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.

So I have an amendment. I have other amendments I am a part of as well, along with this one, that I think we need to consider before we move on forward, even though I have some problem with the basis of the bill. I think it hits more Main Street than it does Wall Street. The difficulty is that we just have different ideas and beliefs about the best way to move forward, and that is normal.

This amendment is not just about the choices, though, that we have on reforming the financial sector. I believe it gets to the heart of a more fundamental issue: what the American people have a right to expect and know from their governmental institutions.

The fact that this amendment is brought forward by the Senator from Vermont, Mr. SANDERS, and the Senator from South Carolina, Mr. DEMINT, two Members who could not be further apart on the ideological spectrum, should be a sufficient warning and measure to make everyone sit up and take notice of what it is that is here that is so troubling.

This amendment isn't about whether the legislation will put an end to taxpayer-backed bailouts. It isn't about whether the legislation will end too big to fail. It isn't even about how to best protect the American people and taxpayer dollars. It is about something I believe is even more fundamental: the accountability of governmental institutions to the people of the United States and to the Congress.

I think it is important, as I stated, to remember—I want to state this again—one single fundamental reality in this debate: Congress created the Federal Reserve, not the other way around. We created the Federal Reserve System to serve the interests of the citizens of this Nation, not to serve the interests of large financial institutions.

In establishing the Federal Reserve, Congress recognized the importance of a central bank that could operate with independence to ensure the orderly functioning of the banking systems and to maintain price stability. That is the core function of the Fed. More recently, the Federal Reserve mandate was expanded to charge them with maintaining price stability and maximum employment. That was an expansion piece that was added.

The Government Accountability Office is also a creation of Congress. GAO is an independent, nonpartisan agency that works for Congress. What is GAO's mission? GAO's mission is to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the Federal Government for the benefit of the American people.

In my view, the real issue here is whether you believe the Congress has the right to ask GAO—in many respects, our auditor—to review actions and activities of an institution that we, the Congress, created.

I certainly understand the importance of the Federal Reserve's independence in the execution of monetary policy. I understand and I support that. I understand the importance of not interfering with the operation of the FOMC. That is not what this amendment is attempting to do. That is not my intention. I am confident, as well, it is not the intention of the main sponsors of this amendment. But I do believe it is relevant to know whether the Federal Reserve is operating in a manner that is consistent with its statutory authority. It is relevant to know whether the Federal Reserve is following its own established rules and procedures or whether it is just making it up as it goes along. I do think it is relevant for Congress to know who was involved in decisions to take extraordinary measures by exercising emergency powers, as well as who was and was not consulted before those actions were taken. Those are prudent and proper things for us to know.

I think it is equally important to know whether the policy statements and subsequent minutes of FOMC meetings accurately reflect what went on in those meetings.

Recent news reports surrounding the release of transcripts from 2004 meetings of the Fed contained some serious, distressing information. Those reports revealed that as far as back as 2004, there were significant concerns raised by regional Reserve Bank presidents about an emerging housing bubble that, indeed, did emerge and burst. Did we see any indication of that in the meeting minutes or the policy statements? We did not. And what that tells me is the minutes did not accurately—I will even say they did not directly portray what went on in the meetings. I do not believe that is right.

Disturbingly, the transcripts reveal that the Federal Reserve Bank president from Atlanta warned that:

> A number of folks were expressing growing concern about potential overbuilding and worrisome speculation in the real estate markets, especially in Florida. Entire condo projects and upscale residential lots are being pre-sold before any construction, with buyers freely admitting that they have no intention of occupying the units or building on the land but rather are counting on ''flipping'' the properties—selling them quickly at higher prices.

That is a direct quote.

Disconcertingly, at the same meeting, the former Chairman of the Board of Governors, Alan Greenspan, made the following statement:

> We run the risk, by laying out the pros and cons of a particular argument, of inducing people to join in on the debate, and in this regard it is possible to lose control of a process that only we fully understand.

Let me repeat that quote. This is from former Chairman Greenspan:

> We run the risk, by laying out the pros and cons of a particular argument, of inducing people to join in on the debate, and in this regard it is possible to lose control of a process that only we [the Federal Reserve Board] fully understand.

Now, I serve as the ranking member of the Joint Economic Committee. Senator DEMINT is also a member of our committee. We believe in free markets and a free enterprise system. We recognize the importance of a strong financial system. Yet a fundamental requirement for the orderly operation of free markets is transparency and accurate reporting—information. I think the suggestion that only the Federal Reserve was capable of fully understanding is evidence enough that this amendment is necessary.

Congress needs to demand change and greater accountability so people can have more information. What if the people had known about this debate going on at the Federal Reserve as the housing bubble was developing? How would people have acted? My guess is, they would have acted quite prudently, saying: The Federal Reserve is concerned about this. This is legitimate information. Maybe we should pull back on housing investments. Maybe we should be watching this as well.

I think people can get it; they need the information, though.

While this amendment does not address the issue of the time delay in releasing transcripts, I do believe the current 5 years, which amounts to almost 6 in many cases, is indefensible, between the actual minutes and them being released—5 years between the actual minutes and their being released to the public. In my judgment, that time limit should be reduced to no more than 2 years. Members of this body should have had access to these and other transcripts before we were asked to reconfirm the current Chairman of the Federal Reserve Board of Governors. I would suggest it would have been helpful to have had access to this information before the housing market collapsed and before it turned into a financial crisis.

The American people are mad at Washington. They are mad at the governmental institutions that they view as increasingly unresponsive and unaccountable. Let's take this step in the direction of transparency, accountability, and disclosure of information. The American people have a right to know whether their interests were protected or simply placed on the back shelf. They have a right to know the information.

I urge my colleagues to support this amendment, and I urge the Federal Reserve to work with us to address real concerns about this amendment, rather than trying to defeat it or amend it with the purpose of making it a symbolic and meaningless gesture. Let's remind the Federal Reserve Board of Governors that they are not the only people capable of fully understanding issues on which all of our economic future depends.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. I wish to thank the Senator from Kansas for his remarks and for his strong support from day one for this concept of transparency of the Fed.

Mr. BROWNBACK. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. COBURN. Mr. President, as we have watched the debate the last 6 days on the financial regulation reform bill, I thought it would be interesting just to raise a few questions. The Congress—both the House and the Senate—created what was called the Financial Inquiry Commission. As a matter of fact, they had a meeting today. The purpose of that Commission—that will turn in their report in December of this year—was to take a thorough and complete look at what happened to us in 2008—the causes, the regulatory failures, the poor incentives—and then make recommendations to the Congress on what we should do.

The question I have for my colleagues is, we have a bill on the floor that has given no credence to the Commission we created, and we are actually, according to the majority leader, going to finish this bill next week without the benefit of that Commission's inquiry. So a couple questions I would ask are, No. 1: Why? Why are we doing that? And, No. 2—by the way, the people on that Commission are learned people with great exposure and great experience in the areas of which we are discussing—Why are we allowing the Commission to continue spending money if we are not going to pay any attention to them? Why don't we just end the Commission, since we have obviously decided what they are going to have to give to us is not of value as we make the decision about what we need to change? I thought that is what we had the Commission for.

So I find it peculiar that in our rush to blame somebody, our rush to take the focus off of where it belongs—by the way, that is right here in the U.S. Congress because 90 percent of what went wrong was our fault—our fault; that is where it lies—in our rush to shield and reflect that away from us, we are going to pass a bill with all sorts of unintended consequences of which we fully do not understand right now. It is a bill that is going to treat the symptoms, not the underlying disease of the financial problems we had. It rings well from a populist standpoint, but in the long run it does a disservice to our country. That does not mean this bill may not hit it 100 percent on what this Commission recommends, but we have no idea what they are going to recommend.

So I think it is a great question for the public to be asking us: Why are we doing that? And why are we continuing a Commission that we obviously are not paying any attention to? One, it was created so we could offload the problem. That is why we created the Commission. We obviously did not care what they thought because we are not going to pay any attention to them. No. 2, we are going to continue to spend money on a Commission that we are not going to value. If we were going to value it, we would at least either give it a mandate to hurry up so we can make appropriate decisions and use their expertise or we would eliminate it.

Now to the bill that is in front of us. What really happened to us. This is my opinion of what happened to us. The Congress created incentives to increase with ease the ability to own a home in this country. Then we created incentives through Fannie Mae and Freddie Mac to do that even greater. Then we created the ability to package and offload what Fannie Mae and Freddie Mac had taken and securitized it.

We wonder why people would take advantage of that. There was not one oversight hearing on the Office of Thrift Supervision, which absolutely failed in terms of loan originators. There was one hearing in 4 years at the SEC that had nothing to do with their oversight of the packaging of these incentives before they became a problem. There was no oversight—significant oversight—on the explosive nature of derivatives trading in this country and around the world. We are so quick to point the finger at the people who took advantage of the incentives we set in motion.

So now what do we have? We have $6 trillion or $8 trillion worth of exposure for the U.S. taxpayer in terms of guaranteed mortgages by the Federal Government through Fannie Mae, Freddie Mac, and FHA, and we are hustling along so none of that ends up getting focused on us. We have a bill on the floor that does not address the core problem of what went wrong.

Here is the core problem of what went wrong: There were no mortgage origination standards that were enforced by the Federal Government, as they took American taxpayers, to guarantee what was going to be an asset. What did we find at the Permanent Subcommittee on Investigations? That in the last year before this, for one company alone that originated a vast majority of the loans in California—Long Beach Mortgage—90 percent of the mortgages were based on fraudulent data.

OTS knew it and did not do anything about it. Why did they not do it? Because they got 16 percent of their revenue from Washington Mutual, who owned Long Beach Mortgage.

So we set up all these systems, we incentivized this system, and now that it blew up in our faces—because we did not look at it, we did not oversight it, we did not do our fiduciary responsibility—we want to be quick and get rid of that blame from us by pointing the finger somewhere else.

We have minimal leverage requirements in this bill. If we are going to create an incentive for people to act badly, at least we ought to put a block somewhere else that will limit the exposure of financial institutions based on capital ratios. We have not done that. We have not accomplished that in this bill. That is something that has to be there. We had companies leveraging to 40 and 50 times their net worth. Yet we are not addressing that issue to a significant extent. It is one small portion of the bill.

Then we are going to take a consumer protection agency—which we created the problems for—and create a massive government bureaucracy that is going to filter all the way down to every small business in this country and isolate that power within one individual who is not accountable to the Congress and not accountable to the President, and we are going to say: You fix it. There will be an unlimited funding stream that is going to be totally out of control that is going to impede and impact the freedom of Americans' ability to make a living in the name of consumer protection.

If you think I am giving a speech to protect the banks, you are wrong. I like them about as much as I like insurance companies. But we have to think about what we are doing, and we ought to be about fixing the real disease. That real disease is us—us not doing oversight, us not being responsible for the legislation we created, and setting up incentives, and then yawn as it goes awry and point our fingers somewhere else.

There is no question we need to change the regulatory structure in this country. But there is something we need to change more than the regulatory structure; that is, the demand on the Congress to start doing its job in terms of oversight. We are quick to whip a bill out when it is politically expedient to do it and create a whipping boy, or several whipping boys, and say we are addressing things. But it is kind of like the pea under the three walnut shells. You never know where the pea is. The reason you never know is because there is not really even a pea there. There was when it started, but it went away. Then it gets put back.

So we are playing the game. We are playing the American people that what we are doing is substantive, and that, in fact, it is going to enhance capital formation, when what we are doing is going to decrease capital formation.

We have one section in this bill that says every small bank in Oklahoma—if they write a mortgage and sell it, forever they have to keep 5 percent of it. Well, if they are a small capitalized bank, guess what they are going to do. They are never going to create another mortgage in Oklahoma. So we are going to concentrate all the mortgages in the big banks in the country. That is why Goldman Sachs loves this bill. That is why Citibank loves the bill. We are not making the big banks smaller; we are making the big banks bigger. We are going to undercut the small and

medium-sized banks in the country because we are going to put a 5-percent retention on every mortgage they write, when, in fact, all we would have to say is: If you write a mortgage and you package it and sell it, there is recourse back to you, the originator of the loan; that mortgage, when it becomes nonperforming, comes back to you. That is all we have to do. That does not tie up their capital. That does not limit their incentive to create housing in our own regional markets that is made available with capital in those regional markets.

No, we are going to make the big boys bigger. All the regulation that is in this bill none of the big banks will ever have a problem with. They already have thousands and thousands of staff to handle government regulation. They will not add a person. But every small community bank in this country, every small financial institution in this country, is going to drown in the requirements of this bill.

I know the chairman of the Banking Committee has worked hard to try to bring a forth bill. I know there have been great deliberations with many from our side of the aisle on the bill. But I think we have thrown common sense out the window. The motives are good. The goal—fix the problem—is good. But if we treat the symptoms of this and convince the American people we have fixed it when, in fact, we have not, when we have not eliminated too big to fail—because we are going to make the big banks bigger—what we are going to see is a further decline in confidence.

In the name of fixing things, we are going to be taking massive amounts of freedom away from small businesses in this country. We are going to take discretion away from capital risk that has minimal risk to the country but has every bit of risk to the person lending the capital. We are even going to take away ''sugar daddy'' investors who are the only hope for some ideas—not venture capitalists. We are going to take away the ability for somebody to come in and say: I will invest in 40 percent of your business and give you the capital to try something. We have actually created requirements for that.

As we look at what we are about to do, the American people ought to ask three questions, three very important questions: No. 1, does it fix the problem? No. 2, does it grow the government and require increased spending? And, No. 3, is there anything to make you think—since we were regulating all these industries already—the Congress might oversight the next set of regulations we put out there to fix this problem? I think the answer to that—all three of those questions—is no. I am in a minority, I understand that.

I said previously, I think we ought to change the regulations in this country. I think we also ought to eliminate too big to fail by making those that are too big become so small they won't make a difference if they do fail. We ought to create the market circumstances that would force that to happen. But this bill doesn't do that. This bill won't do that.

So as we go through this rather large bill, which I think has had three or four accepted amendments thus far and which is 1,409 pages long, one of the other questions we ought to be asking is how many Members have read the entire bill. How many Members understand what is in the bill? How many Members can have the capability to anticipate the unintended consequences of what is in the bill? I think we will find the answer to that is zero. Yet we are in a hurry to do this for a political reason.

So I will go back to what I started on. We created the Financial Inquiry Commission. What are we going to do with it? What happens if they come out in December and say everything we did was wrong? Why did we create it? I would love to read back some of the speeches that were given on this floor about why we were creating it, because we had to know what went wrong. Now we have a commission that has been charged to tell us what went wrong, but we are going to ignore them. We are going to pass a bill before they have even completed their hearings.

I think it is no wonder the country has a low level of confidence in our deliberations, because they don't make sense to the average American. They understand the political spin. They understand pinning the tail on the donkey. They understand placing blame so you can deflect it from yourself. They get all that. They see it and they see right through it. But we are creatures of habit.

