banks relative to gross domestic product. If you look at this chart—and I encourage comments from my colleague, the Senator from Ohio. If you look at this chart, you will see that just about the time we removed Glass-Steagall, this chart went absolutely through the roof.

When you look at the concentration of the U.S. banking system, you see on this chart that is very similar to the first chart. It shows an exponential increase in concentration. This is not good for the country. This is not organic growth. I hear people say it is organic growth. This is growth from mergers. Neither chart includes the massive mergers that went on during 2008. This is through 2007. It doesn't show that Washington Mutual and Bear Stearns were consumed in JPMorgan Chase. It doesn't show the fact that Wachovia went into Wells Fargo, and Merrill Lynch went into Bank of America. It clearly shows that the incredible concentration just goes on.

Alan Greenspan made a number of decisions and statements while this was going on about how we should proceed during the 1990s and early 2000. He said himself that he thought self-regulation would work and was dismayed that it didn't. He came out with a couple statements recently that I was so incredibly surprised about.

He said this:

> For years, the Federal Reserve had been concerned about the ever-larger size of our financial institutions. Federal research has been unable to find economies of scale in banking beyond a modest-sized institution. A decade ago, citing such evidence—

By the way, moderate size, according to Andrew Haldane, the executive director of financial stability for the Bank of England, is $100 billion. He said he can find no reason to have the need for economies of scale at banks larger than $100 billion. As you know, the present size of top banks are in the $2 trillion range, as high as $2 trillion.

Continuing to quote:

> A decade ago, citing such evidence, I noted that megabanks being formed by growth and consolidation are increasingly complex entities that create the potential for unusually large systemic risks in the national/international economy should they fail. Regrettably, we did little to address the problem.

I hear people now talking about: We can't undo this. We need big banks to compete internationally. Alan Greenspan is saying we don't need these for the economies.

Mr. BROWN of Ohio. If the Senator would yield, I thank the Senator for bringing out that there is such broad support, as we are seeing, from economists as conservative as Alan Greenspan and as progressive as Bob Reich, and others, who say too big to fail means simply too big. Our amendment will only affect the six largest banks—affect their size—and it will affect smaller banks in helping them be more competitive.

You said something on the Senate floor yesterday that, in effect, the size of these banks gives them a subsidy, a roughly 75 basis point or three-quarters of 1 percent advantage in the capital markets. This amendment we have, which is gaining increasing support—we have now 10 or 11 cosponsors to it, and we are working with people on both sides—simply to say too big to fail is too big.

Talk to us for a moment about how these banks get the subsidies. Somebody in my office said in a sense we are giving welfare to the Wall Street banks. Because of their size, they are getting advantage on the capital markets because investors, with their dollars, understand these banks are never going to be able to fail unless we really keep them from getting too big.

Explain that Wall Street welfare that we see with these 50 literally trillion-dollar-plus banks, which they extract from the system.

Mr. KAUFMAN. Sure. I don't come at this from any other area except how important our capital markets are. I am a market guy. I think the two greatest things we have are democracy and our capital markets and the credibility of the markets. So when I want to find out what is going on in a financial area, I don't do a survey of 27 people. I say: What is the market telling us? That is the best way. What does the market tell us about what is going on?

What the market says is, if you are a big bank like one of these top banks—referring to the study I talked about yesterday—if you are one of the big banks, you get a 70 to 80 basis point advantage when you borrow money. You pay less than other people.

Mr. BROWN of Ohio. So that means when one of the huge Wall Street banks—these six banks—is getting a three-quarters percent, roughly, interest rate differential—a bonus, perhaps—that means that banks in Delaware and Ohio that aren't so big are at a competitive disadvantage. I assume that also means those big banks have opportunities to get larger. If the playing field is not level, those toward whom it tilts get other advantages and grow larger and larger, making the point of our amendment that much stronger.

Mr. KAUFMAN. Absolutely. Obviously, that is a key point. I am surprised that more of our smaller banks aren't coming forward and saying this isn't fair. The market says it is not fair.

The second point is the too big to fail. You can argue that you are not too big to fail. But the market thinks you are, and I listen to the market. That is one of the important considerations. Unless people misunderstand—people say you want to destroy the banks, and the rest of that. But under our amendment, Citigroup would be reduced to the size it was in 2002.

Now, were they able to compete overseas and do all the things they had to do then? Goldman Sachs, which is now at about $850 billion, under the Brown-Kaufman amendment would be down to a more reasonable level of just above $300 billion or around $450 billion if Goldman exits the bank holding company structure. You may say that is a 50-percent decrease and that is going to hurt their opportunity. In 2003, they had $100 billion in assets. So all we are shrinking Goldman Sachs down to is 3 to 4½ times what they were in 2003.

This is not some draconian effort. The second point we have been focusing on is that we also limit risk. This is not about size; we limit risk. I recommend everybody to read the Washington Post today—that is where I read it—about Jimmy Cayne, former CEO of Bear Stearns. He testified to the Financial Crisis Inquiry Commission that, in his opinion, as CEO of Bear Stearns, they failed because it was leveraged 40 times over its capital base—40 times over its capital base.

Brown-Kaufman would cap leverage at 16 times the capital base. What he is basically saying is that if Brown-Kaufman had been in effect, Bear Stearns would not have failed.

A lot of people have different opinions, but that is what he says. This is not just about size; this is about risk. What we are trying to do is target risk. These banks don't fail—banks are doing great now; profits are out the roof. You don't fail on a nice sunny day. You cannot sit here today and say no problem. That is why regulators don't do anything because, basically, banks are doing well.

Time and again, when we had hearings before the Permanent Subcommittee on Investigations, we heard from Washington Mutual and Goldman Sachs. They said they were doing so well. How can you make them change? The fact that they were doing so well by turning out mortgages that were absolutely doomed to fail is an indication that they should have moved in, but the regulators didn't.

I will not hold this out, but if you want to see what can happen under the worst case, look at Europe today. Look at the mess unfolding in Europe. Greece falters and that affects confidence in other countries such as Portugal, Spain, and Ireland. Europe and other banks have massive exposures to these countries. German and French banks carry a combined $119 billion in exposure to Greek borrowers and more than $900 billion to Greece and other vulnerable Euro countries, including Ireland, Portugal, and Spain.

People say: How can we compete with those big banks? Remember, we are only reducing Citibank to its size in 2002. How can we compete with Europe? Why do we want to do that? Why do we want to go in with their megabanks and deal with the problems they have?

The Royal Bank of Scotland had a balance sheet basically 1½ times the size of the UK economy when it failed in the fall of 2008. See these numbers. It is 63 percent right now. Our six largest banks make up 63 percent of the GDP. The Royal Bank of Scotland's was 1½ times the size of the United Kingdom when it failed. People say the big banks didn't fail; it was the small banks that failed.

I keep hearing that J.P. Morgan and Bank of America did not fail. It was Washington Mutual. They say there is no correlation. Megabanks, such as Citigroup, only survived through massive capital infusions, regulatory forbearance, and Federal monetary easing. Even J.P. Morgan has benefited from not having to write down its second lien mortgages and commercial real estate.

The next thing they said when Washington Mutual failed was: How about that, that was a smaller bank. That was a big bank. The reason it went down is because we knew at the time when it failed that JPMorgan Chase would come in and grab it.

I ask the question: Who is going to bail out, if something goes wrong, JPMorgan Chase, Bank of America, or any of these six larger banks? Remember, going back to Citigroup, Citigroup essentially failed and had to be bailed out three times in the last 30 years: in 1982 because of the emerging market deck, 1989–1991 because of commercial real estate, and 2008–2009 because of residential real estate.

Mr. BROWN of Ohio. Madam President, will the Senator yield? I appreciate this analysis. I hear, as we talk about the Brown-Kaufman amendment—and it has gotten increasing attention because an increasing number of people said too big to fail is too big and that if we allow these six banks—that chart the Senator showed originally—the largest six banks in the United States 15 years ago were 17 percent of our GDP and today they are 63 percent and growing, as Senator KAUFMAN mentioned.

Mr. KAUFMAN. Exponentially.

Mr. BROWN of Ohio. Look at the rate of growth. They did not grow a whole lot until the last 10 years, and look what happened. They are going to continue to grow since the Glass-Steagall repeal.

The argument opponents of our amendment use most frequently is: We do not have the largest banks in the world anymore. There are larger banks other places. And how are our banks going to compete with these huge banks?

I am intrigued by that because our banks are trillion dollar banks. I know there are studies that banks with assets of $300 billion and $400 billion and $500 billion have all the economies of scale. Economies of scale do not work forever.

Mr. KAUFMAN. According to Alan Greenspan.

Mr. BROWN of Ohio. A bank that is $300 billion, $400 billion, $500 billion has all the economies of scale as a trillion dollar bank.

The point they make about European—we cannot compete internationally—it is clear from what the Senator from Delaware said, all of our banks, when they were smaller—smaller than the largest banks in the world—could compete internationally 10 years ago, and there is no reason they cannot compete like that today.

I found the huge lumbering bureaucracies, whether they are a bank or whether they are the Center for Medicare and Medicaid Services, are not as flexible and nimble and cannot keep up with the market nearly as well if they are that big.

The Brown-Kaufman amendment, again, does not apply to very many institutions. No more than five or six will be even unwound a little bit. We are not going to split them all up so they are small, little community banks. They are still clearly going to be able to compete. There is no question about it under the Brown-Kaufman amendment. We give 3 years to banks to sell off some of the assets, to spin off a line of business, to sell regional operations they may have in one area of the country to comply with this amendment.

It is clear that as increasing numbers of people say, ''Too big to fail is too big,'' that if we allow these banks to keep getting bigger and bigger—and we see this chart where the six largest banks in total assets end up being 70 percent, 80 percent, 90 percent of GDP—it is hard for me to think that if one stumbles and is about to fail that we are going to let it fail, that government will let it fail because it will have huge repercussions because of the economic power these institutions have.

Mr. KAUFMAN. We all agree the present bill is a good bill and has a good resolution authority that has been worked on for years. My basic concern is we need a little prevention in the mix.

As I said before, when people say we cannot compete overseas, do we want to go where the Royal Bank of Scotland went? The Royal Bank of Scotland was 1½ times the UK economy when it went down. Do we want to get into this mix in Europe? Is this the place we want to be with these banks facing the problems they are going to have right now, as we went through this earlier? Is this the place we want to be?

I think we go back to what Senator DORGAN was saying earlier, and I wish to add to that with a couple comments. Once again I quote Alan Greenspan. He said: ''Too big to fail, too big.'' ''Too big to fail, too big.''

The idea that we should turn this over to the regulators and let the regulators set the rates—that is the alternative. The alternative is to let the regulators do it. We have good regulators now. I think that is fine.

Remember several things. No. 1, the regulators did nothing. The regulators had the power to do most of what we are talking about. They did nothing in the past.

The second thing is, we could have a new President come in and adopt the same policy as before that self-regulation works, hire a bunch of regulators to go in there, such as a number of regulators we had in our regulatory agencies—they were not bad people. They were smart people. They just basically believed self-regulation works. To quote Alan Greenspan for the third time in this speech, he said: ''I really thought self-regulation would work. I'm dismayed that it didn't.''

We can have it come back. There are still people today who believe—we hear it sometimes on the floor—we do not need these regulators. The example I use is a football game where somebody gets up and says: The referees keep blowing the whistle and stopping the play. Let's get the referees off the field and play football. That is what was going on around here.

As many of my colleagues on the other side point out, there was not enough oversight on these regulators. But you pull the football referees off the field, maybe the first pileup will not be bad, but by the time you get to the second and third pileup, I do not want to be in it.

I think we ought to go back to what our colleagues did in 1933, and we should regulate not for 5 years, 10 years, 15 years; we should regulate for generations. Much of the stuff in this bill does regulate for generations. We should put in the bill hardline, adopted by us to send a message for generations that this is not going to happen again. Bear Stearns is not going to be able to leverage up to 40 times their capital base. That is what we need to do. We need to legislate for generations.

Madam President, I yield the floor.

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

Mr. CORKER. Madam President, I am here to speak about the consumer protection title in the Dodd bill. I do want to say that while I disagree with my friends from Delaware and Ohio in their approach, I appreciate the way they have conducted themselves. I think the debate we have had on the floor on this bill, I say to the Senator from Connecticut, has been of the highest level that I can remember in a long time. I thank him for setting that tone. I thank my caucus for offering nothing but constructive amendments. People on both sides of the aisle have tried to do that.

It took a while to get here, but we are on the floor. Obviously, there are a lot of improvements people would like to make to this bill, and I think people are focused on doing that. I thank the Senator for setting that tone.

At the same time, I do want to talk about the consumer protection title on which I wish to see vast improvement. I wish to see consumer protection take place. I think everybody in this body wishes to see that happen. But I believe that the consumer protection title that exists in this bill is one that gets back to the essence of what the White House has said many times, and that is: Never let a good crisis go to waste.

I think the consumer protection title in this bill is a vast overreach. It is my hope—I know we will have a vote later today on a different title. If that is not successful, maybe there will be surgical attempts to deal with some of the problems in this title.

For the first time in our country's history, we will be giving vast powers to an individual to be involved in almost every aspect of any type of financial transaction. Without a board, without any kind of check and balance, the Dodd bill creates someone heading consumer protection who has no one as a check and balance. This person is going to be able to write rules, and this person is going to be able to enforce those rules over our entire economy as they relate to financial transactions.

I know there is a process by which if a rule is felt to be problematic after it is put in place—not before—after a rule is put in place, there is the ability of a board to actually look at those rules. The fact is, if a standard is set so high, it would be very difficult to ever overturn the rules that would be put in by this consumer protection agency.

It has a vast budget. It sets its own budget, I might add. Again, Congress has nothing whatsoever to do with that.

Some of the biggest problems with the consumer protection agency are not just that it has no checks and balance, it writes rules and enforces rules, it sets its own budget. On top of that, it overturns the way our national banking system has worked for years. Congress years ago decided we wanted to have a national banking system, that we wanted the ability of banks to operate across our country in a way that they had consistency, they knew under what rules they would be operating.

The Dodd bill overturns that. It says there is no Federal preemption anymore. If States want to change laws, write laws—we could have a bank that operates in 50 States that has 50 different sets of regulations if this bill passes. That is highly problematic with banks that operate across our country serving companies that operate across our country. One can imagine a bank that tries to adhere to all of those States laws that might come up as a result of this bill.

In addition, this bill then unleashes 50 attorneys general on these banks. That is something, again, that is not the case today. This is a huge overreach, and it is going to be highly disruptive to our banking system.

What it is going to do, because there is no Federal preemption, is actually encourage general assemblies, State legislators across this country to become hyperactive. One of the things that State banks—not Federal banks, not national banks—one of the things State banks like about our existing laws—by the way, State banks are not these huge megabanks about which my friends from Delaware and Ohio were talking.

I think State banks across the country have enjoyed—again, these are the smaller institutions—the fact there is something called Federal preemption. That has discouraged hyperactivity on behalf of State legislators to create laws that might be populist in nature, that might be done to, in essence, use our financial system for other ends.

One of the things I think is most disruptive about this legislation is that—if you can imagine this—I think all of us realize what led to this last crisis is the fact that we had very poor underwriting of loans. That is the essence of this last crisis. It got spread around the world, the fact we had incredibly poor underwriting.

I hope to fix that, by the way, with an amendment in a few days. I hope it comes up, and I hope it is adopted.

What the Dodd bill does is give to a consumer protection agency loan underwriting standards. If you can imagine that. I would like for people in this body to think about that. A consumer protection agency being involved in setting underwriting standards for loans has to undermine the safety and soundness of our financial institutions. To me, that is a huge problem.

All of us would like to see consumer protection take place. All of us would like to see it, I hope, take place in a way that is balanced, so the consumer protection laws that are put in place are put in place in a way that is balanced against ensuring that our financial institutions across this country are safe and sound; that people know they can go to those institutions and they are going to operate.

I believe the Dodd bill, as it relates to consumer protection, is a vast overreach. I know people on the other side of the aisle have come up to me and said: Look, this is problematic, and if you guys can help us figure out a way to peel this back, we would like to be able to do that.

We are going to have a chance, later today, to vote on a consumer protection amendment that has certainly brought this more in balance. There may be other ways of getting at it. I would urge the chairman to consider looking at ways to peel this back because I do believe that, again, we are going to awake in this country—if the Dodd bill passes in its present form—in 10 or 15 years and realize consumer protection has gotten out of hand; that consumer protection has been used, in many ways, to create social justice, if you will, in our financial system. To me, that is something that is very dangerous.

Let me just add one other thing. There is a new word in this title that is undefined. It is a word that says they will also be looking to see if practices were abusive. But nobody knows what that means. Nobody knows what that means. Under this bill, by the way, if someone were to come in after the fact and find that something was ''abusive,'' it would negate the financial transaction that was entered into. So you could have a zealous consumer advocate come in and say: I am sorry, this loan that was made between two parties was abusive, and it would negate that transaction.

This bill is a huge overreach. It obviously goes right along the lines of the White House saying you should never let a good crisis go to waste. This bill is going to be around for a long time, if it passes. So I hope what we can do, over the course of the next several days, during this time when we are having one of the most civil debates I think we have had in the Senate since we have been here—a high level of civil debate—I hope we will be able to put this back in balance.

I know the Presiding Officer is from a State where people care a great deal about their financial institutions. So I hope to work with her and my friend from Minnesota and others to try to achieve that balance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I will respond more fully a little later because my colleague and friend from Minnesota is on the floor to be heard, but I just wish to say that a lot of work went into this bill on consumer protection.

You don't have to wait 10 or 15 years to find out what can happen. We have watched painfully what can happen over the last several years, when the very people—the prudential regulators—should have been standing and saying: No-doc loans are wrong and dangerous. In fact, it was consumer groups that warned about the real estate bubble. We were being told everything was safe and sound because people were making money, and it looked like it might go on forever.

Of course, everyone has 20/20 hindsight looking back as to what occurred. But had we had in place someone saying: No-doc loans, no downpayments, adjustable rate mortgages at fully indexed prices are going to cripple people's ability to meet those obligations, we wouldn't be in the situation we are in today. None of the seven agencies that have jurisdiction over consumer protection were doing their job very well.

I will address more specifically the alternative idea being suggested, and let me also say I have never claimed our proposal on consumer protection is perfect. I acknowledge the word ''abusive'' does need to be defined, and we are either talking about striking that word or defining it better. Deceptive and fraudulent cover the ground pretty well, but I thought abusive was a pretty good explanation point. Because it was abusive, in common language.

So I will come back later, but I wished to acknowledge that we have a number of organizations that have endorsed this bill of ours, strongly support our committee bill, ranging from the Americans for Financial Reform, the Consumers Union, Center for Responsible Lending, the Consumer Federation of America, U.S. PIRG, Public Citizen, the National Consumer Law Center, Consumer Watchdog, and AARP.

Of course, we are all familiar with the group representing older Americans. In fact, I ask unanimous consent to have printed in the RECORD, at this point, a letter from AARP, opposing the Shelby substitute on the consumer protection title.

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

AMERICAN ASSOCIATION OF RETIRED PERSONS,
Washington, DC, May 6, 2010.

Re Oppose Shelby substitute Consumer Protection title to S. 3217.

DEAR SENATOR: A key priority for AARP in the financial reform legislation is strengthened consumer protection that will help restore market accountability and responsibility, rebuild confidence, and ensure the stability of the financial markets. Surveys conducted by AARP demonstrate that Americans 50+, regardless of party affiliation, want Congress to act to hold financial institutions accountable.

