Opening Statement of Senator Kay Bailey Hutchison
Committee on Banking, Housing, and Foreign Affairs
Executive Session to Mark-Up the Restoring American Financial Stability Act of 2009
November 19, 2009

Thank you Chairman Dodd.

Over the past 18 months, our economy has been in the throes of the worst financial crisis since the Great Depression.

This Committee has held a number of hearings to identify the cause of the financial crisis and determine how to modernize our regulatory authority to prevent a similar crisis from ever occurring again. We are all aware of the hardships that this economic downturn has wrought on all Americans. National unemployment has risen above 10% for the first time in 26 years. Since 2006, foreclosure rates have risen, driving home values across the country into a downward spiral. Credit markets were frozen for a period of time, making capital financing nearly non-existent for our small businesses. And while there are signs of relief in the credit market, small businesses and consumers still have difficulty finding available credit. Companies we once thought to be the titans of finance and business have failed, leading to taxpayer funded bailouts in the name of market stabilization.

Our Committee has been advised by a number of experts on various actions we need to take to help avert a similar crisis in the future. We have heard from regulators, economists, bankers, manufacturers and, most importantly, our constituents. Despite this fact-gathering mission, a consensus recommendation for modernizing our regulatory system evades us.

But, our Committee has been called to craft legislation that will bring necessary reforms to our financial regulatory authority so that we can help prevent another meltdown. The task at hand is a great undertaking: to bring more oversight over our financial system while still fostering the innovation and independence that has made our American economy the best and most powerful in the world. By working together, we should be able to restore responsibility and accountability in our financial system. We should fix the systems and regulations that failed us, enforce the rules already in place, and address the components of our financial system that present the greatest threat to the system.

I am very concerned that the legislation the Chairman is putting forward seems to target the entire financial system in the name of stability and security, aiming to bring about a broad overhaul of our regulatory structure that could have unintended consequences on all components of our economy.

The small businesses in my state often rely on the credit extended from our more than 2,000 community banks. Community banks in Texas and across the country have served as the backbone of our economy for years. Unlike the big financial institutions that have constantly been in the headlines for bailouts and bonuses, these institutions do not pose systemic risk to our financial system, nor are they identified as root causes of our latest crisis. However, our community banks will soon be subjected to a considerable amount of new costs and regulatory burdens as a result of this legislation.

I applaud the efforts of the Chairman to tackle system risk. We absolutely must end the notion that institutions can be “too big to fail,” our government’s policy to provide assistance to prevent the failure of large financial institutions deemed systemically significant to our economy. Last Friday, Jamie Dimon, the Chairman and CEO of J.P. Morgan Chase, which has a significant presence in my state of Texas, wrote in an opinion piece that ending too big to fail is a key part to modernizing our financial regulatory system. In fact, he said that the policy must not just be ended, but the term “too big to fail” should be excised from our vocabulary.

I agree! It is a perversion to free market capitalism to suggest that entities can privatize their profits, yet socialize their risks. While it is my hope that the provisions we put in place will diminish our need to use systemic resolution authority to mitigate future financial crises, we must be prepared. To that end, I commend the Chairman for seeking to end our too big to fail policy. However, I have my doubts about the framework used to do so.

I specifically want to ensure that institutions which do not pose systemic risk to our financial system are not required to contribute to a resolution regime for institutions that do pose such systemic risk. While a “bright line” asset test of $10 billion is convenient for determining exclusions, it fails to have an appreciable connection to what is at the heart of this resolution authority: RISK TO THE SYSTEM.

There are a number of traditional banks and credit unions that exceed $10 billion in assets, and yet pose no systemic threat to our financial system. But under this proposed framework, they will be responsible for bailing out the institutions that do in fact pose consequential risks.

Why? Why should institutions that do not undertake risky behavior be called upon to subsidize those that do? Why should Main Street banks that do not threaten our financial systems be called upon to rescue Wall Street institutions that do? Why are we not basing contributions to the Systemic Resolution Fund on risks posed to the system?

This to me is the only appropriate way to fund such a resolution authority, and I hope we will provide such clarity as we undertake consideration of this bill. The principle should be: No institutions that pose systemic risks should evade responsibility, and no responsibility should be placed on those institutions that do not pose systemic risk.

Resolution authority is not my only area of concern Mr. Chairman. The Mark before us seeks to protect taxpayers through the creation of the Consumer Financial Protection Agency, which would regulate consumer financial products such as home mortgages and credit cards. As we’ve learned during this downturn, it is so important, when applying for a credit card or seeking a loan, for consumers to be as well informed as possible and know all the covenants of a transaction. However, creating a new bureaucracy with near endless authority over all facets of our economy is not the best answer.

We do not need more government. Instead, we need to ensure that our regulators do their job, enforcing existing rules and writing new ones when necessary to protect consumers. Later this Congress, the Commerce Committee will take up an FTC reauthorization. I hope we will work with the Commerce Committee to ensure we add new authority and clarity to the FTC without being too broad in our approach and without creating a new regulator with overlapping authority that will confuse the areas in need of clarification.

Americans have long memories, and our current downturn will reverberate for years to come. For this reason that we must work to fill the gaps and loopholes in our regulatory structure that brought on our current downturn. We must ensure that taxpayers on Main Street will never again be on the hook for excessive risks on Wall Street. This is a huge task, Mr. Chairman. However, it is one that I look forward to taking on with you, Ranking Member Shelby, and our fellow members of the Committee.