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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Lord God, the source of our strength, we acknowledge our dependence on You. Direct our Senators in all their ways, opening and closing the doors of their lives with Your providential wisdom. Watch over their loved ones and deliver them from evil. Equip and strengthen our lawmakers for their difficult work, as they drink deeply from the hidden streams of Your grace. Lord, give them the courage to stand up and speak out in defense of truth, as You provide them with the ability to discern Your will. Fill the wells of their souls with Your strength and their intellects with fresh inspiration.

We pray in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 13, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Madam President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SCHEDULE

Mr. REID. Madam President, following any leader remarks, the Senate will resume consideration of the Wall Street reform legislation. We have eight amendments that are pending. Today we will continue to work through these amendments to the bill and Senators should expect rollcall votes to occur throughout the day.

We are having a special caucus today—we Democrats—to talk about this issue. The Senate will, therefore, be in recess from 1 p.m. until 2 p.m. today. I have had conversations earlier this week with the Republican leader about this and other issues, and I will talk to him again before the caucus.

NATIONAL POLICE WEEK

Mr. REID. Madam President, I had the opportunity a few years ago to ride with two police officers. It was a specialized unit that had been established with the Las Vegas Metropolitan Police Department on drunk drivers. I learned so much. It was a good experience for me. There were things I simply did not know existed. For example, if you see a car with no lights on—it is nighttime—there is a 50-percent chance that is a drunk driver. If you see a car making a wide sweep around a corner very slowly, there is a good chance that is a drunk driver. And they have other things they look for.

As we patrolled the streets, watching for these drunk drivers and responding to calls that came to these police officers, I was struck by how openly they talked about the dangers they face every day, having myself been a police officer and never talking about dangers because we did not have many. This was something that was an eye opener for me. For modern day police officers, it is an inherent part of their jobs, but a part of their families' lives they will never get used to—these families.

Every day, in every city and town around the country, brave men and women—all of whom volunteered to serve their communities—put themselves in danger to protect us—their friends, their neighbors, and so many they will never even know existed or meet. They take that risk to give us peace of mind in our everyday activities.

On Police Week, we recognize those who have made the ultimate sacrifice, those who have given their lives in the line of duty. This evening, they will be honored at a candlelight vigil not far from here. Their names will be added to the National Law Enforcement Officers Memorial. Alongside their families, we will celebrate their dedication and remember their sacrifice.

Four of those names belong to Las Vegas policemen who were killed last year. This morning, I had the chance to meet with their families at an 8:30 breakfast. They, of course, are some of

the strongest Nevadans we could ever meet and I ever met.

Officer Daniel Leach was a career corrections officer. He began his shift last November 21 by driving to Laughlin to pick up prisoners at the Tucker Holding Facility. He was going to take them to the Clark County Detention Center in Las Vegas.

But before he could get to Laughlin—not far from my home in Searchlight—he was involved in a vicious two-vehicle accident and was killed instantly. Officer Leach was 49 years old. He had spent the last 25 years of his life as a Las Vegas police officer. He is survived by his wife, whom I met this morning, two children, his parents, one brother, and one sister.

Before Trevor Nettleton was an officer in the Las Vegas Metropolitan Police Department, he proudly held the honored title of United States marine. His 9 years in the Marine Corps included service in the elite Presidential Guard unit, where he protected President George W. Bush.

Last November 19—2 days before Officer Leach was killed—Officer Nettleton was shot and killed by three gang members who broke into his garage in an attempt to rob him and his family. Officer Nettleton was 30 years old. He left behind a wife, two young children, his parents, and a brother.

Like Officer Nettleton, Officer Milburn Beitel III was also a marine. Tragically, he also died as a Las Vegas police officer at age 30.

''Milli''—as everyone called him—was on patrol late one Wednesday night last October when a car turned in front of him. Officer Beitel swerved to avoid the other car but was thrown from his patrol cruiser and died early the next morning. He, of course, was on a call he had received. He is survived by his parents and brother.

Last Friday marked 1 year since Officer James Manor responded to his last call. It was in the same Las Vegas community where he grew up. While responding to a domestic abuse call, a pickup truck driver failed to yield to him in his police vehicle—going as fast as he could to respond to that dispute—the collision occurred, and James Manor was killed.

He was known as ''Jamie.'' He had 10 brothers and sisters, and even more whom he considered brothers and sisters who served on the police force with him. His siblings, his mother, and his large extended family will tell his young daughter Jay'la—whom I met this morning; a beautiful little 8-year-old girl—they will tell her and the rest of the family about who he was. They will tell Jay'la about how courageous her father was, who died at 28 years of age.

This memorial wall that will bear these four Nevadans' names is a living reminder of some of our most selfless citizens. This year we will also add to that wall the names of Nevadans whom we recognize belatedly—some very belatedly:

Uriah Gregory, a jailer from Virginia Center during its heyday, was killed by two of his prisoners in 1866.

Arthur St. Clair, a constable and father of two, and George Requa, a deputy sheriff, were killed in an ambush in Elko in 1920. They were both killed at the same time.

Charles Lewis, another deputy sheriff from Elko, was killed by a thief in 1925.

George Washington Cotant, an Elko constable, died in a car accident in 1937.

Hugh Gallagher, Sr., a deputy sheriff from Virginia City, died on duty in 1948.

Ronald Haskell, a narcotics agent in Carson City, died on duty in 1975.

Richard Willson, a sergeant from Hawthorne, NV, died after apprehending a suspect in 1994.

These men were killed a long time ago—one almost 150 years ago, when Nevada had been a State for only 2 years, but it does not matter the time—and we can never forget their sacrifices.

Every day we should thank those who wake up on otherwise unremarkable mornings and head out to work with the job simply to keep us safe. Today we thank and honor the courageous Nevadans who, one unforgettable day, never came home.

Madam President, will the Chair report the bill.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 3217, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3217) to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Pending:

Reid (for Dodd/Lincoln) amendment No. 3739, in the nature of a substitute.

Collins amendment No. 3879 (to amendment No. 3739), to mandate minimum leverage and risk-based capital requirements for insured depository institutions, depository institution holding companies, and nonbank financial companies that the Council identifies for Board of Governors supervision and as subject to prudential standards.

Brownback modified amendment No. 3789 (to amendment No. 3739), to provide for an exclusion from the authority of the Bureau of Consumer Financial Protection for certain automobile manufacturers.

Brownback (for Snowe/Pryor) amendment No. 3883 (to amendment No. 3739), to ensure small business fairness and regulatory transparency.

Specter modified amendment No. 3776 (to amendment No. 3739), to amend section 20 of the Securities Exchange Act of 1934 to allow for a private civil action against a person that provides substantial assistance in violation of such Act.

Dodd (for Leahy) amendment No. 3823 (to amendment No. 3739), to restore the application of the Federal antitrust laws to the business of health insurance to protect competition and consumers.

Sessions amendment No. 3832 (to amendment No. 3739), to provide an orderly and transparent bankruptcy process for nonbank financial institutions and prohibit bailout authority.

Dodd (for Durbin) amendment No. 3989 (to amendment No. 3739), to ensure that the fees that small businesses and other entities are charged for accepting debit cards are reasonable and proportional to the costs incurred, and to limit payment card networks from imposing anti-competitive restrictions on small businesses and other entities that accept payment cards.

Dodd (for Franken) amendment No. 3991 (to amendment No. 3739), to instruct the Securities and Exchange Commission to establish a self-regulatory organization to assign credit rating agencies to provide initial credit ratings.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

AMENDMENT NO. 3776, AS MODIFIED

Mr. SPECTER. Madam President, I have sought recognition to ask cosponsors of the pending amendment who wish to present an argument to come to the floor as early as practical. The pending amendment involves reinstating a civil cause of action against aiders and abettors. The law, up until 1994 with a Supreme Court decision, provided that aiders and abettors were liable for damages for those who had been defrauded in securities transactions.

We all know the massive problems caused by Wall Street operations with many allegations of fraud. In our effort to reform Wall Street, this is a very important provision. Traditionally, people who have been injured, lost money, as a result of fraud have had a civil right of action to go into a civil court. The law had been uniform that under the Securities Act those cases could be brought.

There have been two Supreme Court decisions which have modified that, requiring this act change the decisions of the Supreme Court of the United States—which we have the authority to do: not decided on constitutional grounds but decided on grounds of statutory interpretations. So Congress has the plenary power to make that modification.

I have offered the amendment and argued it briefly. We will discuss it further a little later this morning. I offered it on behalf of Senator REED of Rhode Island, Senator KAUFMAN, Senator DURBIN, Senator HARKIN, Senator LEAHY, Senator LEVIN, Senator MENENDEZ, Senator WHITEHOUSE, Senator FRANKEN, Senator FEINGOLD, and Senator MERKLEY, and I want to let all of the cosponsors know the matter is now on the floor, and if they care to support the arguments, now would be the time to come to the floor.

Madam President, I see other colleagues waiting for recognition, so I yield the floor.

Mr. WYDEN. Madam President, I note the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. WYDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WYDEN. Madam President, I am going to speak for about 5 minutes on the effort to finally, once and for all, eliminate secret holds in the Senate. Senator GRASSLEY, my partner in this effort for a decade, will also speak. Then, two colleagues on our side who are a part of this large, bipartisan coalition, Senator WHITEHOUSE and Senator BENNET, and who also have done very good work along with Senator GRASSLEY, Senator INHOFE, and Senator COLLINS, who have been part of a bipartisan coalition, will take just a few minutes.

Let me also express my appreciation to the chairman of the committee, Senator DODD, Senator DURBIN, and others who have been so helpful.

This bipartisan amendment will abolish the secret hold in the Senate, which, in my view, is a violation—an indefensible violation—of the public's right to know. With a secret hold, any Senator can block a piece of legislation or a nomination in secret simply by telling the leader of their party of their desire. This means that one person, without any public disclosure whatsoever, can keep the American people from even getting a peek at what is public business.

When asked why he robbed banks, Willie Sutton said: ''That's where the money is.'' In the Senate, secret holds are where the power is. With a secret hold, one of the most powerful tools a Senator has to affect the lives of our people can be exercised anonymously.

In 2007, the Senate sought to eliminate secret holds. Since then, big loopholes have been developed to keep too much Senate business in the dark, unaccountable, and away from the public.

This bipartisan amendment closes those loopholes. With this bipartisan proposal, every single hold in the Senate will have an owner who is public within 2 days. It is an amendment that will be enforced. Here is how it would work: If a Senator puts a hold on a bill or nomination, they are required to submit a written notice in the CONGRESSIONAL RECORD within 2 days. When that bill or nomination comes to the floor and any Senator objects to its consideration on the grounds of a hold, one of two things will happen: either the Senator placing the secret hold will have their name publicly released or the Senator who objects on their behalf will own that hold, and then that individual will have their name published in the CONGRESSIONAL RECORD. For the first time, there would be both public accountability and peer pressure on those trying to keep Senate business behind closed doors.

The bipartisan proposal includes two additional reforms. First, the proposal eliminates the ability a Senator has today to lift a hold before the current 6-day period expires and never have it disclosed. This has been a huge abuse. It has allowed a Senator to do business in secret and never have it reported.

With the new proposal, if a Senator places a hold—even for a day, even for a minute—that hold is going to be disclosed. Second, the proposal makes it harder for a group of Senators to place revolving holds on a nomination or a bill. I particularly thank Senator WHITEHOUSE, who has highlighted this issue of revolving holds in his past comments on the floor. With the 6-day time period, a group of Senators can literally pass a hold from one colleague to another and never have it disclosed. By requiring all holds to be made public, it will be much more difficult to find new Senators to place revolving holds.

What this comes down to is the question of whether public business ought to actually be done in public. It seems to me that if it is important enough for a Senator to say they are making it a priority to keep a bill or nomination from coming to a vote, that ought to be a public matter and not be something that is decided in the shadows, away from the public and unaccountable.

I thank my colleagues. This has been part of a bipartisan coalition. No one has put more time into this cause than my friend from Iowa, Senator GRASSLEY. I also thank Senator MCCASKILL, who has prosecuted this cause of accountability and openness relentlessly, along with Senators WARNER, WHITEHOUSE, BENNET, INHOFE, and COLLINS—I could go on.

Finally, there is a desire in the Senate to eliminate secret holds once and for all. I will close with this. I don't think that 1 out of 100 people in this country have any idea what a secret hold is. Most people probably think it is some kind of hairspray. It is one of the most powerful tools in our democracy that is being used to keep what is public business from the eyes of the American people, and it has to change.

I will yield to my colleagues, Senators GRASSLEY, WHITEHOUSE, and BENNET. I thank Chairman DODD and Senator SHELBY for indulging us at this time. It seems to me that when Senator DODD has done so much good in terms of arguing for openness and accountability on Wall Street, this is a perfect time to say we ought to have that in the Senate. That is what we are going to do on a bipartisan basis today.

I yield the floor.

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

Mr. GRASSLEY. Madam President, I thank Senator WYDEN for his leadership and for working together with me and other Senators over a long period of time. I think he referred to maybe 10 years that we have been struggling to get to what we are finally getting to today.

In the past, we thought we had victories and they turned out to be hollow victories—maybe a little more openness but largely ineffective. So maybe now we will finally be able to accomplish an effective openness in the Senate on one of the most powerful tools a Senator has.

I think it gives hope to the fact that if you are right, eventually right wins out, even in the Senate. Long struggle does pay. I think we are bringing simply common sense to a process in the Senate. It is, as my friend from Oregon said, transparency, and with transparency we have accountability.

The amendment Senator WYDEN and I have offered would restore the prohibition on secret holds the Senate voted for overwhelmingly in a previous Congress—the 109th Congress—and make it even more robust. As I said, those turned out to be largely not very effective.

At that time, in the 109th Congress, our measure passed as an amendment to the ethics reform bill by a vote of 84 to 13. That bill never became law, but the next Congress passed then what is referred in the title of the legislation as the Honest Leadership and Open Government Act. Our provision was also originally included in that bill.

Ironically, as I have alluded to, in a move that reflected neither honest leadership nor open government, our provisions were altered substantially—I might say too substantially—behind closed doors, before we had final passage.

The current provisions essentially say it is OK to keep a hold anonymous until 6 days after someone asks unanimous consent to proceed to a bill or a nominee. I am not going to explain how that process works out, but it can be summed up in the words that it is a very ineffective sort of transparency, hardly doing any good whatsoever.

The amendment that is before us says Senators must go public from the moment they place the hold.

Perhaps I should take this opportunity to address what a hold is all about. A hold arises out of the right of all Senators to withhold their consent when unanimous consent is asked.

It goes without saying that any Senator has a right to object to a unanimous consent request that the Senator does not support because it is not unanimous unless, obviously, we all support it.

In the old days, when Senators conducted much of their daily business from their desk on the Senate floor, it was a simple matter to stand and say, ''I object'' when necessary, and, of course, that Senator was immediately identified. Now, Since most Senators spend so much time off the Senate floor in committee hearings, meeting

with constituents, and other sorts of obligations that we have, we have tended to rely upon the majority and minority leaders to protect our rights and prerogatives as individual Senators, asking them to object on our behalf.

Just as any Senator has the right to stand on the Senate floor and say, ''I object,'' it is perfectly legitimate to ask another Senator to object on our behalf if we cannot make it to the floor when consent is requested.

By that same token, it would be illegitimate, not to mention impossible, for a Senator to stand on the floor and object anonymously. Senators have no inherent right to have others object on their behalf and keep their identity secret.

If a Senator has a legitimate reason to object to proceeding to a bill or a nominee, then he or she ought to have the guts to do so publicly.

I believe this is part of expanding the principle of open government. The public's business ought to be public. Lack of transparency in the public policy process leads to cynicism and distrust of public officials and, quite honestly, less accountability.

I maintain that the use of secret holds—with emphasis upon the adjective ''secret''—damages public confidence in the institution of the Senate. The public's business ought to be done in public, period.

I have made it my practice to put a statement in the RECORD when I have placed a hold on a nominee or a bill for over a decade. I can tell you that is no burden whatsoever, and it hasn't hurt me in any way whatsoever to let my colleagues and the public know—for the last decade—that Senator CHUCK GRASSLEY had a hold on a bill and why I had that hold on a bill or nominee.

Our amendment—the one before us—would make it crystal clear that holds are to be public. Senators placing a hold must get a statement in the RECORD within 2 days, and they must give permission to their leaders at the time they place the hold to object in their name.

Also, if a Senator objects, ostensibly on behalf of another Senator but refuses to name the Senator he is objecting for and that Senator doesn't come forward within those 2 days, the objecting Senator will be listed as having that hold, owning that hold.

I wish to make it clear that we do not come to this lightly. We have tried other paths to accomplish our goal. I said those other paths have turned out to be largely ineffective.

We sought the advice and assistance of several majority and minority leaders over the last decade, and we twice tried informal policies issued jointly by the two leaders, in 1999 and 2003, but those turned out to be as flimsy as the sheet of paper on which they were written.

So working with two former majority leaders, Senators Lott and BYRD, we crafted the policy I mentioned earlier that the Senate adopted by a vote of 84 to 13, which was later gutted.

It is this policy, with some improvements—in fact, some very needed improvements—that we are introducing today. It is important the Senate have the opportunity to speak on this issue as a body. I look forward to this vote and finally having a true victory against secrecy.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

NATIONAL POLICE WEEK

Mr. MCCONNELL. Madam President, all across the country this week, Americans will honor the law enforcement officers who keep our towns and communities safe and pay solemn tribute to those who have lost their lives in the line of duty. National Police Week is a time to thank all those whose service preserves the rule of law, at great risk to themselves.

I wish to pay special tribute to one of those heroes today, Officer Bryan J. Durman. Officer Durman was a 27-year-old, decorated, Lexington, KY, police officer and a veteran of the U.S. Air Force. He was, tragically, the first Lexington police officer to die in the line of duty in over 20 years.

This past April 29, he was responding to a noise complaint when he was struck by a car and killed. He leaves behind his wife Brandy and their 4-year-old son Brayden.

Bryan Durman went to Paul Laurence Dunbar High School in Lexington, where he was on the wrestling team. After graduation in 2001, he enlisted with the Air Force. He rose to the rank of staff sergeant and served in both Operation Enduring Freedom and Operation Iraqi Freedom. More important, it was while serving in the Air Force that Bryan met Brandy, his wife.

Bryan's mother, Margaret Durman, says that from the time her son was a small boy, she knew he would grow up to be a peacemaker. After leaving Air Force service in July 2007, Bryan returned to Lexington to keep the peace here at home and was accepted into the Lexington police academy.

In his 3 years of service with the Lexington metro police department, Bryan earned great respect from his colleagues and the community. ''The amount of support that we have received speaks volumes about the caliber of person Bryan was and his character,'' says his wife Brandy.

For administering lifesaving CPR to a vehicle collision victim and to a woman in medical emergency in two separate instances, Bryan received the Lifesaving Award and the Exceptional Service Award. His family will be presented with those awards as a small reminder that, as his mother puts it, Bryan ''died doing something that he loved.''

During this National Police Week, as we remember our peace officers and their families, we also remember the loved ones Officer Durman leaves behind: his wife, Brandy; his son, Brayden; his mother, Margaret Durman; his sisters, Monique Wanner, Michelle Wiesman, and Danielle Hood; his brothers, John A. Day and David P. Durman II; his brother-in-law, Robert Fletcher; and many other family members and friends.

Brandy will always have a fond memory of a recent Christmas when Bryan and Brayden received toy dart guns. Father and son spent much of the day playing with their new toys. ''I found about 50 darts in the Christmas tree,'' Brandy says. ''They were in the sink, in the bathtub.''

The day after Officer Durman's death, Lexington police officers wore black bands across their badges as a tribute to their fallen brother. The bands are also a stark reminder of the hazards of the job each and every peace officer in Kentucky and across the country faces every day.

The Senate has the deepest admiration and respect for police officers in every community in the Nation. We recognize theirs is both an honorable job and a dangerous one. We recognize they bravely risk their lives for ours. I appreciate all they do. And America is grateful.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, I know there are a number of Senators on the floor who wish to speak on unrelated matters. I wish to speak on the underlying bill. I believe Senator WHITEHOUSE and maybe Senator MCCASKILL and Senator BENNET wish to speak on the hold issue. I merely ask that we alternate back and forth after the next speaker speaks on whatever subject they do and that I then be allowed to speak on the underlying bill and then go back to the other side of the aisle.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, if I may make a suggestion to my friend from Texas, as I understand, my colleagues are going to speak 2 or 3 minutes apiece. So the cumulative time of all three Senators will be about 6 or 8 minutes. I know the Senator from Texas has a longer statement to make on Senator SESSIONS's amendment.

Mr. CORNYN. I will be glad to defer to them under those circumstances and then ask to be recognized following those 6 or 7 minutes.

Mr. DODD. Madam President, I make that request.

Mr. WYDEN. Will the Senator yield for a question? Again, to save time—the Senator from Connecticut has been very gracious to allow an opportunity to do this—Senator WHITEHOUSE, Senator MCCASKILL, and Senator BENNET are all going to speak. I think that would allow us to set up time later for the vote, and we would have to formally offer the amendment. Would that be acceptable to the chairman?

Mr. DODD. I cannot agree to anything at this point. We can certainly talk with the leadership about that.

Mr. WYDEN. It is acceptable to the leader.

Mr. DODD. I am not in a position to give that consent. That is something that has to go through leadership. Let's get the speeches done so we can get back on the bill.

Mr. WYDEN. All right.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I congratulate Senator WYDEN and Senator GRASSLEY for their long effort to eliminate the secret holds in this body. They thought they had succeeded in 2007 with a mechanism that would scrub secret holds and make them public after 6 days. But it turns out that a number of our colleagues on the other side discovered a loophole in the rule. Whether it is called the old switcheroo or revolving holds or hold laundering, they found a way to defeat the purpose of a rule that was voted for by 84 Members of the Senate on a strong bipartisan basis. That is why we are back here today.

I want to also add to the role of honor on this subject CLAIRE MCCASKILL, who has done the lion's share of the work of shepherding in some cases 100 stalled nominees blockaded on the Executive Calendar through those 2007 year procedures so that we could get to the point of proving that there were, in fact, secret holds and that despite the rule, hold laundering was taking place and the rule was not being put into effect and holds were being kept secret.

I suppose an asterisk on the role of honor should go to Senator COBURN, who is the one Senator on the Republican side who had the courage to stand up and disclose his actual holds. Everybody else went to some other Senator and said: I don't want my name on this. Would you please take my hold over so I can avoid the rule, keep my hold, and have no accountability.

Perhaps there once was a reason for a secret hold, for this kind of business to be done in the dark, in the shadows, and anonymously. I think history and common sense tell us that deeds that are done in the dark are not usually ones of which we are proud. Certainly, the experience of the last few months has shown that if there ever was a legitimate use for secret holds, that purpose has evaporated. It has evaporated under the pressure of blocked nominees numbering, in some cases, over 100—a systematic approach, a systematic attempt to disable this administration's ability to govern by systematically opposing nominees, irrespective of the merits; opposing nominees who came out of committee in a bipartisan fashion; opposing nominees who came out of committee with zero opposing votes; with Senators raising objections to nominees they voted for in committee. There is clearly something more going on than a sincere concern about an individual nominee.

Finally, this effort to what I call hold launder and to avoid the rule 84 Senators stood up and voted for that does nothing more than put your hold in the plain light of day shows that the 2007 rule, unfortunately, has been ineffective and that it is time for a change.

I have continuing gratitude for Senator WYDEN, Senator GRASSLEY, and for all those who have supported us on this issue and particularly for Senator MCCASKILL for her relentless presence on the floor, making this actually happen.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. BENNET. Madam President, I join my colleagues in support of the effort Senator WYDEN and Senator GRASSLEY have led to end the corrosive practice of secret holds. This is a reform that is needed and cannot wait.

I have been in Washington for only about a year, but it did not take that long to realize our government needs to fundamentally change the way it does business. Coloradans deserve a government that works for them. They are tired of the petty partisanship in Washington. They want their elected officials to listen and address their day-to-day concerns. I cannot think of a worse example of this dysfunction than the secret hold. It is undemocratic, and it is hurting our economy.

Quite a few of us in the Senate—the chairman and I—have young daughters, young kids who are familiar with the ups and downs of a long car ride heading out on vacation. The first hour always seems to go pretty well, full of excitement about where everybody is headed. But it is not long before that excitement turns to restlessness and that restlessness turns to secretly doing everything they can to bother their siblings just for the sake of doing it. And every time you turn around, they stop and smile and claim their innocence.

It never occurred to me that experience would actually prepare me to come to the Senate. Countless nominations and important legislation make their way to the floor. Senators make speeches about the importance of doing the country's business, appearing motivated to get the job done, to get the American people's work done. But when the cameras are off, they use the secret hold to bring this progress to a stop.

Since I have been here, I have seen nominees and bipartisan legislation held up for weeks, only to pass with 97 or 98 votes, all to score political points and waste the American people's time and the American people's money.

Earlier this year, we spent months working to reform health care. We have spent a lot of time under the chairman's leadership trying to fix Wall Street. It is past time we fix the way Washington works as well.

Congress must stop living under a glass dome. The Wyden-Grassley amendment is simple. It requires any Senator seeking to hold up the Nation's business to publicly announce his or her hold. All holds should be in writing, made public for the other 99 of us and, most importantly, for the American people so they can render their own judgment.

While I support this amendment, I have legislation that would go even further. My legislation would not only end secret holds, as this amendment does, but also require that any hold be bipartisan or else it expires after 2 legislative days. All holds, public or private, would expire in 30 days. At that point, the pending business would be ready to be considered on the Senate floor.

The Senate was designed to be the greatest deliberative body in the world. Let's have the debate and put an end to these secretive attempts to prevent debate.

Once again, I thank Senators WYDEN and GRASSLEY for their leadership and look forward to the passage of this amendment. I also wish to recognize the great work our colleague from Missouri, CLAIRE MCCASKILL, has done bringing this legislation to this point.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mrs. MCCASKILL. Madam President, first, let me say how grateful I am to Senator CORNYN for his patience. I will try to be very brief because I know he is waiting to address the underlying bill.

I think everything that needs to be said has been said. I will be interested in this vote because there is a group of people right now who voted for a rule that simply said: You have to disclose your secret holds if a certain procedure takes place. There are a bunch of people who voted for that who are not doing it. I do not know how that computes in the mind of a U.S. Senator. I do not know how you vote for a rule that requires you to disclose and then you knowingly continue to keep a hold secret.

I had a colleague tell me the other day they had talked with a colleague across the aisle about a couple of judges they desperately wanted to get released from the land of secret holds. This colleague visited with a Republican about it, and the Republican told her: The leader says he has to get something for it. You have to get something for it? Have we come to that, that you get to hold on to someone whose life is in limbo to be a U.S. district judge until you get something for it? That is not the way the American people want us to operate around here.

I know Senator GRASSLEY and Senator WYDEN have toiled in this field for a long time. I appreciate their efforts. I thank all my colleagues who have been helpful in us bringing this to the attention of the American people. We now have 60 Senators who have signed a letter saying they will never engage in secret holds and they want them completely abolished. The Wyden-Grassley approach is almost as good as

never. It is a very limited window, and I pray that it will work. I had been wildly optimistic it would work right after I voted for the rule back in 2007. I thought, this is all it is going to take. I am not as optimistic, frankly, right now. Games may still be played. I think we have to get to 67 names on that letter.

The American people have to rise with their pitch forks, the way they are in so many other ways, and say: Enough already. Stop this incredibly bad habit of thinking you can hold up nominations just because you feel like it and never have to own it.

I encourage everyone to vote for the Wyden-Grassley amendment. I appreciate Senator CORNYN's patience with us this morning. I look forward to a vote on this amendment. I really want to find out who is secretly holding right now, who votes for this amendment, and how they reconcile those two things.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, I want to speak on the underlying bill, particularly on the Sessions amendment to the bill, but let me just precede that with some more general comments.

I was very concerned when I read in the most recent publication of National Affairs comments from the inspector general of TARP—appointed to oversee that program that has now gotten completely out of control. More to the point, he says what has happened since September of 2008 is that we have seen further consolidation of the banking industry. Actually, he has said what has happened is that things have actually gotten worse as a result of the several mergers that have actually made banks larger. The implicit guarantee of moral hazard that we are not going to let these large institutions fail has contributed to them engaging in more and more risky conduct.

The problem with too big to fail and these large institutions, particularly large banks with assets of over $100 billion, is that they can actually borrow money cheaper than community banks in Texas or New York or Connecticut or elsewhere, and they actually represent a $34 billion subsidy to the largest 18 banks in America because this bill does nothing to eliminate the concept of too big to fail. Indeed, in many ways, it makes it worse. It institutionalizes the concept.

I want to address specifically the provisions in the Dodd bill—the underlying bill—which have to do with how we deal with these large financial institutions if they get into trouble. The underlying bill empowers the Federal Deposit Insurance Corporation—which previously has had no experience dealing with investment banks or other companies that engage in financial transactions, other than depository banks—to seize a vast range of financial companies based on nothing more than their impression that the institution is in ''danger of default.''

Of course, we know one of the reasons we have gotten into this mess—why Wall Street has gotten into the shape it has gotten into—is because either regulators were too close to the people they were supposed to regulate or they were asleep at the switch. If we empower the Federal Deposit Insurance Corporation now to take on this new role as megaregulator in the resolution authority, it literally is going to have to run these businesses—something they are not prepared to do, something they have never done before. It will actually encourage management at the institutions that are subject to this new expanded authority of the FDIC to foster stronger relationships with the regulators, further entangling the government with the fabric of the U.S. private sector.

This underlying legislation creates a resolution scheme for large complex financial institutions that allows the FDIC to serve in multiple capacities at once—as corporate management, as creditor to the corporation, and referee of the liquidation process. There is no question that in the underlying bill there are going to be enormous conflicts of interest on the part of the government agency itself when it is required to wear this many hats at the same time.

The underlying bill also provides the government—and here specifically the FDIC—the authority to discriminate among creditors of the same class. All we have to do is look at what happened when the Federal Government took over General Motors, where we saw the government's $15 billion gift to labor unions to the disadvantage of the bond holders. This is the same sort of abuse that is propagated and continued in the underlying resolution authority in the bill which needs to be fixed. It needs to be changed.

This underlying legislation also forces companies that are financially sound and that have done nothing wrong to contribute to a fund to bail out organizations and institutions—I should say companies—that have been irresponsible and done exactly the wrong thing.

I must say I really wonder why we are rushing through this legislation so fast when the very commission that Congress has created to report back to us—the Financial Crisis Inquiry Commission—is not supposed to report until December. So in the very complex and complicated area such as financial regulatory reform, we are going to be denied the very report that Congress commissioned, which is due in December, that will tell us, hopefully, how to get this done and get it done right.

I think it is a terrible mistake for us to give the FDIC this incredible authority and discretion which will just alter the relationship again between the private sector and government. We have seen a tendency over the last year and a half to grow government and to basically burden the private sector in ways that cause many people to wonder whether we are still committed to a free enterprise system or whether we are going to have one government takeover after another. This legislation—particularly this resolution authority—represents something that will provide for more government intervention in the private sector without making sure ''too big to fail' comes to an end.

AMENDMENT NO. 3832

I want to talk specifically about the Sessions amendment, as I said, because the Sessions amendment restores the rule of law to the resolution authority that would be granted under this bill. Under American bankruptcy law, we have an adversarial process. We have judges who are independent, we have a requirement that when you walk into bankruptcy court you actually have to swear under oath, under the penalty of perjury, that what you are saying is the truth, the whole truth, and nothing but the truth, so help you God.

I don't know why we should allow these big financial institutions that are covered by the resolution authority under the underlying bill a special set of rules. Why shouldn't they be forced to operate under the same rules—bankruptcy rules—that apply to every business that gets into financial trouble all across America today? Many scholars and policy analysts have argued convincingly that bankruptcy reform would be the most effective action Congress could take to protect against future financial panics and bailouts.

There is one note I would make of the Lehman Brothers bankruptcy. As the Chair and my colleagues know, there was a voluminous report written by the court-appointed examiner who dissected the Lehman Brothers bankruptcy for reasons why Lehman Brothers failed. This is a 2,209-page examiner's report which documents accounting gimmicks that were used to hide the extent of Lehman's indebtedness, which was not even known to the Securities and Exchange Commission because the Securities and Exchange Commission took the position it didn't have jurisdiction to do this very sort of regulation and very sort of oversight that might have detected and prevented the meltdown of Lehman Brothers and all across Wall Street.

Amazingly, Richard Fuld, chief executive of Lehman Brothers, when he was confronted with the examiner's report documenting the various maneuvers, including one known as Repo 105 transactions, said he had no knowledge of the accounting maneuvers that were used to take some of the financial obligations of Lehman Brothers off its books.

So I would ask my colleagues: Don't we want this sort of transparency and accountability that comes only out of a bankruptcy-type resolution authority? Don't we want that kind of information so we can hold the people who were responsible for these huge meltdowns of our financial system accountable? I would say we must insist on

that kind of accountability. Unfortunately, under the authority given to the FDIC to conduct this resolution in the Dodd bill, there will be no sort of report by court-appointed examiners such as the one that exposed Lehman Brothers' accounting gimmicks and the complete abdication of responsibility of the chief executive officer for not knowing what kind of accounting transactions were taking place and which hid a lot of their liabilities not only from him but also from examiners. We would not have that kind of information.

That is another reason I believe bankruptcy provides a far superior way of handling this resolution rather than giving the FDIC—a sort of FDIC on steroids—the power to make these decisions without the kind of transparency and accountability we need.

Recently, in the Wall Street Journal, a couple of professors wrote:

> If there were a silver bullet in financial reform, legislation would have been enacted a long time ago. There isn't, but removing the special treatment of derivatives in bankruptcy comes close. It could provide the basis for a sensible compromise on derivatives regulation while also addressing the bailout problem.

That is exactly what the Sessions amendment does. With a small tweak of bankruptcy law, we could assure that everyone is going to have to play by the same rules, and when any financial institution goes bankrupt the automatic stay, which protects the court's jurisdiction to be able to sort out the creditors and debtors, can be used in an appropriate way to deal with derivatives contracts. Currently, derivatives contracts are exempted from the automatic stay, which creates a very dangerous risk of a run on the bankrupt entity's derivatives book. This could lead to a cascade effect, exacerbating systemic risk. The Sessions amendments provides for timely court supervision over any stay on derivatives contracts. Other than that, the Bankruptcy Code would apply as it does every day in bankruptcy courts across this country involving businesses both large and small.

So I think the Sessions amendment provides much more transparency, much greater accountability, much more certainty, and certainly helps restore the rule of law to an otherwise discretionary authority over a Federal agency that has never exercised this kind of authority before, one that has the very real danger of perpetuating the kind of picking of winners and losers that we saw in the GM bankruptcy where the bondholders, who were supposed to be among the most secure creditors, if not the most secure, were forced to take a significant loss in favor of unions, which happened to be more active players in the political process.

So I would urge my colleagues to support the Sessions amendment, which makes bankruptcy a preferable alternative to dealing with future failures of financial institutions.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. ENSIGN. Madam President, we are venturing down a dangerous path that threatens to put the economic future of our country in jeopardy. When the housing market collapsed, the government stepped in with a blank check to bail out the Nation's largest mortgage giants—Fannie Mae and Freddie Mac. When the automakers started to feel the pinch of a downward economic turn, again the government stepped in, taxpayer money in hand, and bailed them out. When the giants of the financial market started to see their bank accounts drop below zero, again the U.S. Government stepped in to bail them out, allowing them to sidestep the pain of their financial mismanagement—pain that was then passed on to hard-working Americans, many of whom are barely scraping by during these difficult economic times.

The pain was certainly not felt by the managers of these institutions when they received exorbitant bonuses, despite their bad performance.

This country has witnessed bailout after bailout after bailout. Yet not one piece of legislation has passed this body that would establish protections for taxpayers to ensure that we do not remain on the hook for bailing out these institutions every single time they mismanage themselves.

Unfortunately, this financial reform bill that we have before us continues this trend. Last week, I offered an amendment that would have restricted the size of Fannie Mae and Freddie Mac so they would not continue to be too big to fail. My amendment was defeated, largely along party lines.

Senator MCCAIN offered an amendment this week that would have reduced the size of Fannie and Freddie, while moving to let them stand on their own so the government gets out of the business of subsidizing mortgages. Again, his amendment was defeated, largely along party lines.

Today, we have another chance to listen to the American people and to stop the bailouts of these mismanaged corporations. The amendment offered by Senator SESSIONS, of which I am a cosponsor, will do this by taking away the bailout option, to, instead, force these companies to declare bankruptcy. This amendment will produce a clear set of rules which will create certainty in the marketplace, rather than continuing the precedents set during the crisis where the government was allowed to pick winners and losers.

This is not the first time I fought against these bailouts. In 2008, when we were debating the bailout of the automakers, I offered an amendment, along with Senator SHELBY, that would have required the big three to file Chapter 11 bankruptcy. At that time, I argued that this was the best way to ensure the automakers would emerge in the future as successful companies. I still believe that. Chapter 11 bankruptcy would have allowed them to restructure their firms and would have protected the employees of these automakers by keeping politics out of the process by eliminating the need for an auto czar. Unfortunately, the government stepped in and, with the exception of Ford, decided to bail them out. I thought this was wrong at that time, and I still believe this was the wrong thing to do.

While we cannot erase the decisions of the past that led to the bailouts of the automakers, Fannie and Freddie and the financial firms, we can correct course to ensure that the American taxpayers get off the hook for bailing out these industries in the future by forcing them to file bankruptcy, should they mismanage their finances again in the future.

The reality is, when Americans mismanage their funds or are unable to stay afloat under mounting debt, they file bankruptcy. I am sure many would rather have the government step in and pay off their debt, but this is simply an unsustainable option.

The same argument can be made for bailouts of financial firms. Bailout after bailout footed by the taxpayers will force our already debt-laden country into further debt that we cannot afford to crawl out from under. We are already rapidly approaching this reality. These bailouts do not incentivize these institutions to minimize their risks. Instead, they go as far as to privatize the profits while socializing the risks of their losses.

The amendment offered by Senator SESSIONS offers hard-working Americans a reprieve from footing another financial sector bailout. But he also discourages these companies from continuing the irresponsible practices that got them into trouble in the first place. Under the financial bill we are currently debating, the government will continue to pick winners and losers and the taxpayer will continue to foot the bill, unless we adopt the amendment offered by Senator SESSIONS. This amendment would make these companies utilize an enhanced bankruptcy process, which would ensure that the costs are covered by the financial institutions and their creditors, not the taxpayer.

The amendment creates a new chapter 14 in the Bankruptcy Code that will utilize many of the tenets in chapter 11 reorganization bankruptcy but will be for the specific use of the big financial institutions. This addition to the Bankruptcy Code creates a new pathway to limit the cascading spread of risk and panic throughout the financial system and ensures the more orderly wind down of these financial institutions insulated from bailouts and political influence.

The amendment offered by Senator SESSIONS delivers much needed transparency, accountability, stability, and due process through the use of bankruptcy courts and the expertise that we have in bankruptcy courts. Further, to

protect the taxpayers, it specifically denies the Federal Government the authority to take over firms, dictate the terms of the reorganization or liquidation, and support them with Federal bailouts. This amendment guarantees real reform that will result in real stability.

This is what the American people are asking us to do. They are asking us to make sure they are not the ones responsible for bailing out these financial giants that make poor decisions. The American people are working hard to weather through these tough economic times, and we owe them much more than legislation that will continue to allow the government to pick winners and losers and will allow too big to fail to continue.

I hope we adopt the Sessions amendment. Unfortunately, almost every good amendment that has been offered to this Wall Street bill has been defeated, largely along party lines. This is an amendment that will actually stop too big to fail. It is a responsible amendment. It is my hope that we will finally adopt a good amendment to this bill.

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

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

The bill clerk proceeded to call the roll.

Mr. SPECTER. 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.