There are good things in this bill. Let me end on that. The elimination of the Office of Thrift Supervision had to happen. The reason they were ineffective is they got their money from the very people they were supervising and when their biggest customer is doing something wrong, rather than lose some of their revenue, they turn their eye the other way. Consequently, billions and billions and billions of dollars out of Washington Mutual became junk. Most of it was junk to begin with. It is the concept of greed.

Other good things: Changing the rating agencies and what they are accountable for. This bill goes in a direction different than I would have gone, but the point is there needs to be a change. They need to not get paid by the very people who are asking them to rate something they are getting ready to sell, and they ought to be paid by the person who is getting ready to buy what they are getting ready to sell, so the accountability will be there. But we haven't done that.

We recovered, and our recovery from this financial fiasco is because of the resilience of the American people. The price is enormous, with having 14 million people unemployed. That is a tremendous price to pay. The loss in terms of dignity, the loss in terms of the ability to provide for your family, the loss of losing the skill set you had and no longer can find a job to do it is a tremendous price that has been paid. But the American people are resilient. What they don't want to tolerate, however, is a Congress that fails to recognize and continues to repeat mistakes of the past.

We can say, Well, we have been working on this for 6 months. We have. There have been negotiations going on for a long time. My question is, Do we have the answers? Do we know what the answers are? And if the answer to that question is yes, then let's disband the Financial Inquiry Commission right now. Let's not waste those folks' time. Let's not spend another penny of Federal taxpayers' money if we think we already have the answers. We are going to do just as we do on every other program: We are going to create another one and we are going to keep spending on the first one.

Needless to say, I think this bill is fixable. I think we ought to address the real key issues: Fannie Mae and Freddie Mac. Why are we not addressing them? Because we don't want to put out the bucks, the cost to do that. That is why. That is why we are not addressing it. We know the issues.

We have taken an unlimited amount of our kids' money and put it in exposure and we have given an absolute implicit and implied guarantee to both of those organizations. The President in late December took office, and they are now buying back close to $400 billion worth of mortgages from the Treasury—nonperforming mortgages—and our kids are going to pay all that back. It will be 20 or 30 years before any of that property actually reaches the level at which it was sold.

So what is coming next? What is coming next is we are going to mandate principal reduction on mortgages across this country. Who does that impact? What that says is that everybody who paid their mortgage on time and kept up with their payments by making tremendous sacrifices other places, guess what. You are going to get to pay for the mortgage of everybody who didn't through your taxes and through your kids' taxes. You acted responsibly, but what is coming down the pike is we are going to lift the load for those who didn't. You met your obligations. You signed the contract on the bottom line, and those who were less fortunate than you, you now are going to get to pay for them too. That is what is coming. Mark my words. You will hear it before November. That is what is coming through the HAMP, through the 40-percent reduction in the principal amount on many of these mortgages.

So what is going on? We are rushing the financial reform bill that doesn't attack the three major underlying diseases of the financial system, and then right after we pass that, we are going to force principal reductions on hundreds of thousands, if not millions, of

mortgages, on which you, the taxpayer, are going to pick up the bill. That is what is coming. We are going to hear that it is not. That is what is coming.

Watch carefully what we do. Watch how we spin things. Watch how we create demons when, in fact, we are the source of the problem. Watch how we point our fingers at others whom we incentivized to take advantage of systems we created and say, Oh, no, we are not culpable at all. Oh, it wasn't us. We did all the oversight hearings. We changed it.

When we saw the writing on the wall, we didn't do any of that. The Congress created this mess, and we are going to continue to act in the same way that is going to create more. Because we are going to create a whole new set of regulations and then we are not going to have the oversight hearings: Are you doing it? Where is the metrics? How do we measure whether you are doing it? Are you, Mr. Bureaucrat, doing what the Congress directed? As a matter of fact, we don't even put in the regulations. We let somebody else write the regulations. We are so knowledgeable that we are getting ready to fix this problem, and besides the fact the Financial Inquiry Commission hasn't said anything to us yet about what the causes are and the potential solutions, but we are not even going to write the regulations, just as we didn't in the health care bill. The Department of HHS is going to write 1,690 regulations on the health care industry in this country. The same thing is going to happen in this bill.

As I say, I hope we can fix the bill because I think we need to make major changes. There are some good things in this bill.

We are in danger of losing what confidence is left of the American people in our actions. We ought to be asking the right questions for the right reasons that shouldn't have anything to do with politics, shouldn't have anything to do with partisanship, and ought to have everything to do with what is the best, right solution for our country in the long run.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have come to speak in support of the Sanders amendment. I am intrigued by my colleague's presentation, so I will respond to a bit of it. There are a couple of areas where we agree and some where I profoundly disagree, but let me start with the agreement.

When my colleague says, If you are too big to fail, you are too big and you ought to get smaller, I fully agree with that. I have an amendment that says if you are too big to fail—judged by the council in this bill that you are too big to fail, at that point you require the breaking up or the paring back of whatever is necessary of that institution to bring it below the level at which its failure would cause a moral jeopardy or an unacceptable risk to this country's entire economy. If we end this process and too big to fail still exists—that is, we have companies that are, in fact, too big to fail—then we will have failed, in my judgment.

Too big to fail means you are too big. We have broken up Standard Oil into 23 pieces and it turns out that 23 pieces are more valuable than the whole. AT&T was broken up. I am not interested in breaking up companies for the sake of it, but I am saying this: We know what has happened.

This chart shows what has happened to the largest financial institutions in this country. It shows that with respect to assets and liabilities, the top six commercial financial institutions in this country have gotten bigger, bigger, bigger, and much, much, much bigger. Does that cause jeopardy to this country? Well, if you have been awake the last few years to watch $700 billion be pledged to avoid a calamitous event to this economy, then you understand that this is too big and something has to be done about it. Create early warnings? No, I don't think so. Stop signs? How about deciding that if you are too big, you are too big, and you have to pare back those portions of your institution that make you too big to fail and a moral hazard to this country that is an unacceptable risk to the future of this economy.

Here is another chart that shows about the same thing. It shows the growth of these institutions going back to 1995. It is relentless, aggressive growth. If we end this without having addressed it, we will not have been able—we won't be able to tell the American people: We took care of too big to fail. So I agree with the Senator from Oklahoma on that point.

Where we disagree is the notion that the problem here is us. Well, I will tell my colleagues what. The ''us'' bears plenty of responsibility, but let me talk about the ''us.'' It wasn't the ''us'' who decided in Countrywide Mortgage, which was the largest single mortgage company in this country, to write liars' loans, to decide to say to people, Hey, you want to get some money from us? We are a big company. We are making a lot of fees. We are paying a lot of money to our executives and we want you to come to us. In fact, I have an ad they ran, Countrywide, the biggest mortgage company in the country. Here is the ad: Do you have less than perfect credit? Do you have late mortgage payments? Have you been denied by other lenders? Call us. We have money for you. Are you a bad risk? Are you a bad person? You can't pay your bills? Come to us.

It wasn't the Congress that did that, I would say to my friend. This was Countrywide Mortgage. By the way, the guy who ran this organization got off with $200 million. So he is now under criminal investigation. But don't suggest to me that somehow that was the responsibility of somebody other than the guy running the company that puts up ads such as: Zoom Credit. It says: You have been bankrupt, slow credit, no credit, can't pay? Who cares? That is what was advertised to the American people. That wasn't somebody in this Chamber going out and saying, Hey, how about letting us give you a loan if you have bad credit. Was it somebody in this Chamber who decided we are going to create credit default swaps? That is like saying ''the devil made me do it'' from the old TV show. No, no, no. It was a group of people who are high fliers, hotshots, wearing silk shirts and monogrammed sleeves, and they go out and create all of these exotic instruments such as credit default swaps, and they weren't enough; they have to do synthetic or naked default swaps with no insurable interest on the other side of the transaction. It was simply wagering. It had nothing to do with investment. It wasn't somebody in this Chamber who said please do this. It was the most unbelievable greed and avarice I have ever seen in the history of this country by a lot of folks. It created big institutions—I am not saying everybody did it, but enough did it to imperil this country's economy and to require emergency action to, as the Treasury Secretary then said, ''save the American economy.''

All this was going on. Everybody was having a carnival and making lots of money. In 2008, Wall Street had a net loss of $35 billion and paid bonuses of $16 billion. I got a master's degree in business. I went to business school. There is no place that teaches that—to go lose a bunch of money and then pay huge bonuses. This was a carnival of greed that went on in this country and steered this country right into a ditch.

When my colleagues say it is government that did that, I am sorry, that is flatout wrong. What government did—and they did it for a number of years in the last decade—is they hired a bunch—and the previous administration is especially responsible—of regulators who didn't like government and didn't want to regulate. One of the key people who came to this town in a key position of regulatory responsibility said: Hey, this is a new day. This is a business-friendly place. Understand that. We are going to be willfully blind here for a number of years. So do what you want; we won't watch and we don't care.

So the responsibility for regulatory authority is not in this Chamber.

I am not somebody who comes here to blame previous administrations very often, but when the Bush administration came to office—about the same time that Gramm-Leach-Bliley, by the way, with the support of the Clinton administration, repealed Glass-Steagall and said you can create big financial holding companies as big as you want and you can merge investment banks with commercial banks and security sales, and you can do it all—a one-stop financial shop. It will be great, and we will call it modern. About the time that passed—over my

objections, as I was one of eight Senators who voted no, and I was out here six, eight times opposing it—about that time, we had a new administration come in and say: We are going to put regulators in place who have no interest in watching what you do, so do what you want. They put out naked credit default swaps and trillions of dollars for them. Who cares? If you want to increase your leverage from 12 times, to 20 times, to 30 times your capital, fine. We will have a meeting in the basement of the SEC, and we will, just like that, approve you to be able to increase your leverage to 30 times your capital. And it will hardly be reported by anybody because we are not watching anything. They were blind regulators—dead blind. Unbelievable.

Don't blame this on someone else. We can blame it on bad legislation a decade ago. That is fair. Those who were making bad loans and taking big checks to the bank and filling it with millions of dollars were doing it because they were greedy and nobody was willing to stop them. That avalanche of greed built into a bubble of speculation that really injured this country and nearly ran it off a cliff.

By the way, at the same time all of this was happening in the last 15 years or so, the financial institutions decided they were going to securitize everything. Doesn't matter; find some debt, and we have people who can roll it into a security. Once they do that, they can sell it three, four times, to an investment bank, to a hedge fund, you name it, and they can get a rating agency—because the investment banks pay the costs of the rating agencies that rate their securities, which is a pretty big conflict of interest—to help roll these forward, and nobody has any skin in the game.

My colleague talks about how unfair it would be to ask somebody to save at least a portion of a loan they are providing. Do you know what? The only way you have proper underwriting of loans in this country is if you sit across the table from somebody who wants to get a loan and look at their credit reports and determine if they are eligible. The only way you ever ensure that happens the right way is to have that kind of underwriting, and you would do that if you are going to have some continuing risk.

But if you are going to give a $750,000 loan to somebody who makes $17,000 a year—and it happened, by the way—a liar's loan, requiring no documentation, with no interest or principal paid because he put it all on the back side—if you can sell that in a security to somebody else and you have no further risk, you get your money free and clear. That is what was going on at every single level. It was just the most unbelievable, irresponsible lack of regulation, perhaps, in the history of this country.

I want to say that the government has made plenty of mistakes, but don't blame this Chamber or people who were elected to the Senate for the bad behavior of somebody who takes $200 million away from the biggest mortgage finance company in this country and was selling liar's loans and advertising that if you have bad credit, no credit, slow credit, and bankruptcy, come to us, we are going to give you money. Don't blame that on somebody else. Put that blame where it rests—the unbelievable greed among the people who should have known better and should not have been able to do it in the first place because the regulators should have been all over them in a moment, saying: You cannot do it. That didn't happen.

This demonstrates the need for effective regulation. The free market system works, but when people try to subvert it, when people commit fouls in the free market system, it needs a referee with a whistle and a striped shirt. That was missing in the last decade.

Mr. President, one final point. Part of this argument is excusing criminal behavior because there wasn't a cop on the beat. Don't excuse the criminal behavior. We need cops on the beat. We need legislation that will make sure we close the loopholes that exist. We need to legislate soberly and thoughtfully and give the American people some notion that this behavior cannot happen again.

By the way, I think the way we do that is to make certain you cannot be too big to fail. By what justification should the major financial companies of this country continue this kind of concentration and escalation of size in a manner that jeopardizes this country should they fail? By what justification should we allow that to continue? The answer is that it should not.

There are two amendments to address that I am aware of—one by Senators BROWN and KAUFMAN, which creates a numerical limit on size, and I fully support. The other one, which I prefer because it has my name on it, is to flatout break up firms that have gotten too big to fail to the point where they are not too big to fail. That is the most effective way, in my judgment, to do this.

I will speak ever so briefly about the Sanders amendment. I got sidetracked by my colleague from Oklahoma, as is so often the case.

My colleague from Vermont has offered a piece of legislation that I think has great merit. Let me tell you what it doesn't do. It does not, as those who fear the amendment say, invoke the tentacles of the U.S. Congress in the construction of monetary policy. That area belongs to the Federal Reserve Board.

The Federal Reserve Board is a creature of legislation that Congress created. If you went back and read the debate, the country was assured that this was not creating a strong central bank. There were just lead pipe assurances to that, but, of course, that turned out not to be the case. Nonetheless, the Federal Reserve Board creates monetary policy, and there is a thought—and I agree with it—that we don't want monetary policy created on the floor of the Senate. We don't want to intrude on the creation or development of monetary policy. We do fiscal policy, the taxing and spending side. The monetary side is the Federal Reserve Board's terrain.

But the Federal Reserve Board ought not be unaccountable to anybody for anything. The Federal Reserve Board, it seems to me, deserves, No. 1, to be audited properly—a Government Accountability Office audit—which the Sanders amendment would require. And I know the Fed is having an apoplectic seizure thinking that maybe this amendment will pass. You know what. It is the right thing to do, to say at long, long last, there should be an audit of the Federal Reserve Board. I am not talking about auditing monetary policy but what it does generally. It is necessary, and I support this and think it is the right policy.

No. 2, this legislation does what I and many others have been pushing the Fed for, for some while. Last July of 2009, I had a letter signed by 10 of my colleagues to Chairman Bernanke saying: You have now used your emergency powers for the first time in U.S. history to open your loan window to investment banks, as never before in the history of our country. Serious financial problems, you say? Open the loan window and come and get some money. So we write and say: OK, you did that on an emergency basis for the first time in our history. What was the result? Who got the money? What were the terms and the conditions?

