President Obama has apparently decided not to do that.

So the concern is that last week the director of the library was quoted in the Los Angeles Times as saying that it would be ''very difficult'' for them to comply by the June 28 hearing date. The director said, ''there are just too many things here,'' and that ''these are legal documents and they are presidential records, and they have to be read by an archivist and vetted for any legal restrictions. And they have to be read line by line.''

In the letter we received on Friday, the library indicated they will start delivering documents by June 4—3 weeks before the hearing—and then they will make additional deliveries on a rolling basis. They did not tell us by when they will provide all the documents. I know they have a hard job. Maybe they have to do all these things, but the fact is we have a deadline that has been set by Chairman LEAHY to start the hearing on June 28, and we are not able to, in my view, conduct a good hearing if we don't have the documents.

So I am trying to make clear to my colleagues that we are heading toward what could be a train wreck. I don't believe this committee can go forward without these documents in the request and have an accurate hearing. The public record of a nominee to such a lifetime position as Justice on the Supreme Court is of such importance that we cannot go forward without these documents. I hope we will get those in a timely fashion. If not, I think we will have no choice but to ask for a delay in the beginning of the hearings.

I thank the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

WALL STREET REFORM

Mr. LEVIN. Mr. President, among the most difficult issues we dealt with in the debate over the Wall Street reform bill we approved last week is that of proprietary trading and conflicts of interest in the financial system. This trading, often involving risky investments with large amounts of borrowed money, was a significant contributor to the financial crisis of 2008—a crisis from which we have yet to fully recover. The bill the Senate has approved includes important language dealing with proprietary trading and with conflicts of interest.

In the hope of strengthening that language, Senator MERKLEY and I introduced an amendment which would have made Congress's intent clear: to end risky proprietary trading at commercial banks, to demand that the largest nonbank financial institutions maintain sufficient capital for their trades to prevent taxpayer bailouts, and to end the outrageous and destructive conflicts of interest which marked so much of Wall Street's behavior leading up to the crisis.

It is this last issue on which I have focused much of my attention. As we move toward negotiations between the House and Senate and final passage of a Wall Street reform bill, hopefully the final product will deal with these conflicts of interest. Failure to do so would accept the status quo under which Wall Street firms can assemble complex financial instruments, instruments they have financial incentives to see fail, sell those instruments to clients, and then profit by betting against the products they built and sold.

The hearings I chaired in the Permanent Subcommittee on Investigations probing the causes of the financial crisis exposed recklessness and greed up and down the financial system. In our last hearing, examining the role of investment bank Goldman Sachs in the crisis, we demonstrated how Goldman profited by betting against financial instruments it had assembled.

In late 2006, Goldman Sachs made a strategic decision to begin unloading mortgage-related holdings and to short the mortgage market; that is, to bet against the market and to profit from its fall. To do so, Goldman assembled a series of financial instruments it would profit from if there were a collapse of the mortgage market.

One e-mail chain from May 2007, for instance, shows how Goldman bet against certain mortgage-backed securities that it had assembled and sold to investors. In the e-mails, Goldman employees discussed how certain securities that Goldman had underwritten and were tied to mortgages issued by Washington Mutual Bank's subprime lender, Long Beach, were losing value. Reporting the wipeout of one security, a Goldman Sachs employee then reported the ''good news''—that the failure would bring the firm $5 million from a bet that it had placed against the very securities it had assembled and sold.

In addition to shorting existing mortgage-backed securities, Goldman constructed a series of even more complicated financial instruments to bet against the mortgage market. These were known as collateralized debt obligations or CDOs. One example is a synthetic CDO put together in late 2006 known as Hudson Mezzanine. A synthetic CDO is a financial instrument whose value is based on a collection of referenced assets, but it does not contain the assets themselves. It is essentially a bet on whether referred-to assets will rise or fall in value.