AMENDMENT NO. 3776

Mr. SPECTER. Madam President, I have sought recognition to comment further about the pending amendment to make tortfeasors, under the Securities Act, liable for civil damages; that is, people who engage in fraudulent conduct. We have a deep recession. Millions of people have lost their jobs. There were enormous financial losses. There were many contentions of fraudulent practices being responsible for that conduct. In this act, we are seeking to reform Wall Street.

The practice had been, the law had been, for decades, under the Securities Act, someone who was cheated, defrauded by people who practice under the Securities Act could sue them. That would involve those aiders and abettors and people in the chain beyond the principal would be responsible. I have offered an amendment on behalf of myself and Senators REED, KAUFMAN, DURBIN, HARKIN, LEAHY, LEVIN, MENENDEZ, WHITEHOUSE, FRANKEN, FEINGOLD, and MERKLEY to reinstate the law prior to what it had been prior to the decision of the Supreme Court. The Supreme Court has held that aiders and abettors are not liable and that there is a requirement that the defendant must have made the representation directly to the person buying or selling the securities, which is a sharp reversal from what the law had been.

It is anomalous, unheard of, to have criminal liability under the Federal Criminal Code for aiding and abetting but not to have liability under the civil claims. It is a much higher standard of proof, criminal culpability, to put somebody in jail than it is to establish a claim for monetary damages. But that is where we find the law and we find people in urgent need of this kind of standing to recover their damages but also to have this procedure serve as a deterrent to Wall Street fraud.

The issue was succinctly summarized by a distinguished Federal judge, Judge Gerald Lynch, in a case captioned In re Refco Litigation, 609 F. Supp. 2d 304 (S.D.N.Y. 2009), to this effect:

> It is perhaps dismaying that participants in a fraudulent scheme who may even have committed criminal acts are not answerable in damages to the victims of fraud. . . . There are accomplices and there are accomplices: after all, in the criminal context, when the Godfather orders a hit, he is only an accomplice to murder—one who ''counsels, commands, induces or procures'' but he is nonetheless liable as a principal for the commission of the crime. Likewise, some civil accomplices are deeply and indispensably implicated in wrongful conduct.

So that you have aiders and abettors. There have to be people who are participants in the fraud. It simply is not a one-person operation. Yesterday, I put into the RECORD the impact of these civil suits in financial recoveries compared to the lesser amounts which can be collected by the SEC. Illustrative of that were two cases—Enron, where the SEC recovered $450 million and the private litigants recovered $7.3 billion—14, 15 times more. In the WorldCom case, the SEC recovered $750 million, the private litigants recovered $6.85 billion. So there is an enormous difference.

This is a subject I have had a deep concern about going back to my law school days, when I wrote a comment for the Yale Law Journal on the subject, about the importance of private prosecutions. Private actions have been very important—treble damages under our antitrust laws, very important under our securities laws.

In 1995, we restricted the scope of discovery. I urged the President, at that time, to veto the bill.

Just a very brief personal story. I was in my condo one night at about 10:30, quarter of 11, I got a call from the White House. The President came on the line and said: Do you have a few minutes to let me read to you my veto message? Well, I had more than a few minutes. I was very interested in the President's veto message.

But the law, nonetheless, notwithstanding the veto, the law was modified.

There is other litigation pending to open the scope of pleading. Federal Rules of Civil Procedure have traditionally been what we call notice pleading; that is, put the defendants on notice as to the claim. Then, under the discovery proceedings, the party is then entitled to probe into the records of the defendant because these are all transactions within the sole control and possession of the defendant on almost all circumstances.

When the Supreme Court of the United States was considering taking the Stoneridge case, I wrote President Bush a letter, on August 3, 2007, urging him to allow the Solicitor General to respond to the request of the Securities and Exchange Commission for the Solicitor General to argue the case. The Solicitor General was precluded from doing so. Stoneridge came down with a very restrictive holding that the people responsible had to make direct representations to the person buying or selling the securities—which is an unrealistic and unreasonable standard. It backed up the prior decision of the Supreme Court in 1994, in Central Bank of Denver, which eliminated aiders and abettors from responsibility.

This is a very important bill. I did compliment the distinguished chairman for his very effective work on it.

I do believe it is fair and accurate to say this is one of the most important provisions of this bill.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Madam President, I wanted to note during this discussion some commentary this week about something that is quite extraordinary. We saw news reports this week about a perfect game that was pitched in the Major Leagues recently by a pitcher from the Oakland Athletics named Braden. In all of the history of baseball, it was the 19th perfect game ever pitched. But it is not the only perfect thing that has happened recently.

We have news reports now that the four biggest banks in America have scored a perfect 61-day run, never having lost money in 61 days. That is like a perfect game, batting 1,000. It is all of those things.

How is it that the four largest banks in the country could, for the first quarter of the year, make money every single day? Is the system rigged? A columnist named Jonathan Well pointed out that if you managed a highly leveraged, diversified investment fund and have become so skilled at it that you had a 70-percent probability of winning on any given trading day, the prospect of your winning 63 times in a row would be about 1.75 billion. Even if you had a 95-percent chance of winning every day because you were so skilled at picking all of the right investments, you would have about a 3.9-percent chance of doing it on 63 straight trading days. And yet four of the largest banks in America, Goldman Sachs, JPMorgan Chase, Bank of America and Citi, scored a perfect game.

How did that happen? Does it happen because the Federal Reserve Board loans them money at near-zero interest rate, and then they invest in 10-year Treasuries at 3.8 percent? That is how you make profits every single day. Is that a rigged game? Can everyone do

that? If everyone can do that, I have got a sure-fire way here for everybody to make money. You get to borrow from the Federal Reserve Board for near nothing, and then you can invest it in 3.8-percent 10-year Treasury notes.

It is interesting this relates to something else we have been trying to do for a while. We have been trying to get information about how much money the Federal Reserve Board is lending those investment banks and the biggest banks in America. How much money is the Federal Reserve Board giving them and at what rate? We know it is at a near-zero rate, but we do not know how much and to whom.

The Federal Reserve Board has now been told by two Federal courts, you have a responsibility to tell the American people and the Congress who got your money and what the terms were and how much. The Federal Reserve Board has said, we do not intend to tell everybody. They have now appealed it to a third Federal court.

I have led the effort in letters to the Fed Chairman saying, you have a responsibility here. But now this latest evidence tells us how this game is played. Isn't it interesting, and isn't it pathetic, that at a time when so many people wake up in the morning jobless, so many people are still losing money on their homes, on their assets, losing hope and losing confidence in the future of this economy, that at the very top of the heap, some of the same firms that caused the problem that threw this country into the deepest recession since the Great Depression now announce they are pitching a perfect game every single day. They are batting 1,000 and pitching perfect games. Why? It appears to me that it is not about lending money to help restore America and help firms that want to expand by providing capital. It appears to me that their reports suggest they are once again back doing the same things they used to do, except this time they understand that they cannot fail.

They borrow money from the Fed at near-zero interest rates, and invest it in Fed 10-year notes at 3.8 percent. That is about as close to guaranteed income as you can get. But it is not guaranteed income for all of the American people, it is just for the folks at the very top of the chain, the biggest financial firms.

Again, let my say as I do every time I come to the floor, I don't have a grief against the biggest financial firms. We need big financial firms. But we do not need them too big to fail. And we certainly do not need to be feeding them with a strategy that says, I tell you what; we will give you a deal no other American has. You get to go to a window at the Fed, get money for almost nothing, and then invest it back in Fed bonds and pay 3.8 percent. We will give you a guaranteed annual income.

I just wanted to make note. It is too often little known, and it is seldom raising much concern among anybody these days, that all of this is happening. I think it is scandalous. It seems to me worth mentioning the only perfect game that is going on around here was not by a pitcher named Braden, but it is by some of the biggest financial institutions in the country that are not only fully recovered but have guaranteed income opportunities every single day, every single day, while a lot of the American people are trying to figure out, how am I going to pay the rent? How am I going to find another job?

I had come to the floor because I want to indulge—I should not say indulge. I wonder if the Senator from Connecticut will indulge me for a moment. I have spoken to the Senator, and I recognize that doing what he is doing is perhaps a cross between a migraine headache and a root canal. This is tough business out here hour after hour after hour and day after day.

I respect that. I was on the floor with a piece of legislation last year that took forever and it did try my patience. So kudos to my colleague from Connecticut. I respect the difficult job he has.

I have had an amendment, along with Senator KAUFMAN, Senators LEVIN, CANTWELL, FEINGOLD, SANDERS, and so on, a Dorgan amendment No. 4008. I would ask the courtesy of being able to set aside the pending amendment and call up this amendment. I do not intend to proceed with it, I just want to get it pending. I would proceed with debate at any time that is convenient. I do not want to inconvenience the Senator and the schedules he has. But I wish to ask if he would give me the opportunity to at least call it up, get it pending, and then we will proceed at a pace and at a time that would be convenient to the manager of the bill.

Mr. DODD. Let me say first, I appreciate my colleague from North Dakota's inquiry. All I am trying to do in this—and, again, everyone can do that. I suppose there are about 60 amendments, and if we can have everyone's amendment called up, we end up with 60 amendments pending around the place. It adds to the difficulty of sorting it out, because obviously it takes consent to withdraw amendments, to modify amendments, do all sorts of things. So while it seems harmless enough to do so, it complicates the job, which is to sequence events, because obviously then it takes consent to do different things, at which point, for all sorts of different reasons, people can have motivations on why not to give consent, including people who may oppose the amendment, for reasons they want the amendment pending. So I will be very candid with my friend from North Dakota, it complicates my job. But, obviously, I do not want to cause anyone discomfort in the process. They all have amendments they want to bring up, and my job here is to try and orchestrate in a way so that amendments can be brought up, be discussed and debated.

My concern is that we end up with sort of this flood. Then everyone comes over, why not give everyone else the same courtesy along the way. If we do, then we end up potentially with chaos, on what happens to be a pretty good bill, I think at this juncture. More work needs to be done, I will be the first to acknowledge and admit that. But there is no guarantee that because we are in a good spot right now and heading, I think, toward a good conclusion of this bill—there are those who frankly would like to see it lose. I know that. There are thousands of lobbyists who have been hired to oppose this piece of legislation, the underlying bill that is before us. They are here in town and will use every mechanism and vehicle available to them to throw this off track. They are very smart. They do not just get paid well, they are bright, and they know how to do this. Many of them, in fact, worked up in these buildings for years. So they know how the place operates. They know a consent to bring up an amendment is, lay it aside, and pending, and they know what unanimous consent means in this body. Any one Member here can object.

So it does add difficulties to the management of the bill to have an unlimited amount of amendments brought up and pending, of which you then try to go through and orchestrate an outcome here that gets us to a reasonable conclusion where people are given an opportunity to debate their amendments.

So, again, I know what I am in for once this starts. We run the risk, I will say—I am very blunt on the RECORD. If we start this process, which I am fearful will be the case, we run the risk of losing this bill. That is the reality. This is not hyperbole. I have been here for 30 years, and I have watched what can happen. When you have got this many opponents, the opponents of this bill who are determined to throw this bill off track, to stop too big to fail, consumer protection, from getting the kind of sunlight on derivatives, all of those issues, including what my colleague from North Dakota wishes to achieve, there are people who will use every means available to destroy this piece of legislation.

We only have a couple of days left, maybe, and then we are going to move on to other bills. I urge my colleagues here—Senator SHELBY and I are doing our best to try and accommodate all of our colleagues. We have had no tabling motions, we have had no filibusters on this bill, we have dealt with literally I do not know many amendments, I think some 20 or 30 amendments already. So we are moving through it and we are getting to everyone who is along the way.

So, again, if my colleagues want to go this route, I understand it, but I would be less than honest if I said, does it help or hurt the effort. Candidly, having everyone come over and demanding they be in line hurts.

Mr. DORGAN. Madam President, let me say, my purpose here is not to add

to the burdens of the Senator from Connecticut, who is trying to get a bill through the Congress and signed by the President. I understand that.

I think I tried to in my opening comments be pretty complimentary of the work and understanding of the work. I agree there are times when there is a straw that breaks the camel's back. I also think this camel can carry a bit more. What I wish is, I think the Senator from Connecticut would agree that I have been to this floor a fair number of times, spoken with some passion and some vigor on things that I care a lot about. It is not as though I came out of a closet someplace here in the cloakroom and started talking about the issue that I intend to offer an amendment.

What I wish to do, with the consent of the Senator from Connecticut, is ask unanimous consent that the pending amendment be set aside and to call up amendment No. 4008.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DODD. Reserving the right to object, I will make the case again. There are unlimited Members who wish to be in line. I understand that. I warn my colleagues, no amendment, in my view, is more important than the underlying bill. Understand that if we go this route, and I end up with every Member coming over and making that request—and there are many more who want to do that here—once this starts, then my ability to get us to the conclusion of a good bill is at risk. So I am going to object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DORGAN. Let me say that unfortunately when I, last evening, saw the note on the desk in front of us that said ''no further rollcall votes'' I had another event, and so I left the Chamber, because there were no further votes, and I went to the other event.

I discovered later that even as I was leaving the Chamber, I understood that there were three amendments at that point made in order. There were, I believe, two Republican amendments and one Democratic amendment that were noticed, and I think the chairman indicated they would be the next amendments. That is the basis on which I left this Chamber.

When I came back this morning, I understand that a fair number of other amendments had been called up, the pending amendment had been set aside, and other amendments had been called up. I do not know how many. I think four or six amendments, perhaps, beyond the three. I was unaware that opportunities such as that would have existed last evening. I think as one Member of the Senate who has spent a considerable amount of time on this floor on this issue, had I been aware last evening that the gate was open a bit to be able to get an amendment pending that I have talked about many times on this floor, I would have been here last evening.

I was not aware of that, and that is the basis on which I came this morning at 11 o'clock. I hope the Senator from Connecticut would not object. I would hope he would rethink that. He has every right as chairman to decide to manage this bill as he wishes. We cannot have 100 managers for this bill. The chairman has done a lot of work to bring the bill to the floor.

On the other hand, this issue is not some ordinary issue. The country will live with the consequences of this bill perhaps for a decade, perhaps more, perhaps less than a decade if we do not do the right things and we suffer another economic near collapse. We will have another bill on the floor for those who are here in 2 years or 5 years.

What I want is financial reform to be done, done well, done right. I was going to say to the Senator from Connecticut, the amendment I have offered is an amendment that I think is very important.

I don't have any idea whether we have the votes for it. But I do think it is one of those pieces that is essential—critical, in fact—in order to address financial difficulties going forward. If we don't pierce this unbelievable building bubble of speculation that has caused a significant part of our problem, then we will not have addressed the real issues of financial reform. The issue of what are called naked credit default swaps, those are newly created instruments by which people make wagers with one another with no insurable interest on any side of the security. If we don't put a dagger in the heart of that kind of activity—and that is not shutting down, as my colleague from Georgia said yesterday, the use of credit default swaps. It is shutting down one portion of them, the largest portion that is just a flatout gambling device.

I hope we can address these issues. I think I have been respectful to the chairman of the committee. I say to the chairman if I am allowed to set this amendment aside and offer amendment No. 4008, I will certainly be willing to have a reasonably short time period for debate. That kind of cooperation is also important in the construct of trying to get this bill done. It is an amendment that should have a lengthier debate.

When I left the floor yesterday, the Senator from Georgia had an amendment. I think it was 2½ hours later that we had a vote. This amendment is much more consequential than that. I am willing, if we can at least get it pending, when the Senator from Connecticut believes it is appropriate to debate it, to engage in an agreement on a short timeframe.

Mr. DODD. Madam President, let me say to my colleague, I have any number of colleagues who would like to be doing the same thing. All of them believe strongly in their amendments. I am not arguing about the substance of the amendment. At the conclusion of last evening, we tried to establish a sequence. I have no problem putting my colleague's amendment in the next tranche. My problem is, what do I say to the next colleague who wants to do the same thing? At what point do I say: I can't manage this if we are going to do it this way. Anyone can make a request, and I am trying to deal with these requests as they come forward and put it together in a way that allows us to go forward.

We will vote shortly on the Sessions amendment, a Franken amendment. Senator DURBIN has an amendment I would like to have called up. Trying to get time agreements is the art of management of legislation. I do not want to deprive anyone of offering an amendment. But at some point—what is the point of having someone sit in this chair if we just all come over and offer amendments and get in line somehow and then we have 60 amendments? Taking unanimous consent at some point to drop that creates a problem in terms of managerial capacity.

My colleague will get, to the best of my ability, a chance to have his amendment come up and, hopefully, an adequate amount of time to debate it. I respectfully ask him to give me a chance so I don't end up opening the door to the next Senator making a similar passionate request. At some point we have to put a stop to this so I can manage the bill and go forward. That is all I am saying.

Mr. DORGAN. I am not unsympathetic to what the Senator is doing. It is the case that I, certainly as one Senator, see amendments being offered again and again by Senators from the Banking Committee, and they had a pretty good shot at this for a good long while before it came to the floor. Those of us who don't serve on that committee just want an opportunity to get amendments pending and up and so on.

Mr. DODD. The next three amendments—those of Senators DURBIN, SPECTER, and FRANKEN—are not offered by members of the committee.

Mr. DORGAN. I am speaking about amendments that have been offered. If the Senator objects, he has the right, but I will be back. If I am in the next tranche the Senator from Connecticut announces, that is fine. I will be able to offer an amendment. But between now and then, I guess I would like to understand how the system is going to work because I will continue to come and ask consent to offer this amendment. Then when we do debate it, I will have a real debate. This is the heart and soul of trying to shut down a system that creates unbelievable speculation in the economy and poses great danger.

I might point out, we should not always assume that we are in safe territory on all of these issues. Colleagues probably saw the news this morning. Last month's Federal budget deficit is $83 billion. Take a look at what the trade deficit is. As I mentioned, in the midst of all this, the biggest financial institutions in the country are batting a thousand. Every single day they make a profit with what I think looks like a rigged system.

This bill is very important. I want the Senator from Connecticut to succeed. If we don't pass a financial reform bill, the American people have a right to look at the Congress and say: What on Earth are you there for? What are you doing? But not just any bill, a bill that actually addresses the heart of the issues that caused the near economic collapse of this country. That is what we need to have accomplished at the end of this process. That is what brings me to the Senate floor. I am sorry I can't get this pending at the moment. But as Governor Schwarzenegger said in a previous life: I will be back, and soon.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

AMENDMENT NO. 3832

Mr. DEMINT. Madam President, I rise to speak in favor of the Sessions bankruptcy amendment. This is critical to the current financial debate because one of the big issues in whether we treat some companies and some banks differently. The current bankruptcy laws create a predictable rule of law. There is no arbitrary or political decisionmaking. When a company can't pay its bills, it can ask for bankruptcy protection to restructure or liquidate in some kind of controlled fashion. This is what is meant by ''justice is blind.'' Our courts, our legal system and political systems do not get involved with deciding which companies have to be liquidated, go through bankruptcy. During our current financial meltdown, the government decided to pick winners and losers, to bail out some companies, some banks, and not others.

The underlying financial regulation bill makes that system permanent, essentially throwing out the rule of law and allowing the political system, the bureaucratic system to decide which companies need to be treated differently while others have to go through the bankruptcy process. The Sessions amendment would treat all companies the same and allow an orderly restructuring or liquidation of banks, regardless of how big they are.

The underlying bill abandons the rule of law. It suspends free market principles, and it perpetuates the idea that there are some companies that are too big to fail and have to be treated differently. It even expands that arbitrary system by giving the FDIC the ability to pick companies they think might fail and to seize them if they are not meeting certain criteria. The market does not decide which company is failing anymore. This becomes a political system which sets up corruption and political meddling as part of the financial system.

There is no reason we can't have special bankruptcy courts to deal with large banking institutions so their failure does not take down the whole financial system. This idea that some people in Washington are going to look at Wall Street or anywhere in the country and decide which company is too big to fail, has to be treated differently, while this company goes through a traditional bankruptcy process—that puts us right back where we are now, where people in the government can arbitrarily take taxpayer money and bail out one company. Maybe it is their political friends and supporters—or maybe they don't bail out the companies that are their political enemies. It makes no sense to make bold promises to the American people that we are going to end too big to fail when this bill actually makes it permanent.

I encourage my colleagues to consider the Sessions amendment. It would take us back to a rule-of-law that is predictable, that let's every company, every bank know if they can't pay their bills, they have to go through a predetermined system, not one that is decided by bureaucrats at the last minute based on criteria that could change at any moment.

Let's get this one right. The underlying bill will not do what we promise. The Sessions amendment will move us in the right direction to keep our promises to the American people.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

AMENDMENT NO. 3991

Mr. FRANKEN. Madam President, let me say how thankful I am that Senator DODD has worked with us to get my amendment to a vote. I know how hard he has been working on this bill and how precious floor time is during this debate.

Last week I proposed an amendment with Senator SCHUMER and Senator BILL NELSON to reform our Nation's credit rating industry. Today I am thrilled to announce that Senators GRASSLEY, KAUFMAN, DURBIN, HARKIN, KLOBUCHAR, LEVIN, WYDEN, and BEGICH have joined as cosponsors. Senator GRASSLEY, of course, is the ranking member of the Finance Committee and a senior member of the Budget Committee. Senator LEVIN led the Permanent Subcommittee on Investigations which revealed some of the credit rating industry's worst abuses. Senator KAUFMAN has also been a leading critic of the rating agencies, pointing out how these agencies kept AAA ratings ''rolling off the assembly,'' despite consistent and increasing indications that they were totally unwarranted. Senators DURBIN, HARKIN, and KLOBUCHAR have long established themselves as strong voices on behalf of consumers.

Over 20 of my colleagues have now cosponsored my amendment, including senior members of the Senate Finance and Banking Committees. Since I have filed this amendment, I have come to the floor several times to explain the different aspects of it. Now that this amendment will be up for a vote, I wish to step back and summarize. To underscore the scope of this problem, I want to explain how this amendment is a simple investor-based solution to the problem. Here it is in a nutshell.

There is a staggering conflict of interest affecting the credit rating industry. The way it works now, issuers of securities are paying for the credit ratings. They shop around for their ratings, selecting those agencies that tend to offer them the best ratings and threatening to stay away from rating agencies that are too tough on them. Because of this, the credit rating agencies are issuing ratings that are orders of magnitude higher than they should be. We know this from the record. We know from the PSI release of e-mails that this was the case. This conflict of interest has cost American investors and pensioners billions of dollars because supposedly risk-free investments have failed or been downgraded to junk status.

My amendment will correct that conflict of interest by having an independent third party assign the credit rating agency that conducts the initial rating for newly issued complex financial problems. My amendment puts investors in charge, not the government.

Let's take this from the top. Right now, when a bank issues a product, it gets a credit rating—it gets a couple credit ratings before they will sell their product. But the problem is, they don't get their rating from an independent agency. They don't get it from someone who has a real interest in being accurate. Rather, issuing banks currently get their credit ratings from rating agencies they hire, and they pay them upwards of $1 million per transaction.

Now, you do not have to be Adam Smith to guess what has happened. As with any other financial transaction, the issuers—the buyers of credit ratings—shopped around for ratings. When they would go to a credit rating agency, and the credit rating agency did not give them the rating they wanted, they would not hire them the next time. So the credit rating agencies responded in kind. They changed their algorithms for rating the products when the ratings they produced were too low, and, thus, they repeatedly overrated terrible securities.

This is not a hypothetical. The Permanent Subcommittee on Investigations, Senator LEVIN's committee, uncovered pages upon pages of e-mails confirming this is exactly what happens. But I think the numbers explain it the best, and we know this. Of all the subprime mortgage-backed securities issued in 2006 and 2007 that received a AAA rating, over 90 percent have since been downgraded to junk status.

Credit rating agencies will counter that the downgrading of AAA bonds to junk status occurred because of the unpredictable collapse of the housing market. Two points here: The e-mails that were released in the investigation by the Permanent Subcommittee on Investigations showed that the credit rating agency knew what was happening. Here is an e-mail from 2006. This is from one of the Standard & Poor's executives:

[T]his is like another banking crisis potentially looming!!

There was an executive who said they wished they could go public with the loss figures they were seeing—this is in 2006—but that ''may be too much of a powder keg.'' And there are e-mails where they were saying: We better increase the ratings so we keep getting business.

These were the guys who got it. Admittedly, there were guys who did not get it in the credit rating agencies. But there is an old Upton Sinclair quote, which is: You can't get a man to understand something that his salary depends on him not understanding.

So there is this inherent conflict of interest, which is, if I give a good rating to these subprime mortgage-backed securities, I am going to make a lot of money; there is a lot of money here; my salary depends on my not getting what is happening. That all emanates from the conflict of interest. That is what I am going after. That is why they either ignored what they were seeing in 2006, or, if they got it, they did not say anything about it. So some were maybe less than completely getting it, and others who got it were corrupt. It was all for the same reason: because of this conflict of interest.

These downgrades did not just result in major losses to Wall Street. They resulted in multibillion-dollar losses to millions of Americans, especially pension holders. CalPERS, which 1½ million Californians rely on for their pensions and health benefits, lost $1 billion. Pensioners in Ohio lost $½ billion. The same story is repeated all across the country.

This was people's retirement money. This was not people buying yachts. This was not people staying a night at the Waldorf. This was their retirement money. So this was the problem, the conflict of interest.

Let me tell you how our amendment addresses this problem. My amendment would call for a new clearinghouse, regulated by the SEC, to assign issuers to a credit rating agency that will give them their first rating on complex financial products. They would be assigned. That means an issuer will no longer be able to shop around for a rating. They will not be able to pressure a rating agency into giving a good score in exchange for future business. Over time, the clearinghouse will monitor the ratings these agencies give out and refine its method of assignments. It can reward agencies that are more accurate and give fewer assignments to those that are less accurate. It will incentivize accuracy. Imagine that. In doing so, it will give smaller agencies a chance to get into the action.

Standard & Poor's and Moody's and Fitch do about, what, 94 percent of the business. The other agencies will get a chance because what will be rewarded is accuracy.

By making these simple changes—and it is a very simple change; it is a third party—the amendment will eliminate the fundamental conflict of interest at the core—at the core—of this problem.

Some people are going to tell you this is a government takeover of the credit rating industry. That is patently, 100 percent false. The clearinghouse will not issue a single rating. The clearinghouse is not going to tell credit rating agencies how to determine their ratings. In fact, every single rating an agency gives after being assigned a security will have a disclaimer that says, ''This is not a government-approved rating.''

Moreover, the clearinghouse will be run by investors such as managers of pension funds and managers of university endowments. OK. There is not a single seat on this board that would be reserved for a government official. Moreover, while the initial board members are to be named by the SEC, after the initial appointments, the board itself will choose its future members. There will be a representative from the rating agencies, there will be a representative from the banks, but a majority will be investors. This makes sense. We will be putting people in charge who are the people who are actually buying the securities, and who pay the price when the securities prove to be significantly overrated.

So let me repeat that. We are putting the buyers of securities—not the government—in charge. OK.

The clearinghouse will be an independent, self-regulatory organization that operates with oversight from the SEC, just like the Financial Industry Regulatory Authority or FINRA.

Finally, this board will not act as an intermediary for every credit rating issued. It will only assign an agency to do the initial rating—the first rating an issuer receives. The issuer is then free to seek as many other credit ratings as it wants from whomever it wants, as most issuers currently do.

I am merely proposing that at least one rating—the initial rating—from an issuer be free from the conflicts of interest inherent in an issuer-pays system. This initial rating will then serve as a check against any possible inflation in subsequent ratings.

You may also have heard there are alternative proposals that would eliminate any requirement of reliance upon a credit rating issued by an NRSRO. Senator LEMIEUX, my good colleague from Florida, will be offering a side-by-side to this amendment. Now, my only problem with this is, this approach ignores the reality that ratings will, by necessity, continue and will always play a role in our economy. Investors will still rely on them even if the statutes do not mandate it.

I believe Senator LEMIEUX's approach does absolutely nothing to tackle the conflicts of interest or address the current oligopoly, both of which would surely persist under this approach, especially the conflicts of interest.

There is nothing in Senator LEMIEUX's approach that I understand is contradictory at all to what I am doing. So if a Member would like to vote for Senator LEMIEUX's side-by-side, it would be fine. You have to determine for yourself the value of that. I am just saying it does not get at the heart of the matter, which is the conflict of interest: the issuer actually paying the rating agency for the rating.

With the help of Senators SCHUMER and NELSON, I have crafted a measure that is not liberal or conservative. It is not moderate. It is not on any spectrum. It just makes sense. It is common sense. This is like the solving of forum shopping in courts. It is an elegant solution. I can say that because I did not think of it. Some professors in academia thought of it, and I guess the chief economist at Patton Boggs. It is just a simple, elegant idea. So it is not conservative; it is not liberal. It is just common sense.

That is why Senator WICKER has embraced this amendment. Senator GRASSLEY has embraced this amendment. It is just plain common sense. That is why Senators LEVIN, JOHNSON, MURRAY, DURBIN, WHITEHOUSE, BROWN, MERKLEY, BINGAMAN, LAUTENBERG, SHAHEEN, CASEY, SANDERS, KAUFMAN, HARKIN, KLOBUCHAR, WYDEN, and BEGICH also support the amendment.

That is why Americans for Financial Reform support it. That is why the Consumers Union supports it; the Teamsters, the National Association of Consumer Advocates, Public Citizen, SEIU, and a number of other national organizations stand behind this amendment.

That is why, as I said, leading economists in academia and private industry support this amendment. In fact, as I was saying, the chief economist at Patton Boggs, Dr. David Raboy, who first developed a similar proposal, is squarely behind this amendment. Of course he would be; he developed it.

That is why independent, smaller rating agencies have come out in support of this amendment. That is why this amendment cannot wait.

I urge colleagues on both sides of the aisle to vote in favor of this amendment.

I thank you, Madam President.

I believe my good colleague from Florida has a side-by-side which, as I say, in no way conflicts—I do not believe—with this amendment. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

AMENDMENT NO. 3774, AS MODIFIED, TO AMENDMENT NO. 3739

Mr. LEMIEUX. Madam President, I ask unanimous consent to temporarily set aside the pending amendment so I may call up amendment No. 3774, as modified.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. LEMIEUX] proposes an amendment numbered 3774, as modified, to amendment No. 3739.

Mr. LEMIEUX. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment, as modified, is as follows:

(Purpose: To remove statutory references to credit rating agencies)

On page 1036, strike line 14 and all that follows through page 1041, line 3, and insert the following:

SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7(b)(1)(E)(i), by striking ''credit rating entities, and other private economic'' and insert ''private economic, credit,'';

(2) in section 28(d)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation'';

(C) in paragraph (2), by striking ''not of investment grade'';

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3); and

(F) in paragraph (3), as so redesignated—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (B), as so redesignated, by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(3) in section 28(e)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(C) in paragraphs (2) and (3), by striking ''not of investment grade'' each place that it appears and inserting ''that does not meet standards of credit-worthiness established by the Corporation''.

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended by striking ''that is a nationally registered statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking ''is rated investment grade by not less than 1 nationally registered statistical rating organization'' and inserting ''meets such standards of creditworthiness as the Commission shall adopt''.

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency'';

(2) in the heading for subsection (a)(3) by striking ''RATING OR COMPARABLE REQUIREMENT'' and inserting ''REQUIREMENT'';

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

''(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.'';

(4) in the heading for subsection (f), by striking ''MAINTAIN PUBLIC RATING OR'' and inserting ''MEET STANDARDS OF CREDIT-WORTHINESS''; and

(5) in subsection (f)(1), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency''.

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking ''is rated in one of the two highest rating categories by at least one nationally registered statistical rating organization'' and inserting ''meets standards of credit-worthiness as established by the Commission''; and

(2) in paragraph (53)(A), by striking ''is rated in 1 of the 4 highest rating categories by at least 1 nationally registered statistical rating organization'' and inserting ''meets standards of credit-worthiness as established by the Commission''.

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking ''credit rating'' and inserting ''credit-worthiness''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

(1) IN GENERAL.—Commission shall undertake a study on the feasability and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

Mr. LEMIEUX. Madam President, I come to the floor today to talk about this important issue my friend from Minnesota has brought forth, and I congratulate him on the work he has done. We know one of the main reasons we had our financial debacle in 2008 was that credit agencies failed to do their job. They put AAA stamps of approval on products that deserved no such stamp. The investing world relied upon the fact that rating agencies were supposed to do their job, and they failed to do their job.

So just as when you read Consumer Reports, and you believe they are giving objective information and a good accounting of how a product is or is not safe, the investing world thought Fitch and Moody's and S&P and these others had done their job and had done the due diligence. So I congratulate, again, my friend from Minnesota. He has focused on one of the main reasons we had our financial debacle.

Unfortunately, much of what is in this 1,409-page bill does not go after what caused the debacle in 2008. We do not deal with Fannie and Freddie. We did not pass significant underwriting standards yesterday in the Corker amendment. We have a chance to address the issue of the rating agencies, because, but for their failure to do their job, we may not have had this debacle that destroyed, as some estimate, $600 trillion worth of wealth.

Where I differ with my friend from Minnesota is that I don't think he has gone far enough. I appreciate his efforts to go after conflicts of interest. I believe there are conflicts of interest. We cannot have the people whose products they rate pay them. He is right about that, but I would go further. My amendment writes these organizations out of law. Why should we reward them and allow them to continue to have what, in effect, is a government-sponsored monopoly? Federal law says creditworthiness will be determined by these rating agencies. Why should we reward them by allowing them to continue in any fashion to have the sanction and permission and basically a monopoly granted by Federal law? That doesn't make any sense to me.

So the amendment I am proposing, again, is not, as my friend from Minnesota said, inconsistent with his amendment, and I believe there will be Members who will vote for his amendment and my amendment. I am glad we are both focused on addressing this issue.

What my amendment will do is take away this sanctioned monopoly that holds out these rating agencies as the entities that determine what is creditworthy. Certainly, rating agencies will still exist, but there will be more rating agencies involved, plus banks themselves will have to do the due diligence to convince the FDIC or whoever the regulator is that the bonds they hold on their books are creditworthy. In a way, we are saying that the astrology we relied upon in the past didn't work. Let's have some new and better astrology.

The rating agencies don't work. Did they not work because they had a conflict of interest? Perhaps. Did they not work because they are incompetent independent of that conflict of interest? Perhaps. I hope what my amendment does will achieve both goals. They will not be paid by these same investment banks if they are no longer written into law, I believe. Plus, if they are no longer written into law, there will have to be something in the marketplace that people can rely upon

when they have to make their case to your Federal regulator that these instruments are creditworthy. Someone is going to have to do their homework.

My friend from Minnesota is exactly right that the damage done in the marketplace was done in large part because of our reliance upon these rating agencies. The Wall Street Journal on April 21 said:

When the government ordains—

And that is an important word—

Moody's and Standard & Poor's as official arbiters of risk, the damage can be catastrophic because so many people rely upon them.

So let's stop ordaining them. Why are we going to reward bad behavior?

My friend from Minnesota, who has gotten his language from professors and others, the language we have worked on—it is not a conservative idea; it is not a Democratic idea. In fact, it is exactly the same as the language BARNEY FRANK put forward on the House side. So we have a liberal Democrat and a conservative Republican working to the same end. So let's not just go halfway. Let's go all the way. Let's make sure these rating agencies don't get rewarded for bad behavior.

This will take some time to implement. It needs time for the market to adjust. There is a 2-year period in this amendment for this to take effect. That is important so that banks can beef up their staff to make sure they can do the due diligence, do the homework, to prove creditworthiness. It is good for the market to settle, which it will need to do, from relying upon just these three big rating agencies.

I believe the solution has to go the full measure. While I congratulate my friend from Minnesota for tackling this issue and while I also don't think our two measures are inconsistent, I believe the amendment I am proposing, which is almost exactly—similar to the language of BARNEY FRANK on the House side—is the right answer to really get us off this ordination of these rating agencies.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Madam President, I rise in strong support of the Franken amendment.

First, I wish to praise my colleague from Minnesota for the great job he has done on this amendment. This is going to make a huge difference. It strengthens the section that is already in Senator DODD's fine bill, on which Senator JACK REED did great work, and now it goes a little further.

In particular, I thank my colleague from Minnesota for really getting at the heart of the conflicts of interest. We can vote around the conflict of interest, we can shine a mirror of light on the conflict of interest, but unless we get to the heart of it, we are not going to undo the problem. The Senator from Minnesota does that, and I praise him for his fine work. I think that if this amendment passes, it is going to be one of the lasting contributions and one of the most significant contributions to prevent a future crisis from happening.

Nobel economist Joseph Stiglitz said:

I view the rating agencies as one of the key culprits . . . They were the party that performed the alchemy that converted the securities from F-rated to A-rated. The banks could not have done what they did without the complicity of the rating agencies.

Credit rating agencies played an important role—an unfortunate and important role—in what led up to the financial crisis. They adopted questionable practices intended to win over clients and capture greater market share, ignoring the true credit quality of the complex securities at the heart of the market meltdown. They neglected their own internal controls and developed a coziness with clients. And because rating the complicated structured finance products brought in more money to these agencies, they raced each other to the bottom, competing for clients by inflating ratings. Because the clients had an incentive to sell products with the highest ratings to investors, the rating agencies would give them advice on how to structure their products to score AAA. This race to the bottom is the easiest, quickest, and least disputatious. Giving an AAA rating is one of the major culprits of the financial crisis we are seeing.

The conflict of interest-ridden industry helped bring our economy to its knees. To provide one example, 93 percent of AAA-rated subprime mortgage-backed securities issued in 2006 have been downgraded to junk status. Is that incredible? Ninety-three percent went from AAA to junk status. That is not an accident and, frankly, that doesn't just happen because people make mistakes. There was something more pernicious at work, which was conflict of interest. That is the fundamental problem. Again, 93 percent of the securities the rating agencies concluded were of the highest quality, least risky investments, in just 2 years they became worthless. Many people lost money. Some were big investors, some were small investors, some were large banks and institutions, and some were pension funds that had the savings of millions of hard-working Americans. Everyone suffered because of what the credit rating agencies did. This bill we are debating this week makes important strides in holding the rating agencies accountable to their credit quality assessments.

Once again, I commend Senator DODD, our able chairman, and Senator JACK REED, our able chairman of the securities subcommittee, for the immense work they did in this area. Requiring the creation of a new Office of Credit Rating Agencies at the SEC; disclosures of rating methodologies; prohibiting compliance officers from working on ratings methodologies or sales; a new liability provision; and requiring rating analysts to pass qualifying exams all helps.

As I said, the provision Senator FRANKEN is offering and I am proud to cosponsor goes to the heart of the conflict of interest. It doesn't go around the edges of the conflict of interest but is a dagger at the heart. This amendment breaks that inherent conflict by having a third party, a neutral third party, step in-between. Issuers will no longer be able to choose a rating agency and directly influence what kind of ratings they get.

The amendment establishes a board of highly knowledgeable and experienced people, a majority of whom will be from the investor industry, including pension funds, municipalities, and retail investors who got clobbered in this financial crisis because the rating agencies were getting paid by the issuer and had an incentive to issue the best rating possible.

How the heck—this is a little digression—how the heck no-doc loans got AAA ratings over and over, packages of no-doc loans—what does that mean to the average person? It means they never asked you if you could afford to pay the mortgage, and they got AAA credit ratings. What was going on, and why didn't anyone catch it? Well, the Dodd part and the Reed part of the amendment will catch it, but the Franken part of the amendment will prevent it by having a noninterested party make a rating.

The Franken amendment establishes a board of highly knowledgeable and experienced people, as I said. They have to submit their products to be rated to the board and, like a wheel, the board will choose a rating agency for each product. When I say a wheel, it is like a wheel; it comes up randomly. Where did Senator FRANKEN—and I have spoken with him about this, so I know—where did he come up with this idea? This is how we prevent forum shopping, bias of judges. When you go to the Southern District of New York and you have a case, it is a wheel and you get a judge randomly. In the past, we have found there were even conflicts of interest in the judiciary because you got to choose your own judge, just as the issuer now gets to choose its own credit rating agency. The wheel makes it random. You don't choose it. That is a big, huge step forward.