AARP supports the creation of a Consumer Financial Protection Bureau, as incorporated in S. 3217, that would have as its sole mission the development and effective implementation of standards that ensure that all credit products offered to borrowers are safe. We have been clear that such an agency should be truly independent in its leadership, funding, staff and decision-making; that it should have the authority to oversee all lenders and products in the marketplace; and that it should have broad rulemaking, enforcement and supervision powers over all types of providers. We also have insisted that the states must be the ''cops on the beat'' with the authority to move against abusive practices that arise locally.

Judged against this criteria, the Shelby substitute Consumer Protection title fails in virtually every instance. The consumer protection agency will not be independent; rather the FDIC Board of Directors must approve all rulemaking. Inadequate resources will cover rulemaking and supervisory expenses only; there is no funding for enforcement. Oversight and enforcement is extremely limited. For example, the new agency will have no enforcement authority over any bank or other type of depository institution. Nonmortgage companies will be subject to supervision only if they demonstrate a pattern or practice of violating the law within the past three years. And, the bill does not give the states the authority to take action where necessary.

We respectfully urge you to vote NO on the Shelby substitute Consumer Protection title when it comes up for a vote today. If you have questions, please feel free to call me or have your staff contact Mary Wallace of our government relations staff at (202) 434–3954 or mwallace@aarp.org.

Sincerely,

DAVID P. SLOANE,
Senior Vice President, Government Relations and Advocacy.

Mr. DODD. So major groups, ones that are consumer oriented as well as those that watch out for older Americans—many of whom have to pay mortgages, are on fixed incomes—are worthy of note.

Again, I wish to thank my colleagues for their comments and thoughts on this amendment, and I will address more of that later, but I will yield the floor.

AMENDMENT NO. 3808

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Madam President, I rise to speak about the need to further address the problems of the credit rating agency industry. Senator DODD has presented us with a very good bill that takes major strides in addressing many of the problems that brought our economy to the brink of collapse. It reins in too big to fail, brings derivatives out of the shadows, and creates a new consumer watchdog that will prioritize consumer protection over Wall Street profits.

Senator DODD's bill includes several provisions on credit rating agencies. It holds rating agencies accountable in court for being reckless in their duties, it requires increased disclosure, creates new complaint systems, and requires raters to use information beyond what is provided by issuers.

These are a few of the many provisions the Dodd bill includes to begin to address issues with credit rating agencies, and they are all good. But one thing it doesn't do is get at the underlying problem—the conflict of interest inherent in the issuer-pays model, where the issuer pays the rating agency.

To root out conflicts of interest completely, we must change the vested interests of each of the players. The central conflict of interest can be boiled down to this: The issuer has an interest in obtaining a high rating so it can sell its product. The credit rating agency has an interest in giving out a high rating so it can sell its service. Tom Toles, of the Washington Post, depicts the problem quite well in this comical cartoon.

Here we see the rating agencies—he labels them that so you know it is them—giving three 10s to a figure skater—labeled Wall Street, and he is kind of fat there. You see he says: ''I pay their salaries.'' That is why he is getting three 10s—or a AAA—and yet he is a figure skater and he is dumping trash. We see an apple core, there is a fish head, skeleton, a banana. You don't want those on the ice. You just don't want that. That is bad. Then there is a little figure here, the little garbageman. It says: ''Somebody else pays to clean the ice.'' That, of course, is us—the taxpayers.

I think after seeing this cartoon, if there is anyone who doesn't support my amendment, I don't know what to do. Anyway, this actually makes the point very well that the issuer is paying the rating agency and, hence, the AAA.

However, the credit rating agency should have an interest in providing accurate ratings—unlike the triple 10s in this cartoon—so investors are provided with the accurate information they need to make investment decisions. But for the reasons I just described, there are very few incentives to provide accurate ratings. The market simply doesn't reward accurate ratings.

The best way to fix this problem is to change the way the market works so it rewards accurate ratings. Once we start getting accurate ratings, investors can make better decisions about the products they are selecting for inclusion into pension funds. Having safe products in pension funds protects the retirement security of hard-working Americans.

Let me give you an example of the perverse incentives that have been driving the credit rating agency industry thus far. My friend and colleague Senator LEVIN recently held a hearing in the Permanent Subcommittee on Investigations. His investigators released many e-mails from the industry that reflect the conflicts of interest that drove the system.

Here is a good example. There is a rating agency employee writing to his own rating agency people about a group of theirs, a group within his rating agency.

We are meeting with your group this week to discuss adjusting criteria for rating CDO's of real estate assets this week because of the ongoing threat of losing deals. Lose the CDO and lose the base business.

So here the credit rating agency is proposing to change its rating criteria to avoid losing business. This is exactly what was at the root of all these AAA-rated, subprime, mortgage-backed securities that were leveraged and had the CDOs on them—these exotic instruments that were rated AAA—and what created this entire mess. It is clear the incentives are to keep customers coming back, to make sure accurate ratings aren't driving customers into the arms of other rating agencies—don't want to let accuracy get in the way of more business.

We need to change the incentives. I believe my amendment, No. 3808, will do that. The amendment tasks a board—a self-regulatory organization—with selecting a pool of qualified credit rating agencies. The board would then choose a system to assign, one at a time, one of these qualified credit rating agencies to each request for an initial credit rating. Issuers could no longer shop around for the best rating. They could, however, get a second, third or fourth rating from any agency they choose. But the first assigned rating would provide a check against the next agency inflating its rating.

The amendment would require the board to consider a rating agency's past performance and could adjust the number of rating assignments based upon demonstrated accuracy. If a small rating agency began performing extremely well, the board could start giving it more assignments, breaking the oligopoly of the big three raters, which served us very poorly, or maybe the big three would get their act together under this new system.

The point is, when the agencies are finally operating in a market in which accuracy is valued, they will compete on the basis of accuracy. When accuracy is driving growth, not preexisting relationships or sweetheart deals, smaller rating agencies will have an opportunity to compete and grow, making the industry more robust.

So properly addressing conflicts of interest in the credit rating agency industry necessitates realigning the interests of rating agencies with the interests of investors. The way to do that is by promoting and rewarding accuracy. My amendment will create these incentives, increase accuracy, promote competition and stability, and restore integrity to the credit rating industry system.

I thank my colleagues, Senator SCHUMER and Senator NELSON, for helping me lead this effort and Senators WHITEHOUSE, BROWN, MURRAY, MERKLEY, and BINGAMAN for joining us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Madam President, I rise today to discuss the amendment that Senate Republicans are offering to greatly improve consumer financial protection.

This amendment recognizes that our existing financial regulatory system fails to adequately provide consumer protection. Our system is broke, and it needs fixing.

The recent financial crisis has revealed that our financial regulators were asleep at the switch and had neglected to uphold their basic responsibilities for consumer protection.

Far too often, our regulators were more concerned about pleasing the entities they regulated than looking out for consumers. It is clear that we need to refocus the priorities of our financial regulators and ensure that consumer protection gets the attention it deserves.

Make no mistake. Republicans want to strengthen consumer protection.

We need to make sure that consumers get clear and understandable disclosure so that they can make good decisions.

We need to make sure that regulators have sufficient authority to combat fraudulent practices.

We also need to make sure that our consumer protection laws and regulations keep up with changes in our dynamic and innovative marketplace.

Any changes to consumer protection, however, need to reflect that consumer protection does not stand in isolation. It is inherently linked with safety and soundness regulation.

This is most dramatically illustrated by the fact that an ill-conceived consumer protection law, such as allowing for no down payments, could cause banks to fail.

Given that taxpayers are ultimately on the hook for bank failures, it would be irresponsible not to require regulators to consider the impact proposed consumer protections could have on the deposit insurance fund.

After all, one of the most important consumer protections is a healthy financial system, where financial institutions are able to keep long-term commitments to consumers, like annuities, insurance, and retirement funds.

The amendment we are proposing embodies this approach. It would put the FDIC in charge of writing consumer protection regulations. That responsibility currently rests with the Fed.

As a prudential regulator, the FDIC has the experience necessary to ensure that the right balance is struck between consumer protection and safety and soundness.

To raise the status of consumer protection, a new division will be established at the FDIC. The division will be led by a Presidentially appointed and Senate-confirmed director.

The director will serve a term of 4 years and will be required to testify before Congress at least twice a year. This will help ensure that regulators are held accountable for their actions on consumer protection.

In addition, this amendment does not disrupt the century and a half of precedent on preemption with respect to national banks.

We should be very cautious about allowing national banks to be regulated by 50 different States and opening up the door to needless state litigation that only enriches trial lawyers and raises costs to consumers.

The Republican amendment also grants the FDIC primary supervision and enforcement authority over large nonbank mortgage originators, and other financial services providers that have violated consumer protection statutes.

This will give the FDIC broad authority to clamp down on the worst offenders of our consumer protection laws without needlessly subjecting law-abiding businesses to expensive regulation.

The Republican approach to consumer protection sharply contrasts with the approach of the Dodd bill.

Under the Dodd bill, the Consumer Financial Protection Bureau would issue rules without considering their impact on the safety and soundness of financial institutions.

Need I remind my colleagues that this is the same regulatory model that produced the fiascos at Fannie and Freddie. In that case, HUD wrote rules on their housing goals and underwriting standards, while OFHEO regulated them for safety and soundness.

Do we need a better example of the foolishness of divorcing consumer protection from safety and soundness?

How did that regulatory model help consumers? It certainly left them with a huge tax bill to cover the government bailout.

An examination of the powers and size of the bureau established by the Dodd bill shows further how the Republican approach differs from the approach advocated by the Obama administration and the Democrats.

They start with the assumption that small busiesses are, in President Obama's words, ''bilking people'' and that heavyhanded regulations and an extensive bureaucracy are the only ways to ensure that small businesses do not take advantage of their consumers.

I do not believe that the tens of thousands of small businesses—the florists, the retailers, the dentists, the auto dealers—that fall within the regulatory reach of their new bureaucracy are ''bilking'' people. I also know that these entities had nothing to do with the financial crisis.

Unfortunately, the Dodd bill would create a massive new bureaucracy with unprecedented powers to regulate small businesses and consumers.

The Consumer Financial Protection Bureau could dictate exactly what forms business must use, who they provide services to, and how they sell their products.

Control over American businesses would shift further from entrepreneurs to bureaucrats in Washington.

Perhaps the most troubling aspect of their approach is that it assumes that consumers need benevolent bureaucrats to make decisions for them. In order to make that happen, the Dodd bill authorizes the new consumer agency to collect any information it desires.

Small businesses across this country fear the massive and potentially very intrusive new bureaucracy created under the rubric of consumer protection. They have every right to be afraid.

This massive new government bureaucracy has the power to place individuals under oath and demand information about their personal financial affairs.

The new bureaucracy is also required to report to the IRS any information it gets that it believes may be evidence of tax evasion.

Why does their new bureaucracy need these incredible powers? Because their bill envisions the bureau analyzing and monitoring Americans' behavior and then issuing regulations to stop them from doing things the bureaucrats deem ''irrational'' or ''inappropriate.''

Just read the writings of the Assistant Secretary of Treasury for Financial Institutions, one of the chief architects of this expansive new bureaucracy. He has written how ''regulating . . . appropriately is difficult and requires substantial sophistication by regulators, including psychological insight.''

Let me translate this academic jargon.

He is saying that all-knowing regulators should be empowered to make decisions for consumers because benevolent regulators are the only ones who possess the right ''psychological'' mind set to do things ''appropriately.''

Think about it a minute.

Regulators are wise and should be heeded; consumers are foolish and should do as they are told. That is what we are talking about here.

The architects of this massive new bureaucracy have long argued for a consumer bureaucracy with the right ''culture.''

Whether that ''culture'' focuses on consumer protection and a safe and sound banking system or it becomes a way for community organizers and groups like ACORN to grab Federal resources is left wide open.

One of the strongest proponents for the new consumer bureaucracy has been Treasury's Assistant Secretary for Financial Institutions, as I said.

Allow me to read into the RECORD a couple of quotes from a paper entitled ''Behaviorally Informed Financial Services Regulation'' coauthored by the Assistant Secretary Barr in October of 2008.

The Secretary writes, ''Because people are fallible and easily misled, transparency does not always pay off. . . .''

He writes that: ''. . . regulatory choice ought to be analyzed according to the market's stance towards human fallibility.''

On regulation, he writes that: ''Product regulation would also reduce cognitive and emotional pressures related to potentially bad decisionmaking by reducing the number of choices. . . .''

He is talking about choices in the market place. Yes, the administration's chief advocate believes that benevolent regulators need to reduce choices for the consumer so that they can be protected from bad decision making and their own inherent fallibility.

He also opines on the topic of disclosures where he states that:

[D]isclosures are geared towards influencing the intention of the borrower to change his behavior; however, even if the disclosure succeeds in changing the borrower's intentions, we know that there is often a large gap between intention and action.

I believe that regulators need to ensure that consumers have the information they need to make their own decisions based on their needs and circumstances.

The proponents of behavioral economics believe, however, that regulators need to influence peoples' intentions and change their behavior so that they make decisions that the regulator deems appropriate for them. As I have said before, this is the nanny state at its worst.

Finally, he writes of a proposal on late fees charged by financial service providers.

He writes:

Under [his] proposal, firms could deter consumers from paying late or going over their credit card limits with whatever fees they deemed appropriate, but the bulk of such fees would be placed in a public trust to be used for financial education and assistance to troubled borrowers.

The translation is that behavioral economists not only believe that they are best positioned to make decisions for us, but they are also best positioned to decide how private companies spend their money.

Needless to say, this is a disturbing perspective, but it does reveal just how much the Obama administration wants to empower bureaucrats.

We should remember that the failure of our existing regulators, primarily the Federal Reserve, to properly enforce consumer protections helped cause the crisis. Yet the Dodd bill's response is to create a bigger bureaucracy and hire more bureaucrats at the Fed.

In contrast, the Republican amendment would make the changes and improvements that we all can agree need to be done, but would do so in a more focused and prudent manner.

The expansive reach of the Dodd bill means that the new bureau is going to be expensive. The budget for the bureau is approximately $650 million in new taxpayer costs, funded Argentina-style by tapping the central bank's money-printing powers.

In comparison, the budget for the Office of the Comptroller of the Currency, our national bank regulator, is currently $750 million, and that agency does both consumer protection and prudential supervision.

Under the Republican plan, industry, not taxpayers, would pay the costs of consumer protection.

Despite giving the bureau a huge budget and vast powers, the Dodd bill fails to take any reasonable steps to hold the bureau accountable.

The bureau receives all of its funding from the Federal Reserve, beyond both congressional and executive oversight.

The bureau has complete discretion on how it spends its budget, allowing it to devise programs for backdoor funding of special interest groups like ACORN and other liberal activist groups.

The more we learn about the Dodd bill's approach to consumer protection, the more I believe the Republican approach makes more sense and strikes the right balance.

The Republican amendment wisely places consumer protection in a financial regulator, the FDIC, but enhances the status of consumer protection by creating a new division of consumer protection.

It holds regulators accountable and ensures that repeat violators of consumer protection laws face stiffer penalties and regulation.

The Republican amendment avoids creating costly new bureaucracies and imposing unnecessary costs on small businesses that had nothing to do with the crisis.

We all agree that consumer protection needs to be modernized and given more attention by our regulators.

I believe the Republican approach does this. And it does so without building the expansive and expensive bureaucracy contained in the Dodd bill.

Most importantly, the Republican approach ensures that consumers are protected, but that they, not bureaucrats, are ultimately the ones making decisions for themselves.

I have heard from productive American companies—from tractor manufacturers to beer brewers—from motorcycle manufacturers to public utilities that provide heating fuel to your home—and they strongly oppose this bill because it will increase their operational and risk management.

I have heard small responsible business owners, who offer their customers the convenience of installment payments, express serious concerns about the potential for an out-of-control consumer bureaucracy that the Dodd bill creates.

Although the bill's supporters have and will argue that the fears are unfounded because the bill says that merchants not engaged ''significantly'' in offering consumer financial services are excluded from the new consumer regulatory bureaucracy.

The bill does not, however, define what the word ''significantly'' means—leaving that to the discretion of the benevolent bureaucrats.

The supporters of this massive new government agency trust the bureaucrats. I trust American small business owners.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I congratulate the Senator from Alabama for his comments and for his proposal, which he described as a Republican proposal. Of course, what all of us hope is that it becomes a bipartisan proposal as our friends on the other side look carefully at it. That is what happened with the big bank bailout provision we worked on yesterday. Senator DODD and Senator SHELBY worked for a while, Senators CORKER and WARNER had worked before that, and we came up with a conclusion that all but five Senators agreed to. Now we have moved to address two of the other major deficiencies in the Dodd bill that we have wrapped up in one proposal here, and it is really wrapped up with the central issue that is before the American people.

President Obama said in September of last year that the health care bill was a proxy for a larger issue about the role of government in Americans' lives. The President was exactly right about that, and we have seen the issue of government's role over and over again. I don't think it will change between now and the November election. In fact, the President said at our health care summit that is why we have elections, and

I think he is correct about that. We have seen a Washington takeover of banks; we have seen a Washington takeover of car companies; we have seen a Washington takeover of many aspects of health care; we have seen a gratuitous Washington takeover of student loans. In this financial regulation bill, instead of dealing with the high jinks of big banks, we are going to take over Main Street lending and, on top of it, create a new czar or czarina to make decisions about millions of transactions across America that are on Main Street.

So what Senator SHELBY's proposal offers—and we hope it receives the same kind of bipartisan consideration that the resolution authority or the big bank bailout discussion did yesterday that we finally agreed on—is that we would like to change this bill in two ways. Republicans would like to say: Let's take Main Street lending out of it. The Senator from Connecticut, Mr. DODD, said it is not in there. But the language makes it look as if it is in there. It looks like we're about to start regulating your daughter's dentist bill, the plumber, and the store owners up and down Main Street who give you flexible credit. In other words, if you say: You can pay me over time—it looks as if Congress is going to start regulating that transaction.

That is going to make credit harder to get because the dentist or the plumber or the store owner is going to say: I'm not going to fool with it. I don't want to be regulated by some Washington bureau, so if you want to buy my goods, go to the bank and get some money or get another credit card.

And you know what that is going to do? That's going to slow down the economy. That's going to make jobs harder to create because it is going to make credit harder to obtain and credit harder to offer.

Making credit harder to get is not what we need at this time. We just had the reports of the economic growth of our country during the first quarter. It was 3.2 percent. That is not very good. I can vividly remember flying on a helicopter with President Bush when I was Education Secretary in 1992, and the economic growth of the third quarter of the year was better than that; it was 4.2 percent. And Bill Clinton beat George Bush, Sr., on the ''It's the Economy, Stupid'' campaign. So 3.2 percent is not going to cut it for our country. Most economists say that if our economy continues to grow over the next year, through 2010, at the same rate it grew in the first quarter, the unemployment rate will not change. The unemployment rate will still be about 9 or 10 percent at the end of this year, as it is today.

What can we do to change that? Well, we have to create an environment for job growth. We have done pretty good in creating job growth in Washington. The one place the stimulus has really worked is in Washington, DC. Salaries are up. Jobs are up. There are plenty of new jobs around here. But out across America, we are not creating enough new jobs, and too many of the things we are doing here make it harder to create new jobs.

The health care bill makes it harder to create new jobs because it imposes taxes on job creators and it imposes taxes on investors. Tax increases make it harder to create new jobs. Running up the debt—the President's budget doubled the debt in 5 years and tripled it in 10 years—makes the economy less certain and it makes it harder to create new jobs. And the threat of creating a czar or czarina in Washington, DC, and a new bureau to supervise and make Main Street lending more difficult and expensive makes it harder to create new jobs. We should take it out of the bill.

If the Senator from Connecticut, who is one of our finest Senators, and is well intentioned, wants Main Street lending out of the bill, let's just take it out of the bill. Let's don't leave in there the possibility that someone might come along and interpret ''significantly'' involved financial activities to include the plumber and the dentist.

