Statement of Senator Jim Bunning
Markup of the Restoring American Financial Stability Act
November 19, 2009

Thank you, Mr. Chairman.

We all agree that changes must be made to the structure and regulation of our financial markets. But the changes must be done right or our financial system and economy will suffer for decades to come. That is why I am deeply concerned about the process surrounding this bill. Yes, we have held several dozen hearings in this Committee during the financial crisis, including recent hearings on derivatives and asset-backed securities in Securities Subcommittee chaired by Senator Reed. Those were good hearings, but they gave us more questions than answers, and we should be trying to get those answers rather than rushing legislation.

Even more troubling than the need for more hearings on the issues is the fact that we have held a total of zero hearings on this bill. At a minimum we should be holding hearings on each title of this bill before moving forward so we can understand the full effect of what is proposed and whether it will even work. Better than that would be to consider multiple ideas on each topic and examine them in detail.

One thing that is clear is bad monetary policy is at the heart of this crisis. Under Chairman Greenspan, the Fed broke from the Taylor Rule and kept interest rates too low for too long, leading to a great asset bubble. So it seems to me the first thing we must address is the Federal Reserve. Mr. Chairman, I strongly support your efforts to focus the Fed on monetary policy by removing their oversight responsibilities and refusing to give them more power. However, I just as strongly oppose your proposal to change the selection of the regional Fed boards. Chairman Bernanke has already done significant damage to the Fed's independence by acting as an arm of the Treasury, and this proposal would further undermine that independence.

The changes will also concentrate even more power in the hands of the Fed Chairman and lead to more unsound and easy money. It is critical that there is healthy debate at the Fed, and the regional Fed presidents, who are the only voices at the Fed representing everyone who lives and works outside New York and Washington, have been the voices of restraint in monetary policy. While there are legitimate concerns that bankers should not be choosing their regulators, that concern is addressed by removing oversight from the Fed. Now more than ever we need regional Feds that will stand up to the Chairman, not a bunch of Bernanke lackeys.

All the Fed's easy money had to end up somewhere, and for a variety of reasons it had the greatest effect on housing. Eventually the housing bubble had to end, and when it did the consequences were always going to be severe, but they were made much worse by other bad decisions and policies that must be addressed. First among those is the idea of too big to fail. Companies like Goldman Sachs will always push the limit in their never-ending quest to satisfy their greed as long as they know the taxpayers have their back. Unfortunately this bill does not end too big to fail. Instead it creates a permanent bailout power that extends beyond financial companies. That will lead to more Citigroup's, Lehman's, and A.I.G.'s, not less.

There are many other issues that must be addressed. The supervision of banks and other financial firms must be strengthened and the number of regulators should be reduced. Capital standards must be increased. Off-balance sheet activity must be eliminated. There must be regulation of all derivatives. Unregulated financial companies must be subject to more oversight. Housing finance and the G.S.E.'s must be reformed. The credit ratings process must be overhauled. And consumer protection must be strengthened.

The Chairman's bill tries to address most of these, and I support a lot of the goals he has set out. But I have concerns about the way the bill goes about accomplishing those goals. One example is the credit rating agencies. We should reduce reliance on the agencies and enable investors and others to do their own research. Instead, the bill will further increase reliance on the agencies and give a government seal of approval to them.

Another example is consumer protection. No one has taken the Fed to task more for their failure to regulate mortgages than you and I have, Mr. Chairman. But I think the approach to consumer protection in this bill is dangerously flawed. Consumer protection cannot be separated from the safety and soundness of financial companies. If a product is unsafe for one, it is unsafe for the other. We need to strengthen the consumer protection mandate of the financial regulators and hold them accountable rather than creating a new agency that will not understand the whole picture and will undermine the safety and soundness of financial companies. I strongly support removing the Fed's consumer protection role as you have proposed, but the right place to put that responsibility is in the primary mission of the financial regulator.

I will not go through each section of the bill, but I do want to make a few more comments. I strongly support more regulation of the derivatives markets, including higher capital standards and more clearing and exchange trading. But this could be the hardest part of the bill to get right, and I think we need to closely examine the proposal in this bill and other ideas before moving forward. One idea worth considering that came out of the derivatives hearing Senator Reed chaired was a requirement for a visible cash basis for any contract.

Many of the securities provisions of the bill have not been examined before this Committee and will likely lead to higher investor costs with no real benefits. One provision would open the door to more securities lawsuits and undermine the Chairman's own securities litigation reform law. I also do not understand why we should reward the S.E.C.'s recent failures with the ability to set its own budget. Before doing anything like that, we should require major reforms and accountability.

I am also very concerned that there is nothing in this bill to deal with the G.S.E.'s and housing finance. They were at the center of the housing boom and bust and we cannot truly reform the financial system without including them.

Finally, Mr. Chairman, I commend you for attempting to open up the Federal Reserve to more transparency and audit some of the Fed's recent actions. I was the sponsor of one of the original Fed audit bills when I was on the Housing Subcommittee in the House of Representatives, so this has been a longtime goal of mine. While the bill needs to go further, I am glad to see this idea has caught on and I would be glad to work with you to craft a stronger audit.

As I said before, I share many of your goals Mr. Chairman. However, we do not know what the real effect of this bill will be, and I am concerned that parts are fundamentally flawed. I cannot support the bill, and I think we should take a step back and consider each issue and other possible solutions. That will be a lot of work, but it will be well worth it.