The board will also monitor the performance of these ratings and ensure the rating agencies are qualified to rate the products. This model will motivate rating agencies to develop and gain the right expertise and methodologies so they can become eligible to rate different classes of structured finance products, and the smaller rating agencies and investor-paid agencies will have a level playing field to compete against the big three.

This proposal has a broad range of bipartisan support. I greatly appreciate not only Senator FRANKEN's outstanding work on this issue but the cosponsorship of Senators NELSON, WHITEHOUSE, BROWN, MURRAY,

MERKLEY, BINGAMAN, LAUTENBERG, SHAHEEN, CASEY, SANDERS, JOHNSON, KAUFMAN, DURBIN, HARKIN, and—thank you to our Republican friends—Senators WICKER and GRASSLEY.

So I hope we will get unanimous support for this amendment. I hope we won't leave out any major provisions. I hope we won't modify it or weaken it. Let's stick to this amendment. It is modest and thoughtful and goes to the heart of what helped cause the financial crisis—the inherent conflict of interest in the way credit rating agencies worked.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, I was going to address the underlying question here, but I know my colleague from Maine wishes to be heard on a different amendment.

Let me say briefly that I appreciate the comments and I appreciate the efforts of Senator FRANKEN in this regard. Forty pages of our bill are exclusively dedicated to rating agencies. We spent an inordinate amount of time on the rating agency question. This is a complex issue and the source of a lot of discomfort. There is a headline in one of the national newspapers this morning that talks about the rating agencies and the problems they have posed in giving ratings to products that were worth vastly less than their claims.

Very briefly, on the underlying bill, the SEC will have a new office of credit ratings to regulate and promote accuracy in ratings, staffed with experts in structured, corporate, and municipal debt finance. The office's own examination staff will conduct annual inspections, and the essential findings will be available to the public. The SEC will have expanded authority to suspend the registration of agencies that consistently produce ratings without integrity. It will have more authority to sanction ratings agencies that violate the law, including penalties for management for failure to supervise employees who break the law.

The bill imposes tough new requirements on credit rating agencies. Ratings agency boards are subject to new rules for independence. Ratings analysts must be separated from those who sell the firm's services. Agencies must publicly disclose when they materially change their procedures or methodologies or make significant errors and update their credit ratings accordingly. Agencies must establish strong internal controls for following procedures and methodologies and have these attested to by their CEO to the SEC. The agencies must establish hotlines for whistleblowers and complaints, retain complaints about the firm's work for regulators to examine.

Compliance officers must submit annual compliance reports to the SEC. They are required to consider credible information they received from sources other than the issuers in making the ratings, rather than relying on the—basing ratings only on the issuer's representations.

Investors are empowered. The agencies must disclose more about their ratings assumptions, limitations, risks, accuracy, and factors that might lead to change in ratings. Agencies must disclose their track record of ratings in a way that is in compliance so that users can compare ratings for accuracy across different agencies.

It also will have the benefit of having new pleading standards so when private suits are brought, they will be able to have actions brought against these rating agencies.

The issuer or underwriters of any asset-backed security shall make available any due diligence reports, and on and on.

The point I want to make is we have spent a lot of time on this issue. A lot of work went into this issue. My colleague from Minnesota has what I think is a good and sound idea. Here is my concern as chairman of the committee. I do not know what the implications are because we have had no real examination of having the wheel about which my friend from New York talked. Not all rating agencies are equal. There ought to be more of them. There are smaller ones out there that ought to be able to grow in their competency and do things. But there are companies of different sizes and needs, and merely changing a rating agency based on an arbitrary choice without considering whether the rating agency can do the job is my concern.

I like the idea because what it does do is get away from the conflict of interest. That is as it presently exists. Here is the quandary we have: Right now, the company that seeks the rating agency pays the rating agency. Obviously, on its face, you have a problem. If I am buying a service from you—and by the way, I would like to get a AAA rating—I have a pretty good chance of getting it whether I deserve it or not. The alternative idea, somebody said, is why don't you have the buyers of the rating agency? There is a similar problem. They might like to have a DDD rating to lower the value. So you have a conflict on either side of this question that is difficult and difficult to resolve.

Compound the problem with the fact that the rating agencies, as presently construed, prior to our language in this bill, basically rely on the information from the very purchase of the rating agency to determine whether it is a good product. There is no due diligence done by the rating agency. Our bill changes all of that.

It is with a great deal of reluctance—as I said to my colleague from Minnesota, I was prepared to take a good study of this; in fact, language that would recommend the SEC and others—the SEC has authority under existing law to deal with conflicts of interest. They have the power to do it. Whether they do it is another matter. That is always the issue with a regulator.

I am concerned what this means. I say that respectfully to the author. He has worked hard on this amendment. There are a lot of good ideas in it. I am just uneasy about what the implications can be. I would be remiss if I did not express that as chairman of the committee having spent hours listening to the debate back and forth.

On the amendment offered by our colleague from Florida, there is a different set of issues I have, but I also have to express my opposition to that amendment. The reason is because very simply we know that credit ratings are far from the perfect measure. We know that. We wrestled with this.

I agree that the markets may place too much reliance on credit ratings. But the way to address the problem is not to simply repeal the safety and soundness provisions of the law. That is what he is asking us to do.

While I have problems with the present system and we made major inroads on how to address that in ways we thought made some sense, the idea of the Senator from Florida that because we are not happy with the present structure—although I think the bill before us does an awful lot in 40 pages to deal with how this is to be accomplished—he repeals all of it. Someone may have a better idea out there, but to get rid of what we have, leaving a vacant space, in a sense, is not my view of the way this ought to be addressed. Congress could not simply repeal safety and soundness laws without careful prior study of the impact on the markets. That is what we are doing with the LeMieux amendment.

Our bill sets out a process by which overreliance on these rating agencies can be reduced without creating risk throughout the financial system. That is my concern. Stripping everything out of safety and soundness in this area does not get you safety and soundness.

With regard to both amendments, I am more attracted to the amendment offered by Senator FRANKEN, and I like the idea of where he is going. I just do not know whether it is sound. Again, it is the kind of thing I wish to see examined—and that is not to suggest he has not done that—where you take the time and go through the process.

It is with some reluctance that I express my opposition to both amendments and urge my colleagues to review, if they care to, the 40 pages of effort we have made in our bill.

JACK REED of Rhode Island deserves a lot of credit for having worked particularly hard on the rating issue in our committee and the subcommittee dealing with securities. We think we have a strong bill in these areas. I would be the first to say it is far from perfect, but we did our best to find a way to get far greater responsibility and accountability out of the credit rating agencies. There is a great concern here that accountability and responsibility needs to be taken into consideration.

As I said, our bill has 40 pages of safeguards to strengthen the SEC, empower investors, and to make rating

agencies far more responsible and accountable.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Maine.

AMENDMENT NO. 3883

Ms. SNOWE. Madam President, I rise to speak today on amendment No. 3883, which is pending, which I have offered with my good friend and colleague from Arkansas, Senator PRYOR.

I ask unanimous consent that Senator PRYOR be able to follow my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Will the Senator yield for a question?

Ms. SNOWE. I will be glad to yield.

Mr. LEVIN. How long does the Senator expect to take?

Ms. SNOWE. Fifteen minutes.

Mr. LEVIN. Does the Senator from Maine know how long Senator PRYOR will take?

Ms. SNOWE. About 5 minutes.

Mr. LEVIN. I thank the Senator.

Ms. SNOWE. Madam President, the amendment that is pending that we have offered—and I add that also has been cosponsored by Senator GRAHAM and Senator MENENDEZ—would ensure that small businesses are considered in the federal rulemaking process by the Bureau of Consumer Financial Protection that would be created in this bill.

The more attentive we are with respect to small businesses and the issues incorporated in this legislation, the better small businesses will be in their ability to create jobs and to survive what is a very difficult and tragic economic environment.

This amendment would ensure that when the newly created bureau promulgates rules and regulations, it fully considers the economic impact those rules and regulations would impose on our Nation's more than 30 million small businesses that have created 64 percent of all new jobs over the past 15 years and no question will drive our Nation's economic recovery. Indeed, we are depending on these small businesses to lead us out of this jobless recovery.

We know a jobless recovery is not a true recovery. We have more than 15 million Americans who are unemployed or underemployed. Clearly, it is going to be small businesses that pave the way toward employment.

Plain and simple, onerous regulations are crushing the entrepreneurial spirit of America's small businesses. In 2009 alone, there were close to 70,000 pages in the Federal Register, and the annual cost of Federal regulations now totals more than $1.1 trillion. Furthermore, according to the research by the Small Business Administration's Office of Advocacy, small firms—and this is no surprise—bear a disproportionate burden, paying approximately 45 percent more per employee in annual regulation compliance than larger firms.

The amendment we are offering today would ensure small business fairness and regulatory transparency by first designating the Consumer Financial Protection Bureau as a ''covered agency'' under the Regulatory Flexibility Act so that small business review panel provisions would apply to the bureau's rulemaking. These advisory small business panels currently apply to EPA and OSHA and have been extremely successful in helping to shape more workable regulations at these agencies for small businesses across America.

Since 1996, when these small business panel provisions were passed unanimously in the Senate and signed into law by then-President Clinton, the EPA has convened 35 panels and OSHA has convened 9 panels. The findings of the panel reports have helped EPA and OSHA improve draft proposals by tailoring regulatory approaches to the unique situations of small businesses.

I know there are some who will argue that my amendment will undermine the rulemaking capacity of the bureau. This simply is not the case. According to the SBA Office of Advocacy report, ''The panel process does not replace, but enhances, the regular notice-and-comment process.''

The Office of Advocacy has also found that these small business review panels have facilitated ''revisions or adjustments to be made to an agency draft rule that mitigated its potentially adverse effects on small entities, but did not compromise the rule's public policy objective.''

Others have expressed concern that these small business advocacy review panels should not apply to the bureau because they apply to no other financial regulatory authority. Unfortunately, there is continued frustration by leaders in the small business community toward government agencies and one-size-fits-all regulation. Independent agencies, such as the Securities and Exchange Commission, the SEC, and its approach to regulation under Sarbanes-Oxley, and the Federal Communications Commission, the FCC, and its rulemaking governing telecommunications practices are too often cited as failing to adequately consider their impact on small business prior to issuing new regulatory mandates. This is why it is vital that small business requirements apply to the new independent agency that is created in the underlying legislation.

Still others will argue that our amendment is unnecessary because my earlier amendment to this legislation provides for an exemption for small businesses from the regulatory requirements of the bureau. However, we must go further to ensure that rules that the bureau promulgates do not unintentionally impact small firms' job creation capacity. That is why our amendment would also specify during the rulemaking process the bureau must consider the economic effects its rule would have on the cost of credit for small businesses.

According to a recent National Federation of Independent Business, NFIB, survey—and that is the foremost organization that speaks for small businesses—42 percent of small business owners use a personal credit card for business purposes. It is imperative that small business interests are fully considered when the bureau issues regulations on consumer credit cards, so that however well-intentioned, the bureau does not inadvertently cut off vital small business credit sources, especially during these tenuous economic times when a recent Federal Deposit Insurance Corporation survey noted that banks posted their sharpest decline in lending since 1942.

That is a big issue right now because lending is not occurring to small businesses. That is one of the issues we must address in any small business tax relief package. Those discussions are ongoing right now with the Treasury Department and the Administrator of the Small Business Administration, Karen Mills, with Chairman LANDRIEU of the Small Business Committee, myself, and key staff from the Finance Committee, and the leadership of both the Republican and Democratic sides because it is so critical. If we cannot get access to lending to small businesses, jobs cannot be created.

We do not want to compound the problem with the creation of this bureau that ignores the implications when it comes to applications for credit from small businesses. After all, all the entities under this legislation—even the smaller institutions—all the entities will be covered under this bureau with respect to regulations. We must make sure that the smallest financial institutions' voices are heard because they are the ones that primarily provide access to small businesses, not to mention the credit card companies that also will certainly be regulated under this bureau.

We want to make sure we are not just having the big institutions' voices heard but not the small financial institutions and not how it will affect small businesses throughout the country.

To give an understanding of how strongly regarded and supported this legislation is, we have a broad cross-section of stakeholders who support this amendment, more than 23 organizations that represent millions and millions of small business owners. I am going to list them now because they are so important, given the support they are providing this amendment and how critical they think it is to the functioning of this bureau and being cognizant of the regulations that are issued, that they do not adversely affect the well-being of small businesses during these tumultuous economic times. You have the Associated Builders and Contractors, the Association of Kentucky Fried Chicken Franchisees,

the Hearth, Patio & Barbecue Association, Hispanic Leadership Fund, Independent Electrical Contractors, Institute for Liberty, International Franchise Association, the National Association for the Self-Employed, the National Federation of Independent Business, the National Lumber and Building Material Dealers Association, the National Restaurant Association, the National Roofing Contractors Association, the National Small Business Association, the Printing Industries of America, the S Corporation Association, Small Business & Entrepreneurship Council, Society of American Florists, the Society of Chemical Manufacturers & Affiliates, the Tire Industry Association, the U.S. Chamber of Commerce, the U.S. Black Chamber of Commerce, the United States Hispanic Chamber of Commerce, and the Women Impacting Public Policy.

As you can see, a broad array of stakeholders are so concerned about the pending legislation with respect to this bureau that they support this amendment.

These groups have sent a letter as well to both the chairman and the ranking member of the Banking Committee as well as the majority and minority leadership because they are so concerned about the underlying legislation, the creation of this Consumer Financial Protection Bureau, and how it will affect small businesses. I wish to quote from their letter. It says that our amendment is:

> . . . an effort to prevent unintended consequences by a new agency that could harm the small business sector . . . and provides assurance that small business access to credit is a top consideration by Bureau officials as they take on the important task of overseeing our financial sector.

Just to give you another indication of how supportive and how important these advisory panels are—the ones that would be created in order to review the regulations that would be issued by this bureau—this would be before they issue the proposed rule that these advisory panels would be created—this has occurred under EPA as well as OSHA since 1996. To give an illustration of the rules that have been reviewed through these advisory panels that are created—within a 60-day period, I might add, they would be required to report to the bureau on their assessment of any particular rule before they propose and issue that rule so we can understand the ramifications. The EPA has issued rules that created an advisory panel on groundwater, radon and drinking water, arsenic and drinking water, and diesel fuel requirements, just to give an illustration.

Since 1996, these advisory panels, as the SBA Office of Advocacy has indicated in their materials, has provided extremely valuable information on the real-world impact—and that is important to understand, the real-world impact, when a small business has to digest and to live by and to implement any rules and regulations issued by this bureau and the compliance costs of these agency proposals. So, clearly, this will have enormous benefits to small businesses because we will have a chance to review, in advance, through these advisory panels that would be comprised of the rulemaking agency—in this instance it would be the Consumer Financial Protection Bureau—representatives of the small business community, as well as the Office of Management and Budget's Office of Information and Regulatory Affairs. So there would be a broad array of voices including small business concerns to examine these rules before they are proposed for the rulemaking process.

Doesn't that make sense? Isn't it important to understand the ramifications before we issue these regulations that could have adverse consequences for small businesses as they attempt to survive during these tenuous economic times?

The SBA Office of Advocacy has indicated in their materials with respect to how these panels work—and, again, they are required under law within 60 days to make a proposal to the bureau in terms of the ramifications or the effects or other considerations that ought to be incorporated as they issue their proposed rule.

The purpose of the panel process is threefold, and this is from the SBA Office of Advocacy. First, the panel process ensures that small entities that would be affected by a regulatory proposal are consulted about the pending action and offered an opportunity to provide information on its potential effect. Second, a panel can develop, consider and recommend less burdensome alternatives to a regulatory proposal when warranted. Finally, the rulemaking agency has the benefit of input from both real-world small entities and the panel's report and analysis prior to publication.

Doesn't it make sense? It saves everybody a lot of aggravation, a lot of money, a lot of energy that would have to be devoted in the rulemaking process after they issue the proposal rather than before they issue the proposal for the rulemaking process.

It clearly does make sense and that is why it has worked so well for EPA and OSHA and that is why it will work well under this circumstance and most especially during these times when we are creating this bureau that will have a wide-ranging effect on financial institutions all across this country that ultimately will affect the more than 30 million small businesses, because 42 percent of them depend on personal credit cards for credit. We want to make sure we are considering the consequences of anything that is done.

Also, the downstream effect of bank regulations would be considered as well as a potential effect of a regulation by this bureau. When banking practices are restricted, they do not just affect consumers, they also affect small businesses—higher capital requirements tighten the availability of credit for small businesses. That is another example of a potential rule that would come out of this bureau that could directly affect small businesses. So it is not only consumers, it is also small businesses.

The regulation of angel investors—a very important fact. In fact, NFIB has written on this question because there will be subsequent amendments to address this issue as well. But the regulation of angel investors also affects the economic well-being of small businesses because they use them as a source of capital. I know that NFIB is concerned about the reduced pool, as they have indicated in their letter, with respect to angel investors. Many small businesses depend on these individuals who invest to provide that kind of startup capital in their businesses. There are other significant small entities in the financial products industry who are likely to be overlooked in the bureau's rulemaking process. The panel requirement will benefit these businesses and will benefit the bureau's consideration of how their rules should be tailored to minimize the impact on these businesses while maximizing the intended benefits overall for small businesses.

This is not anything unique to what we don't already know about how important the Regulatory Flexibility Act is overall. Every agency is required to consider the effect of any rule or law and how it is going to have implications on small businesses and two agencies—the EPA and OSHA—are required to establish advisory panels when it is determined rules are going to be issued that have consequences on small businesses and that gives them the opportunity to have input into the process before this bureau issues those rules.

I think it makes a great deal of sense. It is reasonable, it is logical, and it averts any unintended consequences in the onset of the process rather than waiting to see how well it takes effect, and then we discover that, in fact, it depresses the ability of small businesses to create jobs or to survive.

So I hope we can get very strong support for this legislation. I am very appreciative of the work of my colleague, Senator PRYOR, with whom I work on the Small Business Committee. He does a great job and has provided a great deal of input into the drafting of this legislation, and I appreciate his leadership. I appreciate the fact that it is done on a bipartisan basis because I think we all recognize the pivotal role small businesses play in today's economy and will certainly depend on playing a critical role in the future.

I ask unanimous consent to have printed in the RECORD a report regarding the Regulatory Flexibility Act.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE A.4—SBREFA PANELS THROUGH FISCAL YEAR 2009

Rule title	Date convened	Report completed	NPRM [1] published	Final rule published
Environmental Protection Agency				
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98
Industrial Laundries Effluent Guideline [2]	06/06/97	08/08/97	12/12/97	
Stormwater Phase	06/19/97	08/07/97	01/09/98	12/08/99
Transportation Equipment Cleaning Effluent Guideline	07/16/97	09/23/97	06/25/98	08/14/00
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	09/10/03	12/22/00
			01/13/99	
Underground Injection Control Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
Federal Implementation Plan (FIP) for Regional Nitrogen Oxides Reductions	06/23/98	08/21/98	10/21/98	04/28/06
Section 126 Petitions	06/23/98	08/21/98	09/30/98	05/25/99
Radon in Drinking Water	07/09/98	09/18/98	11/02/99	
Long Term 1 Enhanced Surface Water Treatment	08/21/98	10/19/98	04/10/00	01/14/02
Filter Backwash Recycling	08/21/98	10/19/98	04/10/00	06/08/01
Light Duty Vehicles/Light Duty Trucks Emissions and Sulfur in Gasoline	08/27/98	10/26/98	05/13/99	02/10/00
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01
Recreational Marine Engines	06/07/99	08/25/99	10/05/01	11/08/02
			08/14/02	
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	
Metals Products and Machinery Effluent Guideline	12/09/99	03/03/00	01/03/01	05/13/03
Concentrated Animal Feedlots Effluent Guideline	12/16/99	04/07/00	01/12/01	02/12/03
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Stage 2 Disinfectant Byproducts Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/11/03	01/04/06
			08/18/03	01/05/06
Nonroad Large Spark Ignition Engines, Recreational Land Engines, Recreational Marine Gas Tanks, and Highway Motorcycles.	05/03/01	07/17/01	10/05/01	11/08/02
			08/14/02	
Construction and Development Effluent Guidelines [3]	07/16/01	10/12/01	06/24/02	
			11/28/08	
Aquatic Animal Production Industry	01/22/02	06/19/02	09/12/02	08/23/04
Lime Industry—Air Pollution	01/22/02	03/25/02	12/20/02	01/05/04
Nonroad Diesel Emissions—Tier IV Rules	10/24/02	12/23/02	05/23/03	06/29/04
Cooling Water Intake Structures—Phase III Facilities	02/27/04	04/27/04	11/24/04	06/15/06
Section 126 Petition (2005 Clean Air Implementation Rule—CAIR)	04/27/05	06/27/05	08/24/05	04/28/06
Federal Implementation Plan for Regional Nitrogen Oxides (2005 CAIR)	04/27/05	06/27/05	08/24/05	04/28/06
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Nonroad Spark-ignition Engines/Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Total Coliform Monitoring Rule (TCR)	01/31/08	03/31/08		
Renewable Fuel Standards 2 (RFS2)	07/09/08	09/05/08	05/26/09	
Occupational Safety and Health Administration				
Tuberculosis [4]	09/10/96	11/12/96	10/17/97	
Safety and Health Program Rule	10/20/98	12/19/98	**	
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Occupational Exposure to Respirable Crystalline Silica Dust	10/20/03	12/19/03		
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	
Occupational Exposure to Hexavalent Chromium	01/03/04	04/20/04	10/04/04	02/28/06
Occupational Exposure to Beryllium	09/17/07	01/15/08		
Occupational Exposure to Diacetyl	05/05/09	07/02/09		

[1] Notice of Proposed Rulemaking (NPRM) published in the Federal Register.
[2] Proposed rule was withdrawn August 18, 1999. EPA does not plan to issue a final rule.
[3] Proposed rule was withdrawn on April 26, 2004. EPA issued a new proposal November 28, 2008.
[4] Proposed rule was withdrawn on December 31, 2003. OSHA does not plan to issue a final rule.
** In process.

CHAPTER 41—REGULATORY PANELS

In 1996, SBREFA amended the RFA to include a number of important provisions. One of those was section 609, which requires, among other things, that certain agencies conduct special outreach efforts to ensure that small entity views are carefully considered prior to the issuance of a proposed rule. This outreach is accomplished through the work of small business advocacy review panels, often referred to as SBREFA panels.

WHO MUST HOLD SBREFA PANELS?

The statute requires that the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) evaluate their regulatory proposals to determine whether SBREFA panels should be convened. The requirement for SBREFA panels may appear to impose additional steps for EPA and OSHA in their rulemaking processes. However, the panel process only formalizes the outreach requirements and analyses that the Administrative Procedure Act and the RFA already mandate for all new rules that affect small businesses. Any additional work that may be needed in this special early outreach effort should be offset by time saved at the other end of the regulatory process. When problems are resolved before a proposed rule is published, objections from the public are reduced. Experience has shown that the panel process results in better rules, better compliance and reduced litigation. In at least one instance, EPA withdrew a regulatory proposal based on work performed in connection with the panel process.

HOW IS THE DECISION TO HOLD A SBREFA PANEL MADE?

For each proposed rule, the RFA requires that an agency either certify that the proposal has no significant economic impact on a substantial number of small entities, or prepare an initial regulatory flexibility analysis (IRFA) on the proposal. Whenever EPA or OSHA determines that a regulatory proposal may have a significant economic impact on a substantial number of small entities, the law further requires that the agency convene a SBREFA panel. This SBREFA panel outreach must take place before the publication of the proposed rule. SBREFA panels are required for all EPA and OSHA rules for which an IRFA is required. However, the Chief Counsel for Advocacy may waive the panel requirement upon the request of EPA or OSHA under certain conditions. To waive the panel requirement, the Chief Counsel must find that convening a panel would not advance the effective participation of small entities in the rulemaking process. Section 609(e) of the RFA lays out several factors in making this determination, including consideration of whether small entities have already been consulted in the rulemaking process and whether special circumstances warrant the prompt issuance of a rule.

HOW DOES A SBREFA PANEL WORK?

A SBREFA panel consists of a representative or representatives from the rulemaking agency, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) and the Chief Counsel for Advocacy.

The panel solicits information and advice from small entity representatives (SERs), who are individuals that represent small entities affected by the proposal SERs help the panel better understand the ramifications of the proposed rule. Invariably, the participation of SERs provides extremely valuable information on the real-world impacts and compliance costs of agency proposals.

The law requires that a SBREFA panel be convened and complete its report with recommendations within a 60-day period. The formal panel process begins with the convening of the panel by the rulemaking agency. The date is normally fixed after consultation with both Advocacy and OIRA. Before convening, the three agencies usually work together to discuss regulatory alternatives and their advantages and disadvantages. The rulemaking agency usually has preliminary discussions with small entities about its draft proposal before the panel is formally convened. These preparations ensure that the panel process can be completed during the statutorily specified 60-day period.

The product of a SBREFA panel's work is its panel report on the regulatory proposal under review. The panel completes its final report, including its recommendations, early in a rule's developmental stages, so that the agency has the benefit of the report's findings prior to publication of a proposed rule. The panel report also becomes part of the official docket for the proposed rule.

The purpose of the panel process is threefold. First the panel process ensures that small entities that would be affected by a regulatory proposal are consulted about the pending action and offered an opportunity to

provide information on its potential effects. Second, a panel can develop, consider, and recommend less burdensome alternatives to a regulatory proposal when warranted. Finally, the rulemaking agency has the benefit of input from both real-world small entities and the panel's report and analysis prior to publication.

SUGGESTED SBREFA PANEL TIMELINE

The RFA provides that the formal panel process must be concluded within 60 days from the formal convening of the panel to the completion of its report. Experience has shown that the panel process works best if agencies and panel members accomplish as much preliminary work as possible before the formal convening of the panel. A suggested timeline follows, although panel members have flexibility to adjust their prepanel work schedules to ensure the best outcome for each individual rule.

Ms. SNOWE. Madam President, I yield the floor and now also yield to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Madam President, at this point I wish to thank my colleague from the State of Maine. She has been a great leader in small business matters. She and I serve on the Small Business Committee together, and we have been working for, I guess, 3 years now on the Regulatory Flexibility Act and other related efforts to try to make sure the proper environment exists in America for small businesses to thrive and for entrepreneurs to be successful.

This amendment would make certain that key provisions of the Regulatory Flexibility Act, which require that Federal agencies fully consider during the rulemaking process the economic impact on small firms, would apply to the CFPB created in the bill offered by Senator DODD. This amendment would ensure that the newly created CFPB, when it is promulgating its rules and regulations, fully consider the economic impact those rules and regs would impose on our Nation's almost 30 million small firms, which have created 64 percent of all the new jobs in this country over the last 15 years and, undoubtedly, will drive this Nation's economic recovery.

The last point I wish to make before I make a few closing comments is the fact that we, as the Senate and as the House, should be aware and should address the fact that onerous regulations can crush entrepreneurial spirit for America's small businesses. In 2009 alone—last year—during a recession, there were close to 70,000 pages added to the Federal Register of new regulations. The annual cost of complying with Federal regulations totals about $1.1 trillion.

I am not saying we should end all regulation. I think most of these—or at least a lot of these—make a lot of sense and there are good reasons for a lot of them. But we have to be careful and we have to understand the impact that these regulations have on small businesses. We want our small businesses to thrive. We want our small businesses to be successful. If we are not careful, an agency such as the CFPB—and there are many other Federal agencies—can create rules and relations that actually choke off business opportunities for entrepreneurs and for small businesses.

So I am proud to join my friend and colleague from Maine on this amendment, and I would encourage other colleagues to look at this amendment, look at the text of the amendment. I have enjoyed working with the Senator from Maine, over the last few years, when it comes to trying to help small businesses.

With that, I yield the floor.

AMENDMENT NO. 3808

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I come to the floor to support the amendment of the Senator FRANKEN, amendment No. 3808, along with his cosponsors. This will address a major unresolved cause of the financial meltdown.

The cause which this amendment focuses on is the flawed and inaccurate credit ratings that labeled poor-quality mortgage-backed securities and high-risk collateralized debt obligations as AAA investments. AAA means they were on par, in the view of these rating agencies, with U.S. Treasurys. Investors from pension funds, to universities, municipalities, insurance companies, and more lost hundreds of billions of dollars, in part, because of these ratings.

How did the credit rating agencies get it so wrong? A big part of the answer—one that would be remedied by the Franken amendment—is the inherent conflict of interest that now permeates the credit rating industry. I am going to read from a few e-mails we uncovered and disclosed at our hearings. We had long hearings. We have been investigating this economic meltdown that we had—the financial meltdown—for about a year and a half. One of the four hearings we had was looking at the credit rating agencies—looking at Standard & Poor's, looking at Moody's—and looking through their documents, which we subpoenaed, literally, by the millions.

Listen to some of these e-mails, and we want to focus on what this conflict of interest is. If you want to get a feel for how it is that the credit rating agencies are being paid by the very people whose financial instruments they are doing the ratings of, listen to just a few of these e-mails which we got.

One Standard & Poor's analyst wrote that a ratings model that could have been released months before wasn't because we had to massage the subprime numbers; if ''we didn't have to massage the sub-prime . . . numbers to preserve market share.''

Inside Standard & Poor's you have their analysts saying we had to massage the numbers on this financial document. Why? Not because the rating required it or because the merits required it, but in order to preserve their market share they were massaging the subprime numbers.

Here is an e-mail from a UBS banker warning Standard & Poor's not to make it harder to get high credit ratings. This is a UBS banker, talking to the credit rating agency:

Heard you guys are revising your residential [mortgage backed security] rating methodology. . . . Heard your ratings could be 5 notches back of mo[o]dy's equivalent. This is going to kill your [residential business]. It may force us [UBS] to do moodyfitch only cdos.

The Standard & Poors manager who received the e-mail asked a colleague, ''[A]ny truth to this?'' The response:

We put out some criteria a couple of weeks ago that we will begin to use for deals closing in July. . . . We certainly did not intend to do anything to bump us off a significant amount of deals.

They are worried about their deals. They are worried about their bottom line. The country worries about whether those AAA ratings are real.

Here is another example, called Vertical ABS. A major bank asks Standard & Poor's and Moody's to rate one of these financial instruments. The bank refused to cooperate with the analysts—so the bank is not working with the analysts at Standard & Poor's and Moody's to rate a CDO. One analyst now is complaining to another, inside of this credit rating agency.

Don't see why we have to tolerate lack of cooperation. Deals likely not to perform.

''Deals likely not to perform,'' one analyst inside to another. That is Exhibit 94b, by the way, if anyone wants to look it up.

Despite the analyst's judgment that financial instrument, that CDO, was unlikely to perform, both Moody's and Standard & Poor's rated it, giving AAA ratings to the four top levels of that particular CDO. What happened? Six months later both agencies downgraded that financial instrument and it later collapsed.

One more example. In June 2007, a Moody's analyst sent an email to a Merrill Lynch banker stating that he could not finalize a rating until the issue of fees was resolved. The Merrill Lynch banker responded: ''We are okay with the revised fee schedule for this transaction. We are agreeing to this under the assumption that this will not be a precedent for any future deals and that you will work with us further on this transaction to try to get to some middle ground with respect to the ratings.'' Moody's assured the Merrill analyst that its deal analysis was independent from its fees, but it is clear as glass what is going on here. That is Exhibit 23 from our hearing.

It is past time to tackle the conflicts problem. This bill is the right legislation, and the Franken amendment takes the problem head on. It would direct the SEC to create a self-regulatory organization, a clearinghouse or SRO, to develop a method of assigning credit rating agencies to provide initial ratings to structured finance products. The entity would have the discretion to develop its own methodology for assignment—it could use a rotating system or a formula, just as long as the

issuer doesn't get to choose the rater. It wouldn't set prices or issue ratings, it would just act as an intermediary between issuers and raters. In addition, it could increase the number of assignments to a particular credit rating agency, based on that agency's past performance, or decrease assignments in the case of poor performance, creating a key incentive for accurate ratings.

The amendment would also permit issuers to go to whichever credit rating agency they wanted for second or third ratings.

I commend Senator FRANKEN for this far-sighted effort to correct the conflicts problem. If we don't fix it now, we are going to be right back here with another financial crisis fueled by inaccurate, conflicts-ridden credit ratings.

I want to note that, while this amendment attacks the most important problem with CRAs, there are a number of other problems that also need to be addressed in the credit rating agency area. To me, the most important remaining problem is eliminating the current statutory ban that prevents real SEC oversight. This is what current law says right now in 15 U.S.C. section 78o–7(c)(2):

Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.

To me, that statutory ban against looking at the substance of a rating or the procedures or methodologies used to produce that rating is absurd. It ought to be eliminated. We can't give the SEC the responsibility for overseeing credit rating agencies and then prevent them from looking at the substance of a rating or the procedures or methodologies used to produce that rating.

I have introduced an amendment with Senator KAUFMAN that would eliminate that statutory provision and direct the SEC to set standards and exercise oversight of credit rating agency procedures and methodologies, including qualitative and quantitative data and models, to ensure that the ratings have a reasonable basis in fact and analysis. Given the overwhelming evidence at our hearing about basic flaws in the rating models, how the models were tweaked to help clients, and how the models were ignored when agencies wanted to inflate ratings, it defies common sense to prohibit the SEC from looking at the models and the procedures.

The Levin-Kaufman amendment would also preclude the credit rating agencies from relying on due diligence that they had reason to believe was wrong. Our investigation showed that the credit rating agencies knew that they were relying on bad information because of the rampant fraud and weak underwriting standards, and this led to bad ratings. Again, this is a commonsense fix, that we hope to offer later or have incorporated into a managers amendment.

In the meantime, I urge my colleagues to vote in support of the muchneeded Franken amendment to eliminate the inherent conflicts of interest that now infest the credit rating industry.

I know the leader is trying to get on with votes, but I want to alert colleagues that our hearings, based on a 1½ year investigation, looked at one of the major causes of this collapse. One of the major causes was because our credit rating agencies were interested in their bottom lines instead of getting accurate ratings for the financial instruments, which our universities, our pension funds were buying.

The Franken amendment corrects it. It requires that this conflict of interest be ended. It does not just study it, it requires an end to the conflict of interest by allowing the Securities and Exchange Commission to identify an independent intermediary who will put a process in place to end this conflict of interest. I commend Senator FRANKEN for his amendment.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I appreciate my friend from Michigan yielding the floor. I appreciate the statement. I appreciate the work the Subcommittee on Investigations has done and I appreciate the work his Permanent Subcommittee on Investigations has done. They have done remarkably good work.

I ask unanimous consent the Senate now proceed to vote in relation to the following amendments in the order listed; that no amendments be in order to any of the amendments covered in this agreement: Franken amendment No. 3991; LeMieux amendment No. 3774, as modified, and as a side-by-side to No. 3991; provided further that after the first vote in the sequence, the remaining vote be limited to 10 minutes; and that there be 2 minutes of debate equally divided and controlled prior to the second vote; further, that at the conclusion of these votes, Senator KAUFMAN be recognized for a period of 5 minutes as in morning business; that at the conclusion of his remarks, the Senate then stand in recess until 2 p.m.; that at 2 p.m. there be a period of morning business, in which Senators MENENDEZ, LAUTENBERG, and NELSON of Florida be permitted to speak on the subject of S. 3305 and make a unanimous consent request upon the subject; that immediately thereafter the Senate resume the consideration of S. 3217 and there be 5 minutes debate remaining in order to the Sessions amendment No. 3832, with the time equally divided and controlled in the usual form; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Sessions amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3991

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the Franken amendment.

Mr. KYL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 146 Leg.]

YEAS — 64

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Begich	Graham	Pryor
Bennet	Grassley	Reid
Bingaman	Hagan	Risch
Boxer	Harkin	Rockefeller
Brown (MA)	Inouye	Sanders
Brown (OH)	Johnson	Schumer
Burris	Kaufman	Shaheen
Cantwell	Kerry	Snowe
Cardin	Klobuchar	Specter
Carper	Kohl	Stabenow
Casey	Landrieu	Tester
Cochran	Lautenberg	Udall (CO)
Collins	Leahy	Udall (NM)
Conrad	Levin	Warner
Crapo	Lincoln	Webb
Dorgan	McCaskill	Whitehouse
Durbin	Menendez	Wicker
Ensign	Merkley	Wyden
Feingold	Mikulski	
Feinstein	Murkowski	

NAYS—35

Alexander	DeMint	Lugar
Barrasso	Dodd	McCain
Bayh	Enzi	McConnell
Bennett	Gregg	Nelson (NE)
Bond	Hatch	Reed
Brownback	Hutchison	Roberts
Bunning	Inhofe	Sessions
Burr	Isakson	Shelby
Chambliss	Johanns	Thune
Coburn	Kyl	Vitter
Corker	LeMieux	Voinovich
Cornyn	Lieberman	

NOT VOTING—1

Byrd

The amendment (No. 3991) was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

VISIT TO THE SENATE BY PRESIDENT HAMID KARZAI OF AFGHANISTAN

Mr. KERRY. Madam President, we are currently being visited in Washington by the President of Afghanistan. He has been in the Senate engaged in a luncheon with Senators. I ask unanimous consent that the President of Afghanistan, Hamid Karzai, be permitted the privilege of coming on the floor to be greeted by the Senate, together with his Ministers who are here for a series of important meetings.

The PRESIDING OFFICER. Without objection, it is so ordered.

[Applause.]

AMENDMENT NO. 3774, AS MODIFIED

The PRESIDING OFFICER (Mr. BURRIS). Under the previous order, there are 2 minutes of debate equally

divided on the LeMieux amendment No. 3774.

Who yields time?

The Senator from Florida.

Mr. LEMIEUX. Mr. President, this Chamber just supported and voted for the Franken amendment. My measure goes further. My measure says we are going to write these rating agencies out of the law. We should not reward bad behavior. There are other ways to determine creditworthiness. There will be a 2-year period to figure that out. There is a better way to solve this problem. These rating agencies were responsible for this debacle.

I yield the remainder of my time to my colleague, Senator CANTWELL.

Ms. CANTWELL. Mr. President, this language was also offered in the House by our colleague, BARNEY FRANK. It is appropriate that we don't require Federal agencies to just rely on these rating agencies. It is critical that agencies such as the FDIC and the Comptroller of the Currency use their discretion to come up with appropriate standards of creditworthiness and not rely on the monopoly of rating agencies. I hope my colleagues will support the amendment.

The PRESIDING OFFICER. Who yields time in opposition?

The Senator from Connecticut.

Mr. DODD. Briefly, my concern with this amendment is we are replacing the rating agencies without having anything in their place. I urge my colleagues to vote no and yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. ENSIGN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 147 Leg.]

YEAS—61

Alexander	Crapo	Levin
Barrasso	DeMint	Lincoln
Bayh	Dorgan	Lugar
Begich	Ensign	McCain
Bennet	Enzi	McCaskill
Bennett	Feingold	McConnell
Bond	Graham	Menendez
Boxer	Grassley	Murkowski
Brown (MA)	Gregg	Murray
Brownback	Hatch	Reid
Bunning	Hutchison	Risch
Burr	Inhofe	Roberts
Cantwell	Isakson	Sanders
Chambliss	Johanns	Sessions
Coburn	Kaufman	Shelby
Cochran	Klobuchar	Snowe
Collins	Kyl	Specter
Corker	Landrieu	Thune
Cornyn	LeMieux	Udall (CO)
Vitter	Wicker	
Voinovich	Wyden	

NAYS—38

Akaka	Gillibrand	Nelson (FL)
Baucus	Hagan	Pryor
Bingaman	Harkin	Reed
Brown (OH)	Inouye	Rockefeller
Burris	Johnson	Schumer
Cardin	Kerry	Shaheen
Carper	Kohl	Stabenow
Casey	Lautenberg	Tester
Conrad	Leahy	Udall (NM)
Dodd	Lieberman	Warner
Durbin	Merkley	Webb
Feinstein	Mikulski	Whitehouse
Franken	Nelson (NE)	

NOT VOTING—1

Byrd

The amendment (No. 3774), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

STUTTERING AWARENESS WEEK 2010

Mr. KAUFMAN. Mr. President, I rise today to mark National Stuttering Awareness Week.