This has attracted the attention of a lot of people from Tennessee: community bankers, credit unions, and the National Federation of Independent Businesses. They are talking about office suppliers, jewelers, health professionals, and furniture stores who are all concerned with this bill. The NFIB estimates that about 50 percent of small businesses let you pay over time. In other words, they offer you credit. They make special arrangements. They say: OK, we know you don't have all of the cash right now. You might not want to run up your credit card or maybe your credit card is near the limit, so we will sell you whatever we have to sell you or we will provide the service you need. You can pay us in 6 months. You can pay us in 5 months.

Well, under this bill, if you offer payment plans you could be ''significantly'' involved in financial activities. Then this czar or czarina in Washington, DC, is going to be regulating you. You might be a very small business and you might not have a lot of extra money to fill out regulatory forms, but you are going to be filling out forms and suffering more regulations. And you are going to be offering less credit and credit will be harder to get up and down Main Street.

If our real intention in this body on both sides of the aisle is to not interfere with Main Street lending, then let's actually do that. That is what the Republican amendment—which we hope becomes a bipartisan—does.

Then there is the second big idea that is in this Republican amendment. So far as I am concerned—we don't need another czar. This bill is supposed to be about big banks, about financial high jinks on Wall Street, about this recession we are in, and about issues that will change the regulations in a sensible way that will avoid as many future recessions as possible and, at the same time, about creating an environment in which we can grow the largest number of good new jobs. But suddenly, we have this new Washington agency not only possibly regulating Main Street lending but creating an unaccountable person at the top to write the rules and the regulations. When I say ''unaccountable,'' that means she or he is just over here at the Fed. Once confirmed by the Senate, this person has no boss. This person doesn't report to the President, doesn't have to come before Congress for appropriations, and has a steady stream of money and really unlimited authority. There is nothing to keep this new czarina or czar from writing the kinds of regulations and rules that got us into trouble in the first place with housing. Nothing to keep this person from writing rules that might encourage irresponsible home ownership. That is what we had before. So the Dodd bill might encourage irresponsible borrowing.

So the second major idea in the Republican amendment is, let's make this person accountable. The President appoints a Director who is confirmed by the Senate, but this person would be in the Federal Deposit Insurance Corporation. This Director would be accountable to other people appointed by the President and confirmed by the Senate and would have to come before the Congress multiple times annually to give us a chance to inquire about things.

I have come to the floor today to say we made an important step in the right direction when we worked on the first part of this bill yesterday across party lines. We addressed one of the five issues we need to deal with.

The issue of, what to do with banks that are too big to fail and get the rest of us into trouble, has been addressed.

But we have four more big issues to deal with here and other smaller issues. Two of the big issues are addressed in this Republican amendment. One is: let's not take over Main Street lending and make it harder to loan money, harder to get money, and harder to create jobs.

No. 2 is: let's not create another czar in Washington. The last thing we need is another Washington takeover and another Washington czar.

We hope our amendment will attract significant bipartisan support, and then we can move on to the other important questions in this legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, first, let me thank Senator DODD for bringing forward a strong bill to regulate Wall Street. The bill provides for strict new regulations to stop Wall Street's reckless gambling.

I think one needs to understand the current system and how we got to where we are today. We have eight Federal regulatory entities that oversee the financial sector. Their authority is different, their powers are different, their ability to respond to a particular problem is different, and the entity that is regulated today can shop for the regulator they want by what they call themselves and the types of activities they try to define themselves as. They can shop and look for the regulatory entity they believe they can circumvent the easiest. They can escape and did escape proper supervision.

Well, this legislation ends that practice by a clear regulatory framework in order to regulate all financial institutions. The regulatory entity that does the regulation is based upon size and jurisdiction. And we have the Financial Stability Oversight Board that provides uniformity. No more gaps in the regulatory system. And it provides the tools for the regulators for early intervention. That means we end, once and for all, too big to fail. By early intervention on takeovers, closing down financial institutions, requiring the sale of financial institutions, we can prevent the need for too big to fail. The risk will be on the investors, not on the taxpayers of this country. The Boxer amendment makes that clear.

Tools that are needed for orderly liquidation to minimize the impact on the financial sector and our economy are provided in this legislation.

It recognizes the need for special attention to our community financial institutions. They were not the cause of the financial crisis we went through. We know it came from Wall Street. Our community banks were very much vulnerable as a result of the financial collapse. We need to streamline the regulatory process as it relates to our community banks. Regulation is cost. We have to have regulation. We need regulation. They need regulation. But we need to make sure it is sensible. This bill streamlines the regulatory structure as it relates to our local financial institutions.

We need strong and adequate regulation, and it provides it. We need to write a balance, and this legislation provides that. I might say, there are amendments we have already considered that I think were the right thing in order to make sure this balance is correct. I am sure there will be other amendments we will consider to make sure we get that balance right between adequate regulation and the cost of regulation to small community financial institutions.

This legislation puts the consumer first, as it should, with a strong consumer bureau. Some say: Why do we need that? Isn't the current regulation adequate? The answer is no. All you need to look to is what happened in the residential mortgage marketplace. All you need to look at are the advertisements that were taking place just 2 years ago for no-doc or stated-income loans or no-down-payment loans—loans that provided over 100 percent of the cost. And look at the subprime lending in each of our communities, where home buyers who could have qualified for traditional home mortgages were steered into the subprime market because the mortgage company or the seller made more money by steering them into subprime loans. Well, those practices have to come to an end. Those housing practices sparked, as we know, the trigger for this recession. These practices helped create that bubble that burst and the damage that was caused when it did burst.

We can take a look at the cost of this recession. The Pew Financial Reform Project estimated that just a slowdown in economic growth will cost every family in America close to $6,000. Well, that is money that will never be made up. We have to make sure it never happens again. The Federal spending, in order to prevent the economic collapse of Wall Street, is estimated to cost $2,000 per household. If you look at just the decline in real estate values, in 9 months, from July 2008 to March 2009, the wealth lost equaled about $30,000 per household in real estate and over $60,000 per household in the stock market. We lost millions of jobs. I could go on and on. We have an obligation to make sure our economy and our people are protected from that type of financial meltdown in the future.

This legislation properly regulates risky gambling by financial institutions by putting in place prohibitions and disclosures. It puts an end to derivatives markets that have no economic value to our economy. It requires disclosure on the derivatives markets, so we can take Justice Brandeis' advice and use sunlight as the best disinfectant. It provides for the Volcker rule, codifying that, by restricting certain types of high-risk financial activities by banks and bank holding companies.

This legislation regulates credit rating companies. We know credit rating companies—their rating will very much affect the price of a security and the viability of the security.

In this recession, many Marylanders and people from every State in this Nation have lost their homes, their jobs, and savings. We have a responsibility to act to end the reckless practices on Wall Street that helped plant the seeds for this recession. This legislation is a giant step forward.

AMENDMENT NO. 3732

Madam President, I will now speak briefly about an amendment I intend to offer.

I rise to urge the inclusion of amendment No. 3732 to S. 3217. This amendment is a critical part of the increased transparency and good governance we are striving to achieve in the financial industry.

This is a bipartisan amendment that would require all foreign and domestic companies registered with the U.S. Securities and Exchange Commission, the SEC, to report in their annual report to the SEC how much they pay each government for access to their oil, gas, and minerals. Most of the world's extractive industries companies would be covered by this law, setting a new international standard for transparency, for openness.

We have seen the devastating effects of a lack of transparency in this country, what happens when Wall Street is left unchecked and barons cloaked in secrecy make off with millions while others lose their homes. This is why we are addressing openness and transparency in the underlying legislation today. We would be remiss to create this sweeping reform of our financial sector without addressing the need for adding a new layer of transparency to a set of companies already under the SEC's jurisdiction—the oil, gas, and mining companies that make up the extractive industries.

This amendment would create an environment of transparency to reassure investors, help stabilize global energy markets, and thus support goals of energy security.

Current Federal Accounting Standards Board standards require reports of tax, royalty, and bonus payments to host governments, but the numbers need only be reported in aggregated categories, such as ''production costs excluding taxes'' and ''taxes other than income.'' These payments are reported on a country level where a company's operations are very substantial, but otherwise they are reported on such a broad basis that a company can simply report on which continent it was operating. Such disclosure is not useful in determining the extent of a company's operations in or its ongoing financial arrangements with a country.

In terms of energy security, the oil, gas, and mining revenues are critically important economic sectors in about 60 developing and transition countries which are paradoxically home to more than two-thirds of the world's poorest people. Despite receiving billions of dollars per year from extractive revenue, these countries rank among the lowest in the world on poverty, economic growth, authoritarian governance, conflict, and political instability. Unaccountable management of natural resource revenues by foreign governments leads to corruption and mismanagement, which in turn creates unstable and high-cost operating environments for multinational companies and threatens the security of the energy supply of the United States and other industrialized nations. So we are talking about in these countries where mineral wealth becomes a mineral curse. It becomes a source of revenue for corruption rather that a source of revenue for economic growth so a country can grow. It runs counter to our foreign policy objectives of good governance and economic growth for the developing world. Transparency will help make sure the mineral wealth goes to the people of that nation.

The provisions of this amendment would apply to all oil, gas, and mining companies required to file periodic reports with the SEC; namely, 90 percent of the major internationally operating oil companies and 8 out of the 10 largest mining companies in the world—only 2 of which are U.S. companies. We are talking about foreign-owned companies, not U.S. companies, by and large. Of the top 50 largest oil and gas companies by proven oil reserves, 20 are national oil companies that do not usually operate internationally. These companies are not registered with the SEC or any other exchange and only operate within their own country, which means these national oil companies do not compete with internationally operating companies. Of the remaining 30 companies that do operate internationally, 27 would be covered by this legislation—27 of the 30. These include Canadian, European, Russian, Chinese, Brazilian, and other international companies.

We currently have a voluntary international standard to promote transparency. A number of countries and companies have joined the Extractive Industries Transparency Initiative, the EITI, an excellent initiative that has made tremendous strides in changing the culture of secrecy that surrounds the extractive industries. But too many countries and companies remain outside this voluntary system.

The notion of transparency has been endorsed by the G8, the IMF, the World Bank, and a number of regional development banks. It is clear to the financial leaders of the world that transparency in natural resources development is key to holding government leaders accountable to the needs of their citizens and not just building up their personal offshore bank accounts.

It is now time to create in law an international standard for transparency. It will only happen if the United States is in the leadership. The international community looks to us to be a leader on this issue.

Investors need to be able to assess the risks of their investments. Investors need to know where, in what amount, and on what terms their money is being spent in what are often very high-risk operating environments. These environments are often poor developing countries that may be politically unstable, have lots of corruption, and have a history of civil unrest. The investor has a right to know about the payments. Secrecy of payments carries real bottom-line risks for investors.

Creating a reporting requirement with the SEC will capture a larger portion of the international extractive industries corporations than any other single mechanism, thereby setting a global standard for transparency and promoting a level playing field.

Investors should be able to know how much money is being invested up front in oil, gas, and mining projects. For example, oil companies often pay very large signature payments to secure the rights for an oilfield, long before the first drop of oil is produced. Such payments are in addition to the capital investment required. In Angola, for example, $500 million is not an unusual signature bonus that has to be paid for a single field, and a single field can cost more than $2 billion to develop. Such costs take years for companies to recoup through their production-sharing arrangements with host companies. For this reason, it is in the interest of the investors to know the amount and timing of payments of high-risk operating environments.

When a company they have invested in becomes targeted by a campaign of misinformation, only the transparency of their financial information will help the investor. Disclosure of payments is one way to address risk, helping companies protect themselves from false or unfair accusations and blame-shifting by host governments that can tarnish their image in the investor community and the general public.

I urge my colleagues to join me in supporting the creation of a historic transparency standard that will pierce the veil of secrecy that fosters so much corruption and instability in resource-rich countries around the world.

I thank the Presiding Officer and yield the floor.

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

Mr. BOND. Mr. President, Americans have sent Congress a message: Reform Wall Street, hold the bad actors accountable, but do not hurt the folks on Main Street who had nothing to do with the financial crisis. That is what we are debating about here in the Senate this week.

Senators on both sides of the aisle agree on one thing: All of us want to hold Wall Street accountable for the havoc wreaked on Main Street. We all agree we need to enact reform to prevent another financial crisis. But we have some disagreements on what responsible reform looks like.

While we all agree on the need to reform Wall Street to protect Main Street, the current bill, even with amendments so far, does not, in my view, do the trick. We are making progress, but there is still a lot of work to do because, in its current form, the bill is still a massive government overreach, punishing Main Street, hurting families, and costing jobs by stifling small business and entrepreneurs.

Today, I will highlight some of the concerns I have heard from Main Streets in Missouri and elsewhere and some of the amendments that have been filed to improve the bill.

First, on the GSEs, none of us can deny that Fannie Mae and Freddie Mac were significant contributors to the financial crisis. Just like any real reform, to prevent a future financial crisis, we have to deal with Wall Street, and we must also deal with Fannie Mae and Freddie Mac. Unfortunately, this bill totally ignores it. It turns a blind eye to these government-sponsored enterprises, these GSEs which contributed to the financial meltdown by buying high-risk loans banks were directed to make to people who could not afford them.

The irresponsible actions in the marketplace by Fannie and Freddie turned the American dream into the American nightmare for far too many families who faced foreclosure. They then devastated entire neighborhoods with the foreclosed homes and communities where property values diminished. Ultimately, it led to a national and international financial crisis. No one—especially those of us who are taxpayers—can forget what happened after Fannie and Freddie got done wreaking havoc on families and neighborhoods. They went belly up. That is right. Over a year and a half ago, the government had to take over the GSEs, leaving taxpayers to foot the bill.

To make matters worse, I am sure everybody read with shock just yesterday when the press reported that Freddie lost $8 billion in the first quarter. That is a lot of work. Then they had the nerve to request another $10.6 billion from the American taxpayers and warned that this $10.6 billion is just a downpayment on the money they will need in the future. Is it time to call a halt? Is it time to get a handle on it? It is well past time.

In case my colleagues need a reminder, this latest $8 billion Freddie lost is on top of the $126.9 billion Fannie and Freddie had already lost through the end of 2009. The Wall Street Journal today hit the nail on the head when they referred to Fannie and Freddie as the ‘‘toxic twins.’’ These toxic twins are far and away the biggest losers in the entire financial crisis—bigger than AIG, Citigroup, and all the rest.

So when we focus our anger, let’s not forget our friends at Fannie and Freddie. You talk about doing some damage. Here is where the damage is. Here is where the burden comes, not just on us but on the credit cards of our children and grandchildren, the young people here as pages. They don’t realize how heavy a debt burden we have already put in their wallets. Sorry about that, folks, but you and your generation and generations to come are going to be paying for it.

Taxpayers now and taxpayers in the future will be the biggest losers, since according to the Congressional Budget Office’s optimistic estimates, these toxic twins will cost the taxpayers close to $380 billion. Even for those of us in Washington, $380 billion is a big number.

After all this pain to families, neighborhoods, and taxpayers, one would think the oversight of Fannie and Freddie would be a top priority, which is why it is stunning to me that the Obama administration has only recently nominated someone to fill the critically important position of inspector general of the Federal Housing Finance Agency to oversee the GSEs. How can we have proper and effective oversight of Fannie and Freddie when the office has been vacant at the highest level for so long?

The bottom line is, responsible reform must address Fannie Mae and Freddie Mac. Responsible reform would put an end to the taxpayer-funded bailout of Fannie and Freddie and refocus them on affordable housing. Senators MCCAIN, SHELBY, and GREGG have filed an amendment to protect taxpayers and put an end to the government bailout of Fannie and Freddie. In short, this amendment cuts up the Federal credit card by putting an end to the limitless line of credit Fannie and Freddie currently enjoy, compliments of us as taxpayers.

This amendment puts an end to the conservatorship and requires each to operate eventually without government subsidies and on a level playing field with the private sector.

Next of great importance is seed capital. It is critical in reforming Wall Street that we not punish Main Street and the very specific small business startups that are so critical to job creation. If there is one thing we are worrying about it is, Where are the jobs? Well, I will tell my colleagues where the jobs are. They are the jobs the entrepreneurs and the innovators and the inventors can start. Unfortunately, in the current form of this bill, there are provisions that will kill the business startups. While title IX of the Dodd bill has been little talked about—far too little, in my opinion—it could have devastating consequences. Specifically, this provision would kill small business startups by delaying and eliminating the availability of private investor seed capital, and that is essential for these startups to survive and grow.

According to new regulations by the SEC, innovators and entrepreneurs would be subject to registering with the SEC for a 4-month review; thus, tying up vital venture capital needed for immediate use by new business. This could cripple new businesses.

Next, the bill proposes to add a further requirement to raise the net worth threshold on those who can invest to $2.3 million and raise the annual household income to $450,000. This would disqualify two-thirds of current accredited investors, according to the Angel Capital Association.

Small businesses and startup companies are the backbone of our country. They are where we are looking to get the new jobs of the future, and a critical role is played by angel investors in creating and developing new companies, small or large.

I will confess, this is of particular concern to my State of Missouri, where I have been working for a long time to build an agricultural biotech corridor across the State. In Missouri, we have the research institutions, the scientific leaders, and advanced agricultural research and biotechnology. Research in the biotech industry is our best hope for a stimulus to create high-paying, skilled jobs in rural as well as urban Missouri and, I would say, across America.

The stimulus these biotech and research companies are spurring in Missouri is also happening today across the Nation. According to the Kauffman Foundation, between 1980 and 2005, companies less than 5 years old accounted for all—all—the net job growth in the United States. As a matter of fact, that same study showed that in 2008, angel investors provided roughly $19 billion to help start up more than 55,000 companies. Why would we want to limit that? The bill, if enacted, would deny immediate access to the capital and, if enacted, would say to these innovators and entrepreneurs: You are too small to succeed, too small to survive—not too big to fail.

But there is good news here, and there is a bipartisan solution in the works. I am very thankful and grateful to Senator DODD, who has agreed to work with me to fix the problem. We both want to protect these small business startups that are vital to job creation across the country. I think we are close to an agreement to fix this, and we hope to have a bipartisan amendment soon. I urge all my colleagues to take a look at it and to join us in supporting it.

Next and finally for today, one of the biggest problems in the bill—which I believe will undoubtedly hurt ordinary Americans who had no role in causing the financial crisis—is the creation of the so-called Consumer Financial Protection Bureau, CFPB. Those initials could, in the future, scare people more than all the combined deadly 10 acronyms, including the IRS, EPA, and SEC. This new massive supergovernment bureaucracy would have unprecedented authority to impose expensive mandates on any entities that extend credit. We are not talking about Goldman Sachs or big Wall Street banks. Instead, this new superbureaucracy could hit hard the community banker, farm lender, local dentist or auto dealer. The pain on Main Street will not just be borne by small business, but the costs will be passed on to consumers, the ordinary Americans the bill seeks to protect. It might even cost them their jobs.

The National Federation of Independent Business, a strong voice for small business, stated their concern clearly when they said:

> These small businesses had nothing to do with the Wall Street meltdown and should not be faced with onerous, new, and duplicative regulations because of a problem they did not cause. Further, as the most recent NFIB Small Business Economic Trends survey shows, small businesses continue to struggle with lost sales, and such regulations could make these problems worse, stifling any potential small business recovery.

That is why I have joined with Senators MCCONNELL, SHELBY, GREGG, and others on an amendment to fix the problem. Instead of creating a brandnew superbureaucracy with unlimited authority and reach, our amendment would empower the FDIC to look out for consumers. This makes sense. The FDIC is the one that has a strong record of providing consumer protections. It has a record of being able to deal with financial institutions. It deals with the financial institutions that get into problems. It is in the banks. Any institution that is regulated by the FDIC, they are in there looking over their shoulder.

