

For some aspects of the present crisis, I believe that there were a number of conscious decisions undertaken by bankers, financial institutions, and other lenders that have had a direct and adverse effect on borrower.

I also understand that some Mr. and Mrs. Main Street Americans played a role. Many made false statements or exaggerated their income or engaged in other types of fraud in an effort to secure a mortgage that they could not afford. This bill is designed to take an evenhanded approach and to stamp out fraud, mismanagement, and false statements whether they occur on Main Street or Wall Street. I urge my colleagues to support it.

Mr. ISSA. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. I thank the gentleman for yielding.

Mr. Speaker, I am generally not in favor of commissions. I think Congress gives up too much of its power to commissions in my brief experience here. But this is one point that I think does call out for a commission. Certainly just as egregious as what happened to this country on 9/11 was what happened to this country in September 2008 when we experienced a financial meltdown. And to date, we have not looked back into the causes of the crisis and held anyone accountable.

In fact, Congressman BRADY from Texas and myself introduced a bill earlier this year for just such a commission, H.R. 2111, that differs substantially from the bill under consideration today.

The bill that we are considering today creates a 10-member commission with subpoena power. It is going to be composed of six Democrats and four Republicans. When we did the 9/11 Commission, was that not a 50/50 split with some members being named by agreement amongst the commissioners who were already selected? Why would we unbalance this commission when, quite frankly, Mr. Speaker, there is just as much guilt on one side of the aisle as there is on the other.

Senate 386 allows the chairman of the Senate Banking Committee to select a commissioner. The chairman of the Senate Banking Committee may have been part of the problem.

The bill allows the chairman of the House Financial Services Committee to appoint a representative to the commission. Mr. Speaker, the chairman of the House Financial Services Committee may have been part of the problem.

Senate 386 creates an accountability commission focused on protecting the government. H.R. 2111 creates an accountability commission focused on protecting taxpayers and restoring public confidence, something that is critical at this juncture.

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Importantly, Mr. Speaker, we do things like this all the time. We bring up an important concept and we pass it under suspension of the rules. This is an important commission that should

be created with all due care and caution by this Congress, and then empowered to go out and do the work that we want it to do, not slipped in in the middle of a very quiet legislative day when Members don't even have any idea what they're coming to the floor to vote on.

I just want to end by quoting from the Investors Business Daily, an article entitled, Probe Yourselves, from April 16, 2009. The article says, "Regulators also deserve blame for lowering lending standards that then contributed to riskier home ownership and the housing bubble." Exactly correct."

Continuing to quote, "As such, Pelosi's proposed commission will be little more than a fig leaf to cover Congress' own multitude of sins—letting its Members, the true creators of this financial mess, bash business leaders as they pose as populist saviors of Main Street from Wall Street."

Continuing to quote, "On NPR Thursday, a reporter confronted Representative Frank, chairman of the Financial Services Committee, with the fact that his \$300 billion 'Hope for Homeowners' program"—

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ISSA. I yield the gentleman 1 additional minute.

Mr. BURGESS. "Chairman Frank was asked about his \$300 billion 'Hope for Homeowners' program, passed with much fanfare a year ago that had so far helped one homeowner. One. Frank's response: 'It was the fault of the right.'"

Continuing to quote, "The truth is, Mr. Frank's party has been in charge since 2006. And during that time, Democrats have presided over one of the most disgraceful and least accomplished Congresses in history. This financial mess began on their watch, yet they pretend otherwise."

Further quoting from the Investors Business Daily, the commission that is outlined "won't get to the bottom of our financial crisis; it will carefully select scapegoats to be ritually shamed by the liberal media, stripped of their wealth, and exiled. The new rules will be imposed that will no doubt make things worse. And the cycle will begin again."

"Wall Street didn't create this subprime mess, Congress, through repeated interventions, did. When the whole thing failed, it was Congress' fault."

They conclude by saying, "We'd be happy to support a 9/11-style commission to look into the causes of the financial meltdown. But only if Congress agrees to put itself under the microscope. Anything less would be a sham."

[From Investor's Business Daily, Apr. 16, 2009]

PROBE YOURSELVES

Named for its chief counsel, Ferdinand Pecora, the 1932 congressional commission dragged influential bankers and stockbrokers before its members for rough questioning—both of their business practices and private lives.

The Pecora Commission led directly to the Securities Act of 1933, the Securities Exchange Act of 1934 and the creation of the Securities Exchange Commission in 1935 to oversee Wall Street.