Most of us take for granted the ability to speak comfortably and fluently. All we have to do is think of words, and they come out clearly. Introducing ourselves in meetings, holding conversations over the phone, ordering meals in restaurants—all of these are situations avoided by many people who stutter as a result of being self-conscious.

Approximately 3 million Americans stutter. Since President Ronald Reagan's proclamation in 1988, the second week in May has been observed as National Stuttering Awareness Week. It provides an opportunity for all of us—for all of us—to learn more about stuttering and ways to help those who stutter.

We have all encountered people who stutter. Contrary to popular misconception, stuttering is not a result of nervousness or emotional problems. It is not the fault of those who do it or of their families and friends. Stuttering is a speech disorder that is neurological and physiological. The cause to this day remains unknown, but a recent study indicates the likelihood that stuttering may be genetic.

While there is currently no cure, there are many treatment options available. Children usually begin stuttering between the ages of 2 and 5, and parents should not wait to seek treatment from a doctor or speech language pathologist. Early therapies have been shown to help reduce stuttering.

Those who continue to stutter in adulthood often face social and economic difficulties. Unfortunately, according to a 2009 study by the National Stuttering Association, 40 percent—40 percent—of adults and teenagers who stutter said they were denied a job or denied a promotion or denied a school opportunity as a result. Furthermore, 8 out of 10 children who stutter have reported being bullied and teased.

I am not just speaking about stuttering today because it is an important issue for so many Americans, and I am not just speaking about it because my friend and predecessor, JOE BIDEN, the Vice President, has shared his story—his incredible story—of overcoming stuttering. This is a personal issue for me because stuttering runs in my wife's family, and I have been around people who stutter for many years.

When my wife Lynne was a child, her parents took her to a therapist for her stuttering, who recommended immobilizing her right arm with a solid tube. At that time, the theory was that if she were forced to learn to write using her left hand instead of her right, she could somehow be distracted from her stuttering. Suffice it to say, the tube did not work. She is just one example of what stutterers have historically had to endure. Thankfully, today there are great treatment options available from licensed professionals.

I am glad—very, very glad—there are great organizations, such as the National Stuttering Association and others, that are raising awareness on this important issue. There are important steps all of us can take to help those who stutter feel more confident and comfortable speaking. I hope people will go out and learn more about what they can do themselves, especially if they know someone who stutters.

In recognition of National Stuttering Awareness Week, I have submitted a resolution to mark this observance. I am proud to say I am joined by 27 of my colleagues in sponsoring this resolution supporting the goals and ideals of National Stuttering Awareness Week 2010, and I thank them for their support. They include Senators BARRASSO, SHERROD BROWN, BURRIS, CARDIN, CARPER, CANTWELL, CASEY, CORNYN, DURBIN, ENZI, GREGG, HAGAN, ISAKSON, LEMIEUX, LEVIN, MIKULSKI, PRYOR, REED, RISCH, SESSIONS, SHAHEEN, SNOWE, STABENOW, TESTER, WARNER, WHITEHOUSE, and TOM UDALL.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 524, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 524) supporting the goals and ideals of National Stuttering Awareness Week 2010.

There being no objection, the Senate proceeded to consider the resolution.

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 524) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 524

Whereas an estimated 3,000,000 Americans are affected by stuttering;

Whereas stuttering is a communication disorder experienced by children and adults alike;

Whereas individuals who stutter frequently experience embarrassment, anxiety about speaking, and physical tension in their speech muscles;

Whereas many different types of stuttering exist, and the symptoms of stuttering can range from mild to severe;

Whereas the cause of stuttering is unknown, but research suggests stuttering may be genetic;

Whereas stuttering commonly begins in children between the ages of 2 and 5;

Whereas parents are encouraged to consult with pediatricians or qualified speech-language pathologists as soon as stuttering becomes apparent in a child in order to take advantage of early-intervention therapies;

Whereas it is known that stuttering is not—

(1) a nervous disorder;

(2) the result of emotional problems; or

(3) the fault of the individual who stutters or the family of that individual;

Whereas a 2009 survey by the National Stuttering Association found that—

(1) 40 percent of adults and teenagers who stutter feel that they have been denied a job, a promotion, or a school opportunity as a result of stuttering; and

(2) 8 out of 10 children who stutter report being bullied or teased;

Whereas many individuals who stutter do not have access to qualified speech-language pathologists or helpful resources;

Whereas several treatments for stuttering exist that can help individuals who stutter learn to speak more easily and gain confidence in themselves and their ability to communicate effectively;

Whereas organizations like the National Stuttering Association have been working for many years to raise awareness about stuttering, the effect stuttering has on the lives of individuals who stutter, available treatment options, and research being conducted to investigate the causes of stuttering;

Whereas, on April 13, 1988, the President of the United States signed a proclamation designating the week of May 9 through 16 of that year as National Stuttering Awareness Week;

Whereas since 1988, individuals who stutter and the families and friends those individuals, as well as medical practitioners, speech language pathologists, researchers, and others have marked the second week of May as National Stuttering Awareness Week; and

Whereas the goals of the National Stuttering Awareness Week 2010 include increasing awareness among the people of the United States about stuttering and educating the people of the United States about ways to improve the lives of those who stutter: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of National Stuttering Awareness Week 2010; and

(2) encourages all of the people of the United States to learn more about stuttering and ways to help individuals who stutter feel more confident and comfortable speaking with others.

Mr. KAUFMAN. Thank you, Mr. President. I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2 p.m.

Thereupon, the Senate, at 1:23 p.m., recessed until 2 p.m. and reassembled when called to order by the Presiding Officer (Mr. BURRIS).

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from New Jersey.

UNANIMOUS-CONSENT REQUEST—S. 3305

Mr. MENENDEZ. Mr. President, I rise to discuss legislation I have offered with some of my colleagues here: The Big Oil Bailout Prevention Act. It is legislation that would make absolutely certain big oil polluters pay for oilspills and the consequences of those spills, and not the American taxpayer, not small business owners, not States or the Federal Government.

For some time now we have been told by big oil companies that what is happening in the gulf simply couldn't happen; that it was impossible; that multiple redundant safety systems were in place to prevent it. Well, we have learned there is no such thing as too safe not to spill. Supposedly, the unthinkable has happened, and not only that, but it has happened before.

Last year in Australia, the Montara oilspill began on August 21. By some estimates, the spill sent over 80,000 gallons of oil a day into the waters off the coast of Australia. It was months before they could staunch the flow of oil, and it resulted in one of the largest environmental disasters in Australian history. We should have learned from that experience. But, no; we now have the challenge before the Nation today. In comparison, the deepwater well that is leaking in the gulf is sending nearly 210,000 gallons of oil a day into the gulf; over twice the flow from the Australian spill; several million gallons already; and just like the Australian spill, it could take months to drill the relief well. Two disasters in 1 year, yet big oil companies say over and over again that the technology was simply so safe, a spill such as this could never happen.

The reality is much different than industry claims. There simply is no safety system too safe to fail and no rig that is too safe not to spill. There is no doubt the damages that will be caused by this spill will be enormous. Unfortunately, Federal law sets a $75 million limit on how much an oil company has to pay for damages—not the cleanup; that, they are clearly going to have to pay—but for the damages. So BP would not have to pay more than a total of $75 million to small businesses from lost revenues for fishing, tourism, damage to the environment, the coastline, or the lost tax revenues of State and local governments.

That is why, along with Senators NELSON and LAUTENBERG, I have introduced the Big Oil Bailout Prevention Act to raise the liability cap for offshore oil well spills from $75 million to $10 billion. That will make sure that taxpayers, small business owners, States, and local and Federal governments will not bail out big oil polluters for this spill or any other.

This spill should serve as a rallying cry for holding big oil accountable for the damages of this disaster and any future one, but it should also be a rallying cry to rethink expanding offshore drilling in places that are not already open to offshore drilling, such as my home State of New Jersey. Instead of expanding drilling and doubling down on 19th century fuels, we should be investing in a new 21st century green economy that will create thousands of new jobs, billions in new wealth, and help protect our oil and water from pollution.

We will revisit that debate soon enough, but for now I think we all should be able to agree that when an oil company causes damage by spilling oil into American waters, the oil company bears the responsibility to pay for the damage it caused. My mom taught me growing up that when you mess up, you clean up, and you are responsible for it. Oil companies should get that message as well. This will help make gulf communities whole and it will provide a stronger safety net for our communities along places such as the New Jersey shore who are looking warily at future plans for drilling along the east coast.

With that, Mr. President, I plan to ask unanimous consent on this issue, but first I wish to yield to my other colleagues who wish to speak on this issue as well. I yield 5 minutes to Senator LAUTENBERG and then 5 minutes to Senator NELSON.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Thank you, Mr. President. I thank my colleague for initiation of this bill. It will protect the American taxpayers and say to big oil: You did it, you pay for it; that is the way it goes.

I was lucky. I had two lifetime experiences that have stayed with me. One was growing up in a blue-collar family where we worried almost daily about how we would pay our bills. My father was sick for 13 months before he died at age 43 and we owed everybody—the pharmacist, the hospitals, the doctors. No insurance. No protection for the average person. Then I was fortunate enough to be able to be engaged in a business with two other fellows who had success beyond our wildest dreams. The company we started with nothing now has 46,000 employees in 26 countries, headquartered in New Jersey, of course.

I learned something in those experiences. I learned that if you fouled up, you were responsible for cleaning up, as mentioned by Senator MENENDEZ.

The American people want those responsible for doing dirt to clean up that mess, just as families do in their own lives. But the oil executives and

their lobbyists don't see things that way. They want to continue gouging the public whom they have by the tank and by the throat. They want to continue to accrue billion dollar profit gains year after year and leave the American family, the average American family, stretching daily to pay their bills.

Look at this. The profits of the big oil companies in the last quarter alone are so astounding they are almost unimaginable. BP had a $5.6 billion profit quarter, a gain of $3.2 billion over last year when America was still in some significant economic problems. Exxon, by way of example, had a $6.3 billion profit quarter. It goes beyond, again, the wildest imagination.

We have to draw the line. Our Big Bailout Prevention Act would raise the damage cap for all oilspills from a measly, a pittance, $75 million. My colleagues heard me. We compared it to a $5.2 billion quarter—not a year, a quarter—and they want to hide behind a $75 million cap on damages. Well, fortunately, we are here to say to the average working family: No, we are not going to let them get away with your money. We are not going to let them get away with walking away from this, hiding behind that ridiculous cap. It could be called in the vernacular a spit in the ocean, $75 million. So we can't afford to let those companies bail out, especially when workers' lives are at stake, the gulf environment hangs in the balance, and coastal communities are at risk.

I challenge my colleagues, especially those who on the other side of the aisle have had a habit of saying no. If you want to say no to the taxpayers, say it out loud. Say it out loud. But don't try to protect the oil companies that are stuffing profits so much that they are gorging themselves on it. They are like pigs at the trough.

The United States has seen too many oil spills, more than any other country in the world. It is time to end the special favors for big oil, get on the side of the American people, and make sure that when a catastrophe occurs, the American taxpayers don't get the bill for the oil companies' carelessness and recklessness.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, if this gusher continues—and we hope and pray that by some miracle there is going to be some capping at the seabed of this well that is spewing at least 5,000 barrels of oil a day—but if this thing continues and it doesn't stop until they get the relief well, which is another 3 months—one coming from one side, one coming from the other side, another 3 months—it is going to cover up the gulf coast. Then, as soon as the winds shift from the north coming south, it is going to take that big spill about 90 miles to the south where the loop current is, which is a current that comes up the west side of the Gulf of Mexico off the Yucatan Peninsula, into the northern Gulf of Mexico, and because of the rotation of the Earth, it causes it to come around to the east and then flows south. That loop current comes right around the Florida Keys and becomes the gulf stream. It hugs the Florida Keys and the southeast coast of Florida—and when I say hug it, I mean right off the coast—all the way up to the middle of the peninsula of Florida at Fort Pierce. There it leaves the coast a little bit, but follows the coast all the way up to Cape Hatteras, NC, where it leaves the coast of the United States and goes across the Atlantic to Scotland. It is the old gulf stream that the Spanish galleons used to catch going back to Europe from their discoveries in the New World.

Come back to the wind shifting. The wind shift from the north coming south brings that spill down to the loop current. Last weekend, I had testimony by ocean specialists from the University of Miami who said that once that oil gets in the loop current, it will be at the Florida Keys in 10 days. Eighty-five percent of the live coral reefs of the United States are in the Florida Keys. The gulf stream goes right by those delicate coral reefs. The gulf stream comes up and goes right by Miami, Key Biscayne, Fort Lauderdale, West Palm Beach, and as far north as Fort Pierce, which is only about 10 miles offshore. Can my colleagues imagine what this is going to do in economic damages?

We have been fortunate thus far that the winds have been from the east to the west—fortunate for Florida, unfortunate for Louisiana—because that oil is off all of those delicate bays and estuaries where so much of the Gulf of Mexico marine life is spawned. Sooner or later the winds are going to shift, and they are going to go from the west to the east. It is going to take that oil down there off the world's most beautiful beaches and those bays and estuaries where so much of marine life is spawned that happens to be off of Florida.

Let me tell you what the President of the Hotel and Restaurant Association told me 2 days ago. This is the Hotel and Restaurant Association of Florida. He said he had called a number of the hotels on the northwest gulf coast of Florida. This is the beginning of their season. He said normally they would be 85 percent occupied now. Their occupancy is 18 percent. Can you imagine the economic impact of this oilspill?

What about the economic impact of the lost sales tax to the State and local governments, the counties, and the cities that if they do not have all these tourists coming to the beach, they are not buying things, and there is less revenue coming into the States.

We start to see the picture of the enormous economic damage, well over and above the cost of the cleanup. That is why an artificial figure of—$75 million cap is so artificially low. I am not sure $10 billion is going to be enough as a cap, but it was a target. Let's hope it never gets to that. Thus far, nothing has worked because those backoff safety systems did not work.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, in view of the fierce urgency of now, there is harm already being levied upon these communities, commercial fishermen, tourism, and others, and because $75 million is less than 1 day of BP profits, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 3305, the Big Oil Bailout Prevention Liability Act of 2010, and that the Senate proceed to its consideration; that the bill be read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, I do reserve the right to object, and I would like to take a few minutes this afternoon to explain why I will be objecting to this unanimous consent request.

I sat and listened to my three colleagues. I have great empathy for the concern they share. I share it as well. I represent a State that was devastated a little more than 20 years ago when the Exxon Valdez hit the rocks. We lived with oil on our beaches. We know the economic impact. We know the social impact that a spill can cause. We want to all be working together to ensure that whether it is the devastation we see in the hotels in Florida or whether it is the loss to the fishermen, that we ensure those who are responsible pay for the economic loss, for the damages that are incurred. We are with my colleagues on this issue.

The reason I stand and object at this point in time is I do not believe that taking the amount of the liability cap from $75 million, where it is currently, to $10 billion in strict liability, 133 times the size of the current strict liability limit, is where we need to be right now.

I am not just the only one who suggests that maybe we need to understand a little bit better as to how much we might need to look at raising the limit. The administration, just yesterday in their oilspill legislative package, has proposed an effort. Their proposal, would raise the caps on liability for the responsible parties. ''The administration looks forward to working with Congress to develop levels for the various caps that provide for substantial and proportional increases.''

Mr. LAUTENBERG. Will the Senator yield for a question?

Ms. MURKOWSKI. If the Senator will allow me to conclude, I will be happy to yield.

I do think we need to look at the liability cap and consider raising it, but

I think we need to be careful about unintended consequences of picking a number, $10 billion.

Let me outline what I am talking about when I say ''unintended consequences.'' This has been named the Big Oil Bailout Prevention Liability Act. I think we have some irony in that what this would do is give all of America's offshore oil resources to the biggest of big oil. It would be impossible, or perhaps close to impossible, for any energy company that is smaller than the supermajors, smaller than the national oil companies, to operate in the OCS. Mr. President, $10 billion in strict liability would preclude their ability to obtain financing, to obtain the bonds or insurance for any exploration.

Look at who is producing in the offshore. It is the independents. They produce two-thirds of the natural gas, one-third of the oil. If we move forward in raising this liability cap to $10 billion, the only companies that are going to be able to self-insure against this level of strict liability are the national oil companies, the supermajors. And we all know who they are. There is the Saudi Aramco. There is Exxon. There is the Chinese National Oil Company and, of course, British Petroleum.

It has been mentioned a couple different times now that we need to ensure that BP, as the responsible party, pays. The comment has been made that $75 million is not going to be sufficient.

What people need to remember is that the cap on the strict liability only applies to what the responsible parties have to pay back in the context of OPA, the Oil Pollution Act. The law expressly—expressly—allows for unlimited damages in State courts where compensatory and punitive damages are already being sought. As we speak, there have been numerous claims filed. Back on April 28, the Louisiana shrimpers filed a class action lawsuit against BP, Transocean, Halliburton, and Cameron for their economic losses, alleging negligence and seeking both economic and punitive damages.

The State of Florida on May 10 announced it had assembled a legal team to file suit against BP. Then just 2 days after that, on May 12, the fishermen filed another such lawsuit in Mississippi, recognizing that, again, they have the ability to go after unlimited damages in those forums.

Again, I am open to raising the liability cap, but we have both a directive from the White House and the American people who, I believe, still support offshore drilling. We need to adjust these liability caps in a way that does not give the biggest oil companies a monopoly over the entire OCS.

Mr. President, I object to the unanimous consent request at this time.

The PRESIDING OFFICER. Objection is heard.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. We are now supposed to turn to the Sessions amendment.

Mr. MENENDEZ. Is that by order?

The PRESIDING OFFICER. It is by order.

Mr. MENENDEZ. Is debate on the Sessions amendment now available?

The PRESIDING OFFICER. There is 5 minutes of debate in order on the Sessions amendment, followed by a vote.

Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent—I think this has been discussed on both sides—that we have up to 30 minutes equally divided on this amendment before the vote.

The PRESIDING OFFICER. Is there objection?

Mr. MENENDEZ. Reserving the right to object, and I am not inclined to object, what is the request? Thirty minutes instead of five minutes?

The PRESIDING OFFICER. Thirty minutes equally divided.

Is there objection? Without objection, it is so ordered.

Mr. MENENDEZ. Mr. President, if the distinguished Senator from Alabama will yield for a moment, since I chose not to object, would he allow me to take 2 minutes of our time just to follow the sequence of the previous discussion so I will not interrupt the essence of his amendment?

Mr. SESSIONS. I have no objection.

Mr. MENENDEZ. I thank my distinguished colleague. I appreciate what my colleague from Alaska had to say. Here are a couple of problems with it. First of all, when we call these companies ''independent drillers,'' some of these independent drillers who are portrayed as small mom-and-pop, some of them are like $20 billion companies. So they are not quite the mom-and-pop view we have of small mom-and-pop businesses, No. 1.

If you drill, you need to be able to pay for the damages because otherwise, imagine if this particular spill had been done by a ''small company.'' Then who would be responsible just because they were too small? The risk is what has to be calculated.

Also I simply say, I have a problem saying the administration did not say $10 billion is not the right figure by any stretch of the imagination. Quite the contrary. They said they are for lifting the liability cap. When BP makes $5.6 billion in 3 months, when the top five companies make $25 billion in 3 months, $10 billion is a drop in the bucket.

Finally, the suggestion that those who are harmed—the fishermen, the commercial fishermen, the tourism companies, and others—ultimately will be in a position to make claims in State court, I know my distinguished colleague from Alaska knows what happened in the Exxon Valdez case. That took 20 years for claimants to try to get their just response. Some of them fell off the way because they just could not keep hanging in there, and they lost everything.

I do not want Americans to have to wait 20 years to get their response to what an oil company did. Lifting the liability caps takes care of that circumstance so you do not have to litigate in State courts and then go all the way to the Supreme Court and get turned down at the end of the day.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Alabama is recognized.

AMENDMENT NO. 3832

Mr. SESSIONS. Mr. President, I appreciate the efforts of those who have worked on this financial responsibility bill. I wish to say, however, that I do not believe they have reached a successful conclusion, one that is principled and lawful in describing and mandating how a company that cannot pay the bills should be dissolved.

Throughout America, hundreds of thousands of businesses every day that are unable to pay their bills seek protection, as they often call it, in bankruptcy. All the claims against the company are stayed. A bankruptcy judge, skilled in these matters, in an open, public hearing, with witnesses under oath, determines whether the company has a realistic chance to survive and help structure the bankruptcy reorganization so it can survive, or it determines that the company is unable to survive, that it is unlikely they could pay off their creditors and most likely would only add to the debt, and they close the company down.

This is and has been the law in America since virtually the founding of the Republic. It is something that is principled, well settled as to how it occurs.

This legislation is the exact opposite, in a sense, it institutionalizes the TARP process. Only now, they will not have to come to Congress, as they did this last time, over how to dissolve some big company. They will have too much power, in my view, in a sealed proceeding—not public, not under oath—too much like the last time when the Secretary of the Treasury meets in private meetings with bankers and doles out billions and billions of dollars, puts $100 billion, $80 billion in an insurance company, AIG, all without any accountability, all without any oversight, all without the kind of integrity that is the essence of the American legal system.

I am concerned about it. My amendment would make bankruptcy more usable for large, complex cases that have derivatives in it. It would allow the cases to be brought in large bankruptcy court areas so that there is sufficient expertise and personnel to handle it, and it would deal with the problem of derivatives that some have raised and gives the courts more flexibility to do that. I think it is the better approach. It is our historic, fair approach. The American people will know the same judgment that falls on them and their small businesses will fall on the big boys.

I appreciate the opportunity to make these brief remarks. I see Senator CORKER and Senator KYL are here, and I will yield.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I thank my colleague from Alabama for the work he has done in trying to craft a bankruptcy title that more fully suits financial institutions.

This body is an interesting body because you don't have the chance to do anything but vote yes or no on particular pieces of legislation. Just last week, the Republicans—all Republicans—had a filibuster while they waited for the leaders on each side of the Banking Committee to reach a compromise, and it was supported, I think, 94 or 96 to 1. That compromise was on title II, the orderly liquidation title. So here we have an amendment that basically is to strike something this body, in essence, adopted 96 to 0.

I spent a lot of time on that title myself working with MARK WARNER. I appreciate greatly the partnership we had working on a resolution title. I thank Senator SHELBY and Senator DODD for the work they did to try to improve that title, and we held out on this side until that occurred. So now we have a vote, the Sessions vote, that would strike that.

I wish to say, I am at the point in this bill where I am under no illusion that the bill is going to get any better. I know there are a lot of messaging amendments that will begin to take place, and many of us will have the opportunity, through our votes, to express how we may feel about certain aspects of this bill. When Senator WARNER and I were working on the resolution, it was with the intent that bankruptcy be the default. That would be the place where almost every financial institution would go. There may be that rare instance—that rare instance—when resolution was necessary, but it would be due to some systemic risk. It was our hope the Judiciary Committee would actually develop a title that would allow that to happen, but it did not take place.

As a matter of fact, many of the judicial reviews that Senator WARNER and I wanted to see take place in the resolution title did not occur. There is no judicial review overpayments by the FDIC or those kind of things that we would like to see as part of the rule of law in this country. Well, let me not speak for him—that I would like to see.

What has happened is, we have developed a resolution title that was to be used only very rarely because we had hoped a bankruptcy title would be developed that financial companies would go into. That hasn't happened. So what does that mean? That means it is far more likely—far more likely—the resolution title would actually be used instead of bankruptcy.

The fact is, I am under no illusion that Senator SESSIONS' amendment is going to pass. As a matter of fact, I doubt seriously the amendment is going to pass. My intent, in voting for the Sessions amendment, is not to say I disavow the work Senator SHELBY and Senator DODD did. It is not to disavow the work Senator WARNER and I spent a great deal of time working on. It is to say I do believe, as part of this bill, we should have done the work necessary to make sure there was a bankruptcy title that would work for financial institutions. That has not been done.

I wish to thank Senator SESSIONS for giving us the opportunity to voice the fact that we believe the Bankruptcy Code in this country should be made so it works far better for financial institutions. I would like for this to have been melded in a little differently than the way the Senator is putting it forth, but I wish to thank him for his work and to signify my intent to support his amendment on the basis of the fact that the bill, the way it has been crafted, should have respected judicial review more than it has been; and secondly, the fact that we should have, as part of this thoughtful process, done something in this bill to greatly expand the ability of the judicial system to deal with a large, highly complex financial company.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wish to briefly echo the sentiments of both Senators SESSIONS and CORKER. They have both given a great deal of thought to the problems here.

These are not political issues that capture the imagination of either the news media or the American people, but they are very important, and they are both working to solve a difficult problem in a very reasonable way that recognizes the importance of the rule of law.

One of the great distinguishing characteristics of the United States versus some other countries, many other countries in the world, is that we follow a rule of law. It makes commercial dealings, and therefore expansion of our economy, so much easier when everyone knows what the rules are and they can plan based upon those rules.

One of the bodies of law that is most contributory to that is our Bankruptcy Code. For over a couple centuries, we have had a process and a set of rules that governs what happens when businesses can't pay their debts and have to go out of business or be reorganized. Those rules, in effect, set the rules of the road—the things people can count on both at the time a business gets into trouble but also far before that, when people are making decisions on whether to lend to or invest in a business.

They know, for example, if they are going to be a secured creditor of a business that, in the event something goes wrong, they will be quite high on the list of businesses that get paid. If they are an unsecured creditor, they are going to be lower on that list. They will probably get more for their lending because they are unsecured, but they will be lower on the list. So people can calibrate the kind of equity investment or lending they want to engage in based upon what they know the rules will be in the event something goes wrong.

If you do away with that and just say that in the event something goes wrong, a government bureaucracy—and I don't use that word pejoratively—a group of government employees in an agency are going to decide that something needs to be done and decide what that is and it is basically unconstrained by any set of rules and practices such as the Bankruptcy Code has provided, that is scary to folks. It is going to mean we will have less lending and capital formation for businesses because they are going to be uncertain about the rules of the road. Secondly, it is going to create the potential for unfairness and, frankly, poor decisions if companies do have to get unwound.

So what we are giving up by not adopting an amendment such as the Sessions amendment is certainty, predictability, and decades of understanding of what the law is in the event something such as this occurs.

What Senator CORKER has said is also true; that these financial institutions may present some very unique circumstances, and some of them may be so large and so potentially affecting of other institutions that it may be that the relatively slow pace of bankruptcy—and I don't mean to suggest it is very slow—may mean that we need something more quickly to intervene and ensure that whatever happens with this particular business, it doesn't adversely affect others or that there may be other reasons to have a more immediate infusion of some intervention. I will put it that way.

It was for that reason that all of us supported the Dodd-Shelby compromise. Our view was, as Senator CORKER said, it is better than the underlying bill, although I don't think it satisfied at least the three of us that it went far enough in creating these rules of predictability. The Sessions amendment, as has been described, does that.

I think Senator CORKER has it exactly right; we are under no illusion this will replace the Dodd-Shelby compromise. In that respect, we have to just hope, in the further process of legislating on this bill, that compromise can be informed by additional debate and discussion and maybe improved. By supporting the bankruptcy-related amendment of Senator SESSIONS, what we are trying to do is to send the message that we compliment Senators DODD and SHELBY for what they did, but a little more dose of the predictability and certainty and judicial process of bankruptcy would be very welcomed in this process.

Therefore, to the extent that we can have a good vote on this amendment, perhaps they and others will look to other ways in which they can continue to modify this language for the very best result we can achieve. This is a very important issue. It deserves our very best attention.

I wished to compliment again both Senator SESSIONS and Senator CORKER, two of the very thoughtful Members of this body, for the way they have approached this issue, without any political consideration but simply to try to make this process better, fairer, more predictable and, therefore, better for the businesses involved and for the economy of the United States.

Mr. SESSIONS. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. One minute fifty-five seconds.

Mr. SESSIONS. Mr. President, I wish to share a few things briefly before we move into the vote. William Kristol today raised a fundamental question in a blog site regarding the way this bill is written when he said:

This is a giant power grab for the FDIC and Treasury, who could use their new powers to tug the strings of our country's largest financial institutions like a puppeteer.

I would also refer to a letter of April 12, from the Judicial Conference of the United States. This is a thoughtful letter in response to an inquiry from PATRICK LEAHY, the Judiciary Committee chairman, in which they express grave concerns about the legislation. Among other things, the Judicial Conference says:

The legislation does not envision objection, participation, or input from the bankruptcy creditors (whose rights will be affected) in the course of appointing the FDIC as receiver. Indeed, the legislation proposes to deal with this petition in a sealed manner, only the Secretary and the affected financial firm would be noticed and given the opportunity of a hearing.

I think that is insufficient.

Finally, I received a letter today from a number of superb and well-known economists, legal scholars and leaders—Darrell Duffie, Dean Witter Distinguished Professor at the Graduate School of Business, Stanford University; Tom Jackson, Distinguished University Professor, University of Rochester; Kenneth Scott, Parsons Professor Emeritus of Law and Business, Stanford Law School, George P. Shultz, Distinguished Fellow, Hoover Institution, David Skeel, Professor of Corporate Law, University of Pennsylvania and John B. Taylor, Professor of Economics, Stanford University.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I ask unanimous consent for 30 additional seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, these individuals put forth in detail their concerns about this procedure, and they point out why bankruptcy is necessary, because the rule of law applies and the process is more defined in this appropriate way. They tell us, with much care, why my amendment would be the best way to solve this problem. They say, in part, the following:

Despite the best intentions by the sponsors of Title II, our view is that it will increase rather than decrease the likelihood of financial crises . . . It might be preferable for the Congress [to] wait until the Financial Crisis Inquiry Commission completes its report . . . In the meantime, however, proposed amendment No. 3832, which has been filed by Ranking Member Sessions of the Senate Judiciary Committee, takes a bankruptcy route . . . Amending Title II along these lines would be a big step toward the bankruptcy approach we favor, and we urge you to move in this direction.

Mr. President, I ask unanimous consent to have printed in the RECORD the three items I have just quoted from.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Weekly Standard, May 13, 2010]

BAILOUT NATION V. RULE OF LAW

(By William Kristol)

Financial regulatory ''reform'' has been wending its desultory way through Congress for quite a while, and one can lose track of where things stand and what's important.

But there's a vote scheduled for the Senate floor today that matters. It will be on an amendment—offered by Sen. Sessions—that would strike the entire Orderly Liquidation Authority (OLA) from the Dodd bill. It would instead make needed adjustments to a few provisions of the U.S. Bankruptcy Code to make it more flexible to deal with the failure of large financial firms (such as Lehman). The bankruptcy code amendment is clearly a superior alternative to OLA, which scraps the Code, the primary vehicle to reorganize companies for over a century, and replaces it with a wholly untested process to seize firms that are merely in danger of default. It replaces the Code's strict adherence to the rule of law with a system governed by the FDIC, which is given incredibly broad discretion to treat creditors as it wishes. This is a giant power grab for the FDIC and Treasury, who could use their new powers to tug the strings of our country's largest financial institutions like a puppeteer.

It's increasingly clear in the age of Obama that two very different visions of the relation of the private sector to the state are competing to shape the future of this country. With respect to financial reform, this amendment, more perhaps than any other, clarifies and signifies what's at stake in this debate. Whether or not the amendment passes, if Republicans unite behind it, they will show voters the choice in 2010 and 2012—not the status quo vs. reform, but ''reform'' that would further increase the arbitrary power and scope of government vs. real reform that would safeguard the financial system in accord with limited government and the rule of law.

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC., April 12, 2010.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in response to your letter of March 25, 2010, seeking the views of the Judiciary with regard to provisions relating to bankruptcy that are contained in the financial regulation bill recently approved by the Senate Committee on Banking, Housing, and Urban Affairs. We appreciate your soliciting the views of the courts on this matter. You identified several of the issues that are of concern to the courts, and I will address each of those.

As you noted, Title II would create an ''Orderly Liquidation Authority Panel'' within the Bankruptcy Court for the District of Delaware for the limited purpose of ruling on petitions from the Secretary of the Treasury for authorization to appoint the Federal Deposit Insurance Corporation (FDIC) as the receiver for a failing financial firm. This is a substantial change to bankruptcy law because it would create a new structure within the bankruptcy courts and remove a class of cases from the jurisdiction of the Bankruptcy Code. The legislation, by assigning to the FDIC the responsibility for resolving the affairs of an insolvent firm, appears to provide a substitute for a bankruptcy proceeding. The Judicial Conference has not adopted a position with regard to the removal from bankruptcy court jurisdiction of the class of financial firms identified in this legislation.

We note, however, that the legislation will result in the transition of at least some bankruptcy cases to FDIC receivership in situations where a firm is already in bankruptcy, either voluntarily or involuntarily. Section 203(c)(4)(A) provides that a pending bankruptcy case would be evidence of a firm's financial status for purposes of triggering the Treasury Secretary's authority to seek to appoint the FDIC as receiver. The bill does not specify how the transition from a bankruptcy proceeding to an administrative proceeding would be effected. Further, the bill does not specify the effect of the transfer on prior rulings of the court. For example, would any stays or other rulings continue in effect or be dissolved upon the transfer to the FDIC? This could be especially problematic if creditors have changed position based upon rulings in the course of the bankruptcy proceeding. The legislation does not envision objection, participation, or input from the bankruptcy creditors (whose rights will be affected) in the course of appointing the FDIC as receiver. Indeed, the legislation proposes to deal with this petition in a sealed manner; only the Secretary and the affected financial firm would be noticed and given the opportunity of a hearing. The financial position of affected creditors may have been changed within the context of the firm's bankruptcy case in such a way that the creditors' rights might have changed dramatically. Any resulting due process challenges would impose a significant burden on the courts to resolve novel issues, for which the bill provides no guidance.

In addition, we note that petitions under this title involving financial firms would be filed in a single judicial district. The Judicial Conference favors distribution of cases to ensure that court facilities are reasonably accessible to litigants and other participants in the judicial process. Although we are aware that a large number of companies are incorporated in Delaware, it is not clear that Delaware would necessarily be a convenient location for many of the affected companies, nor indeed the proper venue for that petition, absent changes to title 28, United States Code.

We also note that the legislation requires the designation of more bankruptcy judges for the panel than are permanently authorized for Delaware under existing law. The District of Delaware is authorized one permanent bankruptcy judge and five temporary judgeships. If Congress were to choose not to extend these judgeships or convert them to permanent status, it would be impossible to implement section 202's requirement to appoint three judges to the Orderly Liquidation Authority Panel from the District of Delaware.

With respect to the limited review to be conducted by the panel created in section 202, we note that the authority may exceed what is constitutionally permitted to a non-Article III entity. A previous statute was held unconstitutional because it conferred on the bankruptcy courts the authority to decide matters that are reserved for Article

III courts. Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982). The review of the Secretary's decision in this instance appears to resemble more closely appeals of agency decisions under the Administrative Procedure Act than a bankruptcy petition and, therefore, appears more appropriate for an Article III court. Moreover, the affirmation of the Secretary's petition to designate the Federal Deposit Insurance Corporation as a receiver effectively removes a case from the application of bankruptcy law. Accordingly, it seems anomalous to subject this petition to review by a bankruptcy court.

Your letter particularly questioned whether the time limit of 24 hours for a decision by the panel would be sufficient or realistic. The Judicial Conference has consistently opposed the imposition of time limits for judicial decisions beyond those already set forth in the Speedy Trial Act or section 1657 of title 28. We appreciate that a matter affecting the operation of the national economy warrants a prompt resolution. We note that the courts, recognizing this concern, have already demonstrated an ability to move swiftly in resolving bankruptcy petitions involving large corporations with broad impact on the national economy. In each of these instances, the initial determinations were made by a single judge. The resulting appeals in some cases were also adjudicated on an expedited basis without a statutory requirement to do so.

Requiring a panel of three judges to assemble, conduct a hearing, and craft a written opinion within 24 hours presents practical difficulties that may be insurmountable. Although §202(b)(l)(A)(iii) could be read to limit the court's review to the question of whether the covered financial company is in default or danger of default, the Secretary is required to submit to the panel ''all relevant findings and the recommendation made pursuant to section 203(a),'' which specifies consideration of multiple factors (repeated in subsection (b) of that section as the basis for the Secretary's petition). Even with the full cooperation of the financial firm affected by the proceeding, which is not a predicate for the consideration of a petition, it would appear difficult to hear and consider the evidence and prepare a well-reasoned opinion addressing each reason supporting the decision of the panel within 24 hours. Even assuming that factors other than the solvency of the firm would be excluded from this special panel's review, it may well be that the subject financial firm or one of its creditors would seek judicial review of one of the prior administrative evaluations of the statutory factors, either in the course of the hearing conducted by the Orderly Liquidation Authority Panel or in another court. Such challenges would also make it difficult to meet the proposed timeline. It is possible that the facts of a particular case may be so clear that a decision could be rendered within 24 hours, but the statutory requirement of such speed seems inconsistent with the thoughtful deliberation that would be appropriate for a decision of such great significance.

Although it is to be hoped that only a small number of large financial firms would ever become subject to this legislation, each of the petitions would involve large volumes of evidence regarding complex financial arrangements. Thus, the legislation could result in a large proportion of the judicial resources of a single bankruptcy court being devoted exclusively to review of the Secretary's petitions. Further, the bill provides that the Secretary may re-file a petition to correct deficiencies in response to an initial decision, thus extending the time in which the court's resources would be diverted from other judicial business. The District of Delaware is one of the busiest bankruptcy courts in the nation; to draw the court's limited judicial resources away from the fair and timely adjudication of those bankruptcy cases to process petitions under this bill would be inequitable and unjust to the debtors and creditors in those pending cases. If, as seems possible given recent economic developments, the failure of one firm weakens other firms in the financial services sector, the demand could exceed the court's resources. This consideration alone counsels against the assignment of all such cases to a single court.

Finally, we note that both the Administrative Office of the United States Courts (AO) and the Government Accountability Office (GAO) are directed to conduct studies which will evaluate:

(i) the effectiveness of Chapter 7 or Chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

(ii) ways to maximize the efficiency and effectiveness of the Panel; and

(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

With respect to those firms that are to be treated under Chapters 7 and 11 of the Bankruptcy Code, the vagueness of, and/or lack of criteria for determining ''effectiveness'' will hamper the ability of the AO and GAO to produce meaningful reports. Some would regard rapid payment of even small portions of claims as an effective resolution, while others would prefer a delayed payment of a greater share of a claim. There would also be significant disagreements between creditors holding different types of secured or unsecured claims as to the most effective resolution of an insolvent firm. Some would argue that effectiveness should be measured by the impact of the resolution on the larger economy, regardless of the impact on the creditors of the particular firm. Without clearer guidance for the studies, both agencies will be required repeatedly to expend resources on the development of reports that may not provide the information Congress is seeking.

Thank you for seeking the views of the Judiciary regarding this legislation and for your consideration of them. If we may be of assistance to you in this or any other matter, please do not hesitate to contact our Office of Legislative Affairs.

Sincerely,

JAMES C. DUFF,
Secretary.

HOOVER INSTITUTION,
STANFORD UNIVERSITY,
Stanford, CA, May 13, 2010.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.
Hon. CHRISTOPHER DODD,
Chairman, Senate Committee Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.
Hon. RICHARD SHELBY,
Ranking Member, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN DODD, RANKING MEMBER SHELBY: We are writing to you regarding Title II ''Orderly Liquidation Authority'' of the ''Restoring American Financial Stability Act of 2010.'' Despite the best of intentions by the sponsors of Title II, our view is that it will increase rather than decrease the likelihood of financial crises. Our view is based on experiences during the financial crisis, especially the events surrounding the disruptive failures of such firms as Bear Stearns, Lehman, and AIG. In order to avoid such harmful disruptions in the future, any failure of a large and complex financial firm must be made more orderly and predictable so that market participants can anticipate the process and adjust their positions more smoothly and gradually without chaotic spillover effects to the financial system and the economy.