Our amendment would create a division of consumer financial protection within the FDIC so they can protect consumers without adding burdensome and duplicative regulations. It would avoid costs being passed on to consumers, the very folks we are trying to protect, not saddle them with new costs. The amendment will ensure that the consumer protection division focuses on the real problems currently operating under the radar—the shadow banking I call it—or, as I like to say, the clicks, not the bricks. These are the people who have preyed on vulnerable Americans.

Before the financial crisis that was brought on by bad loans, especially too-good-to-be-true home loans pushed on families who could not afford the loans, my fax and inbox were cluttered, despite my best spam filters, with 1 percent or no down payment loan offers. These offers were not regulated effectively by State regulators, the SEC, the Federal Reserve or the OCC. They succeeded in escaping effective regulation entirely, although some have later fallen to regulation by U.S. attorneys who filed criminal fraud suits a little bit too late in the game.

Also, it is important this new division be tasked with providing financial literacy, as I will continue to stress. We have to improve consumer education in any and all areas where loans are made. While foreclosure counseling is important—another bipartisan program on which I worked with Senator DODD in December of 2007 and in which we put $180 million to reach out to financial counseling groups. They are doing a good job trying to help counsel families in danger of losing their home and ways to solve the problem. Those counselors came back to us unanimously and pleaded with us to make available preloan counseling before somebody buys a home, to make sure they understand the terms and can afford to service the loans.

These are just some of the things we need to do.

Missourians and people across America are angry. They are angry bad actors caused the financial crisis that left many of them with a pink slip instead of a paycheck. They are angry Wall Street bad actors left them with a nightmare of foreclosure instead of the American dream of home ownership. They are angry government has committed trillions of taxpayer dollars for rescuing the financial industry when so many of them are still struggling to pay bills. Is it any surprise that Missourians and Americans across the country are skeptical about financial reform?

These folks were made more skeptical when they heard and saw on TV and read in the paper that it is the actors on Wall Street, with whom the bill was supposed to deal and who caused the financial crisis, who are now cheerleading this bill. Missourians ask me how this bill can be real reform when the head of the investment bank Goldman Sachs, who is supporting the bill, said—let me make sure you understand. This is from the head of the largest investment bank on Wall Street: ''The biggest beneficiary of reform is Wall Street itself.''

That is a quote about the original bill.

Missourians have asked me not to pass a bill that will bail out Wall Street. We need to take care of Main Street. There is no bailout for struggling families. We don't want anymore Wall Street bailouts. We need to pass a bill that reforms Wall Street and protects Main Street. I believe we have an opportunity to pass real, responsible, and bipartisan reform, if Senators of both parties will listen to the concerns raised by ordinary Americans who didn't cause but are paying for the financial crisis.

I have heard similar concerns discussed by speakers on the other side of the aisle who seem to indicate we share the same concerns. I hope we can work together to get a good, strong reform bill that will deal with the problems that caused the last financial crisis, protect consumers, and ensure the safety and soundness of all financial institutions and not subject them to special interests who may have pushed for the bad loans that caused the last crisis.

I thank the Chair, yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. BOXER. Mr. President, what is the pending business, or the order?

The PRESIDING OFFICER. Amendment No. 3826, offered by Senator SHELBY, is the pending business.

Mrs. BOXER. Mr. President, I want to take some time to speak out against the Shelby amendment and urge that it be defeated. If that is appropriate at this time, I will use as much time as I may consume.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, this is a pivotal point in the debate on Wall Street reform. We never want to see what happened to this country happen again, where they essentially crashed the stock market. People had been talked into very difficult to understand and exotic subprime mortgages. We had such greed running rampant on Wall Street, and instruments were created that were even difficult for the Secretary of the Treasury to explain—derivatives that were so complex they were in about the third order.

If we were to adopt the Shelby amendment, we would weaken this bill. As a matter of fact, we will weaken current law, and not only will consumers be hurt but they will actually lose ground—when the purpose of the Dodd bill—our bill—is to elevate consumers, give them protection from these kinds of schemes that brought our economy to its knees and resulted in 700,000 jobs a month being lost then, and the wealth of the average American, who had even a 401(k), was down 20, 30, 40, and maybe 50 percent and, as a result of that, the lack of consumer confidence that followed.

We know our economy is based on consumer confidence. Seventy percent of our economy is attached to consumer spending. When people see the stock market and their wealth going down, and see neighbors losing their homes and jobs, they feel threatened and they pull back, and rightly so. It started from deregulation on steroids on Wall Street, where the regulators didn't even use the powers they had to protect consumers. An essential part of this bill is putting a cop on the beat for consumers, finally. So whether you are a consumer of credit cards, or a consumer in terms of the housing market, or a consumer in terms of the stock market or the commodities market, you are finally going to have a watchdog.

We know the regulators didn't care about consumers. We know that. We know, for example, that the Fed had the authority to intervene in the housing market, if they felt these subprime loans were wrong, and stop them. They didn't do it. We know the SEC was warned about Madoff. There were whistleblowers to that Ponzi scheme, and many more Ponzi schemes were going on. They didn't even follow the lead.

We need to have a strong, independent consumer agency that says to the regulators: You are not doing your job. We are going to make sure you do it.

That is what is in the bill before us. But the Shelby amendment takes us back. The new Consumer Financial Protection Bureau will enforce existing consumer protection laws—those same laws that went unenforced by current regulators. I gave you the example of the SEC and the Ponzi schemes, and of the Fed overlooking the mortgage crisis, and there are many others. It would also ensure clear disclosure to consumers of all the terms and conditions of the financial products they buy.

Believe me, you would have to have a degree in economics and finance and everything else to understand some of the fine print in a credit card bill. People are stunned to know they are paying 20, 30-percent interest rates on their credit cards, because there is no clear way of knowing.

In this bill, that is over. You have to know the terms and conditions of the financial products you buy. This bill will bring protections to home buyers from the kinds of exotic mortgages that led to the current crisis.

Let me give you an example. People were offered mortgages at a teaser rate—a very low rate—and were not being told in clear terms that in a couple of years that teaser rate would go up and go up and go up.

I have to say, some in the mortgage business were paid more commissions to put unsuspecting consumers into these exotic mortgages. So they pushed those mortgages. That is wrong. We need a consumer protection agency that notes it is wrong and puts a stop to it.

We have a situation that weakens the current law. If you think that is right, if you think, for example, that consumers caused the Wall Street meltdown—I think you are living on another planet—vote for this amendment. We know who caused this crisis. We know the greed on Wall Street. We know even while these companies were getting bailed out, they were paying their people huge bonuses. The word ''outrageous'' really can be defined by what these people did.

If my colleagues want more of the same—I cannot understand why they would—but if they want more of the same, if they do not want to strengthen consumer protection, then vote for the Shelby amendment.

Let's be clear. This amendment is a gutting amendment. Instead of creating an independent consumer watchdog, the Shelby amendment creates a weak sister, a weak division of the consumer protection in the FDIC. This new idea of Senator SHELBY's, this new division of consumer protection, would no longer be independent. It would be under the FDIC. It would not have any authority to adopt any rule without the approval of the same bank regulators who have routinely ignored or opposed the needs of consumers.

Let me repeat that. The weak consumer protection agency created in the Shelby amendment would have no authority to adopt any rule without the approval of the same bank regulators who have routinely ignored or opposed the needs of consumers. It even would give bank regulators a veto over consumer protection regulations. That is totally unacceptable.

If my colleagues are for Wall Street reform, they have to vote no on the Shelby amendment. This is the moment of truth. Either my colleagues are going to stand with the people of this country who are innocent victims of greed on Wall Street or they are not. If they want to stand for the greed on Wall Street, if they want to stand for no protection for consumers, a weakening of the protections they already have, which are far too weak, vote for this amendment, and let's go forward with a Dodd bill which has a strong independent consumer protection agency.

I would add that the Shelby amendment would burden the new consumer protection division that he has in his amendment with incredible procedural hurdles—hurdles that have effectively prevented the FTC, that has similar rules, from writing any new rules protecting consumers since 1984.

Mr. President, 1984 was an interesting year for me. It was a long time ago. I was a lot younger. It was before my hair turned blond. In that year, I was in the House of Representatives, and I was pushing the Federal Trade Commission to help consumers. They had too many hurdles. They have not done anything in all those years. Yet this is the template that Senator SHELBY is using for this watered-down consumer protection division.

I see Senator MERKLEY on the floor, and I am going to yield in a minute. He is such a leader on all these issues and such a great populist leader in this Senate.

Maybe my colleagues who support this amendment think the regulators who allowed all of these abuses to happen under their watch, despite repeated warnings, did a fine job and are the best protectors of consumers.

But even if those regulators have somehow had a change of heart and are determined to change their ways, this amendment would leave them with even fewer powers to protect consumers than exist under the current system..

The Shelby amendment would burden the new Consumer Protection Division with the same incredible procedural hurdles that face the Federal Trade Commission—hurdles that have effectively prevented the FTC from writing any rules in the consumer finance area since 1984.

In addition, the amendment would actually prohibit the proposed consumer division from doing any rulewriting under the FTC Act for payday lenders, debt collectors, foreclosure scam operators, mortgage brokers and other nonbank consumer finance companies.

If the new division did somehow manage to get new rules written, the amendment would make sure that they could not be enforced.

Under this amendment, the new weakened consumer division could do examinations of some finance companies only after consumers have been harmed repeatedly.

This after-the-fact authority closes the barn door after the horse is out, and handcuffs regulators from protecting consumers until the harm is already done.

Some of my colleagues want us to believe that the Consumer Financial Protection Bureau that we have proposed in our Wall Street reform bill would harm small businesses.

Nothing could be further from the truth.

Merchants, retailers, and sellers of nonfinancial goods are specifically excluded from the oversight of our proposed new Consumer Financial Protection Bureau.

This includes retailers who provide ordinary credit to their customers to buy their goods.

Even for small businesses that do sell financial products—including community banks and all kinds of small lenders—the Consumer Financial Protection Bureau will have no direct enforcement authority. Enforcement of rules will be handled by the current regulator or State attorneys general.

I will give one more example I think is very important. I told you the template for Senator SHELBY's new consumer protection agency is the FTC. I told you under those rules, the FTC has not done anything since 1984. Let's say they were able to get new rules written. Let's say they were able to do that. Senator SHELBY ensures that the rules they write could never be enforced.

How does he do that? Because he says the only time the weakened consumer division could do any examinations of some financial companies would be after consumers have been harmed repeatedly. This is after-the-fact authority. I have seen too many people crying because of what happened on Wall Street. I have seen too many people crying because they lost their jobs because of what happened on Wall Street. I have seen pictures in the paper of Americans crying because of what Bernie Madoff did to them and their children.

I want this stopped. I do not want it stopped after the fact. Yes, thank goodness Bernie Madoff is in prison where he belongs. But it is very difficult to make the people whole who were harmed by that Ponzi scheme.

We do not want after-the-fact authority; we want before-the-fact authority. We want this consumer protection agency to be on its toes, to intervene, to see if there is a scam going on; to see if there is a credit card scam that leads to 30, 40, 50 percent interest rates; to see if there is a scam on mortgages where people unknowingly walk into a mortgage where the rate goes up to 12 percent.

At the end of the day, we know consumers were hurt hard by Ponzi schemes, by markets in the dark, confusing mortgage options, some bordering on fraud by credit card scams and worse.

Let's take a stand in a bipartisan way and vote no on this amendment and support the consumer protection agency, the strong one that is in this bill. I can tell my colleagues, if we do that, the American people can take a deep breath and know that they will be protected.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. MERKLEY. Mr. President, I applaud my colleague from California who has been an extraordinary champion of consumers throughout her career. She understands that the basis of a successful nation is successful families. That depends on them having a strong financial foundation. We should not measure the success of our country by the million-dollar bonuses or the billion-dollar quarterly profits on Wall Street. We should measure it by the success of our families.

This bill is absolutely essential to restoring those financial foundations; whereas this amendment before us does the opposite. The Shelby amendment No. 3826 carves the heart out of this bill. This dog don't hunt. In fact, this dog doesn't bite. I don't even think this dog barks. For that matter, I am not so sure it is a dog. That is how bad the Shelby amendment is.

The background is this: Predatory mortgages and securitization of those mortgages on Wall Street built a house-of-cards economy that came falling down last year. The predatory mortgages were done at the retail level, but the securitization and selling of those packages occurred on Wall Street. They built investments that were taken in by every major financial house practically in the world, and those investments, those securities had a 2-year fuse on them, essentially a 2-year teaser rate on every underlying mortgage.

At the end of the 2 years, interest rates doubled, families could not make the payments, securities went bad, and we had financial firms one after another collapse. We had Lehman collapsing. We had Bear Stearns collapsing. We had Merrill Lynch collapsing. We had major problems at Bank of America needing a bailout, a $4 billion TARP bailout. We had Citibank collapsing. We had Washington Mutual collapsing—all built on predatory mortgage practices, every single piece. That is why consumer protection is so important. That is why it is at the very heart of this bill. And that is why we need a Federal consumer protection agency.

I have friends back in Oregon who write to me, citizens back in Oregon, constituents who will say: Here is what went on, and how can that be fair? Let me just give an example.

A woman from Salem wrote to me and said: I always pay my credit card on time, always have for years and years. But I got my credit card statement, and it had a late fee. So I called up the credit card company, and I said: How is it possible? I always mail my payment on this day. It should have had plenty of time to get there.

The credit card company said: Yes, as a matter of fact, your payment did come on time. But you know, Madam, we are not required to post your payment on the day we receive it. In fact, in the contract we have, we can sit on your payment for 10 days and then post it, and then your payment is late and we get to charge you this fee. We are just following the rules.

She said: How can that be fair?

It is not fair. Everyone knows it is not fair. Let me give another example.

Citizens wrote saying: Hey, I had a whole series of transactions with my bank, and then the bank changed the order of those transactions to put the biggest transaction first. It so happened that biggest transaction made me $10 over the funds I had in the bank. I had an overdraft. By putting that big transaction first, it meant instead of one overdraft fee, I have 10 overdraft fees. Instead of only $35 for one overdraft, I owe $350 for an overdraft series. How can it be fair that the order of the transactions was changed in order to multiply the fees I owe tenfold?

Everyone knows that is not fair. Everyone knows it. We simply need to have an agency that is able to say that is not OK. We do not want to have a process where something that is unfair goes on for 10 years or 15 years or 20 years before there is legislation to address it.

You cannot address a consumer product's choking hazard by doing it in legislation. You have to empower an agency to say: No, that part is too small. You cannot address lead paint by doing legislation every time something is painted. No, you have to have an agency that says they will test that paint and say lead paint is not OK.

It is the same with consumer financial products. We need the same power to fix traps and tricks in real time for fairness to America's families so they can rebuild their financial foundations because that is what a strong country is, families with strong financial foundations, not million-dollar bonuses, not billion-dollar quarterly profits based on stripping funds from working Americans. It all comes down to the heart of it: fairness in consumer financial documents.

Let's take a look at amendment No. 3826 and why it carves the heart out of this important bill for America's families, America's Main Street families and businesses.

Here is what it does: First, it says virtually no one is covered. Let's look at the list. What is covered under the language of the amendment are large nonbank mortgage originators. Large nonbank mortgage originators do not exist anymore. So it covers firms that do not exist anymore. It is kind of like saying we are going to have the regulation of safety on cars, but it is only for cars that are powered by gasoline and were built before 1850. No such cars exist. All the other cars, the ones actually on the road, we are not going to cover them.

We have a list. We have commercial banks, not covered; investment banks, not covered; credit card companies, not covered; car lenders, not covered; payday lenders, not covered; nonbanks that sell financial products of a whole sort, not covered.

I think you get the picture that this amendment is meant to make sure nothing is covered. Then, just in case there is some little piece that does get covered, it says: You know what. This agency is not independent. It cannot write rules. It has to have everything it does approved by the financial world—the financial world that brought us all these problems, that brought us to tricks and traps, that stripped wealth from working Americans. They are going to decide what is covered.

I echo my constituent from Salem and say: Where is the fairness in that?

Mr. DURBIN. Will the Senator yield for a question?

Mr. MERKLEY. Certainly.

Mr. DURBIN. Let me ask the Senator: As I understand the amendment of the Republican Senator, it goes back to the old days when there was virtually no consumer financial protection. The bill we have before us here—that Senator DODD and the Banking Committee brought forward—has the strongest consumer financial protection law in the history of the United States. It has an agency with independent authority to protect Americans, but more importantly to empower Americans to make the right decisions when they are taking out a mortgage, a loan for a car, a home loan or a student loan. What the Republicans are suggesting in the Shelby amendment is to go back to the old days when there was no protection, there was no authority.

The argument is made about the fact that when it comes to mortgages, they weren't the problem, the problems were with Wall Street. But at the heart of the issue on Wall Street was the mortgage being signed by the family in Springfield, IL, and Portland, OR. So I ask the Senator: In your State, in your experience, as you look at this, if the Republicans have their way and move us back to the old days when it comes to this consumer empowerment, consumer protection, don't we run the risk of falling into another economic crisis, losing millions more jobs across America? Isn't that the risk we run if we go the route suggested by the Republican amendment?

Mr. MERKLEY. My colleague is absolutely right. Because predatory mortgage practices were at the heart of this crisis that led to securities that blew up the economy and led to the loss of millions of jobs around our Nation, with an unemployment rate in my State that has been over 12 percent. We not only have the risk of going back there, we are perhaps more at risk because we have fewer larger banks. Many investment houses that were independent are now inside those banks, in a position where, if they blow up, they will blow up the banks as well.

So unless we have this strong consumer financial protection agency, it is like taking this bill before us and sticking it in the shredder, and with it shredding the hopes and aspirations of America's working families to build strong finances in the future.

Mr. DURBIN. If the Senator will yield for another question.

Mr. MERKLEY. Yes.

Mr. DURBIN. Is it not true that last week, on three different occasions, the Republicans filibustered this bill to stop us from even starting the debate on this bill, and it was only when we reached the point after the Goldman Sachs hearing—when there was this embarrassing testimony from executives, telling America what they were up to, and it all became very public—that the Republicans finally backed off their filibuster, backed off their delay of this legislation and let us come forward to debate; and that now, one of the first amendments they offer is to weaken this bill so the financial institutions and the banks are going to have more power over the economy, more power over consumers than this bill provides?

Isn't that the real history of how we got to this moment in this debate?

Mr. MERKLEY. My friend and colleague is absolutely correct; that, indeed, my colleagues across the aisle, the Republicans, voted three times to say they did not want to proceed to the bill, where their ideas would bear public scrutiny. Instead, they wanted to talk behind closed doors. You know what they were looking to do was not to strengthen this bill.

Now that the amendment has come out and been placed before us publicly, we do see that it does what we feared. It is designed to take a knife and carve the heart out of this financial reform.

Mr. DURBIN. I would ask the Senator from Oregon if he would yield for one last question.

Now that we have been through this experience where we have lost $17 trillion in American value in this economy—$17 trillion accounted for in the savings accounts of ordinary Americans in Illinois and Oregon, $17 trillion in businesses that failed and jobs that were lost—isn't it critically important that this bill from the Senate Banking Committee move forward, and that each amendment take this strong bill and make it stronger, instead of the Republican amendments, which clearly are designed to weaken this amendment and to open us up to the vulnerability of facing more job loss and more economic crisis?

Mr. MERKLEY. Well, my colleague is absolutely correct. The failure of financial rules has become so obvious and had such devastating impact for our families—as my colleague put it, $17 trillion worth of damage. That means families lost their retirements, families lost their savings for their children to go to college, and it means families have houses under water, if they are lucky. For many families, it means the loss of a job, the loss of income, and the inability to make those mortgage payments, which means they are in foreclosure and have lost their dream at every single level. That is the damage $17 trillion did to our families, and that is why every amendment to the bill we have before us should seek to say: Here is the bill and here is how we should make it stronger.