The American people deserved to have that information. I wrote again on March 19 of this year. On both occasions, we received letters from Chairman Bernanke that were polite, thoughtful, but that said: You know what. We don't intend to provide you or the American people information about what happened at our loan window. We don't intend to talk about the loans we gave to investment banks for the first time in history.

I wonder—and this is idle curiosity—did we have investment banks show up at this window and get near zero interest rate loans and then invest them back into Treasury bonds? How much money did they make on that transaction? I know many of these organizations—the largest investment banks—are now making record profits. But it is not as a result of loaning money to businesses in this country that need the lending; it is by trading securities—once again, right back in the same trench.

This legislation that my colleague, Senator SANDERS, has offered is legislation that will put in law a requirement that the Federal Reserve Board disclose the activities, in a certain period of time, of who received the lending from the Federal Reserve Board, what the conditions were, and what the amounts of funding were.

The Chairman of the Fed, who said this might make it very difficult and it will undermine this and that, undermine these programs, publicly releasing names—look, two Federal courts have required the Federal Reserve Board to do this. Two Federal courts—the district court and the appellate court—have said the Federal Reserve Board does not have the authority to withhold this information. The Federal Reserve Board has once again said: It doesn't matter, we intend to appeal again. They, apparently, intend to keep this tied up in the court system as long as they can. This amendment in this piece of legislation will say to the Federal Reserve Board: You cannot do that. The law requires you to disclose to the American people what you have done.

I come here to say I think this is a good bill. I had introduced a separate amendment on the disclosure by the Fed, but if we pass the Sanders amendment, that will take care of my amendment. Some people talked earlier about duplicates. Mine will be taken care of if we pass the larger amendment offered by Senator SANDERS.

I support the amendment. I know a good many of my colleagues will too. It has been a long time to try to get an audit of the Federal Reserve Board—not an audit of the monetary policy but an audit of the Federal Reserve Board. But if we do that, this will be a significant step forward for those of us who believe that is necessary and important for the country.

I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from South Carolina.

Mr. DEMINT. Mr. President, I join Senator DORGAN and Senator SANDERS in the amendment to audit the Federal Reserve.

Let me begin with a perspective on what happened in the stock market today. Clearly, someone got it wrong, and it created a domino effect of one thing falling after another, and before we knew it, the stock market was down 1,000 points. Fortunately, it climbed back up before it closed today.

It reminds us how volatile, how vulnerable we are in a world where so many systems are involved with our financial system.

It is good Congress is looking at financial reform. I only regret we are not dealing with the real causes of our financial crisis.

Wall Street is clearly jittery. We can see that from the stock market today. Everyone is waiting for the dominos to fall. We see what is happening in Greece, one country that continued to spend more than it was bringing in until it went bankrupt. Unfortunately, the American people are on the hook for yet another bailout, not even a bailout in this country but billions of American tax dollars are headed for Greece right now.

As other European countries head toward bankruptcy, last year in this Congress we created another credit line for the International Monetary Fund to be drawn down. The real irony is, we are borrowing money from countries such as China in order to bail out other countries in the world at a time when the United States is carrying $13 trillion of debt and projections of tens of trillions of more dollars in the future. It is clearly unsustainable.

The stock market and investors have a reason to be jittery, and Americans have a reason to be angry. We saw what the failure of large government organizations such as Fannie Mae did and how it cost Americans trillions of dollars. People who had been saving and investing all their lives found out almost overnight that the system they counted on and that we were supposed to oversee was not what they thought it was, and suddenly wealth was gone.

If Fannie Mae could do that much damage to our country, that is small in comparison to what would happen if the Federal Reserve does it wrong.

The Constitution gives Congress the responsibility for our monetary policy. Congress, years ago, delegated that to an independent agency we call the Federal Reserve. But we are still responsible for monetary policy. If something is done wrong with that policy, all we worked for in this country, everyone's savings and investments, everyone's wealth, not only in this country but because we are the reserve currency for the world, the whole economic system of the world is resting on top of what the Federal Reserve does.

The fact is, while it is our responsibility to oversee monetary policy, we do not know what the Federal Reserve is doing. Keep in mind, we were assured only months before Fannie Mae and Freddie Mac collapsed—and, by the way, we bailed them out and Freddie Mac for another $10 billion this week—only months before they collapsed, we were told by Chairman Bernanke at the Federal Reserve and many other economic experts that there was no problem. But there was a problem. The real problem was we did not know it, and that was a company created by this Congress. It was our responsibility to oversee it, and we did not carry out our responsibility.

We need an independent Federal Reserve. We do not need political manipulation and second-guessing of our monetary policy. But we do not need a secret Federal Reserve. We have to know what they are doing if we are going to be responsible for what they are doing. It is not going to be enough if they do something wrong and we point our finger at them and say it was their fault because it is our responsibility.

For years, the Federal Reserve has been avoiding any kind of audit, any kind of accountability, any kind of transparency. Every time we ask for any type of disclosure, they say we are violating their independence. We are not violating their independence by this amendment proposed by Senator SANDERS. All we are doing is uncloaking the secrecy that exists within the Federal Reserve.

It is important to know what we do know. We know the Federal Reserve has bailed out Bear Stearns and AIG. The taxpayers are stuck holding failed bets on everything from toxic subprime mortgages to strip malls and hotels. Thanks to the bailouts, taxpayers now own stakes in bankrupt Hilton hotels in Malaysia, Russia, and Singapore. I am not sure that is what the Congress had in mind when they started the Federal Reserve.

The Federal Reserve owns part of the Civic Opera building in Chicago and the Crossroads Mall in Oklahoma City. I thought it was bad when the Fed was printing money to keep up the government's shopping spree, but I never expected they would buy a mall to go shopping in.

They say it is over when the fat lady sings. Well, now the Fed has an opera house ready for her singing.

Americans deserve to know if the Federal Reserve is being honest with the Congress and with the American people. We know what they say behind closed doors does not square with what they say publicly.

Recently released transcripts show, in 2004, members of the Federal Reserve publicly downplayed specific concerns they discussed internally about the coming housing crisis. They knew we had a problem. At that time, Chairman Alan Greenspan said, if they were to encourage the public to talk about it ''it's possible to lose control of a process that only we fully understand.'' Meanwhile, they were telling the Congress and the public everything was fine.

By doing that, they cost millions of Americans a lifetime of savings, and they are still struggling. Millions of people are out of work because of mismanagement by the Federal Reserve. Yet they seem to think they require no supervision, no accountability, no transparency. We need to end that with this amendment today.

Within 30 days of the President signing this amendment that has been proposed, the Federal Reserve will have to tell us who got all this bailout money, how much they got and the reasoning for giving it and what terms of repayment there are. It is a pretty simple request. True financial reform must include a full audit of the Federal Reserve and a breakup and a winddown of Freddie Mac and Fannie Mae. But the people who run the government are not willing to hold the government institutions responsible.

Those who understand what happened in this financial crisis know that the easy money policy of the Federal Reserve, Fannie Mae and Freddie Mac buying subprime mortgages and securitizing them and selling them all over the world were a large part of the meltdown of our financial system. Yet this financial reform bill we are talking about does not even address the real causes of our financial meltdown.

One thing we can do if we adopt this amendment is make sure there is more transparency, more accountability at the Federal Reserve.

As I already mentioned yesterday, Freddie Mac posted an $8 billion loss. That is now fully owned by the Federal Government. The Federal Government is clearly mismanaging Freddie Mac, and they asked for another $10 billion bailout from the taxpayers. This time that does not have to go through Congress. President Obama has taken the caps off anything that can go to these bankrupt companies. Billions of dollars are going to flow from taxpayers directly to these government-owned entities.

Freddie Mac and Fannie Mae together have lost at least $126.9 billion so far. It is pretty amazing in a time when this country is overcome with debt. There is no end in sight. There is no cap on how much taxpayers can bail them out. Yet they are not even mentioned in this financial reform bill. We heard about greed on Wall Street, but we have not even addressed the greed within the government and within the government agencies.

The Democratic House Financial Services chairman, BARNEY FRANK, does not think these government-run institutions are good candidates for reform. He wrote a memo to the White House saying they were ''being managed responsibly and aren't doing any further economic damage.'' Fortunately, Senator MCCAIN has an amendment to address this issue, and I hope it is adopted. But if there is one place the blame can be placed for this financial meltdown, it comes back to Fannie Mae and Freddie Mac.

Wall Street certainly deserves a lot of the blame for the financial crisis because they took advantage of a lot of the mismanagement in government to their own benefit. But the Federal Reserve, Freddie Mac, and Fannie Mae also deserve a lot of the blame, and they should be addressed as well.

The Sanders amendment at least begins the process in letting us know what the Federal Reserve is doing. The audit-the-Fed amendment has more than 300 cosponsors in the House and 32 in the Senate. It is supported by a broad spectrum of political groups from FreedomWorks all the way to very liberal groups. Within the Senate, if America wants bipartisan activity, it could not be more bipartisan than BERNIE SANDERS and JIM DEMINT.

I encourage my colleagues to support this amendment. Let's reform not only the financial system but our own house, and that includes the Federal Reserve.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Virginia.

Mr. WARNER. Madam President, I rise to speak very briefly, following the comments of my colleague from South Carolina on the pending amendment that I know has received broad bipartisan support. I also wish to comment on what happened in the market today.

The stock market was down about 347 points. But what was more telling was the stock market, at one point today, approached a loss of 1,000 points which, if it had held, would have been the largest single-day loss in modern history.

There were a number of causes. My colleague mentioned some clear concerns about the crisis in Greece. What it appears to be in terms of real-time reporting going on right now is that part of this precipitous drop took place because it appears there was a technology glitch on an order put in that had no backguard or safeguards to stop it.

I am going to quickly go into an area that is actually the expertise of Senator KAUFMAN. I know Senator MCCAIN's amendment will be up in a moment.

I have heard, while sitting in that chair, my friend, the Senator from Delaware, come to this floor time and again to talk about the challenges that have been created in the marketplace with the increased use of high-speed trading, flash trading, colocation, sponsored access—a whole series of technical terms but terms that we may have seen the first inkling today with what happens when these tools of technology do not work the way they are supposed to.

I ask my friend, the Senator from Delaware, who has spent time on this issue much more than I, today we saw—and I have become a believer and I know the SEC has started moving forward on the flash trading issue, but there is a series of other activities that as we go through this financial reform bill, we at least need to have more facts. I believe the SEC needs to have the resources to keep up with the marketplace. We saw a living, breathing real-time example of the potential catastrophe that could take place if we do not have the ability to adequately use the technology and have safeguards and realize how some of these firms are using this technology to get an advantage over the everyday Main Street investor.

Mr. KAUFMAN. Madam President, the Senator from Virginia right from the beginning has been sympathetic. Because of his great knowledge on Wall Street and finance, he has been a great source of encouragement to me. I have spoken on this floor repeatedly, and this is not a surprise. If this turns out to be the worst case of what we are talking about—we do not know.

What happened over the years is that we basically went from a market that was a floor-based market to a market that was digitalized and decimalized, where we began to have tenths using decimals as opposed to eighths. What happened is that markets, computer firms—if you want to read a great story, a book called ''The Quants,'' by Scott Patterson. People came into the market and began to develop these high-speed computers. Human beings were no longer doing the trading, computers were. They developed these algorithms. It ran automatically. It grew and grew, and now it is something like—they went from 30 percent to 70 percent of all the trades on our markets are in this high-frequency trading, using these high speed computers. There is no way to know what is going on. They trade 2,000 to 3,000 shares in a second. No one knows what is happening in the exchanges when this trading is going on. No one knows.

The Securities and Exchange Commission has said—after repeated requests—that we are going to go look at market structure. This is months ago. They say we are going to look into this. Now they are having a group look into it. Right now, there is no way to know what is happening in this marketplace. All we have been requesting from the Securities and Exchange Commission is that they take a look at what is happening.

Remember, you have 2,000 to 3,000 trades a second. The only records that are kept are of the actual trades. But 90 percent—to let you know how complicated this is—90 percent of the trades are canceled. Why are they doing that? There are a lot of allegations about why they are doing this and what is going on, but right now we have this gigantic business—70 percent of our trading—and we have no idea what is going on.

I will say one final thing, because it reflects on this bill. What will happen if we allow our banks to be mingled with our investment banks and don't put some kind of cap on it? That is my big concern. Investment banks are into high risk things, and that is where most of these things are taking place. If you go back and look at derivatives, what we had under derivatives is a whole lot of money. Nobody argues, derivatives are gigantic. This is now gigantic. You had a lot of change. We went from very few derivatives to massive numbers of them. We went from 30 to 70 percent of all our trades being high frequency trading. We have no transparency as we have with derivatives. We didn't know what was going on in the derivatives market. We had no regulation, because you don't know what the trades are. And what happened? We had this gigantic meltdown.

I am saying that I totally agree with the Senator from Virginia. We have a very dangerous situation.

Mr. WARNER. I will wrap up very quickly.

We saw today, for example, in a matter of a moment or two, Procter & Gamble—one of America's premier companies—fall from $60 to $39. We saw another company fall from around $30 to a penny stock. This was not the result of a market, this was the result of, I believe, some lack of oversight. There is nobody in this Chamber who is more of an advocate of technology and the powerful tool that technology can be, but we are seeing what the Senator from Delaware has been an early leader on. I have listened to his speeches for

months, and everything in my gut says he is onto something here.

I have asked the chairman of the Banking Committee to make sure as this piece of legislation proceeds that we make sure that whether it is a study, whether it is an appropriate question of the SEC, this high speed, high frequency trading, colocation, sponsored access, all of these series of tools that seem to give the big guys a slightly bigger advantage over the everyday investor, be an appropriate subject of some additional study.

We may disagree about how we go into the last crisis, but I believe the Senator from Delaware is potentially on to what could be the next crisis. I think we perhaps saw a little window into that possibility today when the stock market got close, for moments in time—based on what appeared to be technology errors and high speed trading—to perhaps the single biggest loss in modern American history—a thousand point loss for a moment in time this afternoon.

I know the Senator from Arizona wants to talk about his issues as well. But there was a warning sign shot across the bow today, and if we don't deal with this as part of the mix, I think we are not acting appropriately.

Mr. KAUFMAN. I will yield, but this is a case where I think we have to look into this and see what is going on.

I yield for the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I want to discuss amendment No. 3839. This amendment is designed to end the taxpayer-backed conservatorship of Fannie Mae and Freddie Mac by putting in place an orderly transition period and eventually requiring them to operate without government subsidies on a level playing field with their private sector competitors.

Events of the last 2 years have made it clear that never again can we allow the taxpayer to be responsible for poorly managed financial entities which gamble away billions of dollars. Fannie Mae and Freddie Mac are synonomous with mismanagement and waste and have become the face of too big to fail. The time has come to end Fannie Mae and Freddie Mac's taxpayer-backed free ride and require them to operate on a level playing field.

