Opening Statement of Senator Jim DeMint
Senate Banking Committee Executive Session
Thursday, November 19, 2009

Thank you, Mr. Chairman. For more than a year, the American people have watched their government respond to this recession by engaging in unprecedented bailouts, unprecedented deficit spending, and unprecedented attempts to increase the power of Washington's career politicians and unelected bureaucrats. More than the recession itself, these efforts – including a mismanaged TARP, a failed stimulus, an attempted government takeover of healthcare, and an economy wrecking cap and trade scheme – are causing anxiety for Americans and all sectors of our economy.

Simply put, while Americans have been inundated with slick speeches assuring them that these efforts are all for the benefit of the common man, they see the current leadership in Washington actually looking out for its own interests and the interests of those political allies who helped them gain power. Unfortunately, the legislation before us today, in its current form, reinforces this reality. It is yet another example of the current leadership in Congress trying to ram through legislation in a way that values doing things quickly above doing them well.

It is no surprise that I have many serious concerns with the legislation before us. I want to highlight several areas where I feel the bill either reaches too far or misrepresents itself.

The bill before us claims to end the concept of "too big to fail", but actually creates a system to identify and provide special treatment for an exclusive club of influential financial institutions – some of which are sure to be the very same companies accused of leading us into our current recession. These so-called "specified financial institutions" will no doubt be perceived in the marketplace as having an implicit safety net, and therefore receive access to lower cost credit and a government-imposed competitive advantage. Simply put: this legislation rewards being big.

It is also ironic and highly disturbing that, while this bill essentially creates new companies with GSE-like status, it completely ignores the need for a resolution of the failed experiments at Fannie Mae and Freddie Mac. If anyone wants to see where this bill will lead us, they only need to look at what happened to these housing GSEs.

It is also claimed that this bill will end bailouts. However, the resolution mechanism it creates does nothing of the sort. In the event of a would-be failure at a "specified financial institution", the bill as written allows taxpayer funds to be put at risk and does not require the institution to be put through resolution. That is actually the definition of a taxpayer bailout, and this legislation enshrines it as our public policy moving forward.

The central premise and political momentum for this bill is its claim to protect consumers. The scheme to accomplish this is not revisiting the thousands of pages of laws and agency rules specifically designed to protect consumers throughout the last century, but instead to create a massive brand-new bureaucracy called the Consumer Financial Protection Agency, or CFPA. It is worth recalling that the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the

Home Mortgage Disclosure Act, the Truth-in-Lending Act, and the Community Reinvestment Act, just to name a few, were all laws fully in place for years prior to our current recession. The push to add a new agency with new authorities is a clear statement by the bill's authors that these existing laws were inadequate. If that is the case, why in the world should the American people trust the claim that "this time, we got it right"? This idea is Washington paternalism at its worst – the belief that a few politicians and bureaucrats know what is best for individual citizens. Far from protecting Americans, this new central planning regime will only lead to higher costs and fewer choices for individual consumers and small businesses.

Mr. Chairman, the definitions in this Title are also quite troubling. While the merchant exclusions purport to exempt the daily activities of firms dealing with non-financial goods, there are exceptions that appear to create circular definitions which wrap up many companies and sectors that have nothing to do with consumer banking or lending. I hope that these are unintended mistakes that can be addressed during the markup, and I look forward to working with you and your staff to do so.

With all this, the bill still claims to create more stability for businesses and consumers moving forward. Notwithstanding the massive disruption caused by the CFPA I just spoke about, the legal liability created and resurrected by this bill will only have a negative effect on businesses, job creation, and the costs and opportunities for American consumers. The inclusion of a provision to overturn the Supreme Court's Stoneridge decision will be a litigation tax that raises the costs of common business activities, in turn negatively affecting jobs and increasing consumer expenses. This provision will also give overseas firms, who do not suffer the same legal exposure, a competitive advantage over domestic companies. The last thing we should do at this time is hand a gift to the trial bar, especially one which will raise consumer costs, kill jobs, and impose a competitive disadvantage on our overall economy.

Another unfortunate gift tucked deep in this bill is one the unions have been seeking for some time. Proxy access is something large institutional shareholders, especially union pension funds, want in order to get their interests represented on the boards of public companies, even if those political interests run counter to the sound performance of such companies and the well-being of other shareholders. It is simply a way for unions to enact their unpopular visions, which cannot succeed without political manipulation. This provision has no place in this bill.

The bill claims to modernize prudential regulation by bringing all bank and holding company regulators under one roof. Now, I am for streamlining regulation, but this consolidation seems aimed more at consolidating the power of Washington regulators and national banks at the expense of thousands of community banks in the smallest of our nation's towns. While many community banks have struggled and even failed during this recession, they and their regulatory treatment did not create our current economic problems. Again, I support the effort to make our regulatory structure more rational, but the bill as written goes too far.

Mr. Chairman, another place I hope to work with you is the Title 12 Federal Reserve Provisions. I believe the audit authority included in this bill is simply inadequate. It only covers emergency lending by the Federal Reserve. I appreciate the concerns raised about crafting audit authority in a way to minimize the impact on the Fed's monetary policy independence. However, the Federal

Reserve engages in many other activities unrelated to monetary policy that remain out of reach. I want to work with the Chairman and his staff to find a way to adequately answer the American people's call for more Federal Reserve Transparency, and do it in a responsible way.

Mr. Chairman, as I said before, I feel there is a push simply to pass a bill ASAP. It is far too big a reform to rush through for the sake of doing something and checking a box. That said, I believe we can do this well, and while I do not agree with the product before us today, I expect this markup process will move things in a productive direction. Thank you.