With that, Mr. President, I yield the floor.

Mr. DODD. If my colleague would yield quickly, I appreciate everyone wanting to make my bill stronger. We have a pretty good bill here, but every bill could use a little improvement, I admit.

I want to compliment the Senator from Oregon, a member of the Banking Committee. He has been a very valued member of the committee. I mentioned earlier—I say to the majority whip—in the committee meetings we have had, it is by seniority, and so I have this cluster of new members down at the end of that committee table. The Senator from Illinois and I have been in that position at those tables over the years. But Senator TESTER, Senator MERKLEY, and Senator BENNET kind of occupy those last three seats on the Banking Committee.

I say that with great respect to all the rest around the committee. Those three new members on the committee have added tremendous value to our debates, and in particular, the Senator from Oregon has been wonderful in his concern about mortgages, prepayment penalties, what has happened to the 7 million foreclosures in our country, the 8½ million jobs that got lost in our Nation, why we need to address this issue, and why it is so critically important.

I want to make one more point about this Shelby amendment that may be lost on our colleagues, and that is in our bill there is no assessment on a nonbank or a bank, but there are assessments in this amendment. We just went through the Tester-Hutchison amendment to actually lower the assessments on community banks. What a great irony that the next amendment—there will be those having supported the earlier amendment to reduce cost—sets assessments. In fact, it asks community banks to have assessments on the nonbanks out there in order to pay for their consumer bureau within the FDIC.

So for those who are concerned about the burdens on community banks—and I think it is a legitimate concern, one I think the Hutchison-Tester amendment did a great deal to alleviate—we are going to turn right around on these institutions that are struggling to stay alive to serve their communities and add a financial burden to them. So for all those reasons the Senator from Oregon mentioned, plus that one, the Shelby amendment deserves to be defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I want to point out that you have just seen an example of why there isn't bipartisanship in this Chamber. You cannot denigrate the other party and denigrate every single thing they put up as an amendment and suggest there is going to be bipartisanship. The amendment that is before you is an attempt to correct some of the things that are in the bill.

The filibuster was mentioned. Well, the filibuster bought enough time that Senator DODD and Senator SHELBY were able to work out the agreement for the amendment that has passed—a major amendment, a major change, a wanted change, an expected change, and a change that makes the bill far better. If every amendment the Republicans bring up is going to get the kind of treatment this amendment is getting and not looking for that piece in there that might make a difference, we are not going to have much success on this bill.

I heard the other side mention Goldman Sachs. Goldman Sachs said they like this bill; one of the offenders, and they like it. That encourages me that it is a good bill.

I appreciate the Senator from Oregon giving the examples of some things that are terrible in our economy—some of the credit card examples he gave. It absolutely shouldn't happen in America. I don't think this bill fixes it, and I will explain that in a few minutes.

If our amendment is too open-ended, the Democratic amendment raises the possibility of controlling every single thing for middle America—every single thing—and I will explain how that works. I don't think it was what was intended, and that is why we go through an amendment process, to clear up problems such as that.

But I am going to talk today about consumer financial protection. I want to be clear when I speak about this protection that I am talking about protecting consumers from bad actors. I am talking about educating consumers. When I talk about consumer protection, I am not separating consumer protection from the health of the economy. I rise today to talk about what is flawed in title X—called the Consumer Protection Title—of the financial reform bill, and to raise awareness about an alternative to the current language in title X.

I believe an alternative to this section is desperately needed because the Federal Government should not be involved in our daily lives and everyday decisions. Under the proposed consumer protection title, we would be opening the floodgates of government involvement. The Federal Government could be telling us how we can spend our money, how we save for the future by making decisions for us, and could truly limit financial markets to the point of economic decline. The Federal Government should not operate with the belief that it is protecting us from ourselves. However, that is where title X language begins to work.

From supporters of this bill, we have heard that in order for consumer protection to be truly effective it needs its own independent agency—or bureau now—and that this Consumer Financial Protection Bureau should be free from outside influence. Independence from outside influence is a fine goal, but our government was built on using a system of checks and balances and this bureau would be totally unchecked. It would have unprecedented power and authority to write its own rules—no review. It would have an uncontested budget—no appropriation. And decisions made by the bureau would be made without regard to the impact those rules would have on the health of our economy. Where is the transparency in this power? Where is the accountability of this proposal? I haven't even touched on what the title could do to consumers' personal information or financial decisions.

To achieve independence, this bureau would consolidate all financial protections and efforts from the various Federal Government agencies, all in the name of better protecting consumers. Don't get me wrong, there are issues needing to be addressed for consumer protection. But right now, each Federal agency acts as a check on its neighbor when it comes to consumer protection. My fear is that once this bureau has consolidated power, it will not stop at protecting consumers from fraud or deceptive practices. This agency would only be getting started.

I am deeply troubled about the creation of this bureau because it would place the bureau within the jurisdiction of the Federal Reserve. Too many of my constituents already believe the Federal Reserve gaining additional power is an alarming thought. However, what is most alarming to me is the fact the Federal Reserve would have little authority over this proposed bureau. Mostly, they provide the money.

Right now, as this bill is written, the Federal Reserve would be required—required—to give the bureau a designated 12 percent of their operating budget. The catch here is that Congress would have no budgetary authority and would not approve this money. And it is adjusted for inflation. If you are going to get a percentage of a budget, how do you adjust a percent for inflation? But aside from that, it is adjusted for inflation. It works up to be 12 percent of the operating budget of the Federal Reserve.

In addition, they can even invest any of the money they do not spend. You will find that on page 1,073. I know it is a huge book, so I didn't want you to have to look through the whole thing. On page 1,074, it even says these aren't government funds. You know why. That way it doesn't cost under the scoring. Even though it will drive up the deficit and the debt, it doesn't count that way. It looks like a free program, but that is not true. So they get to keep the money and invest what they do not spend—I don't know of another entity that gets that right—and it is not considered to be government funds. That provides a little latitude.

The bureau not only has an uncontested budget, but the bureau would be the single most powerful agency in the Federal Government. Not only could the bureau write their own rules for our States' businesses and local banks to follow, it would oversee consumer decisions, and the bureau would be the enforcer of their own rules. No other agency has that kind of unchecked power. Where is the accountability in this? Unchecked power doesn't lend itself to accountability either.

What is important is for the public, for the average American, to know this bill could protect people. But it could also go potentially 10 steps further and take some of their decisionmaking power and transfer it to the Federal Government. We don't do that in America.

For example, as the bill stands, it is so overreaching and ambiguous in areas that it could impact everyday purchases for most Americans. How would they do that? Under the rules they write that nobody takes a look at. There is nothing to hold this bureau in check.

Here is how the bureau would regulate consumer financial products or services, as well as service providers, sweeping thousands of already regulated small businesses into the bureau's purview. Then you add in section 1027 of the bill, and it could penalize anyone who buys or sells something on an installment plan or it could affect any local small business that offers some kind of monthly payment on credit. That is why we are being flooded right now with people who want to be exempted from this bill. They are worried about not being able to provide their service anymore.

Have you ever bought a car and paid for it over a few years with a financing plan from the dealer? Many of us probably have. This bill's language is so ambiguous and unclear that it looks like people who want to pay for a service on an installment plan or those who offer those plans will be penalized and regulated by the new consumer protection agency—I should say consumer protection superagency. Nobody has ever had this kind of power.

Small business owners, regular people off the streets and from our States have been streaming into the congressional offices, looking for these exemptions that I just talked about because of this title in this bill. As drafted, this title is so ambiguous, so far-reaching, that consumers and good actors are being swept up with the bad.

Anyone who ever paid for dental care in installments could, in the near future, be facing the prospect of paying for dental work upfront, as dentists realize they cannot afford to keep up with the new regulations, additional regulators or the cost of compliance with the bureau's demands.

For auto dealers, where financing is hardest to come by in rural towns in small America, this would, in fact, be a direct hit on their business. Right now the financial burdens of the bureau would also be borne by auto dealers that direct clients to available financing but don't originate or authorize car loans themselves. That is pretty far-reaching.

Additionally, though, if a consumer purchases something on an installment plan, whether the loan is for a bike, a minivan, braces, an engagement ring, livestock or a home, if there are more than four installments, the government, through the bureau, would have a say in approving that loan.

The bureau, also in the name of protecting us from ourselves, would require banks to keep and maintain records of all bank account activity and financial activity of their clients for at least 3 years, while also requiring this information be sent regularly to the bureau for safekeeping. I have serious concerns about our Government collecting information on the daily activities of our citizens and equal concerns about the Government approving or disapproving the financial choices of its citizens.

I have just outlined why the Consumer Financial Protection Bureau is bad for consumers, why it is bad for small businesses and our communities, and why it is bad for individual consumer choices and freedoms. I point out all these things to you because there is an alternative to this bureau that is being proposed by my colleagues from Kentucky, Alabama, and Tennessee. This alternative proposal addresses each of the concerns I have just raised about accountability, oversight, consumer protections, consumer education, and consumer rights. This new proposal keeps our current regulatory infrastructure intact and improves on it. This alternative would not scramble all our current regulators in the name of a change, but, instead, has carefully and thoughtfully made our current system better, creating more effective checks and balances. The consumer protection alternative title would create a consumer protection division to be housed within the FDIC.

The FDIC already oversees consumer deposit protection, so it is a logical step to place consumer protection interests here. While the new consumer protection division is shielded from outside influence and has autonomy, the division is, at the same time, prevented from wielding absolute power like the bureau. When rule changes or actions are proposed, the FDIC Board would be better able to use their regulatory experience to protect consumers, while at the same time ensuring safety and soundness are not disregarded.

This division would still have a Presidentially appointed and Senate confirmed Director who serves a 4-year term in office. Instead of needlessly looping all kinds of small businesses into the fold for additional regulation, the division's mission would be of a proactive consumer education, ensuring consumers are able to receive timely and understandable information on consumer financial products. The division would partner with other agencies, such as the Federal Trade Commission, to develop guidelines for market oversight. Through these types of partnerships, the division would pursue fraudsters and the bad actors in our market. They would be developing best practices for overseeing nondepository mortgage originators and addressing the risk-based supervision of our nondepository institutions.

Very importantly, this new alternative leaves current prudent regulators in place for banks, savings associations, and credit unions. While the division would watch over the large institutions that have already violated consumer protection statutes, this alternative would provide an infrastructure with regulatory experience that would also meet the demands of growing consumer financial protection concerns. This proposal creates a balance between past regulating experience and the call by consumers to have more protection, without losing the rights to make personal financial decisions.

I am a cosponsor of the title X alternative because I believe in its ability to address consumer protection without regulating consumers out of their rights as citizens. I am a cosponsor because I believe this alternative regulates the bad actors without tossing small business into the mix and regulating them out of business.

It doesn't form a new agency that has to go through a whole rulemaking process over a period of time before we even know what they are doing.

Putting this bureau under the Federal Reserve, with all the concerns and pressures focused on the Fed right now, is a very bad idea. Moving consumer protection to an unregulated, non-transparent, not accountable new agency that can write its own rules without review and operate using unchecked money is beyond my comprehension, and I think it is beyond the comprehension of the American people when they find out about it. I am not sure they are aware of it or I think there would be a huge hue and cry across this country. People are more concerned over their freedoms right now than they ever have been, and this will take away freedoms. You have to have the freedom to make your choices and even to make bad choices. But in America that is the way it works and Big Brother is not allowed to hang over your shoulder and decide for you whether you are making a good decision.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. LEMIEUX. Mr. President, I could not have said better what my friend and colleague from Wyoming just talked about in terms of this consumer protection bill. Every Member of this body is in favor of consumer protection. The goal is to get it right, not to do too much and not to do too little.

I think it is important for us to remember what we are trying to address. We are trying to address the financial market meltdown that happened in 2008 and the ramifications that have been so devastating to this economy. They were very devastating in my home State of Florida. But what we should do is address the problem. What we should do is try to make sure the problem does not happen again and not use this crisis as an opportunity to create a huge, new, all-powerful bureau of government that is going to regulate orthodontists and folks who had nothing to do with this financial crisis.

Let's think back about what happened. To me there are three or four parts of this story where you can find culpability, places where we should be regulating, some of which is not done in this bill. One is we know mortgages were given to people who should not have had mortgages—people who had no income and no jobs. They called them ninja loans—no income, no jobs. There were a lot of them in my State of Florida. Why were they written? Many of them were written because they were written by mortgage brokers and banks that did not have to retain any of those mortgages on their books. There were no underwriting standards. They could just ship them off. They had no skin in the game and no responsibility.

Then, on Wall Street, this huge market was created to suck in all these mortgages, to create these new investment vehicles that put all these mortgages together—mortgages that did not have the underwriting standards so you could make sure they were sound. In the need to create more and more investment instruments, they created what are called synthetic investment entities. Those are not even ones that held these actual mortgages. They were just merely a shadow that tracked them. So we compounded the problem into hundreds of trillions of dollars, betting on mortgages that should never, in many ways, have been written in the first place.

Then, what was the third part of the problem? These mortgages got bundled into these mortgage-backed securities, sold on Wall Street, and the world looked to the rating agencies to stamp their approval on them. The Morningstars and the Moody's and the Fitches and the S&P's stamped their rating and said they are AAA, without understanding them, without evaluating them. That is another one of the culprits that caused this financial crash that we had that has devastated our economy. But for those rating agencies putting the AAA grade on these mortgage-backed security investments, I don't believe we would have had the crash that occurred. People would not have placed their confidence in them.

Why did that happen? Why did these rating agencies stamp them? Why did so many people rely upon them? What we come to find out is these rating agencies are written into law. They are written into the Federal law as the way to determine the creditworthiness of investments. The FDIC abdicates its authority and allows rating agencies to be the ones that say something is a good investment or not. That is in the law.

How do these rating agencies get paid? They get paid by the very banks that put products in front of them for them to rate. So here is a real easy way to understand this. We all buy Consumer Reports Magazine. Consumer Reports Magazine evaluates everything from toasters to Toyotas, but they don't take any money from the people they rate. They don't have advertisers. But for these rating agencies, they are paid by the people they rate, by the products these banks bring in front of them. Our law says they are the ones that are going to determine whether something is creditworthy.

I wish to make sure we have, as Senator SHELBY has put forward, a good consumer protection law in this country. But I also wish to make sure we are addressing the problems that caused this failure in the first place, and one of the ways to do that is to make sure we have underwriting on these mortgages so people have some skin in the game: You are putting a downpayment on your house, you are showing you are creditworthy. That is the way it always was. It is only recently that went away. We need to go back to that.

That is why I join my colleagues, Senator CORKER, Senator ISAKSON, Senator GREGG, on their amendment to put the underwriting back in the mortgage business.

But another thing we need to do, we need to take the credit rating agencies and write them out of the law. They should no longer get their preferential treatment. No longer should the FDIC abdicate its responsibility to determine creditworthiness. The market should take care of this. If people know they can't just rely upon three or four or five rating agencies and they are going to have to do their evaluation themselves, we may prevent this problem from happening in the future and the next way this problem may manifest itself.

I have filed an amendment, amendment No. 3774, which will do this. It will take these credit rating agencies out of law. In that way, I believe we can stop one of the reasons why we had this financial collapse. It is not just me who believes in this. On the other side of this building, in the House of Representatives, this same language was put forward in the package that was passed.

So this should not be a Republican issue, it should not be a Democratic issue because the Democrats in the House supported something very similar to what I am proposing. This just makes common sense. Let's go after one of the problems that caused this financial mess.

I would like to point to the August 21 edition of the Wall Street Journal. In their editorial they say:

> When the government ordains Moody's and Standard and Poor's as official arbiters of risk, the damage can be catastrophic because so many people rely on them.

Well, let's no longer abdicate the government's responsibility. Let's no longer enshrine these rating agencies in Federal law. Let's get rid of one of the reasons we had this financial meltdown to start with. Let's not create a whole now huge consumer agency that does way too much, gets involved in too many things that had nothing to do with this financial meltdown. Let's go after the problem, solve that problem.

I believe we can do so by passing the amendment I have introduced today.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I compliment my colleague from Florida. He has addressed an issue which is an important part of this debate; that is, making sure loans that get made in this country, both on the borrower side and the lender side, are responsible loans.

I think the amendment he will offer is one on which we ought to have a debate and on which we ought to have a vote. I hope this body will act in a way that leads to more responsible practices, a higher level of responsibility, both with borrowers and lenders in this country, which was at the heart of why we ended up where we did.

It is interesting to me that we continue to watch the problems we are experiencing in our economy. Probably by far the most important one is the high level of unemployment. That has become sort of a chronic problem. Even though the economy appears to be recovering and growing again, we still continue to see these very high rates of unemployment, certainly worse in some parts of the country than in others, but, nonetheless, something that we cannot tolerate.

We ought to be attacking every single day. Everything we do ought to be focused on what we can do to eliminate this high level of unemployment, to provide incentives to small businesses to create jobs, to grow their businesses and expand, get the economy going again, and, obviously, in my view at least, the small businesses in this country are the economic engine of our economy. They are our job creators.

We ought to be focused on making it easier for them to create jobs rather than harder. That is why I think it is ironic that almost everything the Congress has been doing of late makes it even more difficult for small businesses to do that.

We passed a big, massive expansion of the health care entitlement in the Congress a while back. That is going to impose lots of new taxes, lots of new mandates on small businesses. It is going to raise their insurance premiums, which we are seeing now more and more. The CMS Actuary, with their recent report, suggests what we suggested all along; that is, this is going to drive up the cost of insurance and health care in this country. It is not going to drive it down, it is going to drive it up.

So I think what we are going to see with small businesses across this country is not only a higher tax burden associated with paying for that, and also many of the new mandates that are associated with it, but you are also going to see them having to deal now with higher insurance costs that will be associated and come with this massive health care expansion that was passed, not to mention the fact that, in my view, this is going to end up in a tremendous amount of growth in the debt in the outyears when we realize this is going to cost way more than it was anticipated, and that many of the offsets or pay-fors are probably not going to come to fruition.

But that being said, it seems to me at least that having all of this uncertainty coming out of Washington, whether it is the implementation of the new health care bill, whether it is questions about a climate change bill that could impose a crushing new energy tax on our economy, questions about what is going to happen with tax rates with regard to dividends and capital gains and marginal income tax rates next year, what is going to happen with the death tax—all of this uncertainty is just hanging a cloud over this economy and making it very difficult for our small businesses to do what they do best; that is, to exercise that entrepreneurial spirit, to grow the economy, to create jobs.

It is very difficult to do that when you pile more and more burdens and more and more costs on top of the very small businesses that we are hoping will lead us out of this recession. That is why I think in all of our efforts we ought to have a very close eye on what impact they are going to have on the small business sector of our economy.

This is no exception. The debate on financial services reform is about some very critical issues, issues that need to be addressed, issues that we should be focused on: how to deal with the issue of systemic risk and make sure that systemically risky enterprises in this country, that that risk is constrained, that there is appropriate oversight, there is appropriate transparency.

I think there is an important issue to be debated in terms of derivatives, which is a $600 trillion economy in this country that has been operating in the shadows. The legislation that is before us, I think if it is amended the right way—and I hope it will be on the Senate floor—will bring all of that into the light. There will be transparency, something that I think is desperately needed in that area.

I hope this will be done in a way that does not impose new burdens on end users, those who are trying to legitimately hedge against higher commodity prices, currency rates, and interests rates and those sorts of things. But there is work to be done in this legislation to deal with the issue of systemic risk, to ensure that we take all of the steps we possibly can to avoid and prevent the type of economic collapse and meltdown we witnessed a couple of years ago.