However, in our view the new discretionary powers given to government officials and agencies under Title II will not result in a more orderly and predictable process. Indeed, it is likely to have the opposite effect. The legislation would give authority to officials at the Federal Deposit Insurance Corporation (FDIC) to take over and dismantle any large complex financial services business which appears to be failing. We doubt the ability of the FDIC to dismantle such complex financial institutions in a smooth and orderly way. There would be great uncertainty about who will lose and who will gain. The decisions will be made by government officials without knowledge of the circumstances underlying different claims, rather than by the rule of law. The unpredictability of the discretionary process would increase the likelihood of runs: whenever there is rumor of a government official or agency thinking of a takeover, creditors will take their money and run. There are also technical problems with Title II which would cause financial instability. For example, the nature of the delay in applying the exemption from the automatic stay for qualified financial products will lead to more runs.

Fortunately a more orderly and predictable approach is available. All that is required is an adjustment to the bankruptcy law to make it apply to nonbank financial firms in a clear way which the firms, their counterparties, and their creditors can understand and count on. With these changes, bankruptcy would be the mechanism to deal with financial institutions, and thus provisions for a government agency resolution process to override bankruptcy could be eliminated. If these changes had been in effect at the time of the Lehman bankruptcy, it would have been far smoother and less disruptive than what happened in September 2008.

The main advantage of bankruptcy is that the rule of law applies and the process is thus much more defined. The mere existence of an orderly Chapter 11 process will greatly reduce the likelihood of bailouts. There are alternative ways to change the bankruptcy law to make it apply to nonbank financial firms. Some of us and others have proposed such changes and work is continuing. For example, one change could involve creating a team of experts knowledgeable about the bankruptcy law and about financial markets and institutions, which would be ready to go in a financial emergency. Another change is to allow regulators to initiate a petition as prescribed by the law. The government could also file a reorganization plan with the bankruptcy court. The new law could also give a right of relief from the automatic stay upon petition by a counterparty seeking to sell collateral in the possession of the debtor to the extent the collateral consists of highly-marketable securities or other cash-like collateral.

To be sure the issues are complex and amending legislation on the Senate floor rather than in committee or conference is difficult. It might be preferable for the Congress to wait until the Financial Crisis Inquiry Commission completes its report, which will provide additional information and a better understanding of the issues which bear on this legislation. In the meantime, however, proposed amendment No.

3832, which has been filed by Ranking Member Sessions of the Senate Judiciary Committee, takes a bankruptcy route. The amendment is called ''The Bankruptcy Integrity and Accountability Act'' and would replace the currently proposed Title II. Amending Title II along these lines would be a big step toward the bankruptcy approach we favor, and we urge you to move in this direction. We would be happy to provide more details about these issues to you or your staffs.

In sum we urge you to replace Title II, reinstate the rule of law, reduce the likelihood of future financial crises, and prevent bailouts by instituting an orderly and predictable bankruptcy regime for large nonbank financial firms.

Sincerely,

DARRELL DUFFIE,
Dean Witter Distinguished Professor at the Graduate School of Business, Stanford University.
TOM H. JACKSON,
Distinguished University Professor at the University of Rochester.
KENNETH SCOTT,
Parsons Professor Emeritus of Law and Business at the Stanford Law School.
GEORGE P. SHULTZ,
Distinguished Fellow at the Hoover Institution.
DAVID ARTHUR SKEEL,
Professor of Corporate Law, University of Pennsylvania.
JOHN B. TAYLOR,
Professor of Economics, Stanford University.

Mr. SESSIONS. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. Twelve minutes fifty seconds.

Mr. DODD. I will not use all of 12 minutes. I will take a few minutes.

I spoke last evening about my friend's amendment, and it wasn't to a packed Chamber, I can tell you, at 8 o'clock last night. But I am sure the Senators all received copies of it or listened to it intently as you were dozing off last evening.

Let me, first of all, thank JEFF SESSIONS. He is a good pal and friend, and we have worked together on a number of issues. Senator CORKER, who is on the floor as well, in many ways—both BOB CORKER and MARK WARNER of Virginia—is as much the coauthor of the very section we are talking about as anyone in this Chamber. He spent a lot of hours trying to put this together.

But here is the quandary with the Sessions amendment. One of the things we have tried to avoid is, of course, getting back to too big to fail. The presumption of our bill is bankruptcy. Clearly, we want to get people into bankruptcy, if they deserve to be there. If they deserve to fail, they should fail. The problem is, when you end up pushing some large, highly complex entity into bankruptcy, it can have the unintended collateral damage effect of affecting otherwise solvent, good companies that are well managed, well run, and who employ a lot of people and are doing a good job. When these highly complex entities are shoved into bankruptcy, there can be collateral damage and other companies can suffer.

I am shorthanding this, in a way. So the idea was, on some rare occasions, and hopefully they are very rare, when that possibility occurs and you have to go through a number of hoops to get to that conclusion, that we would have a mechanism for a resolution, a winding down of that entity, to avoid the kind of collateral damage that could cause if bankruptcy were the only option for those complex entities.

What you are faced with, if the Sessions amendment is adopted, is right back where we were in the fall of 2008 where the choices are bankruptcy or bailout, in a sense, where bankruptcy would pose, as Lehman Brothers potentially did, as we saw, a lot of collateral damage because there was not a winddown resolution mechanism. Whether it should have been used in that particular fact situation, I don't want to try to make that case. That is not my point, not making my case. But let's say it is a Lehman Brothers-like situation where we would all agree that company ought to be put out of its misery, but to go through traditional bankruptcy would have the collateral effect of taking a lot of other people with it in the process who do not deserve to go down, not to mention the jobs and the impact on the economy.

Senator CORKER, Senator WARNER, and others obviously working with it, came up with this. They listened to a lot of people. Again, no one ever knows if you have this exactly right. We talked about all the things. We had exactly right what we want to do. We know what we want the outcome to be. Whether we did it right so it will work exactly as we planned we will never know until the first case pops up and determines whether what we put in place achieves its goal. But in the absence of that, we are right back where we were.

If someone said to me: What is the most critical part of this bill—that is a hard thing to ask someone who has been involved in a lot of it, but if you said: We are only going to let you keep one section of this bill; you are going to have to get rid of everything else; which section would you keep, Senator, this is what I would keep because this is what exposed the American taxpayer to that $700 billion check they had to write because we didn't have an alternative in place to deal with moments like that. Hopefully, they rarely come.

There were a lot of events that led up to it that we tried to deal with in this bill as well, including the underwriting standards and all sorts of things to minimize ever getting to that point where you have to make that decision. But we have all been around long enough to know they can happen, and when they happen again, what will be our answer? We had an option out there, but we got rid of it.

America, you have to make a choice. A lot of other people are going to suffer unnecessarily, but bankruptcy is the only choice to go. We would look back and say: Why didn't we put in place some alternative mechanism in those most rare occasions where some alternative other than bankruptcy should be in place?

That is the shorthand version of a lot of conversation, a lot of talk over a lot of months to this point.

Senator LEAHY, the chairman of the Judiciary Committee, opposes the amendment. Other members of the committee may agree with Senator SESSIONS. I don't want to suggest this is necessarily broad dissent, one side or the other. But this is as critical as it gets on this bill.

I say to my colleagues, there are a lot of amendments being offered, and frankly I might be against them or for them. If they are excluded or included, I might be disappointed one way or the other. If we get rid of this, I don't know how in good conscience you can walk out of the Chamber and look the American taxpayer in the eye and say again: We have now protected you against too big to fail.

For those reasons, I urge the rejection of the Sessions amendment, and I say that respectfully of a good friend.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. DODD. I have to ask for the yeas and nays under the order, don't I?

Mr. CORKER. Will the Senator yield for a couple of minutes over here? I know we are under time anyway.

Mr. DODD. I will be glad to yield. Instead of yielding my time, let me yield 2 minutes to my friend from Tennessee.

Mr. CORKER. I thank the Senator. I know I spent a great deal of time on the floor.

I thank the Senator from Connecticut. First, I thank him for the work he did to make the resolution title better. I know that after he and Senator SHELBY finished, I came down and thanked him but expressed concerns about the fact that many of the judicial reviews that I believed were important were not included. Yet the bill was better, and I thank the Senator for that.

I realize that in this body, as I said that day on the floor, nothing ever works out exactly as you wish. This bill is not going to be exactly the way the Senator would wish.

We are going to pass a bill that, to me, is incomplete. One of the things I think all of us, including the Senator from Connecticut, had hoped would occur is that the Judiciary Committee would actually work on a title that

would make the resolution title much less necessary because it would enhance the ability to deal with these complex financial companies. That has not happened. I know we have not dealt with Freddie and Fannie in this bill. I know you would have liked to have dealt with that. I hope you would have liked to. We are not going to deal with it.

You are going to be leaving this body after a distinguished career here. But I think what we are trying to say is that, look, we still have work to do. The Judiciary Committee has to develop a better bankruptcy title for financial companies, and I think all scholars have said that is the case. There is no question that we have to deal with Fannie and Freddie. We will do that soon, I hope.

I know the outcome of this, and the Senator knows what the outcome of this is going to be. I think there are numbers of us who would just like to see us really focus on this bankruptcy title to do—what you just said is exactly right, and that is that resolution is only used rarely. But right now, the way the Bankruptcy Code is, it is going to be used in every case one of these large companies fails because we haven't done the work we need to do to make the Bankruptcy Code work.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DODD. I will take 30 more seconds.

Here is the concern. With smaller entities, I can see the case where they should go to bankruptcy, and that may happen. We are talking about very complex, interconnected ones.

My colleague is correct, by the way. I should have made note of this. We did try. And, again, it is not the fault of the Judiciary Committee. They have been overwhelmed with judicial nominations and everything else.

The present bankruptcy process does pose an issue with large, complex entities for the very reason I outlined, and therefore you need some mechanism because then the alternative is bailout, I presume, rather than having a lot of innocent companies fail, with a lot of unemployment occurring and damage to the economy. There is a step that will have to be worked on.

I don't disagree on GSEs. I care deeply about that, and it is an area that needs to be reformed. But at this juncture, to strip this out is to throw us right back. My concern is not what else needs to be done down the road, but if you strip this out at this juncture, we leave ourselves very vulnerable.

With the Shelby-Dodd amendment that passed 93 to 5, I think it was—we tried to fill in a lot of gaps people have. We got rid of that prepayment issue that people had a lot concerns about, and it is a postpayment system. All of the issues we tried to resolve.

I appreciate the comments of my colleague from Tennessee.

With that, I yield back the remainder of my time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 148 Leg.]

YEAS—42

Alexander	Crapo	LeMieux
Barrasso	DeMint	Lugar
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brown (MA)	Feingold	Murkowski
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Inhofe	Thune
Collins	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker

NAYS—58

Akaka	Gillibrand	Nelson (NE)
Baucus	Hagan	Nelson (FL)
Bayh	Harkin	Pryor
Begich	Inouye	Reed
Bennet	Johnson	Reid
Bingaman	Kaufman	Rockefeller
Boxer	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Burris	Kohl	Shaheen
Byrd	Landrieu	Specter
Cantwell	Lautenberg	Stabenow
Cardin	Leahy	Tester
Carper	Levin	Udall (CO)
Casey	Lieberman	Udall (NM)
Conrad	Lincoln	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murray	

The amendment (No. 3832) was rejected.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Washington.

Mrs. MURRAY. I ask unanimous consent for 8 minutes equally divided between myself and Senator CANTWELL in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL POLICE WEEK

Mrs. MURRAY. Mr. President, I come to the floor today to commemorate and celebrate the lives of seven police officers from my home State of Washington who lost their lives in service to their communities last year.

I am proud to join today with Senator CANTWELL during National Police Week to introduce the Washington State Law Enforcement Memorial resolution to extend the condolences of the Senate to the families, loved ones, and communities of our State's fallen heroes.

This week tens of thousands of people from across the country are going to be gathering at the National Law Enforcement Officers Memorial in Washington, DC—friends and families of fallen officers, ordinary citizens, elected officials, and fellow police officers. They will be joining together in the heart of our city in a tree-lined park splashed with daffodils and lined with two curving blue-gray marble walls. On those walls—the ''Pathways of Remembrance''—are engraved the names of Federal, State, and local law enforcement officers who have made the ultimate sacrifice for the safety and protection of our Nation and its people—18,600 of them, dating back to the 18th century.

Among those crowds at that memorial this week will be men and women from the State of Washington who have flown all the way across the country to be here as seven new names are unveiled and carved into the marble and preserved for our Nation to honor.

The seven officers from Washington State who lost their lives last year in the line of duty are: Deputy Sheriff Stephen Michael Gallagher, Jr. of the Lewis County Sheriff's office; Officer Timothy Brenton of the Seattle Police Department; Officer Tina Griswold of the Lakewood Police Department; Officer Ronald Wilbur Owens II of the Lakewood Police Department; Sergeant Mark Joseph Renninger of the Lakewood Police Department; Officer Gregory James Richards of the Lakewood Police Department; and Deputy Sheriff Walter Kent Mundell, Jr. of the Pierce County Sheriff's Department.

These seven remarkable and selfless officers represented the best of their communities. They were seven heroes who served proudly as a brave boundary between civil society and the worst elements of lawlessness and unrest; seven husbands, wives, fathers, and mothers whose losses have devastated families and torn apart communities and whose deaths have weighed heavily on every member of our State's law enforcement community. Each of these tragedies sheds new light on the enormity of the sacrifice police officers make every day in Washington State and across the country. I know our officers feel this weight, but I have no doubt they will never let it stop them from continuing to put themselves in harm's way in order to serve our communities. That is a testament to the commitment they make to serve and protect us. It is an oath they honor each day, and it is a reminder to all of us that these brave men and women deserve every ounce of support we can provide to keep them safe.

It is with great pride that I introduce the Washington State Law Enforcement Memorial resolution to commemorate and celebrate the lives of those seven officers. My thoughts and prayers continue to be with their families, and I join their communities, Washington State, and the entire Nation in gratitude for their service.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank my colleague for her leadership in having this resolution on the floor today. She is always focused on those who are on the front line of defense in our country and, clearly, in Washington State. I appreciate her leadership in honoring the fallen officers from Washington State.

This week does mark National Police Week where officers from across the

Nation will travel here to honor fallen comrades. Because we in Washington State have done so much of this lately, we understand how important this type of activity is for remembering the men and women who serve us. During this week, we reflect on the brave men and women who have made the ultimate sacrifice to our community.

Mr. President, 2009 was one of the deadliest years in Washington State in more than 70 years. Seven officers were killed in the line of duty. These heroes put their lives at risk for our safety. They will be missed, but they will not be forgotten. The men and women in blue keep our communities safe, and they do so at tremendous sacrifices.

Deputy Mike Gallagher from Lewis County Sheriff's Office was killed after his car was struck on his way back from responding to a domestic violence incident. Timothy Brenton from Seattle was shot while sitting in his car on Halloween in Seattle. We thought those two incidents were enough to rock our community. But then, in one of the most heinous murders in the State of Washington history, four Lakewood police officers were shot and killed while on duty in Parkland: Sergeant Mark Renninger, Officer Ronald Owens, Officer Tina Griswold, and Officer Greg Richards. It was a short time later that Deputy Kent Mundell, Jr. of the Pierce County Sheriff's office died from wounds sustained in responding to a domestic violence call.

We have seen in Washington State the sacrifice of these men and women, all they do to keep us safe and all that their families go through when those who are in the line of duty pay the ultimate sacrifice.

I hope my colleagues will remember law enforcement across the country and in their individual States. I hope they will take time, as they see officers here in the Capitol and throughout the Washington, DC area, to thank them for their service. Let's commemorate the activities of those who have fallen and also remember those who are still working to protect us every single day.

I thank my colleague from Washington for this resolution, and I hope for its urgent passage today.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. BURRIS. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CELEBRATING THE LIFE OF LENA HORNE

Mr. BURRIS. Mr. President, in 1933, a 16-year-old girl named Lena Horne joined the chorus at a famous nightclub in Harlem known as the Cotton Club.

This young woman was passionate about performing so she jumped in with both feet.

And she never looked back.

The following year, Lena Horne made her debut on Broadway. And not long after, she became the first African American performer to sign a long-term contract with a big Hollywood studio, MGM.

She blazed a trail. She knew that her talent could outshine the ugliness of racial prejudice so, in the 1940s, she became a major movie star.

But despite her success, Lena Horne never forgot her roots or the plight of those who were subjected to hatred and bigotry on a daily basis.

She knew that she was a role model and an authority figure—and she used her fame as a platform to raise these issues, and to fight against intolerance.

She partnered with First Lady Eleanor Roosevelt to pass anti-lynching legislation. After the Second World War, she worked with Japanese Americans who had suffered internment and discrimination.

And all the while, her star was on the rise.

In 1957, she recorded ''Lena Horne at the Waldorf-Astoria'' a record that would become the best-selling album by a female singer in the history of RCA.

During the civil rights movement, she stood with leaders like Dr. King at the famous march on Washington.

She spoke out for racial equality, and became involved with the NAACP and other groups.

And she never stopped doing what she loved: performing.

In 1981, she returned to Broadway in a one-woman show, which won a Tony Award, two Grammies, and endless critical acclaim.

And she kept creating original material well into the next decade.

Mr. President, Lena Horne departed this life only a few days ago on May 9 at the age of 92.

As a performer, her legacy is unsurpassed.

She rose to become one of the most successful entertainers of the last century, and blazed a trail for countless other minority performers to follow.

Her personal legacy is no less remarkable. She consistently lived out her values, and did not shy away from opportunities to stand up for what she believed in.

She embraced every chance to make a positive difference in the lives of others and that, more than anything, is what she will be remembered for.

Lena Horne left an indelible mark on this Nation. And that is why I am proud to join Senator GILLIBRAND in sponsoring a resolution in her honor.

I ask my colleagues to stand with us in celebrating the life of this remarkable woman—a trailblazer who achieved great success in the face of tall odds, and then used that success to better the lives of others.

Lena Horne is gone.

But in her classic recordings—in the lives she touched, the movies she made, and the change she helped to bring about she will always be with us.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BURRIS. Mr. President, in recent days, since the Chamber opened debate on Chairman DODD's financial reform bill, we have all heard a lot of talk about the irresponsible behavior on Wall Street. We have heard about the recklessness that cost this country trillions of dollars in lost savings, not to mention 8 million American jobs. We have heard about the consumers, especially minority populations and the elderly, who have suffered a great deal as a result of this economic crisis.

I thank my colleagues on both sides of the aisle for joining in the debate about how to address these issues, and I am confident we can reach and find common ground.

Just yesterday, I came to the floor to voice my strong support for the Consumer Financial Protection Bureau that would be created under Chairman DODD's bill. I believe this bureau should be at the heart of any reform legislation—to end abusive practices, serve as an advocate for ordinary Americans, and make sure everybody can get a fair deal. It would even help to prevent a similar financial crisis from taking place in the future.

But we need to make sure our bill is about more than prevention. We need to be proactive about finding solutions for millions of Americans—especially minority individuals—who are hurting right now. We need to start by expanding access to credit.

Under the Dodd bill, the Secretary of the Treasury will be authorized to establish a multiyear program of cooperative agreements, financial agency agreements, and grants—all designed to make credit more available to low- and middle-income Americans. For the first time in years, our legislation would give ordinary consumers access to mainstream financial institutions and provide alternatives to those payday loan operations. It would help defray the costs of programs that make small loans so folks could find it easier to get the resources they need without incurring unnecessary risks.

Our Consumer Financial Protection Bureau would also play a significant role in making credit more available. Currently, 16 percent of minority households do not have bank accounts, compared with only 4 percent of White households. As a result, African Americans and other minorities are more likely to use payday lending services, some of which are questionable practices, to take advantage of their customers.

That is why our Consumer Financial Protection Bureau would have the authority to supervise large, nonbank financial companies to cut down on abusive tactics. It would also help enforce fair credit card laws, rein in automatic overdraft programs, and clarify the complex web of rate charges.

In short, this legislation would reduce or eliminate many of the factors that keep people away from banks. It would help raise financial literacy and establish reasonable terms and conditions for loans. At its core, it would significantly expand access to credit—especially among those who continue to feel the worst effects of this economic crisis.

That is why I am proud to support the Wall Street reform bill that has been introduced by my good friend, the distinguished Senator from Connecticut, Chairman DODD. I urge my colleagues to join me in passing this important legislation.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS NOS. 4019 AND 3987 TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may call up Senator WYDEN's amendment No. 4019 and Senator THUNE's amendment No. 3987.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant bill clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. WYDEN, for himself, Mr. GRASSLEY, Mr. INHOFE, Mr. BENNETT, Ms. COLLINS, Mr. UDALL of Colorado, Mr. BROWN of Ohio, and Mr. MERKLEY, proposes an amendment numbered 4019 to amendment No. 3739.

The amendment is as follows:

(Purpose: To establish as a standing order of the Senate that a Senator publicly disclose a notice of intent to objecting to any measure or matter)

At the end of the amendment, insert the following:

SEC. ___. ELIMINATING SECRET SENATE HOLDS.

(a) IN GENERAL.—

(1) COVERED REQUEST.—This standing order shall apply to a notice of intent to object to the following covered requests:

(A) A unanimous consent request to proceed to a bill, resolution, joint resolution, concurrent resolution, conference report, or amendment between the Houses.

(B) A unanimous consent request to pass a bill or joint resolution or adopt a resolution, concurrent resolution, conference report, or the disposition of an amendment between the Houses.

(C) A unanimous consent request for disposition of a nomination.

(2) RECOGNITION OF NOTICE OF INTENT.—The majority and minority leaders of the Senate or their designees shall recognize a notice of intent to object to a covered request of a Senator who is a member of their caucus if the Senator—

(A) submits the notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name; and

(B) not later than 2 session days after submitting the notice of intent to object to the appropriate leader, submits a copy of the notice of intent to object to the Congressional Record and to the Legislative Clerk for inclusion in the applicable calendar section described in subsection (b).

(3) FORM OF NOTICE.—To be recognized by the appropriate leader a Senator shall submit the following notice of intent to object:

''I, Senator _____, intend to object to _____, dated _____. I will submit a copy of this notice to the Legislative Clerk and the Congressional Record within 2 session days and I give my permission to the objecting Senator to object in my name.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date that the notice of intent to object is submitted.

(b) CALENDAR.—Upon receiving the submission under subsection (a)(2)(B), the Legislative Clerk shall add the information from the notice of intent to object to the applicable Calendar section entitled ''Notices of Intent to Object to Proceeding'' created by Public Law 110–81. Each section shall include the name of each Senator filing a notice under subsection (a)(2)(B), the measure or matter covered by the calendar to which the notice of intent to object relates, and the date the notice of intent to object was filed.

(c) REMOVAL.—A Senator may have a notice of intent to object relating to that Senator removed from a calendar to which it was added under subsection (b) by submitting for inclusion in the Congressional Record the following notice:

''I, Senator _____, do not object to _____, dated _____.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date of the submission to the Congressional Record under this subsection.

(d) OBJECTING ON BEHALF OF A MEMBER.—If a Senator who has notified his or her leader of an intent to object to a covered request fails to submit a notice of intent to object under subsection (a)(2)(B) within 2 session days following an objection to a covered request by the leader or his or her designee on that Senator's behalf, the Legislative Clerk shall list the Senator who made the objection to the covered request in the applicable ''Notice of Intent to Object to Proceeding'' calendar section.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. THUNE, proposes an amendment numbered 3987 to amendment No. 3739.

The amendment is as follows:

(Purpose: To provide for increased Congressional oversight through a sunset of the authority created under title X related to the creation of the Bureau of Consumer Financial Protection)

On page 1208, between lines 12 and 13, insert the following:

(f) EXPIRATION.—Notwithstanding any other provision of this Act, the Bureau, and the authority of the Bureau under this title, shall terminate 4 years after the date of enactment of this Act, unless extended by an Act of Congress.

Mr. DODD. Mr. President, I ask the senior Senator from Oregon, does he want to be heard on his amendment?

Mr. WYDEN. Yes.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 4019

Mr. WYDEN. Mr. President, thank you very much.

Let me particularly express my appreciation to the chairman of the full committee, Senator DODD. He has been extraordinarily patient, and especially with the large bipartisan coalition that has come together behind this amendment to ensure that finally the secret hold in the Senate—one of the most powerful tools a Senator has in the Senate—is no longer.

I say to the Presiding Officer, you have done very good work on this issue, along with a number of colleagues on both sides of the aisle. The reason we feel so strongly is because the secret hold in the Senate is an indefensible violation of the public's right to know.

We all understand every time we are home in our States how frustrated people are with the way business is done in Washington, DC. One way to send a message we are going to start doing business differently is to throw open the doors of government and to make sure nominations and legislation that is important gets debated in public, and people actually get to see the give-and-take of colleagues on both sides of the aisle—Democrats and Republicans—that is essential to making good policy.

Most Americans have no idea what a secret hold is, and I have said on many occasions that my guess is a lot of them think this is some kind of hair spray or something. But the fact is, this is an extraordinary tool that Senators have to effect the lives of our people, and it ought to be something that is exposed to public scrutiny and public accountability.

When asked why he robbed banks, Willie Sutton said: That is where the money is. In the Senate, secret holds are where the power is.

What our bipartisan group has said is, it is wrong for a Senator to block a piece of legislation or a nomination in secret by simply telling the leader of their party of their desire. What this has meant—and there have been scores and scores of these secret holds in recent years—is that one person, without any public disclosure whatsoever, can keep the American people from even getting a small peek at what is public business. That is not right, and it is time to eliminate secret holds.

In 2007, Senators on both sides of the aisle sought to finally bring some sunlight to this practice. Senator GRASSLEY, the distinguished Senator from Iowa, and I have worked on this for over a decade. Unfortunately, a number of loopholes have been developed since that provision was accepted, and today too much Senate business is done in the dark, unaccountable, and away from public scrutiny and public exposure.

This amendment closes the loopholes, and it is going to be enforced.

With this approach, every hold—every single hold—is going to have a public owner within 2 days.

I want to close by just briefly describing how this would work. Under this proposal, if a Senator puts a hold on a bill or a nomination, they are required to submit a written notice in the CONGRESSIONAL RECORD within 2 days. When that bill or nomination comes to the floor, and any Senator objects to its consideration on the grounds of a hold, one of two things is going to happen: either the Senator placing the secret hold is going to have their name publicly released, or the Senator who objected on their behalf is going to own that hold. That Senator will own it. Their name is going to be published in the congressional calendar.

So for the first time—after all of these months and months of debate about secret holds in the Senate—there is going to be public pressure and peer pressure on those who try to do Senate business behind closed doors.

Two last points with respect to reforms included in this amendment: The proposal eliminates the ability that a Senator now has to lift a hold before the current 6-day period expires and never have it disclosed.

The Presiding Officer and I have talked a bit about this matter of revolving holds in a 6-day period. This has been a huge abuse. It has allowed a Senator to do business in secret and never have it recorded. With this new bipartisan proposal, if a Senator places a hold, even for a day, even for a minute, the hold is going to be disclosed.

Finally, the proposal makes it harder for a group of Senators to replace revolving holds on a nomination or bill. With the 6-day time period, a group of Senators can pass a hold from one colleague to another and never have it discussed. By requiring all holds to be made public, it will be much more difficult to find new Senators to place revolving holds.

The last point: It seems to me, in addition to taking a step the country feels very strongly about, which is doing more public business in public, this is being done in a bipartisan way. This is being done in a way that can bring Democrats and Republicans together, in a way that doesn't involve a lot of fingerpointing. I wish to mention a number of colleagues: the Presiding Officer, the distinguished Senator from Virginia, has been very constructive and has had many conversations with me about this; Senator INHOFE, Senator COLLINS, and Senator GRASSLEY. Senator INHOFE has been talking about this issue with me and others for almost a decade as well. Senator BENNET, Senator MERKLEY, Senator WHITEHOUSE, all of these Senators, a large, bipartisan group come together to urge the passage of this amendment. I want to single out too, though, for particular commendation, Mrs. MCCASKILL, the Senator from Missouri, because we wouldn't be on this floor today had not the Senator from Missouri prosecuted this cause relentlessly. She has brought to light the number of holds. When we have talked about it, she has made the point that this has gone on on both sides of the aisle. She deserves great credit for this reform being made today.

Let me also thank Senator COBURN—Dr. COBURN—of Oklahoma. He has been very involved in reform issues for many years. We are looking forward to an additional reform he is going to be advancing that I look forward to sponsoring.

I wrap up only by way of trying to highlight that after the Senate has spent a lot of time discussing secret holds over the last few months, on a bipartisan basis, the Senate comes together today with an approach that has actually brought Senators together and is going to ensure that every single secret hold is going to have an owner. That is going to be a big change. It is high time. The public deserves to have public business actually done in public, and with the adoption of this amendment, that will be done.

The chairman of the full committee has been very gracious to me. I wish to ask for the yeas and nays at this time, and I wish to engage the chairman of the full committee in a colloquy. The chairman has been very helpful with respect to scheduling this.

Is it the pleasure of the chairman of the committee that now, having debated this, we set it aside for a vote later in the day?

Mr. DODD. My pleasure is we have the vote on the Wyden-Grassley amendment. So whenever that can occur, I am for it. We can do it right now. I am for it now.

Mr. WYDEN. I am ready to go to the yeas and nays.

Mr. President, I ask for the yeas and nays.

Mr. President, I withdraw that request. I thank the chairman of the committee.

Mr. DODD. It is not my sole decision, of course.

Mr. WYDEN. The chairman of the full committee has been very patient with us. He has done an extraordinary amount of work. Let us, with that request, hold off on the yeas and nays, and I ask the chairman that it be scheduled with the next group of votes.

Mr. DODD. I can say to my colleague from Oregon that I expect momentarily we will work out some time agreements and we will schedule a vote fairly quickly.

Mr. WYDEN. I thank the chairman.

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 3987

Mr. THUNE. Mr. President, I understand amendment No. 3987 has been called up by the manager of the bill, and I think it has been made pending, so I wish to speak to it. I hope at the appropriate time we will be able to get an agreement for a vote on it, and I will ask for the yeas and nays following my remarks.

This amendment is a very simple, straightforward one. It is one paragraph long. It is not complicated. What it essentially does is it sets a sunset date for the newly created bureau of consumer protection, allowing Congress to reevaluate the bureau after 4 years.

I think most Americans, if they knew we were creating a big new bureaucracy here in Washington, DC, would want us to have some oversight. They would want some accountability. They would want to make sure their tax dollars are being spent wisely and well.

This new consumer protection bureau will have lots of new Federal employees here in Washington, DC. It will spend hundreds of millions of dollars every single year. Yet Congress has literally no oversight or authority with regard to this new bureau.

It seems to me, at least, that when we have a fiscal situation as we have today in this country where we are running trillion dollar deficits literally every year, where our debts are continuing to pile up to the tune of doubling our Federal debt, publicly held debt in 5 years, tripling it in 10 years, we would want to do something to make sure that any new expenditure of taxpayer dollars is spent efficiently, effectively, and that we are being as frugal as we possibly can.

I, for one, would not like to see us go down this path. I don't think creating a huge new bureaucracy here in Washington, DC, is necessary. I think we can address the issue of consumer protection through existing agencies and authorities. Frankly, I wish to see this particular title in this legislation go away entirely, but it doesn't look as though that is going to happen. We offered an amendment earlier this week that would have been a substitute for this consumer protection title in the bill and addressed it in what we think is a more reasonable way, but that was voted down.

My amendment simply says that 4 years from now, once this bureau has been created, let's have it sunset, and then, if necessary, Congress can come back and reauthorize it. Congress then would have an opportunity to fine-tune it, perhaps. Congress would have an opportunity to look and see if it is performing the function it was intended to perform; whether it is doing it in an efficient and cost-effective way. Clearly, we have a responsibility to the American taxpayer to have some accountability with this new bureaucracy we are going to create as a result of this legislation.

It is straightforward. We have other agencies of government that we do this with—that we sunset, that we reauthorize. We just did that with the CFTC, which is an agency that was reauthorized during the farm bill last year. When we did that, we were able to fine-tune its mission. It also gives

the opportunity to reorganize an agency, if it has to go through a reauthorization process and a sunset process. I don't think it is asking too much, when we are talking about literally hundreds of millions of dollars annually and what would appear to be thousands of new Federal employees in this new agency, and what would also appear to be incredibly broad and vast new powers and authorities that will be unchecked because there isn't any accountability to the Congress—Congress is not going to appropriate annually as we do with most agencies the power of the purse. This is all going to be run through the Federal Reserve. Yet it is taxpayer dollars that are at risk here. It is taxpayer dollars that are being used to finance this new bureaucracy.

I hope my colleagues will be able to find their way to support this amendment. I think it is a reasonable approach. Again, I don't think it is asking too much. The American taxpayers are paying the bills every year for this government and are having to deal with the burden of debt we are piling on them because of the spending going on in Washington. Of course, if you look at what we are spending this year and what we spent last year in the Federal Government, much of it was borrowed. Out of all the spending last year, about 43 cents out of every dollar was borrowed. This year it is about 39 cents out of every dollar. When we are running those kinds of deficits and piling up that kind of debt with this kind of spending going on in Washington and the fiscal problems we have as a Nation, it makes perfect sense to me. I think it makes perfect sense to the American taxpayer. If we are going to create a huge new bureaucracy—which I said I don't believe is necessary, but, nonetheless, if it is going to happen in this legislation—let's take a look at this again 4 years from now. Let's allow it to sunset and allow us to go through a process where we reauthorize, reevaluate and review and see if it is functioning the way it is intended, and whether these authorities and powers created by this new bureaucracy is what the American people want to see happen.

One final point I will make. There are lots of entities out there other than banks that are worried about this particular title of the bill because of the rulemaking authority that exists. We have auto dealers, jewelry businesses, furniture stores, orthodontists, and lots of small businesses that are concerned they are going to be covered by the reach of this new agency with these broad new authorities with very little accountability and oversight by the Congress. That is a concern to a lot of small businesses to whom we look to create the jobs and, hopefully, initiate an economic recovery in this country and get the economy growing and back on track. This, in fact, could put lots of new burdens, lots of new bandaid, lots of new costs on many of these small businesses. That is yet another reason why I believe this is a bad idea in the first place, but at a minimum we ought to allow it to sunset so we have an opportunity to review it and reevaluate it and make some decisions with regard to its future 4 years from now.

It is very straightforward. It is one paragraph long. Sunset the Bureau of Consumer Financial Protection and allow Congress to reevaluate that bureau after 4 years.

I hope my colleagues will support this amendment. I ask for the yeas and nays and would hope at the appropriate time to be able to have a recorded vote.

I yield the floor.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The Senator from Illinois.

AMENDMENT NO. 3989 TO AMENDMENT NO. 3739

Mr. DURBIN. Mr. President, I am hoping that later this afternoon there will be a unanimous consent request that relates to an amendment I have introduced, amendment No. 3989, and I wish to take a few minutes now since there is no one else seeking recognition on the floor to describe this amendment in the hopes that when it comes up later, we can move to it and to a vote very quickly.

I have spoken on the floor of the Senate several times about the amendment because it is complicated in one respect. This amendment relates to the fees charged by credit card companies such as Visa and MasterCard to the retailers and businesses that accept the credit cards. So if you are a customer of a shop and you purchase something, you present a credit card. There are then two transactions taking place, at least. One transaction is between you and your credit card company, because you put the credit card out there and you have to pay the bill later on. The other transaction relates to the business, the shop that accepts your credit card. By accepting your credit card, they also accept an obligation to pay the credit card company or the bank issuing the credit card. It is called an interchange fee. There is another one called a swipe fee. So the credit card company is getting paid both ways. They get paid by the customers who pay interest on outstanding balances on their credit cards, and they get paid by the retail establishments that accept the credit cards. The credit card companies have a lucrative business going on both sides of the transaction.

This amendment I am speaking about relates not to you as a customer owning a credit card, but rather to the shop or retail establishment that accepts the credit card. What is a reasonable amount for them to pay?

There are two major types of credit cards. One is a credit card and the other is a debit card. A credit card is basically that. You are buying on credit with the promise to pay when your monthly bill comes around. The debit card is different because it takes the money directly out of your checking account and gives it to the shopowner. They are different in that, No. 1, there is more risk, because people may not pay their credit card balance at the end of the month, so risk is associated with it; and in the other there is very little, if any, risk. If there is no money in the checking account, then it isn't going to be paid to the shopowner. It is a very simple transaction much like writing a check and the bank honoring the check.

My amendment addresses the interchange fee. That is the amount paid by the retail establishment to the credit card company when a customer presents a credit card.

The two major credit cards in America are Visa and MasterCard. They account for over 80 percent of the credit and debit card business in the United States. They are the giants in America. There are others—Discover, American Express, and others. But the two, Visa and MasterCard, are the two big kids on the block. They have established legal arrangements with the businesses that accept their credit cards. It is those legal arrangements we are questioning with this amendment which I am going to propose later in the day.

This amendment will help small businesses, merchants, and consumers by providing relief from high interchange fees for debit card transactions. We are focusing on debit card transactions because those are the ones that have much less, if any, risk involved to them.

On the floor of the Senate, we are working on a bill to prevent the big banks from basically rigging the financial system in a way that helps Wall Street and hurts the shops on Main Street. If we are going to look at the rigged financial systems that hurt small businesses, we have to include the credit and debit card industries.

Credit and debit cards are rapidly replacing cash and checks in the American economy. There are over 1 billion credit and debit cards in America. Think of that: 300 million people and 1 billion credit and debit cards. That gives you an idea of the number of cards people own.

Last year, Americans conducted $1.7 trillion in transactions on credit cards and $1.6 trillion on debit cards, which are becoming more and more popular. Credit and debit cards are now used in more than half the retail sales in the United States of America. Yes, being able to pay with plastic is a great convenience, but there is another reality. The shift from cash and checks to credit and debit means that the way we do business in America is increasingly falling under the control of these two giants of the credit and debit card industry—Visa and MasterCard.

These card networks dominate the credit and debit industries, as I mentioned earlier. They are used in 80 percent of all such transactions. Unfortunately, these two companies are looking for profits, and they are not always looking out for the best interests of the merchants, the small businesses, the

retail businesses or the consumers. Interchange fees are a classic example.

A lot of people in Congress do not want me to bring up this issue. They have told me this is the wrong bill to talk about it. I think not. I tried to bring it up under credit card reform and they said: No, Senator DURBIN, that is the wrong bill. Now I want to bring it up on the Financial Stability Act, and they say: No, it is the wrong bill. I do not think it is. I do not think there is a right bill with an issue that is this controversial and complex. But it is an important enough issue that we should address it and we should vote on it.

Visa and MasterCard require interchange fees every time someone uses a debit or credit card. The fees range from 1 percent to 3 percent of the amount of the transaction. It is a convoluted system. Visa and MasterCard charge interchange fees to the merchants, but instead of keeping the money, they pass the money to the banks that issue the Visa and MasterCard. Why do they do this? Some of it is to help the banks cover the cost of conducting the transaction. Most of it is to induce banks to issue more Visa and MasterCard credit cards.

Around $50 billion in interchange fees were collected in 2008, with about 80 percent of that money going to 10 of the largest banks in America—80 percent of it. The card-issuing banks use this interchange revenue to pay for ads, to offer rewards, to issue more cards. Not surprisingly, the revenue also helps banks make large profits and give bonuses to their CEOs. Banks love the money, and they love the current interchange system.

As interchange fees go up, it means banks get more money to issue more cards and increase their profits. Rising interchange fees also benefit Visa and MasterCard because it means more cards will be issued, and with each card comes another fee, called a network fee, every time the card is used.

What a great system—as long as interchange fees are increasing, both the card networks and the banks could not be happier.

The troubling thing about interchange fees is they are deducted from every transaction left for the seller. This is very different from cash and check systems. When a business makes a cash sale, it gets full payment in hand, and the Federal Reserve requires the checks clear at their full face value. So a $100 sale by cash or check is a $100 sale. But when a business makes a $100 sale by credit or debit card, the banks and their card networks take a cut. The business may end up with only $98 out of $100 that is on the debit card, maybe less. The business is getting shortchanged the actual face value of the transaction.