Now Pelosi's calling for an encore. "People are very unhappy with these bailouts," she noted, especially the bonuses that went to executives. "Seventy five percent of the American people, at least, want an investigation of what happened on Wall Street."

No doubt, that's true. The problem is, what "happened on Wall Street" was a direct result of what happened on Capitol Hill. And we're not the only ones who believe that, by the way.

"Government policies, especially the Community Reinvestment Act, and the affordable housing mission that Fannie Mae and Freddie Mac were charged with fulfilling, are to blame for the financial crisis," wrote economist Peter Wallison, a fellow at the American Enterprise Institute, recently.

"Regulators also deserve blame for lowering lending standards that then contributed to riskier homeownership and the housing bubble." Exactly correct.

As such, Pelosi's proposed commission will be little more than a fig leaf to cover Congress' own multitude of sins—letting its members, the true creators of this financial mess, bash business leaders as they pose as populist saviors of Main Street from Wall Street predators.

Why do this now? Pelosi and her Democrat colleagues are feeling the heat from Tea Party demonstrations and growing voter anger over the massive waste entailed in the \$4 trillion (and rising) stimulus-bailout bonanza. Again, the Democrats created all this spending. Now, as it proves unpopular, they just walk away from it.

On NPR Thursday, a reporter confronted Rep. Barney Frank, chairman of the Financial Services Committee, with the fact that his \$300 billion "Hope for Homeowners" program, passed with much fanfare last fall, had so far helped just one homeowner. One.

Frank's response: It was the fault of the "right." And Bush.

Truth is, Frank's party has been in charge since 2006. And during that time, Democrats have presided over one of the most disgraceful and least accomplished Congresses in history. This financial mess began on their watch, yet they pretend otherwise.

What better way to take the heat off yourself than by pointing accusing fingers at those most unlikable of people—Wall Street bankers? That's what the Pelosi-Pecora Commission will do.

It won't get to the bottom of our financial crisis; it will carefully select scapegoats to be ritually shamed by the liberal media, stripped of their wealth, and exiled. Then new rules will be imposed that will no doubt make things worse. And the cycle will begin again.

We're not saying Wall Street has no blame for the financial meltdown. But Wall Street didn't create the subprime mess. Congress, through repeated interventions in healthy markets, did. And when the whole thing failed, it was Congress' fault.

We'd be happy to support a 9/11-style commission to look into the causes of the financial meltdown. But only if Congress agrees to put itself in the dock. Anything less would be a sham.

Mr. SCOTT of Virginia. I yield 4 minutes to a member of the Judiciary Committee, the gentleman from New York (Mr. MAFFEI).

(Mr. MAFFEI asked and was given permission to revise and extend his remarks.)

Mr. MAFFEI. The Fraud Enforcement Recovery Act of 2009 gives the

Department of Justice the resources it needs to better combat and prevent the kind of financial fraud that has put our economy on its heels.

As I discussed with the bill's sponsors on this legislation in the House, however, I do have concerns about amendments like those included in this package that expand the reach of an already powerful weapon—the civil False Claims Act. Often enforced by whistleblowers and their private counsel when the Department of Justice steps aside, the civil False Claims Act reaches beyond traditional fraud to impose treble damages and per claim penalties of \$5,500 to \$11,000 on individuals, corporations, and other legal entities who submit false claims for government program funds, knowing or recklessly disregarding the falsity of those claims.

The power of the False Claims Act comes from its broad terms, low burden of proof, enabling the government to impose penalties and recoup funds lost not only to frauds, but to less culpable schemes that abuse government monies.

But there's also a danger in this. Not all whistleblowers and their lawyers have the same view of the statute as the Department of Justice and the risk of penalties, treble damages, and attorney fees. In many cases, the defense costs can cost some defendants to settle charges they would otherwise be able to defend.

One of the things this legislation does is expend that powerful weapon to reach schemes that defraud the government of money it pays by mistake—of "overpayments" that come into the possession of an entity, like a university or a research institution, through no fault of its own, that the entity keeps and maybe hides rather than notifying the government or returning it to the government.

Drafting language to pursue unlawful retention of an overpayment proved difficult, however. When we considered similar legislation in committee, I learned that hospitals, universities, and other research institutions are among various entities that function in government programs where the program rules do require those entities to account for overpayments.

They do so in the form of periodic reports prepared according to agency rules that account costs incurred and payments received. This allows them to reconcile overpayments and underpayments and, when appropriate, repay those overpayments.