I think it is ironic this legislation does not encompass something that was at the very heart of that economic meltdown; that is, the issue of Freddie Mac and Fannie Mae. It is ironic to me, at least, the focus of this legislation is to deal with the issues that lead to the economic malaise that we found ourselves in and the collapse that we experienced a couple of years ago that would attempt to accomplish the objective of preventing that in the future, absent dealing with Freddie Mac and Fannie Mae, which was a huge contributing factor to what we witnessed a couple of years ago.

So it does not include that. It does get at derivatives; it does address, in some fashion, the issue of too big to fail. Then it also addresses this issue that we are debating right now, which is the issue of consumer protection. I would argue this is an important part of the debate when it comes to the regulation of our financial markets, perhaps even the most important part; that is, protecting consumers.

Having said that, I think what the recent financial crisis highlighted was the fact that there were a number of bad actors out there in the marketplace who were out for a quick profit, without concern for the consumer, and this consumer protection effort as part of this legislation is designed to correct that, or at least address and get at that problem.

I strongly support some of the consumer protection ideas that have been put forward. There is a Republican alternative amendment that has been offered to the base bill. But as is typically the case in the Congress, instead of just dealing with the issue that needs to be fixed, trying to fix the issue that needs to be fixed, it seems like the pattern is that we try to go beyond that and fix issues that do not need to be fixed; in fact, in this particular case, with a whole new bureaucracy, creating the whole new Consumer Financial Protection Bureau manned with lots of new Federal Government employees with lots of new powers, in my view, extending a reach way beyond what should ever have been contemplated to deal with the important issue of protecting consumers in this country.

Why do I say that? I had in my office last week a bunch of community bankers. I have met with credit unions. I have met with auto dealers. I have met with a lot of small businesses. I would argue these are not the types of entities that led to all of the problems we experienced. Those are not systemically risky entities or companies. These are hard-working, in most cases, small businesses.

When I sat down with my community bankers—I am not talking about big Wall Street banks; I am talking about Main Street banks, local banks, banks that are about their customers because they care about their customers; they are their neighbors; they are the folks they hang out with; their friends and their kids go to school together; these are people who are far removed from Wall Street—they told me about how this bill does not level the playing field and how they are going to be subject to a whole now layer of regulation they cannot afford. They told me stories about how they would make sure their customers are always satisfied and how they cannot afford to make bad loans. In these smaller banks in smaller communities where there is a tremendous amount of accountability, obviously these are not the types of banks at which this legislation should be targeted or directed.

These are banks that provide capital to our farmers, our small business owners. In my State of South Dakota, these are the people who—most of my constituents would rather bank with these big, large chain banks that we talk about when it comes to the issue of systemic risk. The Democrats' bill, in its current form, places new burdens on these banks, costly regulation on banks that are already heavily regulated, that have already proved to be sound financial entities.

I also recently sat down with some car dealers from my State, again small Main Street businesses in South Dakota, who have personal relationships with their customers. They told me how they may have to cut some of the services that they provide to their customers because of the broad authority that is granted to this brandnew agency, this Consumer Financial Protection Bureau.

These business take great pride—when I say ''these,'' the auto dealers—in the service they provide to their friends and neighbors who come into their businesses to buy a car. To have bureaucrats in Washington, DC, looking over their shoulder does not seem like the right approach to me.

I have heard the arguments that these small banks are somehow not going to be affected because of the $10 billion exemption, but I think it is important that we point out here, and that we clear up some of the facts on this issue. That $10 billion exemption is from enforcement and examination authority by the new Consumer Financial Protection Bureau. The new bureaucracy still has the ability to oversee every product and loan and transaction these small banks enter into with their customers.

I have also heard the argument that section 1027 excludes many of the small businesses that are calling me and e-mailing me and coming to my office because they are concerned. However, it seems to me, once a small business decides to give their customers an option to pay for their goods or services over time, this new Consumer Financial Protection Bureau can come knocking on their door. What Washington bureaucrats are going to tell them is what is in the best interest of their customers in South Dakota. So you can imagine the implications of this type of authority. Currently, the legislation provides very few checks on this new bureau's broad new authorities.

I want reforms to our current regulatory oversight structure. We need better protections for our consumers. But the bill that is before us creates a new bureaucracy that has a funding stream outside of congressional oversight with very few checks and balances, and that is not reform.

What I would like to see is this bureau removed from the bill. There are other ways to provide better protection for consumers without burdening small businesses, which, as I said earlier, are the engine of our economy.

Just to illustrate or to put a fine point on that, I have a letter from the National Federation of Independent Business, which represents businesses all across this country, has a very large membership, including many businesses in my State. They write to express their concerns with certain parts of the bill that are too far reaching and would impose major new costs on small business.

They go on to say:

The establishment of the Consumer Financial Protection Bureau will cover many small businesses strictly because they set up flexible payment arrangements with their customers.

According to a study they did a few years back on getting paid, approximately 50 percent of small businesses offer special terms or credit-type arrangements to allow customers to pay for goods or services. Then they go on to describe the nature of some of those arrangements. But I think it is fair to say a lot of small businesses—and car dealers are probably the most notable example. But as was said earlier, that could extend to furniture stores, jewelers; that could extend to orthodontists and dentists. People who allow their customers to spread out the payments over time to pay on terms and have these flexible types of payment arrangements would be covered by this.

That makes no sense. At a time when we are trying to have our small businesses help lead us out of this recession, start creating jobs instead of dealing with the systemically risky entities that got us into this mess in the first place, we are talking about piling a whole new burden and lots of new costs on top of our small businesses at a time when they can least afford it.

So I would hope the amendment that is being offered, the alternative to the Consumer Protection Financial Bureau in this bill, will be adopted; that my colleagues in the Senate will take steps to improve the way this bill treats consumer protection and in the way it treats small businesses under this bill.

I, frankly, as I said earlier, would like to see this title removed entirely and us deal with this in a way that makes more sense; that does not create a whole new bureaucracy, with all kinds of new government employees with all kinds of new powers. There are certainly ways in which we can address the issue of consumer protection absent having to go to these great lengths and this great cost, expense to the taxpayer, and great new burdens imposed upon small businesses in this country.

So I am one who will be supporting not only the amendment that is before us but other amendments that address this title in the bill. I have one I am working on that would exempt many of the small businesses that would be covered by this bill, some of which I mentioned in my remarks earlier. But I think this is an issue that is incredibly consequential in this legislation and so far removed—so far removed—from the purpose of this bill in the first place.

As I said earlier, we ought to fix the things that need to be fixed. But we should not try to fix things that do not need to be fixed, particularly when it calls for creating a whole new government bureaucracy in Washington, DC, with new government employees, at great additional cost and, of course, as I said earlier, at great additional expense to America's small businesses, which are the economic engine and job creators in our economy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, I wanted to come to the floor to talk about the Shelby amendment. I think we need to be 100 percent clear about one thing; that is, we need to pass a consumer protection bill—not a Wall Street protection bill—with a strong independent agency that can aggressively defend families in all sectors of the financial industry. That is consumer protection.

A weak agency that cannot defend families against commercial banks, investment banks, credit card companies, car dealers, payday lenders, and entities such as AIG, that is Wall Street protection. That is, in essence, what this amendment does. The fact is, the Republicans' proposal on this issue seems to symbolize America's worst fears about how the powerful operate—the powerful protecting the powerful. The problem isn't that families have too much protection on Wall Street; the problem is they have not been protected enough.

The Shelby substitute is just the status quo. It is a cynical attempt to pretend they are doing consumer protection. In reality, it is meant to make sure there is no meaningful consumer protection at the end of the day. It willfully ignores the lessons we should have learned: that left to their own devices, there are lenders who can and will take advantage of consumers. That is what the marketplace—as it is right now—has taught us.

We absolutely need a muscular, independent agency—however it is configured, wherever it is housed—one that will have full and comprehensive authority to develop and implement real, honest, proconsumer rules so they will no longer be fooled by 30 pages of fine print that no one except bank lawyers could possibly understand; one that has independent rule-writing authority and authority over banks and nonbanks, while maintaining strong State consumer protection laws; one that will stop the ongoing attempts by credit card companies to circumvent the rules this Senate and Congress have already enacted. They are already working at it.

As Harvard Law Prof. Elizabeth Warren has noted: Thanks to product safety rules, you can't buy a toaster that would burn down your house. But you can buy a faulty mortgage that could take your house away.

The bank regulators have been of no great help because they are looking out for the banks—not for us, not for you, not for unsuspecting families who need the full force protections of robust regulations implemented by a muscular agency that is on your side.

In my view, a new independent agency would provide not only the comfort they need but the protection they deserve. We can argue about details, but I doubt there is much disagreement after what we have been through that Wall Street needs a watchdog, one that has jurisdiction over all financial products no matter who offers them, not just the products offered by big banks.

Chairman DODD has worked very hard over many months to craft the details of an agency that strikes the right balance. I was happy to see that finally our Republican colleagues were saying: We are on the Wall Street reform train. But now I begin to wonder—when I see amendments such as this—that they jumped on the train to strike the emergency brake on consumer protection enforcement.

The Shelby amendment offers nothing in the way of consumer protection. There is no independence. The CFPB would simply be a division within the FDIC with no autonomy of its own. It could not even finalize a rule without FDIC approval. It will not have any resources. And that is how Republicans want it: no resources, no supervisory authority, no enforcement power. Guess who wins in that scenario.

Nonmortgage companies will never be subject to supervision unless they have a pattern or practice of breaking the law within the past 3 years. So what does that mean? ''Let's have a lot of people get hurt before we actually would say we should now give them protection.'' It is not my sense of how the law should operate.

The Shelby amendment would establish the Division of Consumer Protection at the FDIC. It maintains, in essence, the status quo. Consumer protection rule writing will still be under the same authority, the same regulators who routinely ignored or opposed the needs of consumers. The amendment provides no safeguards to prevent the FDIC Chair or board from overriding decisions by the division director.

The amendment would actually prohibit—prohibit—the proposed consumer division from doing any rule writing under the Federal Trade Commission Act for payday lenders, debt collectors, foreclosure scam operators, mortgage brokers, and other nonbank consumer finance companies. It could only do examinations of nonbank consumer finance companies if they ''demonstrate a pattern or practice of violations'' of consumer law. So only after the consumer has been harmed repeatedly—after they have been harmed repeatedly—could the consumer division do any examination of the business.

This is simply saying: I am going to tell you that I am going to put a cop on the beat. He has no uniform, he has no equipment, and he cannot stop the bad guys. What a falsehood. We need to defeat this amendment, and we need to have a bill that ultimately gives strong consumer protections for millions of families in this country who have already faced the consequences of the system that is going on unregulated in a way that it allows greed and excesses to take place and that puts protections, yes, for Wall Street but not for Main Street.

Senator DODD has struck the right balance. We need to preserve it. I look forward to supporting him and opposing this amendment.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, let me briefly express my gratitude to my great pal and friend from New Jersey, BOB MENENDEZ, once again. We look around. There are 100 of us here. I do not often acknowledge these things, but if I had to pick one of our colleagues to be in my corner as an advocate, I would pick BOB MENENDEZ every time. He is a strong advocate. When he is focused and passionate about a matter, as he is on this one, there is no better advocate in the Senate. He has been a great member of our committee and a great help over the last few years where we have worked together on a number of bills coming out of the committee.

His understanding of this issue is exactly right. I say, there are ideas people can offer on which they can make a case that they strengthen our particular provision. But I say, respectfully, this is such a step backward, it is even hard to imagine someone could actually conjure up an amendment that would step us this farther away from even the status quo.

I thought I might get an amendment that would strike this and leave the world as it is. Senator THUNE made that argument, that somehow this is not broken, leave it alone. Yet there is not a person I know of in the country who does not recognize this problem all began because there were unscrupulous brokers, there were people willing to put ratings on bundled securities that were worthless, there were bankers willing to turn a blind eye and a deaf ear, pushing out mortgages they knew people could not possibly afford, luring them into it by promising them they could meet all their obligations.

To suggest the system is not broken—you would almost have to have been living on a different planet over the last few years not to recognize what happened because consumers were forgotten. Safety and soundness, we were told, were in great shape. Institutions were making money. This was a very stable situation.

We had a hearing almost 3 years ago in our committee. It was in June of 2007. A guy by the name of David Berenbaum from the National Community Reinvestment Coalition came before the committee. Let me quote, if I can—this is 3 years ago—from his testimony:

> For the past 5 years, community groups, consumer protection groups, fair lending groups, and all of our members in the National Community Reinvestment Coalition have been sounding an alarm about poor underwriting—underwriting that not only endangered communities, their tax bases, their municipal governments, their ability to have sound services and celebrate home ownership—but [underwriting that] was going to impact on the safety and soundness of our banking institutions themselves. Those cries for action fell on deaf ears, and here we are today.

I remember my colleague from New Jersey, almost 3 years ago—I remember his words—I do not have them written down in front of me, but I remember them very clearly. I say to the Senator, your words that day were: This is going to be a tsunami. It was the first time I heard those words used to describe the looming foreclosure crisis.

We were told then there would be maybe 1 million, maybe 2 million foreclosures. Now we know the number is in excess of 7 million that have occurred—not to mention job loss and the like.

The consumer people were arguing for underwriting standards. It was the safety and soundness regulators who were refusing to acknowledge we did not have underwriting standards or were refusing to acknowledge we needed to do something about it. So I wanted to commend my colleague.

Mr. MENENDEZ. Mr. President, if I may ask my distinguished chairman to yield for a moment, the Chairman is absolutely right. As a matter of fact, when I made that comment that we were going to have a tsunami of foreclosures, the administration witnesses at the time—the previous administration, of course—said, with all due respect, that is an exaggeration.

Mr. DODD. Right.

Mr. MENENDEZ. I wish they had been right and we had been wrong. But I think the chairman hits it right on point. In the context of the rating agencies, they were playing coach and referee. When you are playing coach and referee, somehow the game does not work out quite all that well.

I appreciate what the Senator done in that respect here as well.

I think the chairman makes the case very clearly that the definition of insanity is doing the same thing time and time again and expecting a different result. If we want to see what has happened to the American consumer in this country continue—facing the same consequences they have had to face over the last couple years—then we adopt this amendment. But if we want to change that, then we would support the underlying provisions in his bill.

I thank the Senator for his leadership.

Mr. DODD. Mr. President, I thank the Senator.

The last point I want to make on the amendment is, under this proposal, any person who is subject to one of the enumerated statutes could be assessed—under this bill, in section 1015(a)—and this amendment, by the way—talk about a bureaucracy, it is a long amendment—but in 1015(a), it says:

> The Chairperson shall establish, by rule, an assessment schedule—

So we are going to assess now these various institutions that are already burdened with assessments—

> including the assessment base and rates, applicable to covered persons subject to section 1023. . . .

I know this sounds like a lot of gibberish, but what is section 1023? What does it say? Section 1023 talks about nondepository institutions subject to consumer laws—just consumer laws. One of the complaints about our underlying bill—which is totally false—is that florists and butchers and dentists and accountants and lawyers would be subject to the provisions of this act. Nothing could be further from the truth, and the language in our bill makes it explicitly clear that you must be significantly involved in financial services or products. That is the language of our bill.

Section 1023: Nondepository institutions subject to consumer laws could be levied with assessments. That is your florist, your butcher, your dentist, your accountant, your lawyer. So as to those who argue against my bill and argue for this alternative—in fact, explicitly in here, at least as I read this—it could very well impose assessments on the very people they claim are affected by our legislation.

Again, I invite my colleagues to read it. It is not a speech I am reading. I am reading from the proposed amendment. That section 1023—specifically, you can look it up in here; it is a section of the bill—it speaks about nondepository institutions subject to consumer laws. And the definition, accordingly, is the very people who are not financial institutions, who could be levied with those assessments.

So for all those reasons, respectfully, I would urge my colleagues to reject this amendment. I do not claim perfection in our underlying consumer protection language. We think we have a very strong bill. I am always anxious to hear from people who think they can make it stronger or better in some way. Fine. But to propose a whole new regulatory structure here, with new people coming on, at great cost, with no power whatsoever to do anything about the very problem that confronts us, seems to me to be the height of what we are trying to avoid: creating a bureaucracy that does not do much. That, it seems to me, is what the American taxpayers want us to avoid.

With that, we have completed on our side the debate against this amendment. Unless there is some further comment, then I would ask for the yeas and nays on the amendment and call for a vote.

Mr. BYRD. Mr. President, I oppose the Shelby amendment.

In our zeal to protect consumers from egregious banking and lending practices, I fear the Senate is paying too little attention to basic constitutional tenets.

The Shelby amendment proposes to create a division for consumer financial protection within the Federal Deposit Insurance Corporation, FDIC, to exempt that new entity from the congressional appropriations process. The underlying substitute amendment proposes a similar model—a new Bureau of Consumer Financial Protections within the Federal Reserve System, which would also be exempt from the congressional appropriations process. This is in addition to several exemptions proposed in the underlying substitute amendment—exemptions for the Securities and Exchange Commission, and for new funds for the Securities and Exchange Commission and exemptions for the Commodities and Futures Trading Commission fund to reward whistleblowers.

I understand the desire by some to create a new consumer agency, and to elevate its status to that of a banking regulator but, these proposals—the Shelby amendment, and the underlying Democratic substitute—are alarming in the aggregate spending latitude they are recommending for one agency. The usual procedure of executive review by the White House budget office, and public discussion of the President's budget submission through hearings, testimony, questions, debate and amendment—would not apply to the new consumer agency under both the Republican and Democratic proposals. I support stronger consumer protections in the financial services industry, but I do not believe that the elected representatives of the people have to forfeit their constitutional oversight responsibilities in order to make that happen.

We need to remember that the financial regulators have their directors appointed by presidents, and that the Congress needs to be able to exercise oversight. If enforcement is inadequate, or abusive, the people's most potent weapon to effect change is the congressional power of the purse.

In the bill passed by the House of Representatives last year, the House proposed to create a new consumer protection agency, and to subject its funding—at least in part—to the annual appropriations process. That model is a better way of helping consumers than exempting the budget of the consumer protection agency from congressional review.

Mr. SHELBY. Mr. President, it is my understanding that Chairman DODD has asserted that the Shelby consumer protection substitute would lead to additional assessments on community banks. I want to make it clear for the record that this is not true.

But before doing so, I do want to highlight that the basic thrust of Chairman DODD's assertion is based on the belief that placing the taxpayer on the hook for the costs of regulating Goldman Sachs, Citigroup, and J.P. Morgan is the preferential way of proceeding.

Again, Chairman DODD believes that taxpayers paying the freight for Goldman is the way to go.

But I want to set the record straight about my amendment. First, my provision ensures that any nonbanks that are subject to regulation pay the full cost of that regulation themselves. They get no handouts from the taxpayer.

Secondly, community banks are not presently assessed by the FDIC for the cost of regulation, and my amendment does not provide the FDIC with any new authority to make such assessments.

Funding for the new division will be provided by assessments on nonbank mortgage originators, the other nonbank entities that are subject to regulation and large banking institutions. I would point out that the assessments on large banks will increase considerably following passage of the Tester amendment, which Chairman DODD supported.

Finally, in an effort to protect deposit insurance, my amendment creates a separate consumer financial protection fund which will ensure that funds for deposit insurance and consumer protection are never comingled.

Mr. President, let's be clear about the differences in the funding sources in the two bills. The Dodd bill uses taxpayer funds to give a free ride to Goldman Sachs and the other big Wall Street Banks while my amendment makes big banks and bad actors cover their own costs.