I want to quote from an AP story yesterday entitled: ''Freddie Mac seeks $10.6B in aid after 1Q loss.'' Freddie Mac is asking for $10.6 billion in additional Federal aid after posting a big loss in the first 3 months of the year. It is another sign that the taxpayer bill for stabilizing the housing market will keep mounting. The McLean, VA-based mortgage finance company has been effectively owned by the government after nearly collapsing in September of 2008. The new request will bring the total tab for rescuing Freddie Mac to $61.3 billion. Freddie Mac says it lost $8 billion, or $2.45 a share, in the January-March period. That takes into account $1.3 billion in dividends paid to the Treasury Department. It compares with the loss of $10.4 billion or $3.18 a share, in the year-ago period.

So the beat goes on and the drainage goes on. Here on this chart we have the money yet to be repaid by institutions that received $10 billion or more in taxpayer bailouts. Obviously, these organizations have paid back. GMAC still has $16 billion they owe the taxpayer; Citigroup, $25 billion; GM—despite their PR stunt the other day, where they say they paid back, with TARP money, they paid the taxpayers with taxpayer money—$43.7 billion; AIG, $69.8 billion; and, of course, Fannie and Freddie, $125.9 billion plus.

I wish to begin today by calling my colleagues' attention to an editorial in this morning's Wall Street Journal, which states:

> Fan and Fred owned or guaranteed $5 trillion in mortgages and mortgage-backed securities when they collapsed in September of 2008. Reforming the financial system without fixing Fannie and Freddie is like declaring a war on terror and ignoring al-Qaida.

I want to repeat that sentence for the benefit of my colleagues. This is from the Wall Street Journal this morning.

> Reforming the financial system without fixing Fannie and Freddie is like declaring war on terror and ignoring al-Qaida.
>
> Unreformed, they are sure to kill taxpayers again. Only yesterday, Freddie said it lost $8 billion in the first quarter, requested another $10.6 billion from Uncle Sam, and warned that it would need more in the future. This comes on top of the $126.9 billion that Fan and Fred had already lost through the end of 2009. The duo are by far the biggest losers of the entire financial panic—bigger than AIG, Citigroup and the rest.
>
> From the 2008 meltdown through 2020, the toxic twins will cost taxpayers close to $380 billion, according to the Congressional Budget Office's cautious estimate.

The numbers, I say to my colleagues, are staggering—staggering.

> The Obama administration won't even put the companies on budget for fear of the deficit impact, but it realizes the problem because last Christmas Eve—

Strangely enough on Christmas Eve—

> . . . it raised the $400 billion cap on their potential taxpayer losses to . . . infinity. Moreover, these taxpayer losses understate the financial destruction wrought by Fan and Fred. By concealing how much they were gambling on risky subprime and Alt-A mortgages, the companies sent bogus signals on the size of these markets and distorted decision-making throughout the system. Their implicit government guarantee also let them sell mortgage-backed securities around the world, attracting capital to U.S. housing and thus turbocharging the mania.

Specifically, this amendment does several things:

It provides for a finite end to the current conservatorship period for both government-sponsored enterprises—GSEs—at 2 years of date from the enactment. The Federal Housing Finance Agency has an option to extend conservatorship for 6 months if the FHFA Director determines and notifies Congress that adverse market conditions exist. If at the end of conservatorship a GSE is not financially viable, the FHFA must place that GSE in receivership. If the GSE is financially viable, then it would be allowed to reenter the market under new operating restrictions.

It provides for the following changes to existing operating structure:

It calls for the repeal of the affordable housing goals mandates for the GSEs.

It calls for new limits for mortgage assets held on its books of no more than 95 percent of mortgage assets owned on December 31 of the prior year, reduced an additional 25 percent by the end of year 1, reduced an additional 25 percent by the end of year 2, and reduced to $250 billion by the end of year 3.

It strengthens capital standards and allows them to be increased by the FHFA as necessary.

It calls for the repeal of the temporary increases in conforming loan limit and high cost area increases, and a return to the $417,000 conforming loan limit for the first year, subject to annual adjustments by FHFA.

It provides for a prohibition on the purchase of mortgages exceeding the median home price for that area.

It calls for a minimum downpayment requirement of at least 5 percent for all new loans purchased by the GSE, increasing to 7.5 percent in the second year, and 10 percent in the third year.

It repeals the GSE exemption from having to pay State and local taxes.

I wonder how many of my colleagues and fellow citizens knew that Fannie and Freddie did not have to pay State and local taxes.

It calls for a repeal of the exemption allowing GSE securities to avoid full SEC registration.

In other words, given their enormous clout here in the Congress, Fannie and Freddie were able to have an exemption from their securities falling under SEC registration.

It calls for an assessment of fees on GSEs to recoup full value of the benefit due to guarantee provided by the Federal Government. And GAO will conduct a study to determine current value of government guarantee.

The amendment establishes a 3-year period after the end of conservatorship for GSEs to operate under new operating restrictions until their government charter expires. Upon charter expiration, it provides for a 10-year period with the creation of a separate holding corporation and a dissolution trust fund for any remaining mortgages or debt obligations held by the GSE.

It establishes a Senate-confirmed special inspector general within the Government Accountability Office with responsibility for investigating and reporting to Congress on decisions made with respect to the conservatorships of Fannie Mae and Freddie Mac. The SIG would provide quarterly reports to Congress.

While GSEs remain in conservatorship, it reestablishes the Federal funding limit of $200 billion per institution

for the GSEs and requires the GSEs to reduce their portfolio holdings by 10 percent of the prior year's holdings. It also establishes an approval process for any further agreements that put the taxpayers at risk.

It places Fannie Mae and Freddie Mac as part of the Federal budget as long as either institution is under a conservatorship or receivership.

Again, my colleagues might be interested that Fannie Mae and Freddie Mac, and what we are doing with them now, is not part of the Federal budget—remarkable.

It requires the FHFA to establish minimum prudent underwriting standards for mortgage loans eligible for government-sponsored entities purchase. Minimum requirements will include verification and documentation of income and assets relied upon to qualify the borrower for the mortgage loan and determination of borrower's ability to repay the mortgage loan.

I might add that the Congressional Budget Office has indicated this amendment would save the taxpayers several billions of dollars annually. I repeat, the Congressional Budget Office states—and, by the way, it has not been given any phony assumptions such as a doc fix—this amendment would save the taxpayers several billions of dollars annually.

During the debate on this financial reform bill, we will continue to hear a lot about how the U.S. Government will never again allow a financial institution to become too big to fail. We will hear continuous calls for more regulation to ensure that taxpayers are never again placed at such tremendous risk.

Sadly, and I say very sadly, the underlying bill completely ignores the elephant in the room because no other entity's failure would be as disastrous to our economy as Fannie Mae's and Freddie Mac's. Yet this bill does not address them at all.

In a recent Opinion Piece in the Wall Street Journal, Robert Wilmers wrote:

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

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

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

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

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

The op-ed continues:

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

According to a 2004 Congressional Budget Office study, the two GSEs enjoyed $23 billion in subsidies in 2003—primarily in the form of lower borrowing costs and exemption from state and local taxation. But they passed on only $13 billion to home buyers. Nevertheless, one former Fannie Mae CEO, Franklin Raines, received $91 million in compensation from 1998 through 2003.

Amazing.

In 2006, the top five Fannie Mae executives shared $34 million in compensation, while their counterparts at Freddie Mac shared $35 million. In 2009, even after the financial crash and as these two GSEs fell deeper into the red, the top five executives at Fannie Mae received $19 million in compensation and the CEO earned $6 million.

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

Changing this terrible situation will not be easy. The mortgage market has come to be structured around Fannie and Freddie and powerful interests are allied with the status quo.

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

There have been countless warnings about the mismanagement of both Fannie and Freddie over the years. In May of 2006, after a 27-month investigation into the corrupt corporate culture and accounting practices at Fannie Mae, the Office of Federal Housing Enterprise Oversight—OFHEO—the Federal regulator charged with overseeing Fannie Mae—issued a blistering, 348-page report which stated that:

Fannie Mae senior management promoted an image of the Enterprise as one of the lowest-risk financial institutions in the world and as ''best in class'' in terms of risk management, financial reporting, internal control, and corporate governance. The findings in this report show that risks at Fannie Mae were greatly understated and that the image was false.

During the period covered by this report—1998 to mid-2004—Fannie Mae reported extremely smooth profit growth and hit announced targets for earnings per share precisely each quarter. Those achievements were illusions deliberately and systematically created by the Enterprise's senior management with the aid of inappropriate accounting and improper earnings management.

A large number of Fannie Mae's accounting policies and practices did not comply with Generally Accepted Accounting Principles (GAAP). The Enterprise also had serious problems of internal control, financial reporting, and corporate governance. Those errors resulted in Fannie Mae overstating reported income and capital by a currently estimated $10.6 billion.

By deliberately and intentionally manipulating accounting to hit earnings targets, senior management maximized the bonuses and other executive compensation they received, at the expense of shareholders. Earnings management made a significant contribution to the compensation of Fannie Mae Chairman and CEO Franklin Raines, which totaled over $90 million from 1998 through 2003. Of that total, over $52 million was directly tied to achieving earnings per share targets.

Fannie Mae consistently took a significant amount of interest rate risk and, when interest rates fell in 2002, incurred billions of dollars in economic losses. The Enterprise also had large operational and reputational risk exposures.

Fannie Mae's Board of Directors contributed to those problems by failing to be sufficiently informed and to act independently of its chairman, Franklin Raines, and other senior executives; by failing to exercise the requisite oversight over the Enterprise's operations; and by failing to discover or ensure the correction of a wide variety of unsafe and unsound practices.

The Board's failures continued in the wake of revelations of accounting problems and improper earnings management at Freddie Mac and other high profile firms, the initiation of OFHEO's special examination, and credible allegations of improper earnings management made by an employee of the Enterprise's Office of the Controller.

Senior management did not make investments in accounting systems, computer systems, other infrastructure, and staffing needed to support a sound internal control system, proper accounting, and GAAP-consistent financial reporting. Those failures came at a time when Fannie Mae faced many operational challenges related to its rapid growth and changing accounting and legal requirements.

Fannie Mae senior management sought to interfere with OFHEO's special examination by diretstOg the Enterprise's lobbyists to use their ties to Congressional staff to No. 1, generate a Congressional request for the Inspector General of the Department of Housing and Urban Development (HUD) to investigate OFHEO's conduct of that examination and No. 2, insert into an appropriations bill language that would reduce the agency's appropriations until the Director of OFHEO was replaced.

OFHEO has directed and will continue to direct Fannie Mae to take remedial actions to enhance the safe and sound operation of the Enterprise going forward. OFHEO staff recommends actions to enhance the goal of maintaining the safety and soundness of Fannie Mae.

A remarkable report.

So what steps were taken by the Congress to punish Fannie Mae for such deliberate manipulation and outright corruption? Basically: NONE. According to published reports—including

Fannie Mae's own news release—Daniel Mudd, the president and CEO of Fannie Mae at the time, was awarded over $14.4 million in 2006—the year this report was issued, and over $12.2 million in 2007 in salary, bonuses and stock. And Fannie Mae continued their risky behavior—successfully posting profits of $4.1 billion in 2006.

The blatant corruption reported by the OFHEO led me to come to the Senate floor back in 2006 and call for the immediate consideration of GSE regulatory reform legislation. At the time I said:

For years I have been concerned about the regulatory structure that governs Fannie Mae and Freddie Mac and the sheer magnitude of these companies and the role they play in the housing market. OFHEO's report this week does nothing to ease these concerns. In fact, the report does quite the contrary. OFHEO's report solidifies my view that the GSEs need to be reformed without delay.

If Congress does not act, American taxpayers will continue to be exposed to the enormous risk that Fannie Mae and Freddie Mac pose to the housing market, the overall financial system, and the economy as a whole.

Additionally, also in May, 2006, I joined 19 of my colleagues in writing to the majority leader urging him to bring the Federal Housing Enterprise Regulatory Reform Act to the floor for debate.

I ask unanimous consent this letter be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, May 5, 2006.

Hon. WILLIAM H. FRIST, MD,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. RICHARD C. SHELBY,
Chairman, Banking, Housing and Urban Affairs Committee, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER FRIST AND CHAIRMAN SHELBY, We are concerned that if effective regulatory reform legislation for the housing-finance government sponsored enterprises (GSEs) is not enacted this year, American taxpayers will continue to be exposed to the enormous risk that Fannie Mae and Freddie Mac pose to the housing market, the overall financial system, and the economy as a whole. Therefore, we offer you our support in bringing the Federal Housing Enterprise Regulatory Reform Act (S. 190) to the floor and allowing the Senate to debate the merits of this bill, which was passed by the Senate Banking Committee.

Congress chartered Fannie and Freddie to provide access to home financing by maintaining liquidity in the secondary mortgage market. Today, almost half of all mortgages in the U.S. are owned or guaranteed by these GSEs. They are mammoth financial institutions with almost $1.5 trillion of debt outstanding between them. With the fiscal challenges facing us today (deficits, entitlements, pensions and flood insurance), Congress must ask itself who would actually pay this debt if Fannie or Freddie could not?

Substantial testimony calling for improved regulation of the GSEs has been provided to the Senate by the Treasury, Federal Reserve, HUD, GAO, CBO, and others. Congress has the opportunity to recommit itself to the housing mission of the GSEs while at the same time making sure the GSEs operate in a manner that does not expose our financial system, or taxpayers, to unnecessary risk. It is vitally important that Congress take the necessary steps to ensure that these institutions benefit from strong and independent regulatory supervision, operate in a safe and sound manner, and are primarily focused on their statutory mission. More importantly, Congress must ensure that the American taxpayer is protected in the event either GSE should fail. We strongly support an effort to schedule floor time this year to debate GSE regulatory reform.

Sincerely,

Chuck Hagel; John E. Sununu; John McCain; Elizabeth Dole; Lindsey Graham; Jeff Sessions; Wayne Allard; Mike Crapo; Jim Bunning; Jon Kyl; Rick Santorum; Mel Martinez; Judd Gregg; John Thune; Richard Burr; John Ensign; Larry Craig; Jim DeMint; James M. Inhofe; Tom Coburn.

Mr. MCCAIN. The letter stated in part:

Substantial testimony calling for improved regulation of the GSEs has been provided to the Senate by the Treasury, Federal Reserve, HUD, GAO, CBO, and others. Congress has the opportunity to recommit itself to the housing mission of the GSEs while at the same time making sure the GSEs operate in a manner that does not expose our financial system, or taxpayers, to unnecessary risk. It is vitally important that Congress take the necessary steps to ensure that these institutions benefit from strong and independent regulatory supervision, operate in a safe and sound manner, and are primarily focused on their statutory mission.

More importantly, Congress must ensure that the American taxpayer is protected in the event either GSE should fail.