To make up for interchange fees, businesses are forced to raise their prices, cut back on expenses or something such as that. They may even cut back on employees to keep up with these interchange fees. In a normal market, you see banks competing with one another to do business with the restaurants, shops, and the merchants. With that competition, things would be a lot better. But, in fact, the real world of credit cards with the two giants, Visa and MasterCard, is a world where there is little or no competition.

The credit and debit card markets are not normal. Visa and MasterCard unilaterally set interchange fee rates that apply to all banks within their card networks. There is no negotiation between the banks and merchants over reducing interchange rates. Individual businesses in New Hampshire, Illinois, New York, and all across America have no bargaining power with these giant credit card companies. They set the rules, they fix the fees, take it or leave it.

Visa and MasterCard have every incentive to continue to raise interchange fees because that additional revenue makes it more likely banks will issue more cards.

What can businesses do to stop these rising interchange fees? Almost nothing. Some—very rarely—businesses say they do not accept credit or debit cards, but the vast overwhelming number of businesses do. They have to. It is part of doing business in America.

Visa and MasterCard have 80 percent of the credit and debit market. Merchants have to use them. They tell the merchants: If you want to take our card, you live with the fees we charge. That is not a competitive situation at all.

This current system is not sustainable. If left alone, it is going to get worse for small businesses that face higher fees, for consumers who face higher prices, and for everyone but the banks and credit card networks.

Here is the most unbelievable part. Businesses in every other country in the world get a better interchange deal from Visa and MasterCard than businesses in the United States of America. I told that to someone, and they said: It sounds like pharmaceutical drugs, where you can buy the U.S. pharmaceutical drug more cheaply in Canada, Mexico, and Europe. It is the American consumers paying more.

The same thing is true when it comes to Visa and MasterCard. They charge American businesses higher interchange fees than they charge businesses around the world. Visa and MasterCard already charge the highest interchange rates in the world to American businesses, and the rates keep going up.

There was a GAO report last year. It found that Visa and MasterCard—listen to this—had voluntarily reduced the interchange fees on businesses in other countries. Just last month, Visa voluntarily lowered many of its European debit rates by 60 percent—unilaterally lowered them by 60 percent. What happened in the United States? They raised the fees by 30 percent on American businesses trying to fight their way out of this recession.

These huge credit card companies had some sympathy for Europe but not for America. That is unacceptable, and we need to do something about it. That is why I offer this amendment.

The amendment requires that debit card interchange fees be reasonable and proportional. I do not pick a number. I do not set a fee. We want to make sure they are proportional and reasonable to the cost incurred in processing the transaction.

Debit card transactions are fundamentally different from credit card transactions. All that happens in a debit card transaction is you deduct money from your bank account. It is akin to writing a check. That is why debit cards are advertised as check cards.

Right now in the United States, there are zero transaction fees deducted when you use a check. The Federal Reserve does not allow transaction fees to be charged for checks. But when it comes to debit cards, Visa and MasterCard charge high interchange fees just as they do for credit. Why? Because they can get away with it. There is no regulation, there is no law, there is no one holding them accountable.

An estimated $20 billion was collected from businesses and consumers across America in debit interchange fees last year—$20 billion. That money comes from the bottom line of every small business in every town in America that accepts payments by debit card.

My amendment will bring some reasonableness to the system. It tells the Federal Reserve to ensure that debit fees are reasonable and proportional to cost and not just a way of generating huge profits at the expense of small businesses. If we can reduce debit interchange fees to a reasonable level, it would be similar to a tax break on every debit card sale a merchant makes. Think how much that would help small businesses on Main Street.

One of my colleagues said: Even if the businesses save money and do not have to pay more to the credit card companies, what makes you think they are going to give the consumers a break with it? They may take it in profits. They can. There is no way to police that.

I just had a press conference with the National Association of Convenience Stores. We know them as the small shop on the corner that has some groceries and maybe candy bars, slurpies—whatever you want to stop and buy. It also turns out these convenience stores sell 82 percent of the gasoline sold in America. They are part of the same association.

I said to the man who ran the association: What guarantee do we have, if we reduce the amount you have to pay the credit card companies, that the consumers will feel it? He said: We are the only business that posts prices right out on the sidewalk for all the motorists to see of our most popular

item, our gasoline. We fight over pennies. If we can reduce it a penny or two a gallon, we are going to attract more customers. If we can save money when it comes to these interchange fees, it puts us in a more competitive position to bring in more customers to buy gasoline. That is one side of the argument that could inure to the benefit of the consumers. There are no guarantees.

In the world I am talking about, you get to shop around. As the customer, you pick the convenience store, you pick the grocery store, you pick the prices. When it comes to the owners of the store using credit cards, they do not get to shop. They get a ''take it or leave it'' from MasterCard and Visa and have no bargaining power whatsoever.

Many Senators are worried about community banks that also issue credit cards. One thing I hear over and over from my colleagues is we do not want to hurt smalltown banks, regional banks, banks that are not the big boys on Wall Street that issue credit cards. That is why I amended my amendment and said we will exempt all banks with less than $10 billion in assets. If you have more than $10 billion in assets, it would be hard to call you a community bank. You are a much bigger operation.

Under my amendment, Visa and MasterCard could continue to set the same debit interchange rates they do today for small banks and credit unions. Ninety-nine percent of banks, 99 percent of credit unions have assets of less than $10 billion. Of all the credit unions in the United States, only three have assets over $10 billion.

One of my colleagues said: I am very close to the credit unions. I say to my colleague: I am sure you are also close to the small businesses in your State, and in this situation, 99 percent of the credit unions, virtually every credit union in your State would be exempt from this law, but your small businesses may benefit from it because the largest banks have the largest impact on credit card interchange fees.

My amendment would subject the biggest banks in America, the ones that issue the vast majority of debit cards and get the vast majority of interchange fees, to a reasonable fee requirement.

I hear the so-called independent community banks of America oppose my amendment. I could not understand it. If I exempted banks with less than $10 billion, that would exempt 99.8 percent of all of the so-called community banks in America. Why do they still oppose it? I have learned why. The Independent Community Bank Association is a major issuer of credit and debit cards. They are one of the top 25 credit card issuers in the United States and are the 23rd largest debit card issuers. They make a lot of money off interchange fees. They do not have clean hands in this debate. They are, in fact, conflicted in this debate. They are not arguing on behalf of small banks. Sadly, they are arguing on behalf of their own trade association credit cards and the fact they receive these generous interchange fees.

ICBA, so-called Independent Community Bankers Association, profits from the unfair swipe-fee system just like the biggest banks in America today. That is a conflict of interest.

Is this Washington trade association truly representing small banks that will get higher interchange fees than the big banks under my amendment or is it just interested in protecting its own revenue stream? I called back to some of my friends in downstate Illinois, where I come from—small town, small city America—and I talked to them about this. I said: I am exempting banks with assets of less than $10 billion.

They said to me: Well, that is perfectly reasonable. It won't touch any community banks you know in downstate Illinois.

That is an indication to me that this trade association out here is not speaking—really speaking—for community banks when they say they oppose this amendment as amended.

My amendment also aims to make sure Visa and MasterCard can't block merchants from offering discounts to their customers. For example, Visa has a provision in its contract with all of the businesses that accept it that the business cannot offer a customer a discount to use a competing credit card, such as a MasterCard. MasterCard has a similar provision. So they are protecting one another. You can't say, for example, that your shop prefers Visa cards because the Visa card charges you less as a business. They prohibit that back and forth.

Some people say: Well, maybe that is okay. Would it be okay if we take it to the next example: It is like Coca Cola saying that a store can sell Coke but only if it agrees not to sell Pepsi at a lower price, and it is like Pepsi saying the same thing. Who loses in that deal? I can tell you who loses—the customer, because there is no competition and the business because it does not attract the customers with competition and lower prices. Translate that into credit cards, and that is what Visa and MasterCard are doing today. My amendment strips these provisions from Visa and MasterCard contracts so merchants can offer discounts without penalty.

My amendment would also allow merchants to offer discounts for customers who pay by cash, check, or debit card as opposed to credit cards. Sometimes, Visa and MasterCard threaten to fine merchants who offer discounts for these cheaper forms of payment. My amendment would end those threats once and for all. This type of effort to promote noncompetitive practices should not be allowed, and my amendment would bring it to an end.

Nothing in my amendment would allow merchants to discriminate against cards issued by small banks and credit unions. That was another comment. They said, well, listen, DURBIN, if your amendment passes, they will say: This establishment will not accept credit cards from a small bank that issues these cards. We make it express in the amendment that we are offering that you cannot discriminate against the issuer, that is, the bank, of the credit card. You can only say you prefer one network over another because the interchange fees on your business happen to be lower, but you can't pick out banks. You may say: We prefer Visa or MasterCard, but you cannot pick them out by banks.

Interchange fees have real-life consequences on businesses across America. I have been receiving calls and letters from small business owners all over the State asking Congress to fix this rigged interchange system. Last week, my office received petitions signed by 92,000 Illinois consumers seeking to reform credit and debit interchange fees. The amendment has also been endorsed by 203 national and State trade associations representing every type of business you can think of, and it has been endorsed by Americans for Financial Reform, a coalition of over 250 consumer, civil rights, labor, retiree, and business groups.

If you talk to Visa, MasterCard, and the biggest banks, all you will hear is how well the current system is working and how we ought to keep our hands off it. But if you talk to the local grocery store owner or the person who owns the local restaurant in your hometown or the man who owns the gas station or the family who runs a local diner—small businesses and merchants across America—they will tell you stories about dealing with Visa and MasterCard and what it has meant to them in their business.

This afternoon, Art Potash, who owns some grocery stores in Chicago, came by my office. We had a little press conference. He talked about the competitiveness of the grocery business, where the return is usually 1 or 2 percent and he ends up paying 2 to 3 percent back to the credit card companies for people who use credit and debit cards. He is stuck because if he doesn't accept credit and debit cards, he is really trying to fight the tide. More and more people are using them. But he is paying a fee, which is cutting right into the bottom line. With this interchange fee at a more reasonable level, he would be able to expand his business and hire more people. Wouldn't that be a good outcome in an economy where we are desperate to deal with unemployment?

Let's put Main Street above the big banks and credit card companies. I ask my colleagues to help me in passing this amendment.

Madam President, I have received letters and comments from merchants and businesses across the State of Illinois supporting my amendment for interchange reform. I have received them from James Phillip of Phillip's

Flower Shops in Westmont, IL; Robert Jones, president of American Sale patio store in Tinley Park, IL; George LeDonne, owner of LeDonne Hardware in Berkeley, IL; Russ Peters, owner of Mobile Print in Mount Prospect, IL; Jim Dames, owner of Snackers Cafe in Western Springs; George Preckwinkle, a friend of mine and president of Bishop Hardware and Supply, with 10 locations in central Illinois; Paul Taylor, owner of Taylor's Gifts and Bonsai; Rattanaporn Deeudomchan, owner of the King and I Thai Restaurant in Oak Park; Yvonne Francois, who owns Queenie's Court, a restaurant in the food court at the Ford City Mall in Chicago; and John Gaudette, director of the Illinois Main Street Alliance, representing 450 small businesses across the State.

I ask unanimous consent to have printed in the RECORD at this stage of the debate some of the comments and letters which have been sent to me.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICANS FOR FINANCIAL REFORM,
Washington, DC., May 13, 2010.

Senator DURBIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR DURBIN: We write on behalf of Americans for Financial Reform, an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as Nobel Prize-winning economists. We support a strong Consumer Financial Protection Bureau and oppose weakening amendments to the Restoring American Financial Stability Act, S. 3217.

Durbin Amendment #3989 is a move towards helping Main Street.

Americans for Financial Reform supports the Durbin Reasonable Fees and Rules for Payment Card Transactions Amendment #3989 because it is good for merchants and good for consumers. The bank payment networks, Visa and MC, impose high, nonnegotiable interchange fees for accepting credit and debit cards and use other unfair contractual practices that mean all consumers pay more at the store and more at the pump, whether they pay with cash or plastic. The bulk of the $48 billion estimated yearly take from interchange fees flows to the largest Goliath banks. Giving merchants more flexibility against unfair bank and card network practices will result in more payment choices for consumers and lower merchant costs.

For information, please contact Ed Mierzwinski.

Sincerely,
AMERICANS FOR FINANCIAL REFORM.

MAY 12, 2010.

TO THE MEMBERS OF THE UNITED STATES SENATE: The undersigned organizations, representing a diverse array of interests including small business, state, organizations, dentists, retailers, restaurants, grocery stores, convenience stores and others, write in strong support of S. Amdt. 3989, sponsored by Senator Richard Durbin, regarding interchange fee reforms to S. 3217, the Restoring American Financial Stability Act of 2010 now before the Senate. Unless relief is granted, interchange ''swipe fees,'' which amounted to $48 billion in 2008, will continue to rise as card companies and issuing banks seek even higher profits, primarily on the backs of our organizations' members. This comes at a time when businesses, state agencies and charities—all of whom pay interchange fees—are struggling to help the economy grow again and when consumers can least afford pricing increases.

Despite Congress' efforts to reign in abusive practices, credit card companies continue to take advantage of a major loophole in financial regulation. In fact, they announced interchange rate increases just months after the passage of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act), effectively circumventing many of the reforms instituted by Congress. More recently, Visa Europe announced last month that it was voluntarily dropping debit card interchange fees to 0.2% in Europe, a decrease of 60%, while earlier in the month Visa increased rates on similar transactions in the United States by some 30%. Quite literally, at a rate of approximately 2.0% on debit card interchange fees, which is 10 times higher in the United States, American businesses are subsidizing European transactions.

Simple, common-sense reforms are needed to correct this market imbalance, which would give our organizations' members additional tools to manage our costs related to interchange fees. First, the amendment would give the Federal Reserve the authority to conduct an open and fair rulemaking—without prescribing an outcome—in order to develop regulations to ensure that interchange fees imposed on debit card transactions be ''reasonable and proportional'' to the cost incurred in processing the transaction. Debit transactions are not an extension of credit and are directly drawn from a consumer's checking account, yet the interchange rate on debit transactions continues to increase. Small banks, credit unions and thrifts with assets of under $10 billion would be carved-out from these rules, meaning that 99% of all banks, 99% of all credit unions, and 97% of all thrifts would be exempt, allowing them to continue to receive the same interchange fees they receive today.

Second, the amendment would prohibit anti-competitive restrictions on discounts and the setting of minimum transaction levels, providing entities with the freedom to choose their preferred method of payment. Under current rules, any business, charity or government agency that accepts credit or debit cards is prohibited from setting a minimum transaction level, such as $3, even though the entity may actually lose money on the transaction because of slim profit margins. Visa and MasterCard can and do impose fines on small businesses up to $5,000 per day for such offenses, which has the effect of ensuring that the card companies and big banks turn a profit even if the small business loses money on the transaction. In addition, the amendment allows businesses to incentivize the use of one card network over another (e.g., a discount may be provided for Discover cards if they carry a lower interchange rate) and allows businesses to offer discounts on certain forms of payment (e.g., a discount may be offered for cash, check, PIN debit, etc., all of which carry lower rates than credit cards). This amendment would not enable merchants to discriminate against debit cards issued by small banks and credit unions. Visa and MasterCard require merchants to accept all cards within their networks, and this amendment does not change that requirement.

By providing these and other important reforms, the Congress will send a strong message that it supports modernizing and updating our financial payments systems while providing relief to businesses owners who have seen their interchange credit card assessments skyrocket—for many businesses exceeding the cost of providing health care benefits to their employees.

In closing, we are very concerned about the unintended consequences of not addressing interchange fees will have on our industries as the card companies and big banks continue to seek higher profits as a direct result of financial regulatory reform legislation, and other failing portfolios, through ever increasing interchange fees. We ask that you support S. Amdt. 3989, sponsored by Senator Durbin, to the Restoring American Financial Stability Act of 2010 when it comes up for a vote in order to ensure that financial regulation reform is comprehensive and complete. We look forward to working with you and your staff to incorporate these meaningful, common-sense reforms as part of the financial regulatory reform legislation.

Sincerely,
NATIONAL TRADE ASSOCIATIONS.

American Apparel & Footwear Association, American Association of Motor Vehicle Administrators, American Beverage Licensees, American Booksellers Association, American Dental Association, American Home Furnishings Alliance, American Hotel & Lodging Association, American Nursery & Landscape Association . . .

Mr. DURBIN. Madam President, I see one of my colleagues on the Senate floor, so I am going to yield. And I say to my colleagues, I am hoping this amendment comes up this afternoon. I will take less time to describe it then, but I wanted to use this time to put my full statement in the RECORD. I will just say to my colleagues that there won't be another amendment that we will consider this week or in the near future of such importance to small businesses across America. Let's stand up for these small businesses and give them a fighting chance against giants in the credit card industry. It is only fair, and it is a good way to revive this economy and put people back to work.

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

The PRESIDING OFFICER (Mrs. SHAHEEN). The clerk will call the roll.

The assistant editor of the Daily Digest, proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. Madam President, I rise today to speak about amendment No. 3788, an amendment essential to protecting consumers. As we work to rein in the excesses of Wall Street and shore up our economy, we must do all that we can to ensure consumers can get discount prices from retail stores at the very time when they need them the most.

My amendment will restore the nearly century old rule that made it illegal under antitrust law for a manufacturer to set a price below which a retailer could not sell a product—a practice known as ''resale price maintenance'' or ''vertical price fixing.'' This rule was overturned in June 2007 by a narrow 5–4 majority of the Supreme Court in the Leegin case. My amendment is

identical to the Discount Pricing Consumer Act—a bill which has 10 cosponsors and passed the Judiciary Committee last month. Our bill has been endorsed by 39 State attorneys general, the leading consumer groups, as well as numerous antitrust experts, including former FTC Chairman Pitofsky.

For 96 years until the Leegin decision the rules were clear. Manufacturers could not set a retail price, and retailers could not be prevented from discounting. Millions of consumers saw the benefits of discount prices every day. Thousands of retailers all across the country were able to discount their products and sell their goods at the most competitive prices. Many credit the ban on vertical price fixing with the rise of today's low price, discount retail giants—stores like Target, Best Buy, Walmart, and the Internet sites Amazon and EBay, which offer consumers a wide array of highly desired products at discount prices.

But the consequences of the Leegin decision should worry all of us. Allowing manufacturers to set retail prices threatens the very existence of discounting and discount stores, and leads to higher prices for consumers. In his dissenting opinion in Leegin, Justice Breyer cited economic studies that estimated that if only 10 percent of manufacturers engaged in vertical price fixing, retail bills would average $750 to $1,000 higher for the average family of four every year.

And the experience of the last 3 years since the Leegin decision is beginning to confirm our fears regarding the dangers of permitting vertical price fixing. The Wall Street Journal has reported that more than 5,000 companies have implemented minimum pricing policies. Internet monitors scour the Web at the behest of manufacturers to prevent discounting. And there have been many reports of everything from consumer electronics and video games to baby products and toys, rental cars and bathtubs being subject to minimum retail pricing policies.

My amendment is quite simple and direct—it merely returns us to the state of the law the day before Leegin was decided. It would simply add one sentence to section 1 of the Sherman Act—a statement that any agreement with a retailer, wholesaler or distributor setting a price below which a product or service cannot be sold violates the law. No balancing or protracted legal proceedings will be necessary. Should a manufacturer enter into such an agreement it will unquestionably violate antitrust law. Instead of the complexity of the ''rule of reason'' announced by Leegin, we will once again have a simple and clear legal rule banning vertical price fixing—a legal rule that will promote low prices and discount competition to the benefit of consumers every day.

In the last 50 years, millions of consumers have benefited from an explosion of retail competition from new large discounters in virtually every product, from clothing to electronics to groceries, in both ''big box'' stores and on the Internet. My amendment will correct the Supreme Court's abrupt change to antitrust law, and will ensure that today's vibrant competitive retail marketplace and the savings gained by American consumers from discounting will not be jeopardized by the abolition of the ban on vertical price fixing. I urge my colleagues to support this amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. UDALL of Colorado. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. UDALL of Colorado. I ask unanimous consent that Senators SCHUMER and LEVIN be added as original cosponsors to amendment No. 4016.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. UDALL of Colorado. I thank them for their support. I also want to first thank Senators LUGAR and BOND for the efforts they brought forth, along with those on our side, for this important amendment.

This amendment will make it a fact of life that individual Americans can more easily access their credit score. I have come to the floor of the Senate on a number of occasions over the last week to push for an important change in the world of credit bureaus and credit reports and now credit scores.

A credit score impacts consumers' interest rates, monthly payments on home loans, and can even affect a consumer's ability to buy a car, rent an apartment, and get phone or Internet service. I have been working with Chairman DODD, the Treasury Department, the Federal Reserve, and other colleagues in the Senate to reach a compromise that will help us achieve those objectives I just outlined.

I am very pleased to say I think at this fairly late hour on a Thursday that we have agreed to an approach that will give millions of Americans unsolicited access to their genuine credit score. I have talked about the difference between the score and the report. The report is a valuable tool, but unless people have their score they do not know where they stand.

Our bipartisan amendment will build upon existing law and require disclosure of credit scores to consumers whenever their credit score is used against them. So under our amendment, if they are turned down for credit because of their credit score, which is not an unusual occurrence, frankly, they have the right to see the credit score that was used against them.

Under this amendment, if they are charged a higher interest rate or get less favorable terms on a loan because of their score, they will also receive notification of that score.

So this amendment, again, for which we have bipartisan support, corrects one of the inequities in our financial system which keeps Americans from accessing this very important tool that, frankly, I think is as important as their health statistics: their blood pressure, heart rate, and so on. But people have not been able to access that credit score.

So there is a fundamental principle that is at stake. If their credit score is being used against them, they ought to have the right to at least see it. This Wall Street accountability package we are considering, at the heart of it—I think the Senator from New Hampshire knows this—we want to give Americans more tools so they are more financially literate. They can take control of their financial future.

So the best part of this amendment is that consumers will receive notification of their score without any red tape. This is good government. It is pure transparency reform that will empower Americans, as I have said, with critical information about their financial health. This makes common sense.

Let's put Americans in charge of their financial future. So as I close, I thank, in turn, Chairman DODD, Senator LUGAR, Senators LEVIN, BOND, SCHUMER, BEGICH, LAUTENBERG, and all of the 20-plus additional Senators who helped push for this important reform.

I especially thank Senator PRYOR who has worked with us to find something everyone can agree on. I look forward to this amendment being called up later, and I urge all colleagues to support this commonsense reform that will give Americans control over their financial futures.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEMINT. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3852 TO AMENDMENT NO. 4019

Mr. DEMINT. Madam President, I call for the regular order with respect to the Wyden amendment No. 4019 and call up my amendment No. 3852 as a second-degree amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT], for himself and Mr. VITTER, proposes an amendment numbered 3852 to amendment No. 4019.

Mr. DEMINT. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require the completion of the 700-mile southwest border fence not later than 1 year after the date of the enactment of this Act)

At the appropriate place, insert the following:

SEC. ___. BORDER FENCE COMPLETION.

(a) MINIMUM REQUIREMENTS.—Section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subparagraph (A), by adding at the end the following: ''Fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under this subparagraph.'';

(2) in subparagraph (B)—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(iii) not later than 1 year after the date of the enactment of the Restoring American Financial Stability Act of 2010, complete the construction of all the reinforced fencing and the installation of the related equipment described in subparagraph (A).''; and

(3) in subparagraph (C), by adding at the end the following:

''(iii) FUNDING NOT CONTINGENT ON CONSULTATION.—Amounts appropriated to carry out this paragraph may not be impounded or otherwise withheld for failure to fully comply with the consultation requirement under clause (i).''.

(b) REPORT.—Not later than 180 days after the date of the enactment of the Restoring American Financial Stability Act of 2010, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the progress made in completing the reinforced fencing required under section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended by this section; and

(2) the plans for completing such fencing not later than 1 year after the date of the enactment of this Act.

Mr. DEMINT. I yield the floor.

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KAUFMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KAUFMAN. Madam President, I ask unanimous consent to speak as in morning business for up to 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO CATHLEEN BERRICK AND CYNTHIA BASCETTA

Mr. KAUFMAN. Madam President, I rise today to speak once more about our Nation's great Federal employees.

Henry Clay once said:

Government is a trust, and the officers of the government are trustees; and both the trust and trustees are created for the benefit of the people.

Every dollar of the taxpayers' money that we in Congress spend on their behalf must be accounted for and every program rigorously audited to prevent waste and fraud. That job belongs to the tireless and persistent employees of the Government Accountability Office.

Since its founding in 1921, the GAO has been called ''the taxpayers' best friend.'' It is the people's watchdog, the home of over 3,000 Federal employees whose main task is to save the American people money by analyzing how public funds are spent. They make recommendations to Congress on how best to eliminate waste and make programs more efficient. If our elected officials have been entrusted to guard over public business, surely it is the men and women of the GAO who, in the words of the ancient adage, ''watch over the guardians.''

Today, I want to highlight the achievements of two outstanding employees of the GAO.

Cathleen Berrick has spent her whole career as a public servant. First in the Office of the Inspector General at the Pentagon and with the Air Force Audit Agency, and later with the Postal Service's Inspector General and the GAO, Cathleen has been at the forefront of ensuring the accountability of government for many years.

As a Managing Director at the GAO for Homeland Security and Justice, she has led comprehensive analyses of potential security vulnerabilities at the Transportation Security Agency and suggested key improvements.

In 2008, when assigned to review the plan for the TSA's Secure Flight Program, which screens air passengers against terrorist watch lists, Cathleen identified flaws and offered sound recommendations. She also conducted studies and authored reports recommending more oversight in how we secure our Nation's mass-transit systems and passenger rail.

Cathleen has testified before congressional committees over 20 times and has proven to be an expert resource for policymakers.

The second person whose story I will share is Cynthia Bascetta. Cynthia had worked for the GAO for 30 years when she was set to retire. However, the devastation wrought by Hurricane Katrina caused her to delay her retirement, and she decided to remain in public service.

As the GAO's Director for Health Care, Cynthia leads two major reviews of public health care infrastructure in New Orleans to ensure recovery funds are being spent wisely and for the greatest benefit. In her three decades of service at the GAO, she has fought to improve Federal disability policies, urged making HIV treatment and prevention a national priority, and recommended changes to Social Security that helped beneficiaries return to work without losing health care benefits.

One of the areas of focus throughout Cynthia's career has been improving care for our wounded veterans. She testified at the first congressional hearing to investigate the conditions at Walter Reed Medical Center, and her reviews were critical in understanding where changes needed to be made.

Since we passed the Recovery Act last year, the GAO has been preparing reports every 60 days on how funds are being used. Cynthia has been working recently as the GAO's State lead for Illinois, carefully reviewing every dollar from the Recovery Act being spent there.

Madam President, employees of the GAO continue to ensure government programs work for the American people. They remain ever-vigilant to ensure all of our public funds are spent wisely and carefully.

I hope my colleagues will join me in thanking Cathleen Berrick, Cynthia Bascetta, and all of the outstanding public servants at the Government Accountability Office for their service to our Nation. They are all truly great Federal employees.

Thank you, Madam President. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, before our colleague from Delaware leaves the floor—I said this once before, but I want to repeat it. Our colleague from Delaware has only been here a few months, I guess—a little over a year now; it goes by very quickly—having stepped in after our colleague, JOE BIDEN, became Vice President, and I do not know how well noticed it goes, but Senator KAUFMAN, I believe almost on a daily basis or something like that——

Mr. KAUFMAN. Weekly.

Mr. DODD. On a weekly basis—takes a few minutes to recognize people whose names and faces I am sure most Americans have never known or seen. Their families and neighbors are familiar with them. But he chooses three or four people who have worked on behalf of all of us, in many cases for years, without ever getting the kind of notoriety and celebration people in elective office receive. I wish to thank him for doing it. It is not a piece of legislation. It is not an amendment to a bill. It is not some ordinance or some treaty this Senate has an obligation to engage in; it is merely taking a little time to recognize some very fine Americans. We all hear about the ones who mess up and do things that are wrong. They get the headlines. But every day, there are literally thousands of people in this country who go to work on behalf of the American public who do their jobs diligently and serve us all tremendously well. The fact that one Member in this body every week takes a few minutes to say thank you is something I deeply appreciate, and I thank him.

Mr. KAUFMAN. Madam President, I thank the Senator from Connecticut. I thank him for what he does, and I wish to say to all the world, he is truly one of the great Federal employees. So I thank the Senator from Connecticut.

Mr. DODD. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3776

Mr. ENZI. Madam President, I rise to speak about Specter amendment No. 3776, which has already been debated by the Senator from Pennsylvania, but I wish to bring up the other side because it is a very technical, legal issue which crosses professional fields of accounting, tax preparation, and legal counsel. However, to understand where Senator SPECTER would take this amendment, I wish to explain where we have been.

In 1995, Congress rightly decided that the Securities and Exchange Commission—the SEC—should have sole authority and ability to prosecute criminals violating securities laws. The decision was made because we knew private securities lawsuits would be driven by the wrong factors. At that time, we saw how just a handful of law firms were using class action lawsuits to clog up the courts and to tie up companies in litigation for years for mere fluctuations in company stock prices. Private lawsuits would have negative impacts on the economy, and private securities lawsuits would potentially open small businesses to unwarranted liabilities just as these small businesses are struggling to make a comeback and hope to hire more workers to stimulate our economy.

Fifteen years later, in 2010, Senator SPECTER has introduced an amendment which would run contrary to Congress's decision. Senator SPECTER's amendment would create what is called a ''private right to action,'' meaning trial lawyers are going to have a field day with this. What is worse, though, is this legal standard included in this amendment doesn't hold water. The standard for ''aiding and abetting'' in this amendment has been adjusted three times in 2 weeks, and it still isn't right. The standard in this amendment requires ''actual knowledge of the improper conduct underlying the violation'' and of ''the role of the person assisting in such conduct.'' Now, this standard is only slightly better than the first two proposals discussed earlier in the debate.

At first glance, this standard may seem as though it is all that is needed to show that someone has aided another in the act of committing a crime. It would seem that if a person has knowledge of improper conduct and knows they are helping that person, it would be a simple legal matter. However, that is absolutely not the case, and I will explain why in just a minute.

I am not a legal mind debating legal standards or case law. However, I am a businessman and an accountant by trade, and I can see what this poor legal definition will do not only to the business of accounting but to our domestic securities industry as well. Tinkering with the language of this amendment doesn't conceal the fact that the real-world impact of this provision has not changed.

I need to point out the legal standard this amendment would set has holes. Using the language laid out in the Specter amendment, here is another example: You notice this person running through the park. Having seen the person, you now have knowledge that person was running. As a passerby, you got out of the way so they could continue on their run. If we were to apply the Specter standard, even if you never met this person, you would have knowledge of that person's action—you knew he was running—and you got out of the way so he could use the sidewalk. That is aiding. If this person just robbed a bank, under this standard you could now arguably be considered a secondary accomplice.

In another hypothetical example, if a lawyer reviews a client's statement to their investors, approves what has been written, and the client falsified those statements, the lawyer is completely liable, despite not knowing that the client's disclosures were false.

Although changes from the first draft of this amendment to what is before us now are somewhat better, this amendment is still unacceptable. This amendment does not require that the person in question has knowledge the primary violator has broken the law. It is a very important part of this. You may have seen him, you may have moved aside for him, but you didn't know he was breaking the law. That is a very important requirement.

The Specter amendment just requires the person is aware of the conduct itself, not whether it is illegal. In other words, one doesn't have to know they are helping someone violate the law, which is what aiding and abetting is. One just has to know that the conduct happened.

I will say that again. This standard only requires that one knows of the ''improper conduct,'' not that he ''knows that the conduct is improper.'' This is a critical and unacceptable difference. To be clear, the standard does not even meet what is used by the SEC to prosecute criminal aiding and abetting charges. The SEC standard is significantly higher. Because the standard in this amendment is so flawed, we would be opening thousands of innocent small businesses to secondary charges of fraud.

Again, we are not talking about criminal charges. These charges would be strictly considered in a civil court. Keeping this standard would give profit-motivated trial lawyers a vague statutory standard to work from—not a good combination. They would be able to cast a wide net for defendants, and this opens professionals in their company to the costs of discovery and trial, in addition to potential liability for damages awarded in the rest of the criminal case.

Let's not forget we are talking about accountants, tax preparers, and attorneys who aid everyday companies. This means these professionals would be faced with a standard of evidence they cannot refute or argue, and they could likely be facing unfounded charges.

An accountant looks at the books, has knowledge of it, but that doesn't mean he knows it was improper. Most of the accounting audits are not of every single transaction. For a big corporation, an audit of every single transaction might take 3 or 4 years to cover 1 year's worth of transactions. It can't be done. But under that circumstance, the accountant might have knowledge, and because he signs off on the papers, he might be aiding them under this definition.

Their options under this standard would be pleading out for millions of dollars, even if innocent, or losing even more in the long process of discovery and trial in order to defend themselves and their work. All this for someone who may not even know the criminal or have known that the person's actions were criminal. Is this how our country's legal system is supposed to work? Are we going to incentivize frivolous lawsuits? The Specter amendment standard may even go so far as to hold these professionals liable for not finding fraud.

I also wish to note that this proposed amendment also goes beyond just the actions of some accountants and lawyers involved in the securities industry. Senator CHUCK SCHUMER and Mayor Michael Bloomberg from New York City commissioned a report which found that meritless securities lawsuits are driving up the cost of doing business in securities and driving away foreign investors, making the United States less competitive worldwide. Having a standard like the Specter amendment proposal means foreign trading partners may be reluctant to bring business here right when our country needs the investment the most.

Foreign investors will not want to bring business here if doing so exposes them to the private liability standard that Specter's amendment would create.

As an accountant and former small business owner, and for each of the reasons I have outlined, I urge my colleagues to oppose this ill-conceived amendment.

I would be happy to answer questions of any of my colleagues if they have any. Again, I ask them to just ask their accountant what they think about this particular standard which could lead to lawsuits, discovery, a lot of costs—and needlessly. We are trying to pass a law that would take care of 1 percent of the problem and penalize the other 99 percent. So I hope we will reject the Specter amendment. I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Madam President, I rise to speak on an amendment that

I have offered, amendment No. 3939. I ask unanimous consent to add Senator SNOWE as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Madam President, this amendment is cosponsored also by Senators LEVIN and CANTWELL. The Dodd-Lincoln bill, as currently drafted, takes major steps to reform the $600 trillion derivatives market. I don't think people understand how big this market is. It would require every trade to be reported in real time to the Commodity Futures Trading Commission. It would require that all cleared contracts be traded on an exchange or on a swap execution facility, therefore, guaranteeing transparency. It would require that speculative position limits be set in aggregate for each commodity instead of contract by contract—to assure effectiveness. It would require foreign boards of trade to adhere to minimum standards comparable to those in the United States, including reporting requirements. The provision is designed to address the underlying problem of the so-called London loophole.

I very much support these positions. However, I am very concerned that the bill doesn't go far enough to address the London loophole. This loophole has allowed for the trading of United States energy commodities, such as crude oil, on foreign exchanges, without oversight from the United States regulators. This means there is no cop on the beat to shield U.S. oil prices from manipulation or excessive speculation when they are traded in foreign markets, such as commodities exchanges in London, Dubai, or Shanghai.

The amendment I am proposing along with my colleagues would allow the CFTC to require foreign boards of trade to register with the CFTC, which would give the Commodity Futures Trading Commission the enforcement authority it needs. It is supported by the chairman of the CFTC, Gary Gensler. This provision was in President Obama's original proposed financial reform bill, and I think it is critical to pass in this bill.

Let me explain what has become known as the London loophole. In the wake of the California energy crisis, we learned that most energy trading had been exempted from regulation by the Commodity Futures Modernization Act of 2000, at the urging of a company by the name of Enron. Using the Enron loophole, this notorious firm pioneered over-the-counter energy derivatives trading. It set up EnronOnline, an electronic market for trading physical and derivatives energy contracts. It was a marketplace with no transparency, no paper trail that could be audited, no speculative position limits, and absolutely no government oversight to prevent fraud, manipulation, or protect the public interest. Enron was a participant in every trade, and only Enron knew the prices. It used EnronOnline and other trading forums to fleece California consumers for $40 billion over 2 years of increased energy prices.

Shockingly, much of what Enron had set up was legal because Congress had stripped the Commodity Futures Trading Commission of its enforcement power. Terrible.

From 2002 on, I worked with Senators SNOWE, CANTWELL, LEVIN, and many others to restore regulatory oversight to energy derivatives. We tried in 2002 on this floor, and in 2003 and 2004 to regulate energy derivatives, but we were stopped and stymied. Opponents, such as Alan Greenspan, have since said their opposition was mistaken.

Finally, in 2008—6 years after we started—we were able to close this notorious Enron loophole in an amendment to the farm bill, of all things. The amendment imposed meaningful regulation, including speculative position limits and market oversight. So the CFTC began monitoring these markets for fraud and manipulation for the first time in 10 years.

But as Congress took steps to establish regulatory oversight of domestic energy derivatives markets, Wall Street traders moved to avoid U.S. regulation. They began to turn to offshore markets.

The successor to EnronOnline, the Intercontinental Exchange in Atlanta, bought a London exchange, converted it into an electronic exchange, and began listing American oil futures abroad. That is a way speculators could go right around American regulation and avoid it.

West Texas Intermediate crude has been one of the highest volume contracts on this London exchange since 2006. This contract has what is called a price discovery impact because it is commonly referenced as the standard market price of oil. This new regulatory loophole has thus become known as the London loophole. But firms also listed American energy commodity derivatives in Dubai and Singapore and opened their electronic platforms to American traders.

This new electronically traded marketplace allows American traders, simply put, to evade American market oversight and speculation limits. The practical implication of this is that U.S. traders can use offshore electronic exchanges to artificially drive up prices of U.S. commodities without any consequences from our Nation's market regulators. This is a big problem.

In 2008, a CFTC report found that traders using this London exchange to trade U.S. crude oil futures held positions far larger than would be allowed by American regulators. In fact, from 2006 to 2008, at least one trader position exceeded United States speculation limits every single week on the London exchange, and British regulators have done nothing about it. The good news is that some steps have been taken administratively to address this loophole.

In 2008, the Commodity Futures Trading Commission negotiated an agreement with British regulators to bring greater oversight to American commodities contracts traded in London. The agreement called for speculation limits for the electronic trading of U.S. energy commodities, such as crude oil on foreign exchanges, and required recordkeeping and an audit trail so you can look at them for fraud or manipulation. Without an audit trail, it is all in the dark. But CFTC—and here is the cruncher—has limited legal authority to enforce this agreement.

Bottom line: We need to make sure the CFTC can oversee trading of American commodities, whether it happens through a computer server located on Wall Street or in Singapore.

The Dodd-Lincoln bill currently before us includes some important provisions to help close the London loophole. As drafted, the bill will require foreign boards of trade that provide access to American traders to comply with comparable rules enforced by a foreign regulator, to publish trading information daily, to supply data to the CFTC, and to enforce position limits. However, the CFTC is unable to force a foreign board of trade to comply with those requirements. And that is just fact. This is because the CFTC's current method of overseeing foreign exchanges has tenuous legal underpinnings due to a Commodity Exchange Act provision forbidding the CFTC from regulating foreign boards of trade. In many instances, our regulatory body, the CFTC, can take action against a U.S. trader trading a U.S. commodity on a foreign exchange to prevent manipulation or excessive speculation only with the cooperation and consent of the foreign regulator.

The other more controversial option is for the CFTC to completely ban the foreign exchange from all U.S. operations. Not surprisingly, they shy away from enforcement in the face of these regulatory obstacles.

We have a bill that still does not provide strong regulation. It still allows American derivatives traders to avoid American regulations by trading on a foreign electronic platform in Dubai, London, and other places as well. That is why we—Senator SNOWE, Senator LEVIN, Senator CANTWELL, and I—are offering a proposal to allow the CFTC to require foreign boards of trade to register with the CFTC, which would give it the enforcement authority it needs.

Quickly, here are the benefits of the amendment.

First, the registration process itself would give CFTC the authority to impose regulatory requirements as a condition of registration.

Second, a formal registration process would assure that foreign boards of trade all follow the same set of rules.