The PRESIDING OFFICER (Mr. FRANKEN). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DODD. Mr. President, before calling for the vote, I ask unanimous consent that the Senate now proceed to a vote with respect to the Shelby amendment No. 3826, with no amendment in order to the amendment prior to the vote; further, that the previous order with respect to the Sanders amendment remain in effect, and provided that after the Sanders amendment has been called up and reported by number, Senator MCCAIN be recognized to call up an amendment relating to GSEs; that after the McCain amendment has been reported by number, the Senate then resume consideration of the Sanders amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. Mr. President, again, before we get to this vote, let me make this appeal. We are going to have this vote, and then we will go to the Sanders amendment and then to the McCain amendment. Again, we are going to try to go back and forth and move along. The number of amendments now has increased to over 150. I say to my colleagues, there are actually more amendments on the Democratic side than the Republican side—not many more but more. I urge my colleagues, if you have very like minded amendments, it may be in your interests to combine these ideas in a single amendment—maybe rally around one that actually makes the point, to either extract from the bill or add to the bill because we all realize we are not going to be on this bill forever, and I want to accommodate as many people as I can and have the kind of discussion we just had on this amendment. But to do that in the timeframe we have is going to require cooperation and some indulgence on the part of people to not be demanding.

To the extent you have an amendment up, let's try to get to it and have a good discussion but not too long so we give other people a chance to be heard as well. I make that plea to everyone involved.

With that, I yield the floor.

AMENDMENT NO. 3826 TO AMENDMENT NO. 3739

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—38

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

NAYS—61

Akaka	Boxer	Carper
Baucus	Brown (OH)	Casey
Bayh	Burris	Conrad
Begich	Byrd	Dodd
Bennet	Cantwell	Dorgan
Bingaman	Cardin	Durbin

Feingold	Leahy	Sanders
Feinstein	Levin	Schumer
Franken	Lieberman	Shaheen
Gillibrand	Lincoln	Snowe
Grassley	McCaskill	Specter
Hagan	Menendez	Stabenow
Harkin	Merkley	Tester
Inouye	Mikulski	Udall (CO)
Johnson	Murray	Udall (NM)
Kaufman	Nelson (NE)	Warner
Kerry	Nelson (FL)	Webb
Klobuchar	Pryor	Whitehouse
Kohl	Reed	Wyden
Landrieu	Reid	
Lautenberg	Rockefeller	

NOT VOTING—1

Bennett

The amendment (No. 3826) was rejected.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me give my colleagues some idea of how we are going to proceed.

Senator SANDERS has the next amendment. We entered into a unanimous consent agreement a few minutes ago. Senator SANDERS has asked for 80 minutes to be equally divided on his amendment. We then turn to the McCain amendment. I am hoping we get a time agreement on that amendment as well.

There are 141 amendments, about equally divided between us. I want to accommodate everybody as much as I can. If some people take too much time, it means others do not get a chance to offer their amendments.

I make a request of my good friend Senator SHELBY to inquire, before we get to the McCain amendment, what kind of time agreement we can have on his amendment. Then my intention is to go to a Democratic amendment and possibly a Republican amendment tonight.

There are going to be votes tomorrow. I am letting my colleagues know we will have votes tomorrow. I gather Monday and Friday of next week are nonvote days. If we have 141 amendments and Members want to be heard—and I want to give them time to be heard and have good debate—obviously we cannot go on forever.

Mr. REID. Will my friend yield?

Mr. DODD. I will be happy to.

Mr. REID. Mr. President, for all the Senators here, we may have 141 amendments, but this is not the first time we have had 141 amendments on a bill. I have looked at a catalog of the amendments, and a lot are on the same subject. What we are trying to do is find out different categories and not have everybody offer the same amendment.

Our goal tonight should be to try to get rid of four amendments. If we could have four amendments out of the way tonight, we could look—and I thank my friend because I told him we are going to have votes in the morning, or at least a vote. I can create a vote. I hope we don't have to start creating votes. I hope they are on amendments people want to debate.

Senator SANDERS has an amendment. Has he agreed to a time?

Mr. DODD. Yes, he has.

Mr. REID. Senator MCCAIN, has he agreed to a time?

Mr. SHELBY. It is on GSE. It will take a while.

Mr. DODD. If everybody demands more time, everyone suffers. There is not unlimited debate. With 141 amendments equally divided between us, we have to provide time for people. I cannot do that if people insist on unlimited time or more time. We know these issues pretty well. It is not as if it is a new bill.

Mr. MCCONNELL. If my friend from Connecticut will yield for an observation, Mr. President, we may have 141 amendments, but they are not all equal. We are going to try to work our way through the major amendments in a serious way. This is a very important piece of legislation. The majority leader and I had a conversation earlier today on how to go forward. We will keep working on it in a systematic way and maximize a way for people to have votes on important amendments.

Mr. DODD. I agree. I say to my friend the Republican leader, we spent 24 hours on one amendment. We have to do better than that. I cannot accommodate people if we are going to spend a day on one amendment. It just does not work. All amendments may not be equal, but all Members are, and all Members deserve an opportunity to be heard.

I appreciate the majority leader's point of trying to consolidate if several Members have the same idea about something. Maybe it can be brought together in one amendment rather than five—I say that to both Democrats and Republicans—as a way of moving the process along, and we can have a good discussion. I cannot spend 24 hours on one amendment and accommodate people. It just is not going to happen. That is my point.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, we are making progress. We might not be making progress as quickly as some people would like. Maybe we did spend a lot of time on this amendment, but it is very important. We have debated it. I guess it has been disposed of, at least that part of it, now. But there are a lot of other important amendments coming up. We can work together and work through some of them because a lot are duplications to some degree, and some of them we can take. Senator DODD and I can help our staffs on that. Remember, this affects all of our economy—everything.

Mr. DODD. I will take advantage of the moment to say that I will be here all weekend. We are not going to have votes on the weekend. I will be here all weekend. For people who would like to have amendments and would like us to consider them, Senator SHELBY's staff will be around and my staff will be around to work on their amendment to see if we can accommodate it, modify it, or talk about it. I will spend Saturday and Sunday here all day for people to go over their products so maybe we can expedite things next week as well.

Mr. REID. Mr. President, if I may talk to the two managers through the Chair, I know how important everyone thinks their amendment is. But you can have half an hour on each side, an hour for an amendment. Someone can say quite a bit in 5 minutes. I think we are going to have to have some guidelines as to what we are going to do. Everyone thinks their amendment is the most important, and I am sure in their mind it is. We have to set some standard. I have been very accommodating in this last 24 hours because I think so much of the comanager of the bill, Senator SHELBY. We could have moved to table his amendment a long time ago.

Let's understand, there are other ways we can move forward. If somebody says: I need 3 hours on an amendment—there is not an amendment on this bill that is worth 3 hours, OK? We have had a good conversation.

I hope the two managers can give us some guidelines as to what they expect to do tonight and tomorrow because Members have other things to do than listen to the three of us.

Mr. DODD. Senator SANDERS.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 3738 TO AMENDMENT NO. 3739

Mr. SANDERS. Mr. President, I call up amendment No. 3738.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. SANDERS], for himself, Mr. FEINGOLD, Mr. DEMINT, Mr. LEAHY, Mr. MCCAIN, Mr. WYDEN, Mr. GRASSLEY, Mr. DORGAN, Mr. VITTER, Mrs. BOXER, Mr. BROWNBACK, Mr. RISCH, Mr. WICKER, Mr. GRAHAM, Mr. HATCH, and Mr. CRAPO, proposes an amendment numbered 3738 to amendment No. 3739.

Mr. SANDERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the non-partisan Government Accountability Office to conduct an independent audit of the Board of Governors of the Federal Reserve System that does not interfere with monetary policy, to let the American people know the names of the recipients of over $2,000,000,000,000 in taxpayer assistance from the Federal Reserve System, and for other purposes)

On page 1525, strike line 20 and all that follows through page 1528 line 3 and insert the following: "to the taxpayers of such assistance.".

SEC. 1152. INDEPENDENT AUDIT OF THE BOARD OF GOVERNORS.

(a) AMENDMENTS TO SECTION 714.—Section 714 of title 31, United States Code, is amended—

(1) in subsection (a), by striking "the Office of the Comptroller of the Currency, and the Office of Thrift Supervision." and inserting "and the Office of the Comptroller of the Currency.";

(2) in subsection (b), by striking all after ''has consented in writing.'' and inserting the following: ''Audits of the Federal Reserve Board and Federal reserve banks shall not include unreleased transcripts or minutes of meetings of the Board of Governors or of the Federal Open Market Committee. To the extent that an audit deals with individual market actions, records related to such actions shall only be released by the Comptroller General after 180 days have elapsed following the effective date of such actions.'';

(3) in subsection (c)(1), in the first sentence, by striking ''subsection,'' and inserting ''subsection or in the audits or audit reports referring or relating to the Federal Reserve Board or Reserve Banks,''; and

(4) by adding at the end the following:

''(f) AUDIT OF AND REPORT ON THE FEDERAL RESERVE SYSTEM.—

''(1) IN GENERAL.—An audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) shall be completed within 12 months of the enactment of the Restoring American Financial Stability Act of 2010.

''(2) REPORT.—

''(A) REQUIRED.—A report on the audit referred to in paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to—

''(i) the Speaker of the House of Representatives;

''(ii) the majority and minority leaders of the House of Representatives;

''(iii) the majority and minority leaders of the Senate;

''(iv) the Chairman and Ranking Member of the appropriate committees and each subcommittee of jurisdiction in the House of Representatives and the Senate; and

''(v) any other Member of Congress who requests it.

''(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed—

''(A) as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office; or

''(B) to limit the ability of the Government Accountability Office to perform additional audits of the Board of Governors of the Federal Reserve System or of the Federal reserve banks.''.

SEC. 1153. PUBLICATION OF BOARD ACTIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Board of Governors shall publish on its website, with respect to all loans and other financial assistance it has provided since December 1, 2007 under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of the third undesignated paragraph of section 13 of the Federal Reserve Act—

(1) the identity of each business, individual, entity, or foreign central bank to which the Board of Governors has provided such assistance;

(2) the type of financial assistance provided to that business, individual, entity, or foreign central bank;

(3) the value or amount of that financial assistance;

(4) the date on which the financial assistance was provided;

(5) the specific terms of any repayment expected, including the repayment time period, interest charges, collateral, limitations on executive compensation or dividends, and other material terms; and

(6) the specific rationale for providing assistance in each instance.

(b) TIMING.—The Board of Governors shall publish information required by subsection (a)—

(1) not later than 30 days after the date of enactment of this Act; and

(2) in updated form, not less frequently than once annually.

Mr. SANDERS. Mr. President, this amendment, which calls for transparency at the Fed, is, frankly, one of the more unusual amendments I have ever participated in, not so much for its content but for the kind of coalition that has come together around it. How often do you have the AFL–CIO and FreedomWorks supporting the same effort? How often do you have the SEIU, which is the largest trade union in this country, moveOn.org, which I believe has some 5 million progressive members, and Public Citizen striving for the same goal as the National Taxpayers Union or the Eagle Forum or the Conservative Americans for Tax Reform? There is a coalition representing tens of millions of grassroots activists. Some of them are progressive, some where I come from, some of them are conservative, but they are all united around a very basic principle: We need transparency at the Fed, and we need it now.

I want to use this opportunity—and I thank Chairman DODD for allowing me to do this—to talk about the amendment, what it does, and why so many diverse groups are coming together in support of it because you do have to ask yourself: What is bringing together some of the most progressive groups in the country with some of the most conservative groups, some of the most progressive members of the Senate with some of the most conservative? I also want to tell my colleagues not only what this amendment does but to clarify as best I can what it does not because there has been some distortion about this amendment, and those distortions are blatantly untrue. I want to touch on that also.

The origin for this amendment came on March 3, 2009. That was the date that, as a member of the Budget Committee, I had the opportunity to ask Chairman Bernanke what I thought was a pretty simple question. Chairman Bernanke, obviously, is Chairman of the Fed. What I asked him was: Mr. Chairman, my understanding is that the Fed has lent out some $2 trillion to some of the largest financial institutions in this country. Would you please tell me and the American people who received that money? I thought that was a pretty simple and straightforward question. Mr. Bernanke said: No. Despite the fact that this was $2 trillion in zero interest or near zero interest loans, he apparently believes the American people do not have a right to know who received that money.

On that very same day, I introduced legislation requiring the Fed to put this information on its Web site, just as Congress required the Treasury Department to do with respect to the $700 billion TARP. And here we are today. Whatever one may think of TARP, one can get information as to who received that money, when it was paid back—the details. It is right there on the Internet. I believe that same information should be made available in terms of the Fed's zero interest and near zero interest loans.

What the Fed apparently does not understand—and this is the important point—is that this money, these trillions of dollars, do not belong to the Fed; they belong to the American people. It is incomprehensible to me—and I think to the overwhelming majority of people in our country—that the Fed believes they can keep this information secret.

This amendment not only requires that the Fed tell us who has received the $2 trillion it lent out, but, similar to the language incorporated in the House bill, it calls for an audit of the Fed by the GAO. That is it. That is what we are attempting to do with this amendment: transparency and a straightforward audit. Who got what when, on what basis, on what terms, who was at the meetings, who made the decisions, and taking a look at possible conflicts of interest—simple, factual questions that people from the State of Vermont ask me and I suspect people from Minnesota ask you, Mr. President, and people all over this country, regardless of their political persuasion, are asking.

I understand this amendment may not be supported by everyone. Some may suggest, inaccurately, that this amendment—and I quote from a statement—''takes away the independence of the Federal Reserve and puts monetary policy into the hands of Congress.'' That is one of the charges being made against this amendment.

Let me address that concern by simply reading to the Members of the Senate exactly what is in the amendment so that we know what we are talking about. I quote from page 4 of a six-page amendment. It is not a long amendment. It cannot be clearer than this. This is what it says:

> Nothing in this subsection shall be construed as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office.

If there are people who are saying: Oh, we are going to get involved in monetary policy; oh, we are going to be politicizing the Fed; oh, we are going to have, before an election, Congress telling the Fed to raise interest rates or to lower interest rates, that is absolutely inaccurate. That is not what we are doing. That is not, in my view, what we should be doing.

We want an independent Fed. We want them to develop monetary policy. That is not—underline not—what this amendment does. This amendment does not tell the Fed when to cut short-term interest rates and when to raise them. It does not tell the Fed which banks to lend money to and which banks not to lend money to. It does not tell the Fed which foreign central banks they can do business with and which ones they cannot do business with. It does not impose any new regulations on the Fed, nor does it take any regulatory authority away from the Fed. Let's be clear about that.

I think what the opponents of this amendment are doing is equating independence with secrecy, and there is a difference. At a time when our entire financial system almost collapsed, we cannot let the Fed operate in secrecy any longer. The American people have a right to know.

I find it amusing that there are some people who oppose this amendment. As Chairman DODD and the Presiding Officer know, we have had heated debates on the floor of the Senate over a $5 million amendment, over an $8 million provision that goes on for hours. Yet where we have trillions of dollars being lent out, there are some people who think the American people don't have a right to know who got that money. I think, frankly, that is absurd.

The American people, as we hear over and over on the floor of the Senate, play by the rules. That is what the average American family does; they play by the rules. Well, what are the rules governing the Fed? Who makes those rules or are they just made up as they go along and they do not have to tell anybody about it? So I have a problem with that, and that is what this amendment is about.

Here, to my mind—and these are just my issues; others may have different issues, and I am sure they do—are just a few of the questions the American people are asking and why we need a GAO audit of the Fed. These are just a few. Let me throw them out.

Why was Lloyd Blankfein, the CEO of Goldman Sachs, invited to the New York Federal Reserve to meet with Federal officials in September of 2008 to determine whether AIG would be bailed out or allowed to go bankrupt?

When the Fed and Treasury decided to bail out AIG to the tune of $182 billion, why did the Fed refuse to tell the American people where that money was going? Why did the Fed argue that this information needed to be kept secret ''as a matter of national security?''

Here is the point. When AIG finally released the names of the counterparties receiving this assistance, how did it happen that Goldman Sachs received $13 billion of this money; AIG, $182 billion; $13 billion going to Goldman Sachs—100 cents on the dollar of a company that was going bankrupt and that was bailed out. How is that—100 cents on the dollar? Not bad.

Another question people might ask: Did Goldman Sachs use this money to provide $16 billion in bonuses the next year? Here you have Goldman Sachs getting $13 billion out of the $182 billion that AIG got, and the next year they are announcing $16 billion in bonuses. Did they use some of this money to provide those bonuses?

A GAO audit of the Fed might help explain to the American people if there were any conflicts of interest surrounding this deal. I think the average American would say: Yes, there is a conflict of interest. You have a guy from Goldman Sachs sitting in the room arguing for $182 billion. They got $182 billion; he gets $13 billion. The next year his company gives $16 billion in bonuses.

Is there a conflict of interest? I think so. That is my opinion. My opinion isn't the important one, but that is what the GAO will be doing if this amendment is passed.

Just another question out there. In 2008, it seems to me—I may be wrong—there was a conflict of interest at the Federal Reserve Bank of New York, when Stephen Friedman, the head of the New York Fed, who also served on the board of directors of Goldman Sachs—let's back it up. The head of the Fed serves on the board of Goldman Sachs, approved Goldman's application to become a bank holding company, giving it access to cheap loans from the Federal Reserve. OK. The head of the New York Federal Reserve, on the board of Goldman Sachs, is applying for Goldman Sachs to become a bank holding company to gain cheap loans from the Fed.

It looks to me like there may be a conflict of interest, but what do I know? That is what we need a GAO report to tell us.

Here, interestingly enough, is an article from May 9, 2009, in the Wall Street Journal. Let me quote briefly from that article:

> Goldman Sachs received speedy approval to become a bank holding company in September of 2008. During that time, the New York Fed's chairman, Stephen Friedman, sat on Goldman's board and had a large holding in Goldman's stock, which, because of Goldman's new status as a bank holding company, was a violation of Federal Reserve policy. The New York Fed asked for a waiver, which, after about 2½ months, the Fed granted. While it was weighing the request, Mr. Friedman bought 37,300 more Goldman shares in December. They have since risen $1.7 million in value. Mr. Friedman, who once ran Goldman, says none of these events involved any conflicts.

That is the Wall Street Journal article from May 9, 2009. That is what Mr. Friedman says. Well, I kind of disagree with him, but I would like the GAO to take a look at that. Without a comprehensive GAO report, we have to take Mr. Friedman at his word, and I don't think we should. Who got what? When did they get it? On what basis and what terms? Who was at those meetings? Were there conflicts of interest? These are the kinds of questions a GAO audit of the Fed will answer.

As a result of the bailout of Bear Stearns and AIG, the Fed—and this is a beauty, this is quite something—the Fed now owns credit default swaps—listen up on this one—betting that California, Nevada, and Florida will default on their debt. So the Federal Reserve stands to make money if California, Nevada, and Florida go bankrupt. I suspect that the Senators from the great States of California, Nevada, and Florida would be rather interested to know that if their States go bankrupt, the Fed makes money.

On the surface, this looks a little absurd to me, but again, I think this is an issue that the GAO might be taking a look at.

It has been reported that the Federal Reserve pressured the Bank of America into acquiring Merrill Lynch—making this financial institution even bigger and riskier—allegedly threatening to fire its CEO if the Bank of America backed out of this merger. When the merger went through, Merrill Lynch employees received $3.7 billion in bonuses. Was this a good deal for the American taxpayer? A GAO audit can help us find out.

When the Federal Reserve provided a $29 billion loan to JPMorgan Chase to acquire Bear Stearns, the CEO of JPMorgan Chase, Jamie Dimon, served on the Board of Directors at the New York Federal Reserve. Let me repeat that. When the Federal Reserve provided $29 billion to JPMorgan Chase, the CEO of JPMorgan Chase served on the Board of Directors of the New York Fed. Did this represent a conflict of interest? I think the average American would say yes. Maybe some people would have a different point of view. But I think a GAO audit can help explain all this to the American people.