Sadly, the bill which had passed the Senate Banking Committee under the leadership of then-Chairman SHELBY, with the support of all the committee's Republicans and none of the Democrats, was not brought up for consideration before this body.

It is critical to note, it was in 2005 that the GSEs, which had been acquiring increasing numbers of subprime loans for many years in order to meet their HUD-imposed affordable housing requirements, accelerated the purchases that led to their 2008 insolvency.

If legislation along the lines of the Senate Banking Committee's bill had been enacted that year, many if not all the losses Fannie Mae and Freddie Mac suffered, and will suffer in the future, may have been avoided. I wish to make it clear to my colleagues: Failure of Congress to act could have prevented—if they had acted—many of the failures we are now facing.

Any criticism leveled at Congress for the failures in Fannie Mae and Freddie Mac is very well placed. On October 3, 2008, the Wall Street Journal reported on how Congress pushed Fannie Mae and Freddie Mac to increase the purchases of low- and moderate-income borrowers. They wrote:

Beginning in 1992, Congress pushed Fannie Mae and Freddie Mac to increase their purchases of mortgages going to low- and moderate-income borrowers. For 1996, the Department of Housing and Urban Development (HUD) gave Fannie and Freddie an explicit target—42 percent of their mortgage financing had to go to borrowers with income below the median in their area. The target increased to 50 percent in 2000 and 52 percent in 2005.

For 1996, HUD required that 12 percent of all mortgages purchased by Fannie Mae and Freddie Mac be ''special, affordable'' loans, typically to borrowers with income less than 60 percent of their area's median income. That number was increased to 20 percent in 2000 and 22 percent in 2005. The 2008 goal was to be 28 percent.

Between 2000 and 2005, Fannie Mae and Freddie Mac met these goals every year, funding hundreds of billions of dollars' worth of loans, many of them subprime and adjustable rate loans made to borrowers who bought houses with less than 10 percent down.

Fannie Mae and Freddie Mac also purchased hundreds of billions of subprime securities for their own portfolios to make money and help satisfy HUD affordable housing goals. Fannie Mae and Freddie Mac were important contributors to the demand for subprime securities. Congress designed Fannie Mae and Freddie Mac to serve both their investors and the political class.

Demanding that Fannie Mae and Freddie do more to increase home ownership among poor people allowed Congress and the White House to subsidize low-income housing outside the budget, at least in the short run. It was a political free lunch. The Community Reinvestment Act, CRA, did the same thing with traditional banks. It encouraged banks to serve two masters, their bottom line and the so-called common good.

First passed in 1977, the CRA was ''strengthened'' in 1995, causing an increase of 80 percent in the number of bank loans going to low- and moderate-income families. By the way, there is nothing wrong with that as long as they meet the fundamental criteria, that they are borrowing money they can pay back.

Fannie Mae and Freddie Mac were part of the CRA story too. In 1997, Bear Stearns did the first securitization of CRA loans, a $384 million offering guaranteed by Freddie Mac. Over the next 10 months, Bear Sterns issued $1.9 billion of CRA mortgages backed by Fannie Mae or Freddie Mac.

Between 2000 and 2002, Fannie Mae securitized $394 billion in CRA loans, with $20 billion going to securitize the mortgages. Fannie Mae and Freddie Mac played a significant role in the explosion of subprime mortgages and subprime mortgage-backed securities.

Without Fannie Mae and Freddie Mac's implicit guarantee of government support, which turned out to be all too real, would the mortgage-backed securities market and the subprime part of it have expanded the way they did? Perhaps. But before we conclude that markets failed, we need a careful analysis of public policy's role in creating this mess. Greedy investors obviously played a part, but investors have always been greedy, and

some inevitably overreach and destroy themselves.

Why did they take so many down with them this time? Part of the answer is, a political class greedy to push home ownership rates to historic highs, from 64 percent in 1994 to 69 percent in 2004. This was mostly the result of loans to low-income, higher risk borrowers. Both Bill Clinton and George W. Bush, abetted by Congress, trumpeted this rise as it occurred.

The consequence, on top of putting the entire financial system at risk, the hidden cost has been hundreds of billions of dollars funneled into the housing market instead of more productive assets. Beware of trying to do good with other people's money.

Unfortunately, that strategy remains at the heart of the political process and a proposed solution to this crisis. Congress had the responsibility to ensure that Fannie Mae and Freddie Mac were properly supervised and adequately regulated. Congress failed. The devastation caused by that failure continues to reverberate across the Nation as more and more families face foreclosures every day.

In September 2008, the Washington Post published an in-depth article titled: ''How Washington Failed to Rein in Fannie, Freddie. As Profits Grew, Firms Used Their Power To Mask Peril.'' It is extremely informative and raised many troubling questions about the culture of corruption which is evident in the operations of both enterprises.

The Post piece begins:

Gary Gensler, an undersecretary of the Treasury, went to Capitol Hill in March 2000 to testify in favor of a bill everyone knew would fail.

Fannie Mae and Freddie Mac were ascendent, giants of the mortgage finance business and key players in the Clinton administration's drive to expand home ownership. But Gensler and other Treasury officials feared the companies had grown so large that, if they stumbled, the damage to the U.S. economy could be staggering. Few officials had ever publicly criticized Fannie Mae and Freddie Mac, but Gensler concluded it was time to rein them in.

''We thought this was a hand-on-the-Bible moment,'' he recalled.

The bill failed.

The companies kept growing, the dangers posed by their scale and financial practices kept mounting, critics kept warning of the consequences. Yet across official Washington, those who might have acted repeatedly failed to do so until it was too late.

Blessed with the advantages of a government agency and a private company ''at the same time, Fannie Mae and Freddie Mac used their windfall profits to co-opt the politicians who were supposed to control them. The companies fought successfully against increased regulation by cultivating their friends and hounding their enemies.

The agencies that regulated the companies were outmatched: They lacked the money, the staff, the sophistication and the political support to serve as an effective check.

But most of all, the companies were protected by the belief widespread in Washington—and aggressively promoted by Fannie Mae and Freddie Mac—that their success was inseparable from the expansion of homeownership in America. That conviction was so strong that many lawmakers and regulators ignored the peril posed to that ideal by the failure of either company.

In October 1992, a brief debate unfolded on the floor of the House of Representatives over a bill to create a new regulator for Fannie Mae and Freddie Mac. On one side stood Jim Leach, an Iowa Republican concerned that Congress was ''hamstringing'' this new regulator at the behest of the companies.

He warned that the two companies were changing ''from being agencies of the public at large to money machines for the stockholding few.''

On the other side stood Barney Frank, a Massachusetts Democrat, who said the companies served a public purpose. They were in the business of lowering the price of mortgage loans.

Congress chose to create a weak regulator, the Office of Federal Housing Enterprise Oversight. The agency was required to get its budget approved by Congress, while agencies that regulated the banks set their own budgets. That gave Congressional allies an easy way to exert pressure.

''Fannie Mae's lobbyists worked to ensure that [the] agency was poorly funded and its budget remained subject to approval in the annual appropriations process,'' OFHEO said more than a decade later in a report on Fannie Mae. ''The goal of senior management was straightforward: to force OFHEO to rely on the [Fannie] for information and expertise to the degree that Fannie Mae would essentially regulate itself.''

Congress also wanted to free up money for Fannie Mae and Freddie Mac to buy mortgage loans and specified that the pair would be required to keep a much smaller share of their funds on hand than other financial institutions. Where banks that held $100 could spend $90 buying mortgage loans, Fannie Mae and Freddie Mac could spend $97.50 buying loans.

Finally, Congress ordered that the companies be required to keep more capital as a cushion against losses if they invested in riskier securities. But the rule was never set during the Clinton administration, which came to office that winter, and was only put in place nine years later.

The Clinton administration wanted to expand the share of Americans who owned homes, which had stagnated below 65 percent throughout the 1980s. Encouraging the growth of the two companies was a key part of that plan.

''We began to stress homeownership as an explicit goal for this period of American history,'' said Henry Cisneros, then Secretary of Housing and Urban Development. ''Fannie Mae and Freddie Mac became part of that equation.''

The result was a period of unrestrained growth for the companies. They had pioneered the business of selling bundled mortgage loans to investors and now, as demand for investors soared, so did their profits.

Near the end of the Clinton administration, some of its officials had concluded the companies were so large that their sheer size posed a risk to the financial system.

In the fall of 1999, Treasury Secretary Lawrence Summers issued a warning, saying, ''Debates about systemic risk should also now include government-sponsored enterprises, which are large and growing rapidly.''

It was a signal moment. An administration official had said in public that Fannie Mae and Freddie Mac could be a hazard.

The next spring, seeking to limit the companies' growth, Treasury official Gensler testified before Congress in favor of a bill that would have suspended the Treasury's right to buy $2.25 billion of each company's debt—basically, a $4.5 billion lifeline for the companies.

A Fannie Mae spokesman announced that Gensler's remarks had just cost 206,000 Americans the chance to buy a home because the market now saw the companies as a riskier investment.

The Treasury Department folded in the face of public pressure.

There was an emerging consensus among politicians and even critics of the two companies that Fannie Mae might be right. The companies increasingly were seen as the engine of the housing boom. They were increasingly impervious to calls for even modest reforms.

As early as 1996, the Congressional Budget Office had reported that the two companies were using government support to goose profits, rather than reducing mortgage rates as much as possible.

But the report concluded that severing government ties with Fannie Mae and Freddie Mac would harm the housing market. In unusually colorful language, the budget office wrote, ''Once one agrees to share a canoe with a bear, it is hard to get him out without obtaining his agreement or getting wet.''

Fannie Mae and Freddie Mac enjoyed the nearest thing to a license to print money. The companies borrowed money at below-market interest rates based on the perception that the government guaranteed repayment, and then they used the money to buy mortgages that paid market interest rates. Federal Reserve Chairman Alan Greenspan called the difference between the interest rates a ''big, fat gap.'' The budget office study found that it was worth $3.9 billion in 1995. By 2004, the office would estimate it was worth $20 billion.

As a result, the great risk to the profitability of Fannie Mae and Freddie Mac was not the movement of interest rates or defaults by borrowers, the concerns of normal financial institution. Fannie Mae's risk was political, the concern that the government would end its special status.

So the companies increasingly used their windfall for a massive campaign to protect that status.

''We manage our political risk with the same intensity that we manage our credit and interest rate risks,'' Fannie Mae chief executive Franklin Raines said in a 1999 meeting with investors.

Fannie Mae, and to a lesser extent Freddie Mac, became enmeshed in the fabric of political Washington. They were places former government officials went to get wealthy—and to wait for new federal appointments. At Fannie Mae, chief executives had clauses written into their contracts spelling out the severance benefits they would receive if they left for a government post.

The companies also donated generously to the campaigns of favored politicians.

But Fannie Mae wasn't just buying influence. It was selling government officials on an idea by making its brand synonymous with homeownership. The company spent tens of millions of dollars each year on advertising.

In tying itself to politicians and wrapping itself in the American flag, Fannie Mae went out of its way to share credit with politicians for investments in their communities.

''They have always done everything in their power to massage Congress,'' Leach said.

And when they couldn't massage, they intimidated. In 2003, Richard H. Baker (R-La.), chairman of the House Financial Services subcommittee with oversight over Fannie Mae and Freddie Mac, got information from OFHEO on the salaries paid to executives at both companies. Fannie Mae threatened to

sue Baker if he released it, he recalled. Fearing the expense of a court battle, he kept the data secret for a year.

Baker, who left office in February, 2008, said he had never received a comparable threat from another company in 21 years in Congress. ''The political arrogance exhibited in their heyday, there has never been before or since a private entity that exerted that kind of political power,'' he said.

In June 2003, Freddie Mac dropped a bombshell: It had understated its profits over the previous three years by as much as $6.9 billion in an effort to smooth out earnings.

OFHEO seemed blind. Months earlier, the regulator had pronounced Freddie's accounting controls ''accurate and reliable.''

Humiliated by the scandal, then-OFHEO director Armando Falcon Jr. persuaded the White House to pay for an outside accountant to review the books of Fannie Mae. The agency reported in September 2004 that Fannie Mae also had manipulated its accounting, in this case to inflate its profits.

The companies soon faced new bills in both the House and the Senate seeking increased regulation. The Bush administration took the hardest line, insisting on a strong new regulator and seeking the power to put the companies into receivership if they foundered. That suggested the government might not stand behind the companies' debt.

Fannie Mae and Freddie Mac succeeded in escaping once more, by pounding every available button.

The companies orchestrated a letter-writing campaign by traditional allies including real estate agents, home builders and mortgage lenders. Fannie Mae ran radio and television ads ahead of a key Senate committee meeting, depicting a Latino couple who fretted that if the bill passed, mortgage rates would go up.

The wife lamented: ''But that could mean we won't be able to afford the new house.''

Most of all, the company leaned on its Congressional supporters.

Fannie Mae even persuaded the New York Stock Exchange to allow its shares to keep trading. The company had not issued a required report on its financial condition in a year. The rules of the exchange required delisting. So the exchange created an exception when ''delisting would be significantly contrary to the national interest.''

The amendment was approved by the Securities and Exchange Commission. Fannie Mae would remain on the New York Stock Exchange.

As Fannie Mae and Freddie Mac were trying to recover from their accounting scandals, a new and ultimately mortal threat emerged. Yet again, the warnings went unheeded for too long.

The companies had begun buying loans made to borrowers with credit problems.

Fannie Mae and Freddie Mac had been losing market share to Wall Street banks, which were doing boomtown business packaging these riskier loans. The mortgage finance giants wanted a share of the profits.

Soon, the firms' own reports were noting the growing risk of their portfolios. Dense monthly summaries of the companies' mortgage purchases were piling up at OFHEO.

An employee at one of the companies said it was already a constant discussion around the office in 2004: When would the regulators notice?

''It didn't take a lot of sophistication to notice what was happening to the quality of the loans. Anybody could have seen it,'' the staffer said. ''But nobody on the outside was even questioning us about it.''

President Bush had pledged to create an ''ownership society,'' and the companies were helping the administration achieve its goal of putting more than 10 million Americans into their first homes.

Fannie Mae and Freddie Mac's appetite for risky loans was growing ever more voracious. By the time OFHEO began raising red flags in January 2007, many borrowers were defaulting on loans and within months Fannie Mae and Freddie Mac would be running out of money to cover the losses.

Finally, as the credit crisis escalated, Congress passed a bill in July of 2008 that established a tough, new regulator for Fannie Mae and Freddie Mac. It was too late.

Americans are hurting. The economic situation remains depressed in my State. Unemployment is at record levels. The time has come to end the taxpayer-funded free ride of the gambling institutions. We cannot afford it anymore.