Goldman constructed this $2 billion CDO to reflect the value of subprime mortgage securities similar to those that Goldman held in its own inventory. Goldman's sales force was told that Hudson Mezzanine was a top priority and it worked aggressively to sell Hudson securities to clients around the world. Internal e-mails released by our Permanent Subcommittee on Investigations showed that one Goldman client was unhappy that the firm was spending so much time on Hudson and not on a deal the client wanted to make. In the documents Goldman used to sell Hudson Mezzanine to clients, the firm even suggested to investors that Goldman stood to benefit if the investment performed well, telling those customers: ''Goldman Sachs has aligned incentives with the Hudson project by investing in a portion of the equity.''

In fact, that was not true. Goldman Sachs' interests were not aligned with its customers. They were in conflict. Goldman was the sole counterparty in the Hudson CDO and made a $2 billion bet; that is, a $2 billion bet, that the assets referenced in the CDO would fall in value. Goldman won that bet big time. The CDO, filled with toxic subprime assets that Goldman had selected, assembled, and sold, began losing value. When Goldman first sold the securities to its clients, more than 70 percent of Hudson Mezzanine had AAA ratings, but within 9 months those AAA ratings were downgraded, and within 18 months Hudson was downgraded to junk status, and Goldman cashed in at the expense of its clients.

To sum up, in late 2006, Goldman decided to bet against the housing market it had helped to create. It shorted mortgage-backed securities it had sold to investors, and designed and built CDOs that enabled it to make billions of dollars in bets against the housing market and its own CDOs, collecting money when the products it had peddled to its clients failed.

That kind of proprietary trading is not ''market making.'' It is not matching buyers and sellers. It is one firm acting as a principal looking out for its own self-interest and making bets that were collected at the expense of its clients. Goldman served its own interests, and if clients got burned in the process, so be it.

But Goldman's actions did more than hurt its clients. It helped undermine an entire financial market which, in turn, damaged numerous financial institutions that ended up requiring a $700 billion taxpayer bailout to stop the bleeding. Hudson Mezzanine and other synthetic vehicles Goldman used to bet against mortgages were particularly damaging because they were not constrained by the number of mortgages in the market. They contained no real assets but were strictly bets on whether referenced assets would fall in value. The creation and sale of those synthetic instruments presented money-making opportunities for Goldman but magnified the risk in the financial system and made the crisis more severe when it hit.

It is time for Congress to put an end to the conflicts of interest that undermine our financial markets and pit investment banks against their clients.

The Merkley-Levin amendment contained a provision targeted at cleaning up this mess and preventing it from happening again. It would have barred any financial institution that underwrote an asset-backed security

from placing bets against the securities it created. The amendment would have also imposed new limitations on proprietary trading, limitations which are also critical to repairing financial markets and which are contained in more limited form in the Dodd bill.

The Senate Parliamentarian ruled that the Merkley-Levin proprietary trading and conflicts of interest provisions were germane to the Dodd bill. That is because the Merkley-Levin conflicts provision targets the same problem as the Dodd proprietary trading section—stopping financial firms from putting their own interests ahead of their clients. Our proprietary trading provision and our ban on conflicts of interest are essential to restoring client confidence in U.S. markets. They are within the scope of the conference and ought to be included in the conference report.

The financial landscape today is littered with the damage done by financial firms which pursued short-term profit at the expense of their clients, U.S. taxpayers, and the economy as a whole. Those financial firms cannot be allowed to continue to sell securities to clients and then bet against them. It is essential to remove these schemes that have undermined U.S. financial markets. I urge my colleagues in both Chambers, as they discuss final Wall Street reform legislation, to keep in mind how damaging these schemes have been, to strengthen the Dodd proprietary trading provisions, and to include a ban on conflicts of interest.

I thank the Presiding Officer.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DISCRETIONARY SPENDING CAPS

Mr. SESSIONS. Mr. President, when our colleagues arrive, I will be pleased to yield the floor to them, but I will be offering, after 3 o'clock, along with Senator CLAIRE MCCASKILL, my Democratic colleague from Missouri, an amendment we voted on before in the Senate. It is an amendment that would establish 3-year discretionary spending caps, limits on how much we can spend, how much debt we can run up. To violate those limits, it would take a two-thirds vote of the Senate and the House to pass. So this is a spending limitation amendment that will have some teeth to it.

It will allow us to have in effect a budget because it looks like, even in light of the incredibly disastrous financial crisis we are in, we will not pass a budget this year. We need to do that. But the House has not even moved one. One has been moved out of committee on a straight party-line vote, but there are indications we may not move it in the Senate, and if the House does not move, we will not have a budget.

What our amendment would do is help fill that gap. That is another reason for it. It would set spending limits for 3 years. The limits we would set are the limits President Obama submitted as spending limits last time. I recall, of my colleagues, 59 Senators voted for it, 1 short of moving through the Senate, a few weeks ago. I will talk about that at 3.

I see my colleague is here, Senator JOHANNS. I will be pleased to yield the floor. We will talk about this amendment later.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska is recognized.

THE HEALTH CARE PLAN

Mr. JOHANNS. Mr. President, I rise to speak a little bit about the health care plan that was passed now a few months ago. Of course, there was a lot of buildup to that plan. One of the things that was said over and over again by President Obama was: ''If you like your health care plan, you can keep your health care plan.''

The White House, of course, has very vigorously defended that promise. In fact, the White House responded to an op-ed that was entitled ''No, you can't keep your health care plan.'' That is what that op-ed was titled. The White House responded last week on the White House blog and they said this:

> The 150 million Americans with employer-sponsored health insurance—who make up the vast majority of those with health insurance today—will not see major changes to their coverage.

The White House's Stephanie Cutter went on to say:

> At the end of the day, employer-sponsored insurance will be improved but will look much the same as it does now.

The administration is continuing to try to convince the American people that, in fact, that is going to be the case. However, no matter how many times they say it, study after study tells us the opposite. Less than 2 months ago, after the bill became law, clear evidence is now emerging that the promises are impossible to keep. Recently, certain companies were required by securities law to report the impact of the new health care law on those companies. The company reports so concerned supporters of the health care law that they said we are going to bring these companies in. We are going to do an investigation. We will have a hearing on this. However, when they reviewed these companies' internal documents, the supporters of the health care law, those demanding the hearing, immediately backed off. You see, they saw in black and white why so many Americans are going to lose the health care coverage they like under this legislation.

Companies with longstanding employer-sponsored health plans were legitimately, lawfully, legally contemplating just paying the fine instead of continuing the more expensive employee insurance programs. Yes, all of a sudden the hearing was canceled. There was no interest in the hearing. One can speculate it was canceled because the findings would have exposed a very serious policy flaw of the health care law.

Headlines are hard to defend when they shout: ''Companies contemplate dropping employer-sponsored health insurance plans.''

This is very worrisome, but it is not unexpected. Last July I spoke about this on the Senate floor, right at this spot. I and many others warned that the proposed penalties for businesses would create a very perverse incentive. I said this:

> When you do all the math, this is no penalty at all compared to the cost of private insurance. It would encourage employers to dump their employees from their health insurance.

That is what I said a year ago. But supporters of health care reform denied it. They provided assurance to the American workers that they, in fact, would be able to keep their health insurance plan. Now, 10 months later, what is happening? Companies are, in fact, contemplating dropping their plans. Why? Because that perverse incentive is there.

To do so would significantly lower their costs and increase the costs for taxpayers and Medicare beneficiaries. Let's look at AT&T, for example. You see, for them, paying the Government fine instead of providing employee insurance would cut their annual health care expenses from $2.4 billion annual expenses to $600 million. That is a 75-percent savings.

Other companies, though, have sent similar signals. An official with John Deere has indicated they should look into, ''just paying the fine.'' Caterpillar said this: They are giving this ''serious consideration.''

Another survey showed that these are not isolated cases. A Washington State University survey, published in the Puget Sound Business Journal, concluded this:

> [A]bout a third of Seattle area executives said it may be cheaper for their businesses to stop offering health care benefits and pay fines.

If a major employer discontinues health insurance for its employees, brace yourself, because its competitors will do the same. The savings are just too dramatic, and that is not the only problem out there. The Congressional Budget Office cost estimate assumed that companies would be covering more employees in 10 years, not less. This optimistic view may have led to a very optimistic cost projection. If employees lose their employer-sponsored insurance plans, then they are going to be forced to get their health insurance elsewhere, likely through the health