Currently—and I think we have to appreciate this as well; we have to shed some light on these issues—some 35 members of the Federal Reserve's Board of Governors are executives at private financial institutions which have received nearly $120 billion in TARP funds, but we don't know how much these big banks received from the Fed. We know what they got from the TARP, not from the Fed. A GAO audit could answer this question.

All of us—I believe all of us—are deeply concerned that small- and medium-sized businesses around this country—I know it is certainly the case in Vermont—are begging for affordable credit. They have the opportunity to expand. We are beginning to see some economic recovery, but they want to expand, they want to create new jobs, and they are finding it extremely difficult to acquire those desperately needed affordable loans. I find it an important issue to ask how much of the trillions of dollars in zero or near zero interest loans that financial institutions received from the Fed went out to those small businesses or, perhaps, as I personally believe is the case, were simply invested in Federal Government bonds, earning an interest rate of 3 or 4 percent.

A number of observers believe—and the GAO can help us discover—the Fed provided zero interest loans to a large bank, which then took that money and bought government bonds at 3 percent. If that was the case, and I suspect it was, you are looking at a huge scam—a huge scam—when small- and medium-sized businesses needed the money. That was the intention of these loans. But I don't know how much of this was invested in growth bonds, you don't know, and the American people don't know. It is time we found out.

This amendment I am offering is virtually identical to legislation that I have offered on this subject that has 33 cosponsors. The amendment, I think, has 20, 22 Democrats and Republicans. The original legislation had 33 cosponsors. Just so you can get a sense of the diversity of ideological opinion behind this amendment, let me tell you the names of the people on board the legislation—not the amendment, the legislation: Senators BARRASSO, BENNETT, BOXER, BROWNBACK, BURR, CARDIN, CHAMBLISS, COBURN, COCHRAN, CORNYN, CRAPO, DEMINT, DORGAN, FEINGOLD, GRAHAM, GRASSLEY, HARKIN, HATCH, HUTCHISON, INHOFE, ISAKSON, LANDRIEU, LEAHY, LINCOLN, MCCAIN, MURKOWSKI, RISCH, SANDERS, THUNE, VITTER, WEBB, WICKER, and WYDEN.

Those are people who are on the original legislation—33 cosponsors. As you can see, they range from some of the most progressive Members to some of the most conservative Members. The amendment that is now on the floor has, I believe, 22 cosponsors, Republicans and Democrats alike, and I wish to thank all of them for their support.

The American people are asking: Can people work together? Can they come together on important issues? If there is an important issue that people with different ideological backgrounds have come together on, this is that one. So I wished to thank my Republican friends and my Democratic friends who, every other day, are fighting like cats and mice but on this issue have come together, and I appreciate that.

But it is not only the Members of the Senate. In terms of progressive grassroots organizations, this amendment enjoys the strong support of the AFL–CIO; the Service Employees International Union, the single largest union in the country; the United Steelworkers of America; Public Citizen; the New American Foundation; Center for Economic Policy; U.S. Public Interest Research Group; Americans for Financial Reform, which is a coalition of over 250 consumer, employee, investor, community, and civil rights groups. There is a huge amount of support from the progressive community. It also has a huge amount of support from the conservative community.

Let me read, briefly, a letter I received from the legislative director of the AFL–CIO. This is what he says:

> On behalf of the AFL–CIO, I am writing to urge you to support the Sanders-Feingold-DeMint-Leahy-McCain-Grassley-Vitter-Brownback amendment to increase transparency at the Federal Reserve. Working people want to know who benefitted from the liquidity provided by taxpayers during the crisis and this amendment will ensure that we receive this information.

I received another letter, which came from the president of the SCIU, the president of the United Steelworkers, the president of Public Citizen and many other progressive groups and this is what they say:

> Since the start of the financial crisis, the Federal Reserve has dramatically changed its operating procedures. Instead of simply setting interest rates to influence macroeconomic conditions, it rapidly acquired a wide variety of private assets and extended massive secret bailouts to major financial institutions. There are still many questions about the Fed's behavior in these new activities. The Federal Reserve's balance sheet expanded to more than $2 trillion, along with implied and implicit backstops to Wall Street firms that could cost even more. Who received the money? Against what collateral? On what terms and conditions? The only way to find out is through a complete audit of the Federal Reserve. That's why we support the amendment to increase transparency at the Fed.

That is from the SEIU, and many other unions.

That is what some of the progressive groups, quite frankly, that I work with quite often have to say about this amendment. But let me quote from some of the conservative organizations that, frankly, I usually do not have very good voting records with. Very often they oppose what I bring forth.

Here is the National Taxpayers Union. I don't know how many folks they have, but they are a big organization. This is what the National Taxpayers Union says:

> The National Taxpayers Union urges all Senators to vote ''yes'' on S. Amendment 3738 to the financial regulatory reform legislation. This amendment, introduced by Senators Sanders and DeMint, would require the Government Accountability Office to conduct an audit of the Federal Reserve. . . .

I like their next sentence.

> Transparency is not a Democrat or Republican issue, but rather an issue of right or wrong. If the Senate insists on further expanding the Fed's reach, Americans deserve to know more about the workings of a government-sanctioned entity whose decisions directly affect their economic livelihood. A ''yes'' vote on S. amendment 3738 [this amendment] will be significantly weighted as a pro-taxpayer vote in our annual Rating of Congress.

That means I may have at least a 1-percent approval vote from the National Taxpayers Union. I appreciate their support. That is from the National Taxpayers Union.

Let me quote from another letter of support I received from a group of conservative organizations that includes the Americans for Tax Reform, the Campaign for Liberty, the Rutherford Institute, the Eagle forum, Freedomworks, and the Center for Fiscal Accountability—again, some of the more conservative groups in the country, groups that usually do not support my issues. This is what they say:

> We urge you to vote for Senators Sanders, Feingold, DeMint, and Vitter's Federal Reserve Transparency Amendment. . . . This amendment does not take away the ''independence'' of the Fed. It simply requires the GAO to conduct an independent audit of the Fed and requires the Fed to release the names of the recipients of more than $2 trillion in taxpayer-backed assistance during this latest economic crisis. Any true financial reform effort will start with requiring accountability from our Nation's central bank.

Let me thank all of the conservative groups—in this case the Americans for Tax Reform, the Campaign for Liberty, and the others—for their very strong grassroots effort in supporting this amendment. It is an indication, again, that on certain issues progressives and conservatives can come together.

Let me mention this because I think it is possible that some of the Members do not know this. This amendment is not a radical idea. As part of the budget resolution debate in April of 2009, the Senate voted overwhelmingly in support of this concept by a vote of 59 to 39. I brought that up. It was a nonbinding vote, part of the budget resolution, 59 to 39. So many Senators have already gone on record supporting that.

Here is also an important piece of information. In the House of Representatives, this concept passed the House Financial Services Committee by a vote of 43 to 26 and was incorporated into the House version of the Wall Street reform bill that was approved by the House last December.

Again, what we are talking about is something that was passed in the House, and it is in the House bill. There is a variation. We are not the same, to be honest, but the same concept—for a Fed audit—already exists in the Wall Street reform bill passed in the House.

This concept has the support of the Speaker of the House, NANCY PELOSI, who has said Congress should ask the Fed to put this information ''on the Internet like they've done with the recovery package and the budget.'' That is exactly what this amendment would do.

Here is another point many people don't know. A lot of this language is in the House bill. A lot of this language has already been supported in the Senate last year as part of the budget resolution. But here is an important point many people do not know. Bloomberg News service did a very good job, and they have aggressively demanded, as a news organization, this information about who the Fed lent money to be made public. As a result of their efforts, two Federal courts—not one, two Federal courts—have ordered the Fed to release all the names and details of the recipients of more than $2 trillion in Federal Reserve loans since the financial crisis as a result of a Freedom of Information Act lawsuit.

So Bloomberg News filed suit and two Federal courts supported

Bloomberg. The Fed had argued in court in opposition to Bloomberg that it should not have to release this information, citing, according to Reuters—this is what the Fed said—''an exemption that it said lets Federal agencies keep secret various trade secrets and commercial or financial information.''

However, the U.S. Court of Appeals in New York disagreed. Here is what a unanimous three-judge appeals court panel wrote in their opinion:

To give the Fed power to deny disclosure because it thinks it best to do so would undermine the basic policy that disclosure, not secrecy, is the dominant objective. If the Board believes such an exemption would better serve the national interest, it should ask Congress to amend the statute.

This appeals court decision upheld an earlier ruling by the Southern Federal District Court of New York that also ordered the Fed to release this information. In other words, we now have 59 Senators who, as part of the budget resolution, voted on this issue; 320 Members of Congress, the House, and two U.S. courts that have all told the Fed in no uncertain terms: Give us transparency. That is what we have.

As I wind down and conclude my remarks, let me just simply say that I am thankful for all of the support, all the grassroots support from progressive and conservative groups, and from my fellow Senators. The American people have a right to know when trillions of their dollars are being spent and who gets it. The American people have a right to know whether there are conflicts of interest.

I thank my colleagues—there are so many cosponsors, I will not mention them all—but I thank all of them.

Let me conclude by saying I am very proud to say we have been working with Senator DODD's office and some other offices.

AMENDMENT NO. 3738, AS MODIFIED

I am going to ask that my amendment be modified with the changes that are at the desk. I am proud to say these modifications have been worked out with Senator DODD and would allow the GAO to conduct a top-to-bottom audit of all of the Federal Reserve's emergency lending activities since December 1, 2007. In addition, the modifications require the Fed to put on its Web site all of the recipients of over $2 trillion in emergency assistance since December 1, 2007.

The PRESIDING OFFICER (Mrs. SHAHEEN). The amendment is so modified.

The amendment (No. 3738), as modified, is as follows:

At the end of title XI, add the following:

SEC. 1159. GAO AUDIT OF THE FEDERAL RESERVE FACILITIES; PUBLICATION OF BOARD ACTIONS.

(a) GAO AUDIT.—

(1) IN GENERAL.—Notwithstanding section 714(b) of title 31, United States Code, or any other provision of law, the Comptroller General of the United States (in this subsection referred to as the ''Comptroller General'') shall conduct a one-time audit of all loans and other financial assistance provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act by the Board of Governors under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of the third undesignated paragraph of section 13 of the Federal Reserve Act.

(2) ASSESSMENTS.—In conducting the audit under paragraph (1), the Comptroller General shall assess—

(A) the operational integrity, accounting, financial reporting, and internal controls of the credit facility;

(B) the effectiveness of the collateral policies established for the facility in mitigating risk to the relevant Federal reserve bank and taxpayers;

(C) whether the credit facility inappropriately favors one or more specific participants over other institutions eligible to utilize the facility;

(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility; and

(E) whether there were conflicts of interest with respect to the manner in which such facility was established or operated.

(3) TIMING.—The audit required by this subsection shall be commenced not later than 30 days after the date of enactment of this Act, and shall be completed not later than 12 months after that date of enactment.

(4) REPORT REQUIRED.—The Comptroller General shall submit a report on the audit conducted under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act, and such report shall be made available to—

(A) the Speaker of the House of Representatives;

(B) the majority and minority leaders of the House of Representatives;

(C) the majority and minority leaders of the Senate;

(D) the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Financial Services of the House of Representatives; and

(E) any member of Congress who requests it.

(b) AUDIT OF FEDERAL RESERVE BANK GOVERNANCE.—

(1) AUDIT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall complete an audit of the governance of the Federal reserve bank system.

(B) REQUIRED EXAMINATIONS.—The audit required under subparagraph (A) shall—

(i) examine the extent to which the current system of appointing Federal reserve bank directors effectively represents ''the public, without discrimination on the basis of race, creed, color, sex or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers'' in the selection of bank directors, as such requirement is set forth under section 4 of the Federal Reserve Act;

(ii) examine whether there are actual or potential conflicts of interest created when the directors of Federal reserve banks, which execute the supervisory functions of the Board of Governors of the Federal Reserve System, are elected by member banks;

(iii) examine the establishment and operations of each facility described in subsection (a)(1) and each Federal reserve bank involved in the establishment and operations thereof; and

(iv) identify changes to selection procedures for Federal reserve bank directors, or to other aspects of Federal reserve bank governance, that would—

(I) improve how the public is represented;

(II) eliminate actual or potential conflicts of interest in bank supervision;

(III) increase the availability of information useful for the formation and execution of monetary policy; or

(IV) in other ways increase the effectiveness or efficiency of reserve banks.

(2) REPORT REQUIRED.—A report on the audit conducted under paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed, and such report shall be made available to—

(A) the Speaker of the House of Representatives;

(B) the majority and minority leaders of the House of Representatives;

(C) the majority and minority leaders of the Senate;

(D) the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Financial Services of the House of Representatives; and

(E) any member of Congress who requests it.

(c) PUBLICATION OF BOARD ACTIONS.—Notwithstanding any other provision of law, the Board of Governors shall publish on its website, not later than December 1, 2010, with respect to all loans and other financial assistance it has provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of the third undesignated paragraph of section 13 of the Federal Reserve Act—

(1) the identity of each business, individual, entity, or foreign central bank to which the Board of Governors has provided such assistance;

(2) the type of financial assistance provided to that business, individual, entity, or foreign central bank;

(3) the value or amount of that financial assistance;

(4) the date on which the financial assistance was provided;

(5) the specific terms of any repayment expected, including the repayment time period, interest charges, collateral, limitations on executive compensation or dividends, and other material terms; and

(6) the specific rationale for each such facility or program.

Mr. DODD. I will just take 30 seconds. I will speak longer on this a little later. But let me thank our colleague from Vermont. He is a remarkable individual who brings great intelligence and passion to this cause. He does not get involved in every issue that comes up on the floor of the Senate. I admire that. Some believe they have to have something to say about everything.

But when Senator SANDERS gets involved with something, you better believe he does it with a great deal of conviction and passion and purpose.

I am a cosponsor of this amendment he has just modified. I think it is absolutely correct. On the transparency issues, there are no excuses. When as much American taxpayer money has been exposed as has been, we have the right to know where it is going and who is involved in it. There was a concern about whether the independence of the Fed would be compromised. He has guaranteed in his language that is no longer an issue whatsoever. I thank him for it. It is a great amendment.

I know Senator GRASSLEY wants to be heard, and I yield the floor.

Mr. SANDERS. I thank the chairman.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, you have heard me say many times to my colleagues that the public's business ought to be public. I don't know why that does not apply to the Federal Reserve, at least on its regulatory activities when it gives out money. There are all kinds of reasons it should not apply to monetary policy. But for everything else, the Federal Reserve is acting at the behest of Congress through a law going way back to 1913 giving them certain powers. If Congress exercised these same powers—and under the Constitution we have the authority to do that—it would be the public's business; in fact, even more than what this amendment does. So the public's business ought to be public.

With transparency, and that is what this amendment is all about, you get accountability—it seems to me, with what has happened over the last 10 years, more transparency leading to accountability. If we had that transparency we probably would not have had the bubble in the first place that broke in 2008, which brought us to this recession.

So I rise not hesitantly but forthrightly to support the pending amendment by the Senator from Vermont. I appreciate all of his hard work on making the Federal Reserve more accountable to the people of this country. I am a cosponsor of his stand-alone bill, so I am glad to be a cosponsor of this amendment, to bring sunshine to the Fed.

During the last 2½ years, the Fed has gone well beyond what was viewed as its historical authority. It has taken on more and more risk, in complicated and unprecedented ways. It intervened in the market to prop up certain firms. It intervened in the market to protect these firms from failing, using an unlimited source of taxpayers' dollars to, in effect, pick winners and losers.

The risks they have taken will ultimately be borne by the American taxpayers. So in the interest of accountability, the taxpayers deserve to have answers on who got money and how it was spent.

Under law, the Federal Reserve has lending authority for unusual and exigent circumstances. Under section 13(c) of the Federal Reserve Act, the Reserve can ''discount for any individual, partnership or corporation, notes, drafts and bills of exchange when such notes, drafts and bills of exchange are endorsed or otherwise secured to the satisfaction of the Federal Reserve bank.''

Essentially, this means the Fed can lend to any entity or person when it believes there is an emergency. This is an extraordinary amount of power and discretion, and it should be exercised in the light of day. Transparency, accountability—the public's business ought to be public. Trillions of dollars were provided to financial institutions and corporations since the financial crisis began. The Fed helped rescue Fannie Mae and Freddie Mac. The Fed propped up Bear Stearns and AIG when they were on the brink of failure. They intervened in the business efforts of Lehman Brothers, Merrill Lynch, and Citigroup.

But how much has been doled out and to whom is still a mystery. This amendment would allow the independent arm of Congress, the Government Accountability Office, to review the decisions made by the Federal Reserve. And the Government Accountability Office is nothing but a group of professional people without a political motive and the right group to get the job done and do it on an ongoing basis. An objective review of the Fed's actions will serve our country well in the future.

We can learn from the mistakes that may have been made. We can determine if the losses or profits from the Fed's investments help serve the economy well. Did the Federal Reserve act in an appropriate and ethical manner? Was the relationship between regulators and the financial industry too cozy, hampering the ability to make an objective decision?

Proponents of the Federal Reserve should not consider this as a threat to the independence of the Fed—an independence I support. They should embrace an independent evaluation as an opportunity to improve its operations and, most importantly, strengthen public trust for future generations who may be faced with similar financial crises.

As the Senator from Vermont has made very clear, the intent of his amendment is not to interfere in monetary policy. I share that same feeling he has, and I would not support an amendment that went into monetary policy. But the Fed's extraordinary power outside of monetary policy should be subject to the light of day, transparency and accountability. The public's business ought to be public. We should allow the Government Accountability Office to audit the Fed since they have moved far beyond their traditional and primary mission of conducting monetary policy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. I thank the Senator from Iowa not only for his support but for his long fight for transparency. It has been a pleasure working with the Senator.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I wish to thank my colleagues, Senators SANDERS and DEMINT, for putting forward, bringing this amendment to the floor. I am a cosponsor of this amendment, along with several of my other colleagues.

I would say as well to my colleague from Vermont, my colleague from South Carolina, and others who are sponsors, this is an issue I hear a lot about when I am traveling around my State, which is often. When I am traveling around and listening to people, this is something people are concerned about. They are concerned about the monetary policy. They are concerned about the money system. They are concerned.

I would note to people, and to my colleagues in particular, that the Congress created the Fed, the Fed didn't create the Congress. So the Congress does have control over this issue, and I think we need to look at it and say: Let's look at what is appropriate and what is proper. And this is clearly one piece of it.

I think the Fed has done a number of things quite well and quite right. Yet I don't see any problem whatsoever with having a simple audit; that that is going to somehow reveal the genie in the bottle and let out all of these secrets that are going to be harmful to the development of monetary policy. There seems to me to be a fair amount of overstatement on the other side of the terrible damage this audit would do. That does not seem right to me. It does not seem right to my constituents. My constituents look at this and say: Well, I do not want to harm the development of monetary policy. I want it to be wise and good and sound. But I do not see how it is harmed by an audit of an entity that is created by the government, that is created by the Congress. So why shouldn't we do something like this?

That is why I think this is a prudent amendment. It is a good commonsense amendment, and I think it will be well received by the constituents of this great country who I think are pretty wise on these and other decisions; that as we go around, if we will listen to what people are saying, I think there is a lot of wisdom in that. They are saying we ought to know more about what is taking place in the Fed.

I know we would all like to move forward on financial regulatory reform legislation. I have some serious problems in this bill. I think the consumer financial product piece shouldn't penalize auto dealers and orthodontists and others who did not cause any of these problems.