Mr. President, for us to somehow say we are going to enact significant and meaningful financial regulatory reform without addressing this situation—these hundreds of billions of dollars of toxic assets that still have not been resolved; two government-supported enterprises that have been propped up by the taxpayers of America for too long, while they engaged in the riskiest of enterprises, paying obscene profits to their executives and CEOs, their boards of directors derelict in their duties, criminally so.

We must enact reform of Freddie and Fannie if we are going to perform our duties, albeit too late—too late because of the terrible losses we have inflicted on the American taxpayers. But it is not too late to fix it.

Mr. President, I yield the floor.

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

Mr. WHITEHOUSE. Thank you, Mr. President.

I rise to speak for a moment again about my amendment No. 3746, of which I am delighted that the distinguished Presiding Officer is a cosponsor. I ask unanimous consent that Chairman PATRICK LEAHY, Senator JIM WEBB, and Senator BOB CASEY all be added as cosponsors to the amendment.

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

Mr. WHITEHOUSE. Just to recap it briefly, if you go around the country—

Mr. DODD. Mr. President, will the Senator yield for a moment?

Mr. WHITEHOUSE. I will be glad to yield to the chairman.

Mr. DODD. Mr. President, I see my friend from Arizona.

Can I ask the Senator, did he lay down his amendment? I am unclear.

Mr. MCCAIN. I have not laid down the amendment because I understand the Senator from Connecticut would move to table, and there are numerous Members who want to talk on this issue—this multitrillion-dollar issue. So, no, I have not. But I can also assure the Senator from Connecticut, if I propose the amendment, and it is tabled without proper debate, there will be another amendment just like it.

Mr. DODD. Let me say to my friend from Arizona—and he is my friend—I have no intention of immediately tabling anyone's amendment. I have not done that at all in the process. I think most Members appreciate I have been trying to make sure everybody has a chance to be heard and to work out amendments where we can so we can move along.

You can also understand my dilemma, in a sense. We have 100 Members here who basically all have amendments on which they want to get heard. Everyone thinks their amendment is pretty important, and I respect that. All I am trying to look for are some time agreements so we can say: How long do we need? So we can then set up a schedule whereby, with some predictability—Members want to go home tomorrow. Are we going to have votes tomorrow? Are we going to have votes on Monday?

I am just trying to have a schedule so I can accommodate as many people as I can so they can be heard on their matters. That is all I am seeking. I am not trying to shortcut anybody, although I would ask for reasonableness on time so everybody gets a crack at what they would like to do. That is all I am inquiring.

Mr. MCCAIN. In the words of Humphrey Bogart in Casablanca, I was misinformed because I was told by several different individuals that you would be moving to table the amendment if it was proposed. I am glad to hear that is not the case. I know of at least 20 Members on this side who want to speak on this issue. I will try to compile that and try to come to the Senator with a list and the time they want to discuss.

With all due respect to all the other amendments—and I do not say this very often—when we are talking about trillions of dollars—trillions of dollars—this is a very important amendment. So I will try to get to the distinguished chairman—I say with sympathy and respect—a list of speakers and the amount of time they may consume as soon as possible.

Mr. DURBIN. Mr. President, will the Senator from Arizona yield for a question?

Can I ask the Senator from Arizona, while he is working out his list and speakers and time, can we move some other amendments?

Mr. MCCAIN. Sure. Absolutely.

Mr. DURBIN. Bring them to a vote on the floor this evening?

Mr. MCCAIN. Absolutely.

Mr. DURBIN. Does the Senator have any objection to that?

Mr. MCCAIN. I have no objection to moving other amendments while I am doing that. None whatsoever.

Mr. DURBIN. On both sides of the aisle I hope we can work to accomplish that.

Mr. MCCAIN. We have to ask our leader but, yes, that is fine. Our two leaders say it is fine. I thank you.

Mr. DODD. I thank the Senator from Arizona.

We have Senator SANDERS' pending amendment, on which I think we have reached a lot of consensus. I would like

to see us get a vote on it. I know there are some issues that are—I will not mention them at all, but my hope is my colleagues might let us go to this. Is there any chance of that at all? Would someone get back to me and let me know it we can—

I urge a vote on the Sanders amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DODD. Is there a sufficient second?

The PRESIDING OFFICER. There is not a sufficient second.

Mr. SANDERS. Point of order: How many hands do you need up?

The PRESIDING OFFICER. Twenty.

Ordering the yeas and nays does not force a vote on the amendment.

Mr. REID. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk called the roll, and the following Senators entered the Chamber and answered to their names.

[Quorum No. 3 Leg.]

Alexander	Gregg	Sanders
Bennett (CO)	Hagan	Schumer
Brown (OH)	Isakson	Shelby
Burris	McCain	Udall (CO)
Dodd	Murray	Warner
Durbin	Reid (NV)	Whitehouse

The PRESIDING OFFICER. A quorum is not present.

The majority leader is recognized.

Mr. REID. Mr. President, I enter a motion to instruct the Sergeant at Arms to request the presence of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from South Carolina (Mr. DEMINT), the Senator from Arizona (Mr. KYL), the Senator from Indiana (Mr. LUGAR), and the Senator from Ohio (Mr. VOINOVICH).

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

The result was announced—yeas 61, nays 33, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—61

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

NAYS—33

Alexander	Cornyn	McCain
Barrasso	Crapo	McConnell
Bond	Ensign	Murkowski
Brownback	Enzi	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	LeMieux	Wicker

NOT VOTING—6

Bennett	DeMint	Lugar
Byrd	Kyl	Voinovich

The motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

The majority leader is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I am sometimes a patient person. I am really doing my best to be patient. I am going into this with good faith, as I hope my Republican colleagues are. We have not gotten a lot done. The issue we are working on is very important. But I just tell my friends on the other side of the aisle, we do not need a filibuster by some other name. I am approaching this in good faith.

People have worked very hard. We have a lot to do. I think it goes without saying that we were at a meeting today, and we were told we have to complete the supplemental for the war spending by the time we leave here. That came from Secretary Gates. We have a lot to do.

My suggestion is that people who want to offer amendments work tomorrow, they work Saturday and Sunday. The Banking staff will be available and the Agriculture staff will be available. If you have amendments, bring them together. We have a lot of amendments, but many of them are on the same subject. Work with the Banking staff and the Agriculture staff to come up with the amendments we can move through as quickly as possible. I want people, if they have something to say, to say it, but we don't need hours and hours to say it.

One of the most important amendments we are trying to do is one that has been talked about by Senators KAUFMAN and BROWN for weeks. And he has agreed to take 5 minutes on it. It has been talked about. We have read it. Senator BROWN has agreed to take 5 minutes. We have read about it in the press. Everybody knows what he is trying to do. So I appreciate very much the Republicans allowing us to move forward on this amendment tonight. But, please, over the next few days we have a lot of amendments that are important, and I understand that, but when it comes time to offer these amendments, you need a lot of work on them. It always happens because it is a complicated bill. And we only need one amendment. We do not need the same amendment offered by five different Senators.

I appreciate everyone's patience tonight. We are trying to work through this. We are not going to have votes tomorrow. We are going to have votes tonight. And it has been hard to get here.

I appreciate the conversation I had with the Republican leader earlier today, and I know how hard this has been for the two managers of this part of the bill, Senators DODD and SHELBY.

Senator SHELBY has been especially gracious during the whole day. This is his birthday. His wonderful wife is waiting for him for dinner. She has been waiting for an hour now, and she is going to have to wait a little while longer, as she has waited for him a long time on other occasions. So we wish him a happy birthday.

I ask unanimous consent that the following be the next amendments in order: Cantwell amendment No. 3786, to be modified with the changes at the desk, and it is my understanding that is going to go by voice; Brown amendment No. 3733, with a second-degree amendment by Senator ENSIGN, amendment No. 3869; that Senator BROWN will have 5 minutes, Senator ENSIGN will have 5 minutes, and Senator DODD will have 5 minutes, and then we will proceed to a vote on that matter. I further ask consent that it be in order for a Democratic side-by-side to the McCain GSE amendment and that the Cardin amendment No. 3840 be considered tonight, and it is my understanding that amendment will be decided by a voice vote; that after the Cantwell amendment is called and modified, there be 10 minutes of debate with respect to that amendment, with the time equally divided and controlled in the usual form; that upon the use or yielding back of the time, the amendment be agreed to, and that there be no amendments in order to the amendments in this agreement prior to a vote except as we have stated.

The PRESIDING OFFICER (Mr. MERKLEY.) Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object—I am certainly not going to object; I just wanted to make sure everyone understands. So tomorrow would be debate only?

Mr. REID. Yes, debate only, and the same on Monday.

Mr. MCCONNELL. I want to echo the comments of the majority leader with regard to getting amendments prepared. It is to our advantage to have amendment votes. We are going to work hard to get them in the queue and to get them voted on.

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

The Senator from Washington is recognized.

AMENDMENT NO. 3786, AS MODIFIED, TO AMENDMENT NO. 3739

Ms. CANTWELL. Mr. President, I ask unanimous consent that the pending amendment be set aside and call up my amendment No. 3786, as modified.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. WHITEHOUSE, and Mr. SANDERS, proposes an amendment numbered 3786, as modified, to amendment No. 3739.

Ms. CANTWELL. 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:

On page 762, between lines 5 and 6, insert the following:

SEC. _____. ANTIMARKET MANIPULATION AUTHORITY.

(a) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:

''(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

''(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.

''(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact, that such report is false, misleading or inaccurate.

''(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

''(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

''(3) OTHER MANIPULATION.—In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

''(4) ENFORCEMENT.—

''(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

''(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

''(i) contain a description of the charges against the person that is the subject of the complaint; and

''(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

''(C) HEARING.—A hearing described in subparagraph (B)(ii)—

''(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

''(ii) shall require the person to show cause regarding why—

''(I) an order should not be made—

''(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

''(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

''(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

''(iii) may be held before—

''(I) the Commission; or

''(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

''(5) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

''(6) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

''(7) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

''(8) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

''(9) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

''(10) EVIDENCE.—On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

''(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

''(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

''(C) assess such person—

''(i) a civil penalty of not more than an amount equal to the greater of—

''(I) $140,000; or

''(II) triple the monetary gain to such person for each such violation; or

''(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—

''(I) $1,000,000; or

''(II) triple the monetary gain to the person for each such violation; and

''(D) require restitution to customers of damages proximately caused by violations of the person.

''(11) ORDERS.—

''(A) NOTICE.—The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

''(i) registered mail;

''(ii) certified mail; or

''(iii) personal delivery.

''(B) REVIEW.—

''(i) IN GENERAL.—A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

''(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

''(I) for the circuit in which the petitioner carries out the business of the petitioner; or

''(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

''(C) PROCEDURE.—

''(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

''(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

''(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) shall have jurisdiction to affirm, set aside, or modify

the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.''.

(b) CEASE AND DESIST ORDERS, FINES.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

''(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): Provided, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.''.

(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:

''(D) who purchased or sold a contract referred to in subparagraph (B) hereof or swap if the violation constitutes—

''(i) the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010; or

''(ii) a manipulation of the price of any such contract or swap or the price of the commodity underlying such contract or swap.''.

(d) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.

(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section.

Ms. CANTWELL. I further ask unanimous consent that Senators MERKLEY, BROWN of Ohio, and SHAHEEN be added as cosponsors.

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

Mr. DODD. I would like to be added as a cosponsor.

Ms. CANTWELL. I ask unanimous consent that Senator DODD also be added as a cosponsor.

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

Ms. CANTWELL. My amendment strengthens the Commodity Futures Trading Commission's authority to go after manipulation and attempted manipulation in the swaps and commodities markets. It makes it unlawful to manipulate or attempt to manipulate the price of a swap or commodity using any manipulative device or contrivance.

Some people might be thinking: Why do we need legislation like that? Don't we already have something in place? Unfortunately, current law does not have enough protections for our consumers, and we have found in other areas that it is very important to have a strong bright line, a law on the books against manipulation. We want the CFTC to have strong tools to go after this kind of behavior. This amendment is about protecting the integrity of markets for people who rely on them for their business.

Current law makes it very difficult for the Commodity Futures Trading Commission to prove market manipulation. The CFTC has to prove that someone had specific intent to manipulate, and that is a very difficult standard to prove. Most individuals don't write an e-mail, for example, saying they intend to manipulated prices, but that is currently what the law requires the Commodity Futures Trading Commission to prove: ''specific intent'' to manipulate. As a result of this, the Federal courts have recognized that with the CFTC's weaker anti-manipulation standard, market ''manipulation cases generally have not fared so well.'' In fact, the law is so weak that in the CFTC's 35-year history, it has only had one successfully prosecuted case of market manipulation, and that case is currently on appeal in Federal court. I am going to say that again. In the 35 years of its history, the CFTC has only successfully prosecuted one single case of manipulation.

This language in this amendment is patterned after the law that the SEC uses to go after fraud and manipulation; that there can be no manipulative devices or contrivances. It is a strong and clear legal standard that allows regulators to successfully go after reckless and manipulative behavior.

This legislation tracks the Securities Act in part because Federal case law is clear that when the Congress uses language identical to that used in another statute, Congress intended for the courts and the Commission to interpret the new authority in a similar manner, and Congress has made sure that its intention is clear.

In the 75 years since the enactment of the Securities and Exchange Act of 1934, a substantial body of case law has developed around the words ''manipulative or deceptive devices or contrivances.''

The Supreme Court has compared this body of law to ''a judicial oak which has grown from little more than a legislative acorn.'' It is worth noting that the courts have held that the SEC's manipulation authority is not intended to catch sellers who take advantage of the natural market forces of supply and demand, only those who attempt to affect the market or prices by artificial means unrelated to the natural forces of supply and demand.

Mr. President, Congress granted the same antimanipulation authority to the Federal Energy Regulatory Commission in 2005 in the Energy Policy Act. We did this as a result of the Enron market manipulation. I am very proud of this legislation and its ban on manipulation in electricity and natural gas markets. I say that because there was a similar issue of deregulation of energy markets that led to the Federal regulators not doing their job.

Since we have implemented this language in the electricity markets, the Federal Energy Regulatory Commission, since 2005, has used its authority to conduct 135 investigations. Of those 135 investigations, 41 have resulted in settlements involving civil penalties or other monetary remedies totaling over $49 million.

Two investigations brought about enforcement actions against manipulation, one against Amaranth for $291 million——

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator has used 5 minutes.

Ms. CANTWELL. Mr. President, I ask unanimous consent for an additional 1 minute.

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

Ms. CANTWELL. The alleged market manipulation brought enforcement action against Amaranth for $291 million in civil penalties and Energy Trading Partners for $167 million in civil penalties. That is just an example of what a statute with teeth and a regulatory entity can do to actually stop manipulation when given that authority.

So, Mr. President, I hope my colleagues will support this strong antimanipulation standard being inserted into the Commodity Exchange Act. It will truly put a policeman on the beat and stop the kind of manipulation that has occurred in these commodities markets.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. LINCOLN addressed the Chair.