But the drafting problem we faced was avoiding language that would impose liability on research institutions or hospitals for holding on to overpayments at a time when the applicable rules would allow them to do so pending repayment through the normal process.

This would include reconciliation processes established under statutes, regulations, and rules that govern Medicare, Medicaid, and all sorts of other various research grants and programs.

So, as a courtesy to my colleagues, I withdrew an amendment that addressed these issues and commenced negotiations to see that any amendments to the False Claims Act-protected entities that rely on those processes in good faith in handling their accounting, protecting them from unwarranted investigations and litigation concerning overpayments, they were, in effect, entitled to keep for at least a small period of time.

As reflected in the committee report, the Senate version of this bill was amended to afford that protection. A new subsection of the False Claims Act will not impose liability for the mere retention of an overpayment over the course of the reconciliation period. Rather, the new subsection would require proof of a knowing false record or statement, of knowing concealment, or of knowing and improper acts to avoid or decrease an obligation to pay money to the government.

So, if a person or entity receives an overpayment from the United States and fails to return it immediately and instead takes steps to return the overpayment through an applicable reconciliation process, then liability would not attach. However, if a person falsifies information during a reconciliation period or otherwise acts knowingly and improperly to avoid the payment, liability would attach.

So it's vitally important that we pass this legislation to fight financial fraud. But it's also important that we not punish universities, hospitals, and other important research institutions when they're doing everything that they are supposed to do. We must have enforcement and also fairness.

Mr. ISSA. Mr. Speaker. It's now my privilege to yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. I appreciate my friend yielding, and I appreciate all the good work that has gone into this bill. I do have concerns about a commission that would look into something as important as our financial situation, where it ends up being a political commission, 6-4, instead of, like, the 9/11 Commission, which was 5-5. That was a bipartisan commission that made those findings and were largely supported around the country.

If we're going to make this another political commission, 6-4, then aren't we going to get right back into the mess of: Can we trust this? Or is this another political report that we're going to spend millions and millions of dollars for?

There are many of us, I think, that can be objective about this. But when you have a commission that's 6-4, it's going to get political. There's no way around it.

There's nobody more upset, for example, with the bailout that the Republican administration proposed last September. It sure seemed to me that AIG should have gone to bankruptcy because they were bankrupt and we wouldn't have had the issue of bonuses.

We should have let the car manufacturers, if they're bankrupt, then we have bankruptcy court.

And so I was not happy with our administration. I think it would be easy to have a commission that would be fair. But when it's 6-4, it's unavoidably going to end up political instead of giving us the fair analysis that this country really needs.

Mr. SCOTT of Virginia. I yield 2 minutes to the gentleman from Florida (Mr. KLEIN).

Mr. KLEIN of Florida. I thank the gentleman. There are serious problems with the way some mortgages were sold over this past decade. I have heard from constituents who were fully taken advantage of by lenders who used a variety of different techniques. Florida, my home State, was particularly hard hit by fraud and unscrupulous lenders, unfortunately. There's plenty of blame to go around.

However, on a going-forward basis, we must ensure that these problems never happen again, and it's essential that we reform the current mortgage underwriting legislation.

Senator LEAHY's legislation and my colleagues in the House here have put together an excellent bill, the Fraud Enforcement and Recovery Act, which is part of a comprehensive effort to reform mortgage underwriting standards and, most importantly, restore consumer and investor confidence in the system by expanding criminal penalties for fraudulent activity by mortgage brokers and lenders.

In addition, this bill expands the scope of securities fraud provisions and extends the prohibition against defrauding the Federal Government to the TARP program and to the stimulus bill.

The bill also authorizes additional appropriations to investigate and prosecute fraud, and creates a Senate Select Committee to examine the causes of our current economic crisis.

All these measures, when taken together, will help restore confidence in the American economy, and I urge my colleagues to support this legislation so we can get on with business.

Mr. ISSA. Mr. Speaker, can I inquire how much time I have remaining?

The SPEAKER pro tempore. The gentleman from California has 9 minutes remaining.

Mr. ISSA. I yield myself such time as I may consume.

Mr. Speaker, in closing, this legislation is a combination of two well thought-out compromises. First of all, the Fraud Enforcement and Recovery Act, in fact, is going to take the place of a piece of legislation that is far more reaching and, in my opinion, overreaching, that passed out of Judiciary just this past week. In fact, by making this narrower, what we do is help the whistleblowers and those who would support them, while not going too far as to cripple the legitimate enforcement by cities and States and the right for them to discover waste, fraud