And third, the registration process would provide a much clearer basis for CFTC decisions to refuse or withdraw permission to foreign boards of trade wishing to allow American traders on their exchange.

Finally, and most important, all of CFTC's existing enforcement authorities apply to registered entities under the Commodity Exchange Act. This amendment would allow the Commodity Futures Trading Commission to enforce its own statute with regard to foreign exchanges operating in the United States. This is a moderate, practical amendment to assure that we give our regulator the authority to enforce the statutory provisions already in the legislation.

There are powerful interests out there that are opposed to this. They want to be able to avoid our law. They want to be able to trade over the London exchange. We negotiated with them to close the Enron loophole. We had ICE in our office. They agreed to it. It took 6 months of negotiation. Do you know what they did? They then went offshore, bought the London exchange, changed it to an electronic trading platform to avoid the very agreement they agreed with, that we legislated and enacted. That is fact. Guess what. It burns me up. And I do not intend to quit because I do not like to be duped that way, whether it is Goldman Sachs and ICE or anybody else. If you give your word, you make an agreement. You do not go offshore to avoid that agreement.

Now that I have cooled down, this is a moderate, practical amendment to assure that we give the Commodity Futures Trading Commission the authority to enforce the statutory provisions already in the proposed legislation. Why would we want legislation which cannot be enforced? Why would we want legislation that ties their hands? Why would we want legislation that allows somebody simply to avoid this law by trading what amounts to $600 trillion of derivatives in Dubai or in London or in Shanghai or anywhere else?

Guess what. These electronic exchanges will be set up everywhere to avoid this bill. That is why we have to give the Commodity Futures Trading Commission the authority to see that these foreign exchanges register with them and agree to abide by the laws of the United States of America.

I think it is important that we do this, and I do not intend to quit one way or another, if it takes me 6 years to get it done, as it did the last one. I have no respect for traders who look to go around U.S. law.

As we crack down on traders in our markets, we must be ever vigilant to assure that traders sitting on Wall Street do not avoid our regulations by trading on electronic exchanges with computer servers in London or Dubai or Singapore.

This amendment is an improvement of the London loophole provisions in the Dodd-Lincoln bill by making these provisions easily enforceable. It is the final piece to go in, to close the London loophole, which should never have been opened in the first place, and to ensure that our government has what it needs to protect American markets from manipulation and excessive speculation, no matter where U.S. energy commodities are traded.

I expect the big boys to speak out against it. But I will tell you something: Everybody in the West who knows how they were fleeced back in 1999 and 2000 by Enron clearly will understand the value of being able to enforce the law of this country. We should ask for no less.

I know I cannot call up the amendment at the present time, but I hope I will have that opportunity to do so later.

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

The PRESIDING OFFICER (Mr. BURRIS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4019, WITHDRAWN

Mr. DODD. Mr. President, what is the pending question?

The PRESIDING OFFICER. The DeMint amendment is pending for the Dodd-Wyden first-degree amendment.

Mr. DODD. Mr. President, I now withdraw the Wyden amendment.

The PRESIDING OFFICER. The Senator has that right.

The amendment is withdrawn.

AMENDMENTS NOS. 3989, AS MODIFIED, AND 3987

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now resume consideration of the Durbin amendment No. 3989 and the Thune amendment No. 3987; that the Durbin amendment be modified with the changes at the desk; that the amendments be debated concurrently for a total of 10 minutes, with the time equally divided and controlled in the usual form; that no amendment be in order to any of the amendments in this agreement prior to a vote; that upon the use or yielding back of time, the Senate proceed to vote in relation to the following amendments; that the Durbin amendment be subject to an affirmative 60-vote threshold; that if the amendment achieves the threshold, then it be agreed to and the motion to reconsider be laid upon the table; that if the amendment does not achieve the threshold, it be withdrawn: Durbin amendment No. 3989, as modified; Thune amendment No. 3987; that after the first vote, the succeeding vote be limited to 10 minutes, with 2 minutes of debate prior to each vote, equally divided and controlled.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The Senator does not have the floor.

Mr. GREGG. Do I have the right to object?

Can you do a quorum for a second?

Mr. DODD. Mr. President, I couldn't hear. What is the situation we are in?

Mr. GREGG. I am reserving the right to object and asking the Senator if he can put us in a quorum for a minute or two so we can clear this issue on our side.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I renew my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 3989), as modified, is as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

"SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

''(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

''(1) REGULATORY AUTHORITY.—The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction.

''(2) REASONABLE FEES.—The amount of any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction shall be reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(3) RULEMAKING REQUIRED.—The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(4) CONSIDERATIONS.—In issuing rules required by this section, the Board shall—

''(A) consider the functional similarity between—

''(i) electronic debit transactions; and

''(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

''(B) distinguish between—

''(i) the actual incremental cost incurred by an issuer or payment card network for the role of the issuer or the payment card network in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

''(ii) other costs incurred by an issuer or payment card network which are not specific to a particular electronic debit transaction,

which costs shall not be considered under paragraph (2); and

''(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

''(5) EXEMPTION FOR SMALL ISSUERS.—This subsection shall not apply to issuers that, together with affiliates, have assets of less than $10,000,000,000, and the Board shall exempt such issuers from rules issued under paragraph (3).

''(6) EFFECTIVE DATE.—Paragraph (2) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

''(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.—

''(1) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network, provided that the discount or in-kind incentive only differentiates between payment card networks and not between other issuers.

''(2) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, or credit card.

''(3) NO RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of credit cards, provided that such minimum or maximum dollar value does not differentiate between issuers or between payment card networks.

''(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) DEBIT CARD.—The term 'debit card'—

''(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means;

''(B) includes general use prepaid cards, as that term is defined in section 915(a)(2)(A) (15 U.S.C. 1693l–1(a)(2)(A)); and

''(C) does not include paper checks.

''(2) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(3) DISCOUNT.—The term 'discount'—

''(A) means a reduction made from the price that customers are informed is the regular price; and

''(B) does not include any means of increasing the price that customers are informed is the regular price.

''(4) ELECTRONIC DEBIT TRANSACTION.—The term 'electronic debit transaction' means a transaction in which a person uses a debit card to debit an asset account.

''(5) INTERCHANGE TRANSACTION FEE.—The term 'interchange transaction fee' means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

''(6) ISSUER.—The term 'issuer' means any person who issues a debit card or credit card, or the agent of such person with respect to such card.

''(7) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.''.

Mr. DODD. Mr. President, I ask unanimous consent that upon disposition of the above-mentioned amendments, the Senate resume consideration of the Collins amendment No. 3879 and that the amendment be considered and agreed to and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I ask unanimous consent that the following be the next first-degree amendments in order: Rockefeller-Hutchison, the FTC amendment; Senator CRAPO, the GSE on budget amendment; Senator MARK UDALL of Colorado, No. 4016 regarding credit scores; Senator SHELBY's amendment No. 4010 re: the consumer bureau; Senator WHITEHOUSE's State usury laws; Senator VITTER, No. 4003, the manufacturing amendment; Senator CANTWELL and Senator MCCAIN's Glass-Steagall amendment; and Senator CORNYN, No. 3986 regarding the IMF.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, there will be 10 minutes of debate equally divided.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask the Chair to inform me when I have 1 minute of my 5 minutes remaining.

I think this is an amendment that is well known to my colleagues. I have spoken on the floor several times. It is about the interchange fees charged to small businesses across America for the use of credit cards.

This amendment does the following things: It directs the Federal Reserve to ensure that debit fees on debit cards are reasonable and proportional to processing costs; it stops Visa and MasterCard from imposing any competitive restrictions; it ends prohibitions on discounts for use of different network cards; it ends prohibitions on discounts for cash, debit, or credit; and it ends prohibitions on minimum purchase levels for paying with a credit card.

It does not affect credit card interchange rates. We do not establish a rate. That is left entirely to the Federal Reserve to review. We do not allow discrimination against small banks or credit unions. The modification specifically prohibits any discrimination against the issuer of a credit card. A merchant may decide to favor one network over another but cannot favor one bank over another that issues a card. So there can be no discrimination against a credit union, community bank, or a large bank, for that matter. It doesn't set interchange prices.

By putting a $10 billion threshold in terms of the banks issuing the cards, we literally exempt 99 percent of all banks and credit unions from the application of this law. Still, just going for the largest banks in America—86 banks in America—we will cover 65 percent of all the credit and debit transactions in this country. So it is a significant amendment, and it protects the community banks and the credit unions.

I will tell you that I am very concerned and disappointed by the so-called Independent Community Banks Association, which continues to oppose this amendment despite my best efforts to exempt virtually all of their members from being covered. I understand they have a conflict of interest because they are in the top 25 issuers of credit and debit cards in the United States. They make a lot of money under the current situation. They may not want to change it, but it is not fair to small banks in Illinois and across the Nation for them to speak to this issue when they have this conflict of interest.

The second thing I want to say to the credit unions is that there are 8,200 credit unions in America, and all but 3 are exempt from this law—99.999 percent of credit unions are exempt from this law. For them to be opposing it because of three of the biggest credit unions in America is unfair to the rest of their members and certainly unfair to the merchants who do business with them every day.

This is the single most important amendment for small business and retail business in America that we will consider on this bill. In a time of recession, when we need small businesses to step up and create jobs, this is a way to move forward.

Members have heard from all across the country, from small businesses and retail merchants who are asking for some fairness, some justice when it comes to these major credits cards that literally dictate the terms of their agreements with these small businesses. I urge my colleagues to support the Durbin amendment.

Mr. President, I am going to reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If no time is yielded, the time will be charged to both sides equally.

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. One minute, 15 seconds.

Mr. DURBIN. I yield to the Republican side, if there is opposition to the amendment.

Mr. KYL. Mr. President, as far as I know, there is no one else on our side wishing to speak; therefore, we can yield back time of the minority.

Mr. DURBIN. I say to my colleagues, I know this is a complex and in some ways a controversial amendment. But I can't think of a better way for us to establish a reasonable standard that debit cards, which are now becoming more common and are equivalent to a check, are going to be charged against the merchant that honors the card only in a reasonable and proportional way by the same agency we used under the consumer credit card reform bill of just last year.

I urge my colleagues, if they are listening to small businesses across America, struggling to survive, trying to add new employees, give them a helping hand by voting for the Durbin amendment so they can have reasonable charges for the use of credit cards and debit cards at their establishment. I urge the passage of this amendment and I yield the remainder of my time.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

If all time is yielded back, the question is on agreeing to the Durbin amendment, No. 3989, as modified.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Florida (Mr. NELSON) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Texas (Mrs. HUTCHISON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote

The result was announced—yeas 64, nays 33, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—64

Barrasso	Feinstein	Murray
Begich	Franken	Nelson (NE)
Bennet	Gillibrand	Pryor
Bingaman	Graham	Reed
Boxer	Grassley	Reid
Brown (MA)	Hagan	Risch
Brown (OH)	Harkin	Rockefeller
Burr	Inouye	Sanders
Burris	Isakson	Schumer
Cantwell	Kerry	Shaheen
Cardin	Klobuchar	Snowe
Casey	Kohl	Specter
Chambliss	Landrieu	Stabenow
Collins	Lautenberg	Udall (CO)
Conrad	Leahy	Udall (NM)
Crapo	LeMieux	Vitter
Dodd	Levin	Webb
Dorgan	Lincoln	Whitehouse
Durbin	Lugar	Wicker
Ensign	Menendez	Wyden
Enzi	Merkley	
Feingold	Mikulski	

NAYS—33

Akaka	Coburn	Johnson
Alexander	Cochran	Kaufman
Baucus	Corker	Kyl
Bayh	Cornyn	Lieberman
Bennett	DeMint	McCain
Bond	Gregg	McCaskill
Brownback	Hatch	McConnell
Bunning	Inhofe	Murkowski
Carper	Johanns	Roberts
Sessions	Tester	Voinovich
Shelby	Thune	Warner

NOT VOTING—3

Byrd	Hutchison	Nelson (FL)

The amendment (No. 3989), as modified, was agreed to.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

The majority leader is recognized.

Mr. REID. Mr. President, if I can have everyone's attention, I will be as quick as possible. Mr. President, we have dealt with 31 amendments on this piece of legislation. Until today, this last amendment, they have all been 50-vote margins. There has been no tabling of motions.

We now have six amendments pending. We have unanimous consent that eight more can be offered. There is talk between the two managers of the bill. There are Democratic amendments we think the Republicans will agree to; there are Republican amendments that we will agree to.

We are moving toward wrapping up this bill. There will be a number of votes on Monday night starting at 5:30. Everyone should be aware of that. Tonight the managers are here. They are going to try to work through a couple of amendments. We have one more vote. After that, there will not be any more votes until Monday night.

VOTE ON AMENDMENT NO. 3987

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to Amendment No. 3987 offered by the Senator from South Dakota.

The yeas and nays have previously been ordered.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Michigan (Ms. STABENOW), and the Senator from Florida (Mr. NELSON) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Texas (Mrs. HUTCHISON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 55, as follows:

[Rollcall Vote No. 150 Leg.]

YEAS—40

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hatch	Shelby
Burr	Inhofe	Snowe
Chambliss	Isakson	Thune
Coburn	Johanns	Vitter
Cochran	Kyl	Voinovich
Corker	LeMieux	Wicker
Cornyn	Lincoln	
Crapo	Lugar	

NAYS—55

Akaka	Bayh	Bennet
Baucus	Begich	Bingaman
Boxer	Harkin	Pryor
Brown (OH)	Inouye	Reed
Burris	Johnson	Reid
Cantwell	Kaufman	Rockefeller
Cardin	Kerry	Sanders
Carper	Klobuchar	Schumer
Casey	Kohl	Shaheen
Collins	Landrieu	Specter
Conrad	Leahy	Tester
Dodd	Levin	Udall (CO)
Dorgan	Lieberman	Udall (NM)
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murray	
Hagan	Nelson (NE)	

NOT VOTING—5

Byrd	Lautenberg	Stabenow
Hutchison	Nelson (FL)	

The amendment (No. 3987) was rejected.

AMENDMENT NO. 3879

The PRESIDING OFFICER. Under the previous order, the question is on amendment No. 3879, offered by the Senator from Maine.

The amendment is agreed to, and the motion to reconsider is considered made and laid upon the table.

The amendment (No. 3879) was agreed to.

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SECRET HOLDS

Mr. WYDEN. Mr. President and colleagues, the American people are furious at the way business is done in Washington, DC. Today, on the floor of the Senate, we saw a pretty good reason why.

For many months, a large group of Senators on both sides of the aisle—Senator GRASSLEY, Senator INHOFE, Senator COLLINS, and Senator BENNETT, among the Republicans; a host of my colleagues on our side of the aisle, led by Senator MCCASKILL—have been working to try to eliminate the secret hold in the Senate, which is, in my view, one of the most pernicious, most antidemocratic practices in government.

What the secret hold allows is for just one Senator—just one—to anonymously keep the American people from getting any sense of a particular piece of legislation, someone who has been nominated for an appointment—any sense of some of the most important business that is before the Senate.

The Senator from Missouri, who is in the Chamber, has noted that at times there are scores and scores of these secret holds. I have pointed out this has happened for years on both sides of the aisle.

So this has been an opportunity, when the country is crying out for bipartisanship, for Democrats and Republicans to together—as our large group has done—fix this, to open our government, to ensure that democracy is accountable, and that public business is actually done in public.

Until about an hour or so ago, I thought we would win a dramatic victory for the cause of open government. We had a good debate this morning on the measure. Colleagues on both sides of the aisle talked about it.

Not one Senator objected, not one was willing to say in public they were in favor of secret holds. Quite the opposite: We talked for some time, and no one objected at all. We were under the impression that the matter would be scheduled for a vote this afternoon.

Given that, I was flabbergasted that right before it was time to vote, one Senator—just one—without any notice whatever—no notice to me, no notice to any of the other sponsors, sponsors on the other side of the aisle—one Senator sought to attach to our amendment, which would have received a resounding vote because Senators are not going to vote in favor of secrecy when they are on the record—one Senator attached a completely unrelated matter, a very controversial matter.

I say to the Chair, I say to all my colleagues, I never, ever would have done that to another colleague. I have felt for many years now that the great challenge in the Senate is to have colleagues work together, to have colleagues come together on both sides, because that is going to help us advance the cause of open government, it is going to help us get the best possible policy.

So if I had been in our colleague's shoes, and I was interested in advancing this other issue, I would have come to that particular Senator and said: How can we work this out? That did not happen. So all of us, at the last minute, when we were looking forward to celebrating what, in my view, would have been a historic vote for open government, after all these months of Democrats and Republicans debating secrecy in government, we now sit here on Thursday evening, with secrecy having won once more, doing government in the shadows winning once more, denying the American people the accountability this institution is all about winning once again.

I think the American people deserve better. We spent a lot of time today bringing all sides together. The chairman of the committee, Senator DODD, is here with us. The whole essence of the Wall Street legislation has been to ensure more openness and more accountability in these essential financial transactions. Chairman DODD has done a superb job in advancing that case.

What Senators on both sides of the aisle sought to do, until there was an objection from one Senator at the last minute—with no notice—what we sought to do was to say: If we are going to open our system of financial transactions so there would be more transparency and more accountability, let's also open the way we do business in the Senate so the American people are not kept in the dark any longer about major judgments with respect to legislation or nominations. One Senator—just one—without notice, kept us from bringing that new accountability and openness to the Senate.

I know colleagues want to bring up other matters. I simply wish to say—I think I have been in this body now for a little over a decade—I cannot recall another instance where the cause of open government took a beating, took a blindsiding, like the cause of open government took this afternoon.

I wish to tell my colleagues, I intend to come back to my post here again and again and again until we abolish the secret hold, until we ensure that the American people see that government is being brought out of the shadows and debates are out in the open, where they ought to be.

We did not win this afternoon because I think we got kneecapped. I do not know how to describe it any other way. But I do not think, at this time in American history, where the American people are this angry—this angry—at the way Washington, DC, does business, that those who advocate secrecy are on the right side of history. I do not think they are going to be able to defend in broad daylight opposing a bipartisan coalition.

Senator GRASSLEY has worked with me on this for a decade. He has, again and again, championed the cause of transparency and openness in government, not just on this question of abolishing secret holds but on inspectors general and a variety of other practices.

So these are colleagues—Democrats and Republicans—who want to show the American people they are going to stand for open government, and they are going to do it in a way where the American people will say: Those folks finally get it. Instead of spending their time in these petty food fights, they are a group of Democrats and Republicans who acted like adults and got together and solved a major problem—a major problem—by eliminating secrecy and making government more open.

So it is my intent to come back, if possible, day in and day out until this changes. I think this is unconscionable. I can tell you, I have never seen anything like this in my time in the Senate: one Senator coming in, at the last moment, with no notice, trying to derail the cause of open government.

I am not going to stand for it. I do not think the American people are going to stand for it. We will be back here for as long as it takes to bring some real sunshine to this cause of the Senate doing its business in public rather than in the shadows.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mrs. MCCASKILL. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MCCASKILL. Mr. President, I know someone is going to be able to use the figleaf and stand behind the argument that the amendment that was offered at the very last moment this afternoon was about something they cared about and something we need to vote on. It is a subject matter we care about that we need to work on. But really? It is pretty transparent what is going on here: that at the very last moment, when all of a sudden we were this close for everyone having to go on record about secret holds, that someone shot it out of the sky like a clay pigeon. That is what this amendment did.

So the argument is: Well, the Wyden-Grassley amendment on secret holds is not really about the financial reform bill. Why does it get a chance to be voted on? It is very simple. The reason the Wyden-Grassley amendment should be considered germane to every bill we debate in this body is because it is about the way we do business. Every day that goes by that we do not try to reform this nasty habit of secret holds, we diminish the shine and the glory that is our democracy. We diminish what this body should stand for and what our priorities should be. Every day we allow the secret hold process to continue to take root and grow and flourish, we are failing in our job as Senators who are here to do the public's business.

We are not here to go in back rooms and get something for our secret hold. We are not here to go in back rooms and leverage our secret hold for something else we want. We are not here to go in back rooms and have secret holds to keep this administration from succeeding or filling the jobs that need to be filled. We are here to be accountable.

Of all the amendments out there that can be second degreed, this amendment that would reform our process is selected to slow it down and obviously, hopefully, kill it. Well, I have bad news for my friends across the aisle who want to kill the longstanding attempts of Senators WYDEN and GRASSLEY at reform, and my recent attempts, along with Senator BENNET, Senator WHITEHOUSE, Senator UDALL, Senator WARNER, and others who have come to the floor and spoken on secret holds: We are not going anywhere. It is probably a fault I have, but I am pretty darn stubborn. In fact, I am probably stubborn to a fault. I think this is something we all ought to be stubborn about.

We have different kinds of Senators. We have some who are kind of feeling as though they are being marched to the gallows as they grudgingly support cleaning up secret holds. We have others who want to pound their chests and shout from the rooftops about trying

to get rid of secret holds. And we have others who are hiding in the crevices, the little, bitty, tiny dark places, who are trying to keep secret holds without anybody knowing who they are.

I will say this. One can make the assumption that whoever offered this amendment to try to kill this amendment probably is a big fan of secret holds. Because it seems to me if they wanted this amendment to pass, they would have at least talked to the sponsors before they offered the second-degree amendment. That is the common courtesy around here; they would have at least given everyone some notice. But they saw this amendment speeding toward the finish line. They realized they were going to be called for the yeas and nays on reforming the Senate, and they decided to take the path of least resistance and that is try to kill the bill another way.

But along with my colleague and mentor on this subject, Senator WYDEN, and Senator GRASSLEY, whom I have met with a number of times over the last week, we are going to stay with it. I know I speak for my colleagues who have been here 4 years or less, the freshmen and sophomores in this body. I know how strongly we feel about this.

I wish to remind my colleagues, if I am wrong about you, if you are against secret holds, the letter is still open. We have 60 Members who have signed the letter. Sixty Members of this body, all of the Democrats but one, both of the Independents, and now two Republicans have signed the letter saying we will not exercise a secret hold and we want to abolish secret holds. I look forward to seeing my colleagues on the other side of the aisle, more Republicans joining in the signing of this letter. It is available. I hope they will contact us. Senator WARNER, Senator WHITEHOUSE, and I are the lead signators on this letter. But it is time for everyone—by the way, if we get to 67 signatures, guess what we can do. We can amend the standing rules of this place. We could say that an objection will not be in order if it is anonymous. We could do that with 67 votes. What a great day that would be. Wouldn't that be a wake-up call to the American people that maybe we get it. Maybe we get why our approval ratings of Congress are near historic lows for all the nonsense, ridiculous games that get played around here.

Let's do the public's business and let's do it in public and let's end the secret holds, the nasty habit we can no longer afford.

I will look forward to visiting with my colleagues on the other side of the aisle and see if we can prevail upon them to withdraw their second-degree amendment so we can go forward or find some other way forward. But make no mistake, we will find a way forward and we will end the secret hold. I am confident it will happen. So you can fight as long and as hard as you want, but we are not going to give up.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Mr. President, I will take a couple of minutes. I have been here a smaller amount of time than anybody who is on this floor. The chairman has been here longer than I have been here; Senator WYDEN, Senator MCCASKILL, and others. I have been here about 15 months. What I can tell my colleagues is that this place doesn't operate like any other place in the universe. This secret hold business we are talking about right now, so people understand, allows a Senator to be able to hold up a nomination or a piece of legislation without having to tell anybody who they are. I spent half my career in business. No business I have would have ever tolerated a rule such as that. I have worked in local government. No local government I have ever been part of would have tolerated a rule such as that. There are city councils and State governments, county governments all over this country right now—by the way, they are probably still at work, unlike us, trying to figure out how to balance their budgets in the most savage economy since the Great Depression. They are not using secret holds to stop their ability to respond to the American people, and we shouldn't either.

One of the things I want to say is that Senator WYDEN should be congratulated, because this is not a partisan piece of legislation. The No. 1 question I hear from people when I go home is, Why can't you guys work together? We lack confidence in what you are doing. There are Democrats, Republicans, unaffiliated voters who say, Why can't you work together? It looks like a partisan food fight back here because it is, but it is a little more complicated than that. In this case, we have a bipartisan piece of legislation that has broad support in this Chamber, as do the nominees who are being held up whom we have brought forward. We haven't brought forward nominees who got just Democratic votes; they are nominees who were passed out of the relevant committee of jurisdiction on a bipartisan basis, and somebody has decided that they want to hold these people up for reasons that have nothing to do with the quality of the nominees or because they were passed out on a partisan way, which they weren't. They are bipartisan.

So this isn't about everybody on the other side of the aisle holding up this legislation. This is bipartisan legislation. We should be here tonight. It is only 7:30. We should be here tonight debating this amendment, allowing people to come together in a bipartisan way to support the amendment, just as we should allow people to come together in a bipartisan way to support the nominees who have come forward and passed out of committee. There is no difference. The difference is that this rule allows some individuals to bring it to a grinding halt, to create more division rather than less division which, at least in my view, is what we need as a country.

In my State, no matter where I am—in blue parts of the State, in red parts of the State—my sense is that people have a pretty common set of aspirations for our State, for our country, for their kids, for our grandkids. They expect us to act on those aspirations rather than on the divisions that are so easy to create for just political gain. That is what has been happening when it comes to these secret holds. There are other issues as well that relate to the rules of this place that need to be changed, but this is one that is indefensible.

I came to the floor this morning and I said it reminds me a little bit of a car trip with my three little girls who are 10, 9, and 5. It happens every single time we are in the car: The first hour goes great; everybody is fine. But then they start to fret with each other, they get frustrated with each other. You can hear it. Any parent knows, the hair on the back of your neck starts to rise, and you know something bad is about to happen, and it does. Usually somebody slugs somebody else, and then you look behind you and no one will admit what they have done. No one will take responsibility for their bad act. We don't tolerate that in my household, by the way. We try hard to get to the bottom and the truth. We don't always, but we usually do.

This is the same thing. I am not saying people shouldn't be able to hold things up on the merits, but they ought to have to come to the floor and tell the American people who they are and why they are holding it up. They may have good arguments to make. That is what this is about. It is about debate, and that is what we need more of in this country because we are wasting the American people's time. We are wasting the American people's money, and we can't even get a debate on a lot of the issues this country faces.

I am going to try hard to do everything I can to contribute to a civil debate rather than an uncivil debate, and I think getting rid of these holds is going to be one of the ways forward. It is not the only thing we need to do.

I wish to thank Senator WYDEN for all of his good work on this issue, and Senator WHITEHOUSE for his good work, and the chairman's indulgence for letting us have this conversation tonight. Thanks for everything you have done to advance Wall Street reform this week.

By the way, on that, the American people should know that this bill, the Wall Street reform bill, is a very good bill. Unlike some other work we have done recently, it actually has the benefit of being worked on in a very bipartisan way, with a lot of amendments from Democrats and Republicans which I think have improved the legislation. I can't predict the future, but my guess is that it is going to pass with broad bipartisan support.

I congratulate Chairman DODD on his leadership and getting that done in a way that gives the American people confidence that we are actually doing their business.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I wish to join my colleagues in expressing our support for Senator WYDEN's continued efforts to get this rule changed.

The circumstances in which these secret holds take place are quite remarkable. Over and over again we see a committee vote clearing a nominee for the floor, often unanimously, or by heavy, huge bipartisan majorities; clearly qualified candidates; clearly candidates who enjoy bipartisan support and, in many cases, candidates who are unanimously supported. Even in this contentious and cantankerous time in this body, they come through the committee with that kind of support.

Then they come through on the floor in some cases 98 to 0, 100 to 0. But between that unanimous committee vote and the unanimous floor vote is an endless, endless, endless delay. Many of them stack up and never get that floor vote. We have had as many as 100 stacked up, waiting for that floor vote on the Executive calendar.

What is happening between a unanimous committee vote and a unanimous floor vote that creates all this hassle and delay and leaves people in limbo for months and months, 100 at a time on the Executive calendar, all of whom are in responsible positions in our Federal Government that we need to have staffed? It is the secret hold. It is the secret hold where you don't have to disclose who you are so you don't have to disclose why you are holding. Because you don't have to disclose who you are or why you are holding, you don't have to have a good reason. You could have a downright nefarious reason and you could still use the hold. It is pretty widely known that deeds that are done in the dark are not the deeds we are proud of, and this is a deed that is by definition always done in the dark. Senator WYDEN and Senator GRASSLEY's long efforts to get rid of it are very commendable. We are going to work very hard to make sure we have their back on this rule.

In this particular circumstance, Senator WYDEN has been here 14 years. He has never seen a stunt like this one. I have only been here 3 years; I can't say that. But 14 years of service in the Senate and he has never seen a stunt like this particular one.

The idea that this is on the merits, the idea that this is about trying to get a vote on that second-degree amendment, seems mighty improbable. Of all of the amendments on this bill, of all of the amendments we have voted on, of all the amendments that are pending, of all the amendments people are arguing for to get on the floor, which is the one amendment that somebody chose to drop this second-degree amendment on and jam up its passage through this body?

Which is the one? It is the secret hold. In kind of a perverse way, it is actually sort of appropriate that a procedural vehicle, the secret hold, that has such an odor of mischief around it—that the reform of that should itself be blockaded by a procedural trick that also has that same odor of mischief about it.

But what we want to do is get through that mischief so that the business of this body no longer wreaks of the odor of mischief and instead gives off the healthy air of open debate and public process and transparency. I thank Senator WYDEN and Senator GRASSLEY, who is not on the floor. We will continue to push on this.

AMENDMENT NO. 3746 TO AMENDMENT NO. 3739

If I could change to a different piece of business, I will take this opportunity to call up amendment No. 3746. I thank Senator DODD and I will say a few words about it.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. WHITEHOUSE], for himself, Mr. MERKLEY, Mr. DURBIN, Mr. SANDERS, and Mr. LEVIN, proposes an amendment numbered 3746 to amendment No. 3739.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To restore to the States the right to protect consumers from usurious lenders)

On page 1320, strike line 23 and all that follows through the end of the undesignated matter on page 1321 between lines 17 and 18 and insert the following:

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update not less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

(c) USURIOUS LENDERS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following:

''SEC. 141. LIMITS ON ANNUAL PERCENTAGES RATES.

''Effective 12 months after the date of enactment of this section, and notwithstanding any other provision of law, the interest applicable to any consumer credit transaction (other than a transaction that is secured by real property), including any fees, points, or time-price differential associated with such a transaction, may not exceed the maximum permitted by any law of the State in which the consumer resides. Nothing in this section may be construed to preempt an otherwise applicable provision of State law governing the interest in connection with a consumer credit transaction that is secured by real property.''.

Mr. WHITEHOUSE. I don't want to speak long. I want to, first, join Senator BENNET's appreciation of Senator DODD for the long and successful way in which he has managed this bill. It has not gone unnoticed by the American people how contentious and cantankerous the environment is around the Senate. Notwithstanding that inhospitable environment, he has done an extraordinary job of bringing this legislation forward and continuing through the deliberative process, where people are getting amendments and votes are being taken. There are no motions to table so far. Only one vote has required 60 votes. It has been going by the regular order of the Senate and not the usual procedures that often have been forced by the recent obstructionism we have seen. I commend him and thank him for allowing this amendment to be called up and to go forward.

I want to add a sponsor, Senator TOM UDALL, of New Mexico. I ask unanimous consent that he be added as the amendment's 15th cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. I very much hope this can go with bipartisan support. Senator COCHRAN on the Republican side is a cosponsor as well. It is a bipartisan amendment. This is a situation that the Congress never voted on, the situation that is here to cure. We never made a decision that an out-of-State bank should be able to come into your State and violate your State's law about interest rates. We could have. That is within Congress's power to say. But we never did. We are in that circumstance, however, for an unusual reason—because many years ago, 30 years ago, the Supreme Court made a technical decision about the National Banking Act, determining that when you have a transaction between a bank in one State and a consumer in another, where is the transaction located for regulatory purposes? They decided to locate it where the bank is. They had to pick one or the other.

That didn't seem very systemically important at the time. But the big banks—the Wall Street banks—have very crafty lawyers. The very crafty lawyers saw the loophole that this innocent technical decision opened. So they started moving their credit card businesses, their divisions, into States that had the worst consumer protection laws—the ones where you could charge any interest rate you wanted, where there was the worst protection for the consumer. From that base of the worst consumer protection in the country, they could move out and sell their products and do business in all of the other States, whose laws were still on the books, whose laws still protected their citizens, whose laws had stood since the founding of the Republic, since the establishment of the

States, and they could get around those laws because of this loophole that the Supreme Court decision opened.

It is way past time that we close this loophole. In Illinois, Connecticut, and Rhode Island, over and over and over we hear from people who are suffering because they were late with a payment or they fell into one of the tricks and traps in the credit card contract or for no reason at all, just because they can do it, the credit card company jacked the interest rate up to or over 30 percent. Suddenly, boom, they are in what one expert called the ''sweat box.'' They cannot pay what they owe. It is all they can do to stay even all the time. The big company milked them and charged an interest rate that would be illegal under the laws of that State. Before 1978, the solicitation for that credit card that had the tricks and traps, and that hidden 30-percent penalty rate, would have been a matter for the authorities. Now it is the way they do business.

This amendment will put that back. For 202 years of this Republic, that was the way things were. States could protect their own citizens from unfair and excessive interest rates. That is the way it should be. That is what federalism is all about. That is what States rights are all about. So I hope that my amendment will go forward.

People believe in history—the more than two centuries of history of the States protecting their consumers, and a tradition of protection against abusive rates that goes back before the founding of our country, back to ancient Roman law, and all of the world's major religions. This is a longstanding tradition with a very strange little loophole that created a peculiar historic anomaly that allows these big corporations to take terrible advantage of ordinary Americans. Not only are Americans being taken advantage of, but local banks suffer as well because they have to play by the rules. If you haven't played that stunt of headquartering your bank in another State so you can work your way back and market in that same State, but under the nonexistent consumer protections of the home State, then you are stuck, and it is not fair.

I ask my colleagues to protect consumers in your home States and be true to history and States rights, protect your local banks have to follow local State laws. Let's put this brief moment in history into the ash heap of history, where it belongs as an anomaly where Americans, for the first time, had no protection from giant corporations gouging them with 30 percent and higher interest rates. That is not the way America was founded. That is not what we stood for for centuries. It is only because of this peculiar loophole that we have this situation. We have it within our power to change that. We have it within our power to go back to our home States and say to the people in our home States: We have done you a real good deed. We have allowed your State government, your Governor and legislature in the home State, to protect its own citizens against abusive out-of-State interest rates.

A lot of this bill is very technical. It is preventive medicine to rebuild the Glass-Steagall firewall, to regulate collateralized debt obligations, to enhance leverage requirements—things that are hard for people to grasp if they have not been steeped in these technicalities for these many weeks. It is important stuff, but if you want a clear, deliverable way to explain about this bill when you go back to your home State—when Senator COCHRAN, my cosponsor, goes back to Mississippi, if this amendment passes, he will be able to say to his fellow Mississippians: Ladies and gentlemen, the State of Mississippi is empowered to protect you now. An out-of-State company can no longer take your interest rates, and for a lousy reason, or for no reason at all, suddenly jack them up to 30 percent or more. It is simply wrong to leave ordinary Americans subject to that kind of abuse, to all the crafty, heavily lawyered, carefully designed, socially engineered tricks and traps they have built into these complicated, complex, tricky credit card agreements.

Now 50 States can stand against it. Attorneys general can proceed to defend these laws. It puts the government of this country back where it should be—in the hands of the people. Some people here would rather have the big corporations rule over the States. I believe that the States should trump even the big corporations when it comes to matters of protecting their citizens. That is the way it should be. That is the way the country was founded and, if this amendment passes, that is the way it will be again.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank my colleague from Rhode Island for his very generous comments. We have worked closely together. He hasn't been here a great deal of time, but he was an invaluable asset last year about this time when we were spending an awful lot of time together. I had become sort of the acting chairman of the HELP Committee when my dearest friend in this Chamber became terribly ill, Senator Kennedy. He asked me to take over that committee for him. We were charged with the responsibility of putting together a sizable portion of the health care proposal. The Senator from Rhode Island was an invaluable asset in that process. We had some critical moments, which I will not go into now, but in those critical moments, he played a remarkably important role. Some day, I will have time to spend more time going back and writing or talking about those days. I can point to several moments when, in the absence of Senator WHITEHOUSE's involvement, I am not sure we would have ever concluded the process as successfully as we did. I am eternally grateful to him for that. He has since then moved off that committee and he is doing other things. He is terribly interested in this subject matter, financial reform. I commend him for his passion and determination to have these issues raised.

Mr. WHITEHOUSE. Mr. President, if I may reply. As a new Senator in this body, who had not had legislative experience—I came out of an executive and law enforcement background—I have enjoyed the privilege of serving on that committee under the Senator's leadership. And now to have had the privilege of seeing him work this bill on the floor, for a new Senator, it has been a master class in leadership and legislation. I will never forget it. I feel very privileged to have had that experience. I thank the chairman.

Mr. DODD. Mr. President, I am going to be very brief. Our staff has been very patient all week. You only get to see them when the cameras pull back and we are in a quorum call. The wonderful floor staff people do a remarkable job. Our reporters of debates here do a terrific job reporting the words of every Senator who has spoken. I am grateful to them.

I briefly say, Mr. President, we have now, I think, done some 30, 35 amendments on this bill. We have been at this for a couple of weeks. The legislative days, I think, are 6 working days—maybe 7, which doesn't seem like much, but it is an awful lot. Important amendments have been debated, accepted, and rejected on both sides of the aisle.

I was determined at the outset to prove not only that we can pass important legislation, but that we can do it with a strong dose of civility in the process, and that while we have strong views and we speak, as I do from time to time, with some degree of emotion and passion about things I care deeply about, that should in no way be a reflection of my feelings for my colleagues. We have allowed a lack of civility in recent years, which makes it more difficult to get our jobs done. We didn't get elected here to let those emotions dominate our jobs on behalf of the people who sent us here.

In the last couple of weeks, we have produced a good bill, a stronger bill, but in a way the American people can take pride in how their Senate is operating. I am grateful to all my colleagues and the staffs and others who make it possible for us to do this. These people are knowledgeable about what needs to be done to work out language that allows us to move forward. They don't get mentioned or talked about, and they don't give speeches, but they play an integral and important role in how this institution works.

AMENDMENT NO. 3758 TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be set aside, and on behalf of Senator ROCKEFELLER, I call up amendment No. 3758 and ask that once it is reported by number, it be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. ROCKEFELLER, for himself, Mrs. HUTCHISON, Mr. DORGAN, and Mr. PRYOR, proposes an amendment numbered 3758 to amendment No. 3739.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To preserve the Federal Trade Commission's rulemaking authority and for other purposes)

On page 1237, line 6, strike ''law,'' and insert ''law (other than section 1024(g) of this title),''.

On page 1254, line 15, strike ''To'' and insert ''Except as provided in paragraph (3), to''.

On page 1255, line 10, strike ''(a)(1)(A),'' and insert ''(a)(1),''.

On page 1256, line 25, strike ''law,'' and insert ''law (other than subsection (g)),''.

On page 1257, after line 25, insert the following:

(g) PRESERVATION OF FEDERAL TRADE COMMISSION AUTHORITY.—

(1) IN GENERAL.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act or any other law, other than an enumerated consumer law.

(2) CERTAIN ENFORCEMENT ACTIONS.—The Federal Trade Commission may enforce, under the Federal Trade Commission Act, a rule with respect to an unfair, deceptive, or abusive act or practice issued by the Bureau as to a person subject to the Federal Trade Commission's jurisdiction under that Act, and a violation of such a rule shall be treated as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices. The Bureau may enforce, under subtitle E, a rule with respect to an unfair or deceptive act or practice issued by the Federal Trade Commission as to a covered person.

On page 1375, beginning with line 7, strike through line 5 on page 1376 and insert the following:

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—The Federal Trade Commission's authority under an enumerated consumer law to conduct a rulemaking, issue official guidelines, or conduct a study or issue a report mandated by such law, shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission to the Bureau.