The PRESIDING OFFICER. Who yields time in opposition?

Mr. DODD. Mr. President, as I recall the unanimous consent agreement, there were 5 minutes. Is there time allocated? I do not believe there is any opposition to this amendment; therefore, if there is any, we yield back the time.

I say to the Senator, did you want to be heard on the Cantwell amendment?

Mrs. LINCOLN. Yes.

Mr. DODD. I am sorry.

The PRESIDING OFFICER. There is 5 minutes remaining for debate.

The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I rise this evening in support of my good friend, Senator CANTWELL, and her amendment. I would like to thank the Senator from Washington who has for years been a leader in the Senate on the complicated issue of derivatives and who has been particularly effective at strengthening manipulation standards. There has not been a more effective champion of consumers and efficient markets than Senator CANTWELL.

This amendment comes as a result of hours of thoughtful hard work from Senator CANTWELL and her staff. While the Dodd-Lincoln bill contains a strong antimanipulation authority, Senator CANTWELL came to me and my staff with ideas on how to strengthen the provision, and I was pleased to have listened. We worked through our concerns and built on each other's strengths and, in the end, came up with an improved product. That is the amendment we are accepting here today.

Market manipulation is an ever-present danger in derivatives trading. Derivatives are leveraged transactions, and it is well known that in these markets there are numerous opportunities for traders to abuse their positions in order to game the market to their advantage. This is unacceptable. These markets are a fundamental part of our economy. They are used to manage risk and for price discovery, and their integrity must be preserved.

The Dodd-Lincoln bill strengthens existing law to target specific market abuses that have arisen in recent years. These abuses are outlawed as disruptive practices in section 747 of the underlying bill.

I wholeheartedly support Senator CANTWELL's amendment, which takes the significant step of adding a new and versatile standard for deceptive and manipulative practices under the Commodity Exchange Act. It addresses false reporting and authorizes private rights of action that will aid the CFTC in its enforcement effort. Senator CANTWELL's amendment will supplement the CFTC's existing standards as the Commission and the SEC work together to regulate derivatives.

The Commodity Exchange Act is a complex statute that covers many trading venues. Senator CANTWELL's amendment will give the CFTC a very important new weapon in its arsenal to combat ever-evolving forms of manipulative trading schemes that undermine public confidence in the proper functioning of these markets.

I am very proud to be a supporter of what Senator CANTWELL has done with this amendment, and I urge all of our colleagues to take a look at it and realize she has really helped to improve the bill, the underlying bill, in her actions.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3786), as modified, was agreed to.

Mr. DODD. I move to reconsider the vote and 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 Maryland is recognized.

AMENDMENT NO. 3840 TO AMENDMENT NO. 3739

Mr. CARDIN. Mr. President, under the unanimous consent agreement, I call up amendment No. 3840.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Mr. CARDIN], for himself and Mr. GRASSLEY, proposes an amendment numbered 3840 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To provide whistleblower protections for employees of nationally recognized statistical rating organizations)

On page 977, line 19, strike ''The Securities'' and insert the following:

(a) IN GENERAL.—The Securities

On page 994, between lines 2 and 3, insert the following:

(b) PROTECTION FOR EMPLOYEES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—Section 1514A(a) of title 18, United States Code, is amended—

(1) by inserting ''or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c),'' after ''78*o*(d)),''; and

(2) by inserting ''or nationally recognized statistical rating organization'' after ''such company''.

Mr. CARDIN. Mr. President, the Cardin-Grassley amendment extends whistleblower protections to employees of nationally recognized statistical rating organizations, NRSROs. NRSROs are the companies—such as Moody's and Standard & Poor's—which issue credit ratings that the U.S. Securities and Exchange Commission permits other financial firms to use for certain regulatory purposes.

There are 10 NRSROs at present, including some privately held firms. The NRSROs played a large role—by overestimating the safety of residential mortgage-backed securities and collateralized debt obligations—in creating the housing bubble and making it bigger.

Then, by marking tardy but massive simultaneous downgrades of these securities, they contributed to the collapse of the subprime secondary market and the ''fire sale'' of assets, exacerbating the financial crisis.

In the wake of the Enron, WorldCom, and Tyco corporate scandals, Congress passed the Sarbanes-Oxley Act in July of 2002. One of the provisions in the act was extended whistleblower protections to employees of any company that is registered under the SEC Act of 1934 or that is required to file reports under section 15(d) of the same act. The whistleblower provisions of the Sarbanes-Oxley Act protect employees of the publicly traded companies from retaliation by giving victims of such treatment a cause of action which can be brought in Federal court.

Section 1514(a) delineates which companies are covered by that act and what actions are prohibited. The Cardin-Grassley amendment expands the provision to include employees of the rating companies.

I think it is important we have the whistleblower protection. S. 3217 contains several provisions to improve SEC and congressional oversight of the functioning of the NRSROs. So the underlying bill does provide for the regulatory framework for the rating agencies.

What the Cardin-Grassley amendment does is extend the whistleblowing provisions—that protect employees—to all of the rating agencies. I would urge my colleagues to support the amendment.

With that, Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from Connecticut.

Mr. DODD. Mr. President, I rise in strong support of the amendment offered by our colleague from Maryland, which would protect whistleblowers.

We have all learned, over the many months of discussions since the collapse and fall in 2008, of the culpability of the credit rating agencies—in terms of what was sold in the market place, relying on the reputation of the credit rating agencies and their classification of these bundled mortgages. We have had a lot of discussion about how best to do this, to rein in the credit rating agencies so we get far greater reliability and due diligence out of them.

One thing for certain that would clearly help is the Cardin amendment. It may not solve all the problems with the credit rating agencies, but it is going to be a major opportunity for us to be able to break down the bales that exist.

A significant part of our bill improves, we think, regulation. This bill contains several provisions that will make rating agencies more transparent, accountable, and accurate. That will increase the SEC's regulatory performance, and that will reduce investors' reliance on ratings issued by nationally recognized statistical rating organizations.

Senator CARDIN's amendment complements this provision in the bill, and I commend him for it. It adds employees of nationally recognized statistical rating organizations to a list of already protected whistleblowers. It is a valuable contribution to this bill, and I thank him for it.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 3840) was agreed to.

Mr. DODD. I move to reconsider the vote and 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 Ohio is recognized.

AMENDMENT NO. 3733 TO AMENDMENT NO. 3739

(Purpose: To impose leverage and liability limits on bank holding companies and financial companies)

Mr. BROWN of Ohio. Mr. President, I call up amendment No. 3733.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. BROWN], for himself, Mr. KAUFMAN, Mr. CASEY, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. HARKIN, Mr. SANDERS, and Mr. BURRIS, proposes an amendment numbered 3733 to amendment No. 3739.

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

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

(The amendment is printed in the RECORD of Wednesday, April 28, 2010, under ''Text of Amendments.'')

Mr. BROWN of Ohio. Mr. President, the Kaufman-Brown amendment, with 14 cosponsors, would scale back the six largest banks in the Nation, requiring them to spin off into smaller more manageable banks and maintain sufficient capital to cover their debts.

These six banks' assets total $9 trillion. Our amendment ends bailouts by ensuring that no Wall Street firm is so big or so reckless that it fails, and then so does our economy. The bill we are considering today is strong, but it needs to be stronger. It focuses on monitoring risk—risk is the biggest problem—and takes action once there are signs of trouble.

But size is also a huge problem. Everyone, from consumer groups, to small business owners, to former directors, Governors of the Fed, Chairmen of the Federal Reserve—two of them—understand what is at stake if we do not pass this amendment.

They have understood because we see it for ourselves that when a few megabanks dominate our financial system, the downfall of any of them can mark the downfall of our entire economy. We have seen millions of jobs lost. We have seen millions of homes lost. We have seen trillions of dollars in savings and wealth drained.

Just 15 years ago—just 15 years ago—the six largest U.S. banks had assets equal to 17 percent of our GDP. Today, the six largest banks have total assets estimated to be in excess of 63 percent. From 17 percent of GDP to 63 percent of GDP—these six largest banks.

Alan Greenspan said too big to fail is too big. Too big to fail is too big. These six banks, in addition to the fact they already have such dominance in our economy, when borrowing money when going into the capital markets, enjoy an 80-basis point advantage over banks in Denver and Cleveland, regional banks in our States, and community banks that are even smaller. They have an 80-basis points advantage ensuring that if we don't pass the Brown-Kaufman amendment, their advantage will only grow because these banks will grow larger, because the playing field is tilted toward them, because they have this interest rate advantage when they borrow money—another reason to understand that too big to fail is too big.

I yield the last 2 or 3 minutes to Senator KAUFMAN.

Mr. KAUFMAN. Mr. President, I want to say to those who say this is Draconian, think of one thing: Citigroup under this will be the size they were in 2002. They competed internationally. Everything was the same.

In terms of risk, James Cayne said today, after he spoke before the Financial Crisis Inquiry, that Bear Stearns failed because their ratio of assets to capital was 40 to 1. This bill would cap it at 16. Bear Stearns would not have failed. We should not leave this for the regulators. In 1933 our forbears before us made tough decisions after the Great Depression and put in Glass-Steagall. We should do no less. We should be legislating for generations here tonight and support this amendment.

Thank you.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 3898 TO AMENDMENT NO. 3733

Mr. ENSIGN. Mr. President, I have a second-degree amendment to the Brown amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 3898 to amendment No. 3733.

Mr. ENSIGN. 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 amend the definition of the term ''financial company'' for purposes of imposing limits on nondeposit liabilities)

On page 2 of the amendment, strike lines 11 through 15 and insert the following:

(1) FINANCIAL COMPANY.—The term ''financial company'' means—

(A) any nonbank financial company supervised by the Board;

(B) the Federal National Mortgage Association; and

(C) the Federal Home Loan Mortgage Corporation.

Mr. ENSIGN. Mr. President, I have a very simple second-degree amendment actually supporting the underlying amendment. But what my second degree does is it simply says that Fannie Mae and Freddie Mac will be subject to the same limits. Everybody has been talking about too big to fail. That is one of the problems. All of this interconnectedness of our financial markets, when one is too big to fail, draws the entire market down. That is why TARP was needed. That is why people have justified a lot of bailouts. I don't think there is anybody who can legitimately argue that Fannie and Freddie aren't too big to fail.

What this second-degree amendment says, very simply, is the 3 percent of GDP that we are limiting the banks to, we limit Freddie Mac and Fannie Mae to those same limits.

We saw yesterday afternoon that Freddie Mac said they needed another $10 million in taxpayer bailouts. There is no question it is too big. There is no question that if we actually put their debt on our balance sheets, we look much worse, the deficits on our balance sheet, we look much worse. What we are seeing over in Greece with the rioting and how that is affecting our financial markets, we need to be honest in our accounting, but we also need to make sure these things don't continue to get larger and larger.

Back in December the President took the limits off of Fannie and Freddie—took the limits off. That is saying they can grow and keep borrowing and keep doing the irresponsible things they did in the past.

When we look at the root causes of the financial crisis, people took risks they never should have taken because there were implicit guarantees not only in the banks being too big to fail but especially in Fannie and Freddie being too big to fail. It skewed the markets. People took risks they never should have taken.

There are other things I believe that need to be done with Fannie and Freddie, but certainly we can't allow them to get as large as they are now. So the reasonable limits that have been put on the large banks I think need to be put on these GSEs, the government-sponsored entities, and if we do that, I think we will be in better shape in the future for not having another financial collapse.

It is a very simple amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. ENSIGN. Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 5 minutes.

Mr. DODD. I yield 2 minutes to my colleague from Virginia, Senator WARNER, a member of the Banking Committee.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise in opposition to both the second-degree amendment and the initial Brown-Kaufman amendment. I understand their goals. I believe the chairman's bill addresses those goals. We have 10 percent total liabilities in the United States in the existing bill right now.

We only have 4 of the largest 50 banks in the world that are American domiciled. I believe this arbitrary asset cap size is not the appropriate restriction. The real question should be the level of interconnectedness and the risk taking. We saw in the crisis of 2008 the character of the firms was not simply the largest firms but firms that did undue risk taking.

We have put forward in this legislation two very important ways so that if these firms do take undue risk or if their size is a contributing factor, the Dodd bill does provide the ability for these banks to be broken up, one through the funeral plans, to make sure these large institutions have to show how they can do an orderly unwinding process through bankruptcy. If they can't show that, whether it is due to the international holdings or the domestic holdings, the systemic risk council can break up these institutions.

In addition, there are other parts of the bill that also allow it. If these institutions continue to pose a systemic risk, they can be broken up, so I rise in opposition to both amendments.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I join the Senator in opposition to the Brown amendment, but I wish to speak about the Ensign amendment.

We talk about rushing things through around here. I have heard that mentioned a lot over the last couple of days. This is going beyond rushing through. The entire 97 percent of all mortgages—97 percent of all mortgages in the country today—are going through the GSEs, Fannie and Freddie. Without them, there is no housing market in the country. So before we decide to do this without any alternative in place—and clearly one is needed. I take a backseat to no one on the idea we need to reform how the GSEs are functioning.

As I think my friend JUDD GREGG mentioned the other day, this is far too complex an issue to include in this bill. We already have 1,500 pages. We never intended to deal with every financial issue in the United States, and particularly one where the housing market today is completely dependent on this. Adopt this amendment and, believe me, by tomorrow we will have an economic reaction in the country we won't want to believe.

So with all due respect, we will deal with this. I will have language in this bill that will absolutely guarantee we are going to take up this issue in the coming Congress. It has to be done. But to grapple with that and all of these other matters in the same bill is asking too much. It doesn't minimize the importance of the issue, but this evening, without any other kind of alternative in place, to adopt this amendment and then have the implications—97 percent of all mortgages in the United States go through the GSEs and without them there is no housing market—I urge my colleagues to reject the Ensign amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I think the case has been made that Fannie and Freddie are too big. There is no question they are too big. We have also had almost 2 years to deal with it, but we haven't done anything.

Mr. DODD. If my colleague would yield, that is untrue. We passed legislation only last year on the GSEs.

Mr. ENSIGN. We have not reformed the GSEs the way we needed to. We haven't done what needs to be done on the GSEs. This is one large step to doing that, and I believe we should. They are too big and they can take this entire economy down, and that is why we have to limit the size of them. I would encourage my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Has all the time been used in opposition?

The PRESIDING OFFICER. The Senator from Connecticut has 2 minutes remaining. The Senator from Ohio has 1 minute 45 seconds, as does the Senator from Nevada.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I don't understand this Brown amendment. Basically what it says is if you are successful—we are not talking about too big to fail here, we are talking about entities, businesses that are big, yes. They are actually not as big as a lot of the international banks they compete with, and that we as a Nation compete with, but they are large and they are successful. You are going to break them up. Where does this stop? Do we take on McDonald's? Do we take on Wal-Mart? Do we take on Microsoft? Do we take on Google? Should we set a standard that we as a body can step in and unilaterally decide that some company has gotten too large and deserves to be broken up, even if it is healthy?

If it is a systemic risk because it has overextended itself and put itself into a situation where we have a question of whether it can survive, then we have the resolution authority to take care of that. But why would we—we 100 people—think we know enough to start breaking up businesses in this Nation which are profitable and which make us competitive as a Nation? It doesn't make any sense to me.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. I yield back the remaining time.

Mr. DODD. I don't think I have any time left, do I?

The PRESIDING OFFICER. The Senator has 45 seconds remaining.

Mr. DODD. I yield it back.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I would only say that Alan Greenspan, not someone who has been on a crusade to break up America's businesses, talking about these banks, said too big to fail is too big. I think that sums it up pretty well.

I yield the remainder of my time, and I ask for the yeas and nays on the Brown amendment.

The PRESIDING OFFICER. Is there objection to ordering the yeas and nays on the Brown amendment?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DODD. Parliamentary inquiry, Mr. President: We are voting first on the Ensign amendment, is that correct?

The PRESIDING OFFICER. That is correct.

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. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. DEMINT), the Senator from Indiana (Mr. LUGAR), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''yea.''

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

The result was announced—yeas 35, nays 59, as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—35

Barrasso	Crapo	McConnell
Bingaman	Ensign	Merkley
Bond	Enzi	Murkowski
Brownback	Feingold	Risch
Burr	Grassley	Roberts
Cantwell	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Kohl	Thune
Collins	Kyl	Wicker
Corker	Lincoln	Wyden
Cornyn	McCain	

NAYS—59

Akaka	Graham	Murray
Alexander	Gregg	Nelson (NE)
Baucus	Hagan	Nelson (FL)
Bayh	Harkin	Pryor
Begich	Inouye	Reed
Bennet	Isakson	Reid
Boxer	Johanns	Rockefeller
Brown (MA)	Johnson	Sanders
Brown (OH)	Kaufman	Schumer
Burris	Kerry	Shaheen
Cardin	Klobuchar	Specter
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Conrad	Leahy	Udall (CO)
Dodd	LeMieux	Udall (NM)
Dorgan	Levin	Voinovich
Durbin	Lieberman	Warner
Feinstein	McCaskill	Webb
Franken	Menendez	Whitehouse
Gillibrand	Mikulski	

NOT VOTING—6

Bennett	Byrd	Lugar
Bunning	DeMint	Vitter

The amendment (No. 3898) was rejected.

Mr. DODD. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3733

The PRESIDING OFFICER. The question is on agreeing to the Brown amendment No. 3733.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Sentor from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. DEMINT), the Senator from Indiana (Mr. LUGAR), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''yea.''

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

The result was announced—yeas 33, nays 61, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—33

Begich	Ensign	Pryor
Bingaman	Feingold	Reid
Boxer	Franken	Rockefeller
Brown (OH)	Harkin	Sanders
Burris	Kaufman	Shelby
Cantwell	Leahy	Specter
Cardin	Levin	Stabenow
Casey	Lincoln	Udall (NM)
Coburn	Merkley	Webb
Dorgan	Mikulski	Whitehouse
Durbin	Murray	Wyden

NAYS—61

Akaka	Gillibrand	McCaskill
Alexander	Graham	McConnell
Barrasso	Grassley	Menendez
Baucus	Gregg	Murkowski
Bayh	Hagan	Nelson (NE)
Bennet	Hatch	Nelson (FL)
Bond	Hutchison	Reed
Brown (MA)	Inhofe	Risch
Brownback	Inouye	Roberts
Burr	Isakson	Schumer
Carper	Johanns	Sessions
Chambliss	Johnson	Shaheen
Cochran	Kerry	Snowe
Collins	Klobuchar	Tester
Conrad	Kohl	Thune
Corker	Kyl	Udall (CO)
Cornyn	Landrieu	Voinovich
Crapo	Lautenberg	Warner
Dodd	LeMieux	Wicker
Enzi	Lieberman	
Feinstein	McCain	

NOT VOTING—6

Bennett	Byrd	Lugar
Bunning	DeMint	Vitter

The amendent (No. 3733) was rejected.

Mr. DODD. I move to reconsider the vote and 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, there are no further votes today. As I understand it, there will be no votes tomorrow. But there will be a session tomorrow for Members to come and to be heard on the remaining parts of the bill or amendments we still have to consider.

I think we all heard the majority leader, Senator REID, make the point that I made earlier; that is, I intend to be here all weekend. My staff and Senator SHELBY's staff will be as well. So for those Members who still have amendments, we are more than happy to sit down and try to resolve and work together on those amendments to see if we can't reach agreement on some or at least to work with the authors of the amendments or their staffs. So we will be here to do that.

Let me just thank all Members again. Mr. President, it is RICHARD SHELBY's birthday today—my seatmate on the Banking Committee, the former chairman of the Banking Committee—and I would just note that, even though he was late for his dinner with Annette, his lovely wife, we stepped aside around 4 p.m. this afternoon—the members of the Banking Committee, his staff, and I—and we brought out a nice cake for Senator SHELBY. So we celebrated in the midst of the debate.

It is important for the people of the country to know that we have very strong differences—I had strong objections to the Shelby amendment today, and we debated that. Yet despite those very strong differences, and while we disagree with each other on substantive issues, we can enjoy each other's company on a personal level, on a civil level.

So let me, on behalf of all of us today, wish RICHARD SHELBY a very happy birthday on this day. Again, I thank him for his cooperation and that of his staff.

I thank our floor staff today as well, working hard every day. They are here every day early in the morning and they stay here with us until late in the evening. So I want to thank them all for their tremendous work.

With that, Mr. President, I am all done, and I yield the floor.

Ms. COLLINS. Mr. President, I wish to discuss an amendment that would expand the Financial Stability Council established in S. 3217 to include the Chairman of the National Credit Union Administration. It is important that the council incorporate a Federal credit union regulator to ensure consumer regulation protections. Ninety-two million Americans are members of credit unions.

Insofar as S. 3217, section 1023 provides that any member agency of the council may set aside a final regulation or provision prescribed by the bureau, a national credit union representative should sit on the council to ensure fairness for its members.

Moreover, similar legislation passed by the House included the Chairman of the National Credit Union Administration in its Financial Services Oversight Council, so this amendment would make the composition of the council in both the House and Senate consistent.

Finally, given their size, no single credit union poses a systemic risk to the overall U.S. financial system.

I ask unanimous consent to have printed in the RECORD this statement and the supporting letters from the Credit Union National Association, the largest credit union advocacy organization representing nearly 90 percent of America's 8,700 State and federally chartered credit unions, National Credit Union Administration, and the National Association of Federal Credit Unions.

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

CREDIT UNION NATIONAL ASSOCIATION,
Washington, DC, May 5, 2010.

Hon. SUSAN COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: On behalf of the Credit Union National Association, I am writing in support of your amendment to S. 3217 which would add the National Credit Union Administration (NCUA) to the Financial Stability Oversight Council (the Council). CUNA is the largest credit union advocacy organization representing nearly 90 percent of America's 8,700 state and federally chartered credit unions and their 92 million members.

Because of the relative size of credit unions, we believe no single credit union is large enough to impose any systemic risk on the overall financial system. Nevertheless, we believe there would be value in having the federal credit union regulator on the Council if for no other reason than Section 1023 of the underlying bill gives the members of the Council the authority to petition to stay or set aside rules promulgated by the Bureau under limited circumstances when the rules may put the safety and soundness of the banking system or the stability of the financial sector of the United States at risk. Your amendment would ensure that the credit union regulator has a voice in the review of the consumer regulations.

The House-passed version of this legislation includes the NCUA Chairman on the Financial Services Oversight Council; therefore, your amendment would eliminate a difference between the House-passed version and the Senate bill under consideration and ensure that all of the federal financial regulators are part of the Council.

On behalf of America's credit unions, thank you very much for introducing this amendment. We look forward to working with you to secure its inclusion in S. 3217.

Sincerely,

DANIEL A. MICA,
President & CEO.

NATIONAL CREDIT UNION ADMINISTRATION,
Alexandria, VA, May 5, 2010.

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

DEAR SENATOR COLLINS:

Thank you for your leadership in drafting an amendment to S. 3217, the Restoring American Financial Stability Act of 2010, to add the Chairman of the National Credit Union Administration (NCUA) as a voting member of the Financial Stability Oversight Council (the Council).

I have had the opportunity to review the proposed amendment. I wish to express my strong support for both the amendment and the underlying bill.

As you know, the NCUA was not included as a member of the Council in the legislation as reported by the Senate Committee on

Banking, Housing and Urban Affairs. Among other duties and responsibilities, members of the Council may petition the full Council to set aside a rule (or a part thereof) issued by the Bureau of Consumer Financial Protection if that rule threatens the safety and soundness of the U.S. financial sector or our system of depository institutions.

It bears noting that the NCUA Chairman is a designated member of the Consumer Financial Protection Oversight Board in the House-passed measure. If adopted, I believe your amendment would help harmonize the House and Senate bills with respect to oversight of the Consumer Financial Protection Agency or Bureau, particularly in regard to the credit union system.

Thank you again for your leadership on this important matter and for the opportunity to review and comment on your amendment.

Sincerely,

DEBBIE MATZ,
Chairman.

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS,
Arlington, VA, May 5, 2010.

Hon. SUSAN COLLINS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade organization exclusively representing the interests of our nation's federal credit unions, in support of your amendment to the Restoring American Financial Stability Act of 2010 (S. 3217) that would add the Chairman of the National Credit Union Administration (NCUA) to the Financial Stability Oversight Council established in the underlying bill.

We applaud your efforts to ensure that the voices of credit unions are heard by placing NCUA on the oversight council. As you know, this is an issue of fairness and will enable the NCUA to petition for the review of a rule issued by the Bureau of Consumer Financial Protection. Without passage of this amendment, credit unions would not have the ability to appeal rule making that could have a detrimental effect on the credit union industry.

We thank you and your staff for your work on this amendment as the Senate takes up comprehensive financial regulatory reform. If we can answer any questions or provide you with further information on this matter, please do not hesitate to contact me or NAFCU's Director of Legislative Affairs Brad Thaler at (703) 522–4770.

Sincerely,

B. DAN BERGER,
Executive Vice President, Government Affairs.

MORNING BUSINESS

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

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

RECOGNIZING NATIONAL PUBLIC GARDENS DAY

Mr. DURBIN. Mr. President, this May 7 is National Public Gardens Day, a day for us to celebrate the important role public gardens play in our communities and throughout our Nation. Across this great country, more than 500 public gardens are keeping our Nation connected to our natural world, our history, and our culture. These public gardens include arboreta, botanical gardens, zoos, historic landscapes, college campuses, and children's gardens. Together they form a web that preserves the beauty and complexity of plants and animals and humanity's interaction with them.

There is a great thirst for the knowledge and experiences public gardens can provide. Gardening is the most popular hobby in the United States, and more than 70 million people visit public gardens annually. People from all backgrounds, age groups, and geographic regions regularly share in the beauty and serenity of natural spaces such as our public gardens.

Here in Washington, DC, just across the street from the Capitol, is the U.S. Botanic Garden. Called ''America's Garden,'' it is a gateway for people to enjoy the beauty of plants while learning about the role plants play in commerce, culture, and kinship. The United States Botanic Garden is also responsible for helping to preserve and maintain the Capitol Grounds, which are enjoyed by over 3 million people who visit the Capitol every year.

In my own home State of Illinois, our 32 public gardens include wonderful and varied institutions, such as the Morton Arboretum and the Quad City Botanical Center, places such as the Cantigny Foundation and the Skokie Northshore Sculpture Park.

Among Illinois' valued public gardens is the Chicago Botanic Garden, which serves nearly 1 million visitors annually. Its classes are attended by 57,000 visitors, well over half of them school-age children. Millions of schoolchildren have been educated by public gardens about the wonders of nature and the important role of plants in our everyday lives, from the food we eat, to the clothes we wear, to the homes we live in. The Chicago Botanic Garden has hosted 22,000 children on field trips in the past year, providing opportunities for them to interact with nature—a special opportunity for some who may never otherwise get to see a real meadow or visit a lake.

Public gardens are not only committed to growing plants; they are committed to growing minds. As a result, public gardens everywhere are partnering extensively with local schools, colleges and universities, nonprofit organizations, and civic associations. Together they have worked on projects ranging from habitat restoration to landscape beautification, as well as on school-based education programs, public health education programs, and community and school gardens.

The Chicago Botanic Garden is a wonderful example of the partnerships occurring between our public gardens and our colleges. Its Windy City Harvest program partners with City Colleges of Chicago to provide summer jobs and hands-on training for teenagers at sustainable agriculture sites within Chicago. Through this partnership, participants are trained in producing high-value organic produce, which is sold at retail outlets and is made available to local residents. Program participants not only gain important entrepreneurial skills, they learn where their food comes from and the value in nurturing plant life.

We can rely on public gardens to deliver timely and critical resources for plant and water conservation, ecosystem management, green space preservation, and environmental stewardship. Visitors to public gardens have the opportunity to view regionally appropriate landscapes that preserve our precious natural resources—and give them ideas for creating their own.

Public gardens also serve as repositories for rare and endangered plant species. The research conducted by public gardens on these endangered plant species can be crucial to their survival.

Through their conservation and propagation efforts, many plants that would have been lost to us forever through extinction have been saved.

Therefore, this May 7 we should celebrate our public gardens and the many contributions they make to our communities.

SECRET HOLDS

Mr. FEINGOLD. Mr. President, I am pleased to be joining an effort spearheaded by the Senator from Missouri, Mrs. MCCASKILL, to put an end to the practice of Senators secretly holding up legislation or nominations. Senators who want to block a bill or nomination should be willing to state their objection on the record. Many of us thought we had addressed that problem when Congress approved the Honest Leadership and Open Government Act of 2007. Unfortunately, the problem of secret holds persists, and the new rule needs to be tightened.

As with any Senator, there are times when I object to passage of a bill or confirmation of a nominee. It has not been my practice to try to keep my objection secret, however. For example, when the Senator from Arizona, Mr. MCCAIN, and I objected to confirmation of the nomination of John Sullivan to a term on the Federal Election Commission last year, we released a statement publicly stating our action and our reasons. We made clear that, until the White House nominates replacements for the two other commissioners whose terms have expired, we would not consent to Mr. Sullivan's confirmation. The FEC is currently mired in anti-enforcement gridlock, and the President must nominate new commissioners with a demonstrated commitment to the existence and enforcement of the campaign finance laws.

Similarly, when I had concerns about legislation introduced by the Senator from California, Mrs. FEINSTEIN, S. 132, I discussed my concerns directly with