(B) FEDERAL TRADE COMMISSION AUTHORITY.—The Bureau shall have all powers and duties respecting rulemaking, issuing guidelines, conducting mandated studies, and issuing mandated reports contained within the enumerated consumer laws that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

On page 1462, line 5, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1464, line 10, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1472, line 4, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1477, strike lines 15 through 21 and insert the following:

''(e) REGULATORY AUTHORITY.—

''(1) BUREAU OF CONSUMER FINANCIAL PROTECTION.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this Act. Except as provided in paragraph (2), the regulations prescribed by the Bureau under this subsection shall apply to any person that is subject to this Act, notwithstanding the enforcement authorities granted to other agencies under this section.

''(2) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall issue regulations to implement sections 615(e) and 628 of this Act with respect to entities within its authority under section 621 of this Act. The regulations issued by the Bureau under paragraph (1) shall not apply to those entities.''; and

On page 1482, line 1, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1485, line 24, strike ''and'' after the semicolon.

On page 1486, line 2, insert ''and'' after the semicolon.

On page 1486, between lines 2 and 3, insert the following:

(C) by adding at the end the following: ''Notwithstanding the preceding sentence, only the Federal Trade Commission shall prescribe regulations to implement section 501(b) with respect to entities subject to Federal Trade Commission enforcement under section 505(a).''.

On page 1500, line 23, strike the closing quotation marks, the semicolon, and ''and''.

On page 1500, between lines 23 and 24, insert the following:

''(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section.''; and

On page 1516, line 1, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

Ms. COLLINS. Mr. President, I rise today to speak on the amendment that Senator MURRAY and I have been working on together that would expand the Financial Stability Oversight Council established in S. 3217 to include as nonvoting members a State insurance commissioner, a State banking supervisor, and a State securities commissioner. Concomitantly, I seek to remove the independent voting member position having insurance expertise, as that would create a duplicative position.

It is critically important that the Council incorporate State regulators. State banking, insurance, and securities regulators are on the front lines of financial regulation and therefore have information and perspectives that are necessary components of an effective regulatory structure. State regulators could act as ''first responders'' to the Council, in that they see trends developing at the State level. They could serve as an early warning system, identifying practices and risk-related trends that are substantial contributing factors to systemic risk.

I ask for unanimous consent that the joint letter from the Conference of State Bank Supervisors, the National Association of Insurance Commissioners, and the North American Securities Administrators Association supporting this amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS,
May 13, 2010.

Hon. PATTY MURRAY,
Hon. SUSAN COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATORS MURRAY AND COLLINS: The Conference of State Bank Supervisors (CSBS), the National Association of Insurance Commissioners (NAIC) and the North American Securities Administrators Association (NASAA) are writing in support of your amendments providing for non-voting membership for state banking, insurance and securities regulators on the Financial Stability Oversight Council (FSOC).

Including state regulators on the FSOC is both necessary and appropriate. State banking, insurance, and securities regulators are on the front lines of financial regulation and bring information and perspectives that are necessary components of an effective regulatory structure. In all financial sectors, state regulators gather and act upon large amounts of information from industry participants and from investors. State regulators would bring to the FSOC the insights of a team of ''first responders'' who see trends developing at the state level, which have the potential to impact the larger financial system. Consequently, they serve as an early warning system identifying practices and risk-related trends that are substantial contributing factors to systemic risk.

Matters of financial stability and systemic risk have far-reaching implications and benefit from a diversity of regulatory perspectives. By including state regulators in the FSOC, your amendments create a more comprehensive and efficient approach that will benefit from access to all relevant information regarding the accumulation of risk in our financial system.

Thank you for your efforts and we look forward to working with you to secure passage of your amendments.

Sincerely,

JOSEPH A. SMITH, Jr.,
Commissioner of Banks, North Carolina, Chairman, Conference of State Bank Supervisors.
DENISE VOIGT CRAWFORD,
Texas Securities Commissioner, NASAA President.
JANE CLINE;
West Virginia Insurance Commissioner, NAIC President.

Ms. COLLINS. Mr. President, I also wish to speak briefly on my amendment, No. 3879, which would help raise capital and risk standards for banks, bank holding companies, and nonbank financial institutions.

It is not my intent that this amendment affect the treatment of small

bank holding companies as provided under the Federal Reserve's Small Bank Holding Company Policy Statement, nor do I intend that the amendment apply to Federal Home Loan Banks. Likewise, I would like the record to reflect that the effective date for bank holding companies owned by foreign banking organizations that obtained an exemption from capital requirements pursuant to the Federal Reserve's Supervision and Regulation Letter SR–01–1 should be 5 years after enactment.

I look forward to working with my colleagues to ensure that this intent is properly reflected in the final language of this reform bill.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMEMBERING REVEREND JESSE SCOTT

Mr. REID. Mr. President, I rise today with a sad heart, because on Monday, May 10, the city of Las Vegas and our Nation lost a voice for truth and justice. On that day, Reverend Jesse Scott passed away.

Reverend Jesse Scott committed many of his 90 years to creating a more just world. With a commanding voice he argued for basic principles of fairness that will reverberate long into the future. His perseverance inspired us all and we continue his legacy of building a community that sees all its members as equals.

Reverend Scott's career was devoted to social justice. As an organizer, president and executive director of the NAACP in California and Nevada, he brought communities together to create better living and working conditions for minority workers. Because of his dedication, Reverend Scott was later selected to be the executive director of the Nevada Equal Rights Commission, where he served with dedication and distinction.

Until his death, Reverend Scott was assistant pastor at Second Baptist Church of Las Vegas and was the former pastor of Second Christian Church in Las Vegas. Even in his final days, he practiced his life's mission of social advocacy by working with Nevada's nonviolent ex-offenders and by promoting education to help Nevada students go to college.

The U.S. Senate will also miss an opportunity to hear Reverend Scott's words of faith; he was scheduled to serve as the guest Chaplain and deliver the opening prayer on the Senate floor on Thursday, May 20.

Mr. President, Reverend Jesse Scott was a trailblazer for civil rights and a man of deep faith in God and humanity. My thoughts are with Reverend Scott's family during this difficult time.

Our State has lost a giant, but I am proud to have worked alongside such a great Nevadan.

NATIONAL POLICE WEEK

Mrs. LINCOLN. Mr. President, I rise today in honor of National Police Week to recognize the courage, bravery, and dedication of Arkansas's law enforcement officers, who risk their lives each day to keep our citizens safe.

In particular, I pay tribute to five fallen officers from our State whose names have been added to the National Law Enforcement Officers Memorial in Washington, DC. The officers, their departments, and their dates of death are:

John A Bratton, Grant County Sheriff's Office, February 1, 1887

H.L. Smith, Grant County Sheriff's Office, February 1, 1887

Joseph Christopher Cannon, Plumerville Police Department, June 19, 2009

Larry Neal Blagg, Trumann Police Department, January 27, 2009

Henry Jorden Willeford, Van Buren County Sheriff's Office, November 16, 2009

Along with all Arkansans, I thank these officers for their service and sacrifice. It is a fitting tribute that the names of these officers have been etched on the National Law Enforcement Officers Memorial in Washington, DC.

HONORING OUR ARMED FORCES

LANCE CORPORAL RICHARD R. PENNY

Mr. PRYOR. Mr. President, it is with a heavy heart that today I honor LCpl. Richard R. Penny from Greenland, AR, and pay tribute to his life and service to our country.

Lance Corporal Penny was a machine gunner assigned to the 1st Battalion, 2nd Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force based out of Camp Lejeune, North Carolina. In March of this year, he was deployed to Afghanistan's Helmand Province, an opium-producing region at the epicenter of the war on terror. He served with valor and distinction, earning numerous awards, including the National Defense Service Medal, the Global War on Terrorism Service Medal, and the Afghanistan Campaign Medal.

Lance Corporal Penny was an ''all-American'' man, an all-conference defensive tackle for Greenland High School's football team, and voted ''class favorite'' by his peers. He loved to hunt and fish and drive backroads in his four-wheel-drive pickup he called ''Skeeter.'' Those who knew him described him as ''tough as nails,'' and said the word ''quit'' was not part of his vocabulary.

Greenland police officer Michael Huber perhaps best described Lance Corporal Penny's life and the impact he had on others when he said to a local TV station: ''Here in our town, there are people we look up to. Richard Penny was one of those. He'll still be somebody we can look up to. Because he paid the ultimate sacrifice on the altar of freedom.''

Today I join all Arkansans in lifting up Lance Corporal Penny's family, friends, and all those who loved him during these challenging times. We will never forget his courage, his honor, and the life he gave for our country.

ADDITIONAL STATEMENTS

TRIBUTE TO COLONEL JOHN D. BIRD II

● Mr. CRAPO. Mr. President, on May 24, 2010, Mountain Home Air Force Base, in my home State of Idaho, will bid farewell to COL John D. Bird, his wife Megan, and their children Blake and Cole. Colonel Bird has been the commander of the 366th Fighter Wing at Mountain Home Air Force Base since February 11, 2009. Colonel Bird is a command pilot with more than 1,700 flight hours in the F–15C, T–37, and T–38. He has been awarded the Legion of Merit, the Defense Meritorious Service Medal, the Meritorious Service Medal with three oak leaf clusters, the Air Medal, the Air Force Commendation Medal with one oak leaf cluster, and the Air Force Achievement Medal. Colonel Bird has given a lifetime of service to his country, to the benefit of us all.

The 366th Fighter Wing consists of over 4,800 United States and Republic of Singapore personnel, with 22 squadrons, comprised of a fleet of 86 F–15 aircraft, and under Colonel Bird's command, it excelled in its mission. He oversaw the deployment of 5,286 personnel and 1,507 tons of cargo to 18 different locations around the world, with his squadrons surpassing all theater commander objectives in each location. During Colonel Bird's time as commander, and due to his leadership, the Wing was recognized with 19 individual awards and 9 program awards at the Air Combat Command level and 10 awards at the Headquarters Air Force level. While under his command, the Mountain Home Air Force Base thrived. He oversaw the expansion and enhancement of the Mountain Home Range Complex, with new urban target construction and an increase in training airspace capacity; a family housing demolition project, 3 years ahead of

schedule, saving $2.2 million; the construction of 300 new military family housing units; a temporary lodging facility; and a new main gate complex.

Colonel Bird's outstanding leadership abilities inspired excellence and achievement in others, and his comprehensive view of the wing's mission within the context of the broader mission of the Air Force and the U.S. military made him a particularly outstanding commander. My staff and I have enjoyed an extremely positive working relationship with Colonel Bird and his staff, which helps to ensure that Mountain Home AFB not only retains critical missions, but is considered for others as it possesses one of the top training ranges in the Nation and has the strong support of the local community and the State.

Colonel and Mrs. Bird have been exemplary representatives of the Air Force and good friends to Idaho. They will be greatly missed. On behalf of the State of Idaho, I wish them well as they move back to Washington, DC, where Colonel Bird will work as Chief of the Force Application Division at the Pentagon, and I thank them for their continued service to our Nation and for their time as gunfighters in the great State of Idaho.●

TRIBUTE TO B.M. ''MACK'' RANKIN, JR.

● Mrs. HUTCHISON. Mr. President, today I wish to speak about a dear friend whose contributions to the great State of Texas and our Nation are most notable.

B.M. Rankin, Jr., known by his friends as ''Mack,'' is a pioneer in the oil and gas industry. More than three decades ago, Rankin and two partners, W.K. McWilliams, Jr. and James R. Moffett, founded McMoRan Exploration Co., an independent public company engaged in the exploration, development and production of oil and natural gas offshore in the Gulf of Mexico and onshore in the gulf coast area. Today Rankin is the vice chairman of both McMoRan Exploration Co., NYSE, and Freeport-McMoRan Copper & Gold Inc., NYSE, the world's third-largest copper deposit and the single largest gold deposit in the world.

Rankin's expertise and knowledge of America's energy resources, coupled with his leadership and vision for our country's energy needs, have transformed public policy in this area.

For the past 2 years, he has served as the chairman of the U.S. Oil and Gas Association. Under his guidance, the association has provided the industry with representation in legislative, regulatory and public affairs, and it serves as a resource on technical matters. Membership in the association represents all segments of the industry, including major oil and gas companies, independent oil and gas producers, refineries, natural gas and petroleum products transportation and distribution companies, natural gas generation companies, and other firms and individuals involved in the industry.

Throughout his career Rankin has been a strong advocate for clarity and practicality in the ongoing debate to formulate a responsible national energy policy. Because of his steadfast efforts, the oil and gas industry plays a leading role in these policy debates and deliberations.

A native of Dallas, Rankin is an active member and generous benefactor of a number of local charitable foundations. He has served on the Board of Visitors of the University Cancer Foundation of the University of Texas M.D. Anderson Hospital Cancer Center and as chairman for the Chronic Lymphocytic Leukemia, CLL, Global Research Foundation.

On May 13, 2010, Rankin will step down as chairman of the U.S. Oil and Gas Association. On this special occasion I want not only to commend Rankin for his lifelong dedication to energy policy but also to thank him for his tremendous commitment to our State and country.●

GOVERNOR'S WORK-LIFE BALANCE AWARD RECIPIENTS

● Mrs. LINCOLN. Mr. President, today I congratulate 17 Arkansas employers that were recently honored by the Arkansas Governor's office for providing resources to help their workers balance work and family life. As the mother of twin boys, and like every working parent, I find it can be a challenge to balance family life with my work responsibilities. I commend these Arkansas employers for providing resources that support employees in balancing the needs of both work and family.

The winners, based on number of employees, were:

LARGE COMPANIES

University of Arkansas, Fayetteville, Gold
University of Arkansas for Medical Sciences, Little Rock, Silver
Ernst & Young, LLP, Rogers, Bronze
Fayetteville Public School District, Fayetteville, Bronze

MEDIUM COMPANIES

Winrock International, Little Rock, Gold
Arkansas Educational Television Network, Conway, Silver
Delta Dental of Arkansas, Sherwood, Bronze

SMALL COMPANIES

Cross, Gunter, Witherspoon & Galchus, P.C., Little Rock, Gold
Arkansas Power Electronics International, Inc., Fayetteville, Silver
White River Planning & Development District, Inc., Batesville, Bronze

The Work-Life Initiative also announced Spotlight Award winners, honoring organizations that provided exemplary strategies that support a healthy work-life balance. They were:

Arvest Bank, Ft. Smith and River Valley Region, Ft. Smith
Bell & Company, PA, North Little Rock
Friendship Community Care, Russellville
Helen R. Walton Children's Enrichment Center, Bentonville
McKee Foods Corporation, Gentry

The Mature Worker Award also recognized three companies for their ongoing efforts to provide a work environment friendly to mature workers. The winners were:

Arkansas Educational Television Network, Conway
Bank of the Ozarks, Little Rock
Saline Memorial Hospital, Benton

Mr. President, I congratulate each and every member of these organizations for their dedication to their families, work life, and our great State of Arkansas.●

RECOGNIZING BLACK DINAH CHOCOLATIERS

● Ms. SNOWE. Mr. President, today I recognize Black Dinah Chocolatiers, a rare treasure of a company found on the tiny, remote Maine island of Isle au Haut in Penobscot Bay. While this small business may be nestled on a small island, it is no secret to the world. Featured in Martha Stewart Living and various other publications, chocolate lovers travel from near and far to take the 45-minute ride by mail boat or ferry from the mainland to indulge in the rich, delightful taste of Black Dinah's specialty handcrafted chocolates.

The history behind this tasty small business is a tale of adventure and creativity. Black Dinah Chocolatiers' founders Kate and Steve Shaffer fell in love with the small fishing and lobstering community of Isle au Haut after moving there in 2004. Not seeking employment in the island's traditional trades of lobstering and carpentry, Kate and Steve designed an alternative business plan that consisted of a product that could be marketed and shipped off the island year-round to compensate for cold Maine winters and a sparsely populated customer base on the island. Their solution was chocolate.

With Kate's years of experience in the restaurant industry, Steve's experience in the computer repair business, and some assistance from one of Maine's exceptional women's business centers, the Shaffers launched Black Dinah Chocolatiers in July of 2007. Today, thousands of chocolates are shipped off the island to every State during holidays such as Thanksgiving, Christmas, Valentine's Day, and Mothers Day. In addition to an active mail order business, the Shaffers supply their artisan chocolates to Maine gourmet food stores, wine shops, and florists. They also run an organic bakery and coffeehouse from May through September for tourists and locals alike. This small business has a tremendous impact on the island's community—not only through its satisfying contribution of extraordinary chocolate but as a profitable venture that is helping to sustain its local economy through sales that have doubled each year since its inception.

Black Dinah Chocolatier further assists the regional economy through its

use of local Maine produce. Kate turns out dozens of handmade Venezuelan, Belgian, and rare Peruvian-style chocolates, including truffles and caramels, all of them flavored with natural ingredients—organic herbs, flowers, fruits, and even cheeses cultivated by the region's farmers. In fact, each season's flavored chocolates are dictated by what is at the nearby Stonington farmers market on the mainland. Every chocolate features at least one ingredient from a Maine farmer located within 50 miles of the company's base.

The Shaffers understand how critical it is for their business to establish and maintain local relationships, especially on an island the size of Isle au Haut. In a truly Maine example of how neighbors help each other to this day, Kate told Martha Stewart Living Magazine, ''It's not as though you can go to the store when you run out of butter. If I run out of butter I'll go to Diana, the innkeeper. For cream cheese, I call Brenda, a lobsterman's wife, who makes lots of crab dip. And of course, if anyone needs sugar or chocolate, they come to me.''

A true sweet spot in the heart of an island community as well as the hearts of chocolate lovers worldwide, Black Dinah Chocolatiers is a prime example of a Maine small business that seeks to be a profitable venture and a good neighbor. I commend its founders, Kate and Steve Shaffer, for their ingenuity in creating this thriving and viable business, as well as for their commitment and dedication to helping grow their local economy, and I wish them the sweetest success in the future.●

TRIBUTE TO MIKE BARKER

● Mr. WYDEN. Mr. President, this week in Bend, OR, the community will be honoring one of the great advocates for Oregon's veterans, Mike ''Rocky'' Barker. Mike has been an incredible partner to me and my staff as we have worked to improve health and other services for central Oregon's military veterans.

Mike's incredible service to our Nation began with 8 years in the U.S. Air Force as an air traffic controller. He went on to a career with the FAA at the Butte, MT, Flight Service Station and then moved to central Oregon where he ran the Disabled Veterans Outreach Program. In that post he became nationally recognized as the VA's top service officer for 1999, and shortly thereafter he received similar national recognition from the VFW.

Always looking for ways to help veterans in need, Mike ran the incarcerated vet program for a number of years. During his leadership, more than 95 percent of the veterans who came through his program stayed out of prison.

He retired in 2003, and the hallmark of his career from 1970 to the present—whether as a professional or as a volunteer—has been his insight and leadership on issues that matter to military veterans.

When I was elected to the U.S. Senate in 1996, Mike immediately rolled up his shirt sleeves to work with me and our staff to open up the VA's Central Oregon Community Based Outreach Clinic—the first of its kind to open up east of the Cascades. Before this clinic got off the ground, central Oregon veterans had to drive to the Portland VA Medical Center for the medical services our Nation promised them—a 6-hour round trip. That hardship is now a thing of the past for Oregon's veterans. Today, the clinic is such a success that we are now in the process of expanding it.

Throughout all of his work on veterans' issues, Mike had a particular feel for the challenges his fellow servicemembers faced with post traumatic stress disorder, PTSD. He had started working with people dealing with illness during the Vietnam era, and continues to this day. Three years ago, Mike brought together a diverse group of veterans' leaders and formed the Central Oregon Vet Center Task Force to find ways to support veterans in their community. Mike led the group's monthly meetings, as they brainstormed strategies to persuade the VA how important it was to create a vet center in eastern Oregon. Almost a year ago we finally achieved that goal, and the Central Oregon Vet Center is now open for service. It is a place where combat veterans can get counseling and, just as importantly, find a community of people who have a common experience as warriors for the United States.

Thank you, Mike, for your friendship, your dedication, and your service to our veterans.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 10:57 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 1067. An act to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 3333. An act to extend the statutory license for secondary transmissions under title 17, United States Code, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 61. Concurrent resolution expressing the sense of the Congress that general aviation pilots and industry should be recognized for the contributions made in response to Haiti earthquake relief efforts.

ENROLLED BILLS SIGNED

The PRESIDENT pro tempore (Mr. BYRD) announced that he had signed the following enrolled bills, which were previously signed by the Speaker of the House:

H.R. 1121. An act to authorize a land exchange to acquire lands for the Blue Ridge Parkway from the Town of Blowing Rock, North Carolina, and for other purposes.

H.R. 1442. An act to provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 1909.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5817. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures (21); Amdt. No. 3369'' (RIN2120–AA65) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5818. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0430)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5819. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Model 747–200B Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0381)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5820. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2009–0525)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5821. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0431)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5822. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2009–1111)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5823. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; British Aerospace Regional Aircraft Model Jetstream Series 3101 and Jetstream Model 3201 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0123)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5824. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Eurocopter France (ECF) Model EC120B Helicopters'' ((RIN2120–AA64)(Docket No. FAA–2010–0410)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5825. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Eurocopter France Model AS350B, BA, B1, B2, B3, C, D, and D1; AS 355E, F, F1, F2, N, and NP Helicopters'' ((RIN2120–AA64)(Docket No. FAA–2010–0356)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5826. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Honeywell International Inc., Primus EPIC and Primus APEX Flight Management Systems, Installed on, but not Limited to, Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes, and Pilatus Aircraft Ltd. Model PC–12/47E Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0385)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5827. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Piaggio Aero Industries S.p.A. Model PIAGGIO P–180 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0124)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5828. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; General Electric Company (GE) CF34–1A, CF34–3A, and CF34–3B Series Turbofan Engines; Correction'' ((RIN2120–AA64)(Docket No. FAA–2009–0328)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5829. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Turbomeca Makila 2A Turboshaft Engines'' ((RIN2120–AA64)(Docket No. FAA–2010–0411)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5830. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; General Electric Company (GE) CJ610 Series Turbojet Engines and CF700 Series Turbofan Engines'' ((RIN2120–AA64)(Docket No. FAA–2009–0502)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5831. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Liberty Aerospace Incorporated Model XL–2 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2009–0329)) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5832. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands'' (RIN0648–XV79) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5833. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XV78) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5834. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska'' (RIN0648–XV80) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5835. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer'' (RIN0648–XV91) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5836. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures'' (RIN0648–AY57) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5837. A communication from the Deputy Chief Financial Officer, Department of Homeland Security, transmitting, pursuant to law, a report relative to the transfer of funds from the Oil Spill Liability Trust Fund to the Emergency Fund, which is administered by the United States Coast Guard; to the Committee on Commerce, Science, and Transportation.

EC–5838. A communication from the Secretary of Transportation, transmitting, pursuant to law, an annual report relative to the regulatory status of each recommendation on the National Transportation Safety Board's Most Wanted List; to the Committee on Commerce, Science, and Transportation.

EC–5839. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Flutriafol; Pesticide Tolerances'' (FRL No. 8812–6) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5840. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Fluazinam; Pesticide Tolerances'' (FRL No. 8824–5) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5841. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clethodim; Pesticide Tolerances'' (FRL No. 8822–7) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5842. A communication from the Secretary of the American Battle Monuments Commission, transmitting, pursuant to law, a report relative to a violation of the Antideficiency Act that occurred within the Commission and was reported in the Government Accountability Office report, GAO–10–399; to the Committee on Appropriations.

EC–5843. A communication from the Assistant Secretary of Defense (Health Affairs), Department of Defense, transmitting, pursuant to law, a report relative to mental health counselors practicing independently under the TRICARE program; to the Committee on Armed Services.

EC–5844. A communication from the Under Secretary of Defense (Personnel and Readiness), Department of Defense, transmitting, pursuant to law, a report relative to the disposition of remains; to the Committee on Armed Services.

EC–5845. A communication from the Acting Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to current military, diplomatic, political, and economic measures that are being or have been undertaken to complete our mission in Iraq successfully; to the Committee on Armed Services.

EC–5846. A communication from the Chief Counsel, Federal Emergency Management

Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (75 FR 22699)'' ((44 CFR Part 67)(Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5847. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (75 FR 23593)'' ((44 CFR Part 65) (Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5848. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (75 FR 23595)'' ((44 CFR Part 67) (Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5849. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (75 FR 23600)'' ((44 CFR Part 67) (Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5850. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations (75 FR 23608)'' ((44 CFR Part 67) (Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5851. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Addition to the List of Validated End-Users: Advanced Micro Devices China, Inc.'' (RIN0694–AE87) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5852. A communication from the Executive Vice President and Chief Financial Officer, Federal Home Loan Bank of Chicago, transmitting, pursuant to law, the Bank's 2009 management reports; to the Committee on Banking, Housing, and Urban Affairs.

EC–5853. A communication from the General Counsel of the Department of Housing and Urban Development, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary for Public Affairs, Department of Housing and Urban Development; to the Committee on Banking, Housing, and Urban Affairs.

EC–5854. A communication from the Deputy to the Chairman, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''Final Rule Regarding Limited Amendment of the Temporary Liquidity Guarantee Program to Extend the Transaction Account Guarantee Program with Modified Fee Structure'' (RIN3064–AD37) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5855. A communication from the Assistant General Counsel for Legislation and Energy Efficiency, Office of Energy Efficiency and Renewable Energy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters'' (RIN1904–AA90) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Energy and Natural Resources.

EC–5856. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Standards for Business Practices and Communication Protocols for Public Utilities; Final Rule'' (FERC Docket No. RM05–5–017) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Energy and Natural Resources.

EC–5857. A communication from the Assistant Secretary for Insular Affairs, Department of the Interior, transmitting, pursuant to law, a report entitled ''Report on the Alien Worker Population in the Commonwealth of the Northern Mariana Islands''; to the Committee on Energy and Natural Resources.

EC–5858. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''MOX Fuel Fabrication Facility Construction and Operations Report to Congress; April 30, 2010''; to the Committee on Energy and Natural Resources.

EC–5859. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Discrete Emission Credit Banking and Trading Program'' (FRL No. 9151–6) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Environment and Public Works.

EC–5860. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Emission Credit Banking and Trading Program'' (FRL No. 9151–5) received in the Office of the President of the Senate on May 12, 2010; to the Committee on Environment and Public Works.

EC–5861. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Determination to Approve Alternative Final Cover Request for the Lake County, Montana Landfill'' (FRL No. 9149–7) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Environment and Public Works.

EC–5862. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Reformulated Gasoline and Diesel Fuels; California'' (FRL No. 9112–7) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Environment and Public Works.

EC–5863. A communication from the Regulations Coordinator, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act'' (RIN0991–AB66) received in the Office of the President of the Senate on May 11, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–5864. A communication from the Director of the Regulatory Review Group, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Livestock Forage Disaster Program and Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish; Supplemental Agricultural Disaster Assistance'' (RIN0560–AH94) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5865. A communication from the Secretary of the Senate, transmitting, pursuant to law, the report of the receipts and expenditures of the Senate for the period from October 1, 2009 through March 31, 2010, received in the Office of the President of the Senate on May 13, 2010; ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute:

S. 624. A bill to provide 100,000,000 people with first—time access to safe drinking water and sanitation on a sustainable basis by 2015 by improving the capacity of the United States Government to fully implement the Senator Paul Simon Water for the Poor Act of 2005 (Rept. No. 111—185).

S. 2839. A bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for treatment of victims of torture, and for other purposes (Rept. No. 111—186).

By Mr. KOHL, from the Special Committee on Aging:

Special Report entitled ''Social Security Modernization: Options to Address Solvency and Benefit Adequacy'' (Rept. No. 111—187).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

Goodwin Liu, of California, to be United States Circuit Judge for the Ninth Circuit.

Raymond Joseph Lohier, Jr., of New York, to be United States Circuit Judge for the Second Circuit.

Leonard Philip Stark, of Delaware, to be United States District Judge for the District of Delaware.

Kerry Joseph Forestal, of Indiana, to be United States Marshal for the Southern District of Indiana for the term of four years.

John Dale Foster, of West Virginia, to be United States Marshal for the Southern District of West Virginia for the term of four years.

Gary Michael Gaskins, of West Virginia, to be United States Marshal for the Northern District of West Virginia for the term of four years.

Dallas Stephen Neville, of Wisconsin, to be United States Marshal for the Western District of Wisconsin for the term of four years.

R. Booth Goodwin II, of West Virginia, to be United States Attorney for the Southern District of West Virginia for the term of four years.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. FEINGOLD:

S. 3356. A bill to amend title 38, United States Code, to increase the maximum age for children eligible for medical care under the CHAMPVA program, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. LAUTENBERG (for himself, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mr. WYDEN, Mr. WHITEHOUSE, Mrs. FEINSTEIN, and Mr. FRANKEN):

S. 3357. A bill to establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER (for herself, Ms. CANTWELL, Mrs. FEINSTEIN, Mr. MERKLEY, Mr. WYDEN, and Mrs. MURRAY):

S. 3358. A bill to amend the Outer Continental Shelf Lands Act to permanently prohibit the conduct of offshore drilling on the outer Continental Shelf off the coast of California, Oregon, and Washington; to the Committee on Energy and Natural Resources.

By Mr. THUNE (for himself, Mr. TESTER, and Ms. SNOWE):

S. 3359. A bill to amend title 38, United States Code, to provide for annual cost-of-living adjustments to be made automatically by law each year in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. KERRY:

S. 3360. A bill to establish a pilot program for police departments to use anonymous texts from citizens to augment their anonymous tip hotlines; to the Committee on the Judiciary.

By Mr. BROWNBACK (for himself, Mrs. MURRAY, Mr. BOND, and Mr. ROBERTS):

S. 3361. A bill to require the Secretary of Defense to take illegal subsidization into account in evaluating proposals for contracts for major defense acquisition programs, and for other purposes; to the Committee on Armed Services.

By Mr. SANDERS (for himself and Mrs. BOXER):

S. 3362. A bill to amend the Clean Air Act to direct the Administrator of the Environmental Protection Agency to provide competitive grants to publicly funded schools to implement effective technologies to reduce air pollutants (as defined in section 302 of the Clean Air Act), including greenhouse gas emissions, in accordance with that Act; to the Committee on Environment and Public Works.

By Mr. CARDIN (for himself, Mr. CRAPO, Ms. MIKULSKI, and Mr. RISCH):

S. 3363. A bill to amend the Water Resources Research Act of 1984 to reauthorize grants for and require applied water supply research regarding the water resources research and technology institutes established under that Act; to the Committee on Environment and Public Works.

By Mr. UDALL of Colorado (for himself, Ms. COLLINS, Mr. BURRIS, Mr. MERKLEY, Mrs. MURRAY, and Mr. TESTER):

S. 3364. A bill to amend the Energy Policy and Conservation Act to establish the Office of Energy and Renewable Energy as the lead Federal agency for coordinating Federal, State, and local assistance provided to promote the energy retrofitting of schools; to the Committee on Energy and Natural Resources.

By Mr. WEBB:

S. 3365. A bill to amend section 5542 of title 5, United States Code, to provide that any hours worked by Federal firefighters under a qualified trade-of-time arrangement shall be excluded for purposes of determinations relating to overtime pay; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LAUTENBERG:

S. 3366. A bill to prohibit individuals from carrying firearms in certain airports buildings and airfields, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. AKAKA:

S. 3367. A bill to amend title 38, United States Code, to increase the rate of pension for disabled veterans who are married to one another and both of whom require regular aid and attendance, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. AKAKA:

S. 3368. A bill to amend title 38, United States Code, to authorize certain individuals to sign claims filed with the Secretary of Veterans Affairs on behalf of claimants, and for other purposes; to the Committee on Veterans' Affairs.

By Ms. MURKOWSKI:

S. 3369. A bill to provide for the application of the Recreation and Public Purposes Act to the Connell Lake area to enable the Ketchikan Gateway Borough in Alaska to obtain land in the area in accordance with that Act; to the Committee on Energy and Natural Resources.

By Mr. AKAKA:

S. 3370. A bill to amend title 38, United States Code, to improve the process by which an individual files jointly for social security and dependency and indemnity compensation, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. McCASKILL (for herself, Mr. LIEBERMAN, and Ms. COLLINS):

S. 3371. A bill to amend title 10, United States Code, to improve access to mental health care counselors under the TRICARE program, and for other purposes; to the Committee on Armed Services.

By Mrs. BOXER (for herself, Ms. MURKOWSKI, Mrs. MURRAY, Ms. CANTWELL, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BEGICH, Mr. INHOFE, Ms. LANDRIEU, Mr. VITTER, Ms. SNOWE, and Mr. COCHRAN):

S. 3372. A bill to modify the date on which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels; to the Committee on Environment and Public Works.

By Mrs. BOXER:

S. 3373. A bill to address the health and economic development impacts of nonattainment of federally mandated air quality standards in the San Joaquin Valley, California, by designating air quality empowerment zones; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG:

S. 3374. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to establish a grant program to revitalize brownfield sites for the purpose of locating renewable electricity generation facilities on those sites; to the Committee on Environment and Public Works.

By Mr. VITTER (for himself, Mr. SESSIONS, Mr. WICKER, and Mr. LEMIEUX):

S. 3375. A bill to amend the Oil Pollution Act of 1990 to increase the cap on liability for economic damages resulting from an oil spill, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mr. SCHUMER, Mr. CORNYN, Mrs. BOXER, Mrs. HUTCHISON, Mr. BINGAMAN, Mr. MCCAIN, Mr. DURBIN, and Mr. CRAPO):

S. 3376. A bill to authorize to be appropriated $950,000,000 for each of the fiscal years 2012 through 2015 to carry out the State Criminal Alien Assistance Program; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KAUFMAN (for himself, Mr. BARRASSO, Mr. BROWN of Ohio, Mr. BURRIS, Mr. CARDIN, Mr. CARPER, Ms. CANTWELL, Mr. CASEY, Mr. CORNYN, Mr. DURBIN, Mr. ENZI, Mr. GREGG, Mrs. HAGAN, Mr. ISAKSON, Mr. LEMIEUX, Mr. LEVIN, Ms. MIKULSKI, Mr. PRYOR, Mr. REED, Mr. RISCH, Mr. SESSIONS, Mrs. SHAHEEN, Ms. SNOWE, Ms. STABENOW, Mr. TESTER, Mr. WARNER, Mr. WHITEHOUSE, and Mr. UDALL of New Mexico):

S. Res. 524. A resolution supporting the goals and ideals of National Stuttering Awareness Week 2010; considered and agreed to.

By Mr. LIEBERMAN (for himself, Mr. LEVIN, Mr. MCCAIN, Mr. KERRY, and Mr. LUGAR):

S. Res. 525. A resolution expressing sympathy to the families of those killed in the sinking of the Republic of Korea Ship Cheonan, and solidarity with the Republic of Korea in the aftermath of this tragic incident; considered and agreed to.

ADDITIONAL COSPONSORS

S. 46

At the request of Mr. ENSIGN, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 46, a bill to amend title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps.

S. 504

At the request of Mr. ROBERTS, the names of the Senator from Wyoming (Mr. BARRASSO), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. BROWNBACK), the Senator from Kentucky (Mr. BUNNING), the Senator from Texas (Mr. CORNYN), the Senator from Idaho (Mr. CRAPO), the Senator from Connecticut (Mr. DODD), the Senator from Wyoming (Mr. ENZI), the Senator from Iowa (Mr. GRASSLEY), the Senator from Oklahoma (Mr. INHOFE), the Senator from Vermont (Mr. LEAHY), the Senator from Idaho (Mr. RISCH), the Senator from South Dakota (Mr. THUNE), the Senator from New Mexico (Mr. UDALL), and the Senator from Virginia (Mr. WARNER) were added

as cosponsors of S. 504, a bill to redesignate the Department of the Navy as the Department of the Navy and Marine Corps.

S. 701

At the request of Mr. KERRY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 701, a bill to amend title XVIII of the Social Security Act to improve access of Medicare beneficiaries to intravenous immune globulins (IVIG).

S. 729

At the request of Mr. DURBIN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 729, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

S. 987

At the request of Mr. DURBIN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1055

At the request of Mrs. BOXER, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 1055, a bill to grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

S. 1072

At the request of Mrs. LINCOLN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1072, a bill to amend chapter 1606 of title 10, United States Code, to modify the basis utilized for annual adjustments in amounts of educational assistance for members of the Selected Reserve.

S. 1312

At the request of Mr. ISAKSON, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1312, a bill to amend title XVIII of the Social Security Act to provide for coverage, as supplies associated with the injection of insulin, of containment, removal, decontamination and disposal of home-generated needles, syringes, and other sharps through a sharps container, decontamination/destruction device, or sharps-by-mail program or similar program under part D of the Medicare program.

S. 1395

At the request of Mr. CRAPO, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of S. 1395, a bill to amend the Marine Mammal Protection Act of 1972 to allow importation of polar bear trophies taken in sport hunts in Canada before the date on which the polar bear was determined to be a threatened species under the Endangered Species Act of 1973.

S. 1548

At the request of Mr. BURR, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1548, a bill to improve research, diagnosis, and treatment of musculoskeletal diseases, conditions, and injuries, to conduct a longitudinal study on aging, and for other purposes.

S. 1605

At the request of Mr. SCHUMER, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1605, a bill to amend the Internal Revenue Code of 1986 to reform the rules relating to fractional charitable donations of tangible personal property.

S. 1836

At the request of Mr. MCCAIN, the names of the Senator from Arizona (Mr. KYL), the Senator from Kansas (Mr. BROWNBACK), the Senator from Nevada (Mr. ENSIGN), and the Senator from Texas (Mr. CORNYN) were added as cosponsors of S. 1836, a bill to prohibit the Federal Communications Commission from further regulating the Internet.

S. 2882

At the request of Mr. KERRY, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Illinois (Mr. BURRIS) were added as cosponsors of S. 2882, a bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the treatment of individuals as independent contractors or employees, and for other purposes.

S. 2989

At the request of Ms. LANDRIEU, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2989, a bill to improve the Small Business Act, and for other purposes.

S. 3065

At the request of Mr. LIEBERMAN, the names of the Senator from Delaware (Mr. KAUFMAN), the Senator from Washington (Mrs. MURRAY), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 3065, a bill to amend title 10, United States Code, to enhance the readiness of the Armed Forces by replacing the current policy concerning homosexuality in the Armed Forces, referred to as ''Don't Ask, Don't Tell'', with a policy of nondiscrimination on the basis of sexual orientation.

S. 3078

At the request of Mrs. FEINSTEIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 3078, a bill to provide for the establishment of a Health Insurance Rate Authority to establish limits on premium rating, and for other purposes.

S. 3201

At the request of Mr. UDALL of Colorado, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 3201, a bill to amend title 10, United States Code, to extend TRICARE coverage to certain dependents under the age of 26.

S. 3206

At the request of Mr. HARKIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 3206, a bill to establish an Education Jobs Fund.

S. 3266

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 3266, a bill to ensure the availability of loan guarantees for rural homeowners.

S. 3295

At the request of Mr. SCHUMER, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 3295, a bill to amend the Federal Election Campaign Act of 1971 to prohibit foreign influence in Federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

S. 3305

At the request of Mr. MENENDEZ, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 3305, a bill to amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills, and for other purposes.

S. 3311

At the request of Mr. KERRY, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 3311, a bill to improve and enhance the capabilities of the Department of Defense to prevent and respond to sexual assault in the Armed Forces, and for other purposes.

S. 3335

At the request of Mr. COBURN, the names of the Senator from Utah (Mr. HATCH), the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Montana (Mr. TESTER) were added as cosponsors of S. 3335, a bill to require Congress to establish a unified and searchable database on a public website for congressional earmarks as called for by the President in his 2010 State of the Union Address to Congress.

S. 3339

At the request of Mr. KERRY, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 3339, a bill to amend the Internal Revenue Code of 1986 to provide a reduced rate of excise tax on beer produced domestically by certain small producers.

S. 3341

At the request of Mr. CARDIN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 3341, a bill to amend title

5, United States Code, to extend eligibility for coverage under the Federal Employees Health Benefits Program with respect to certain adult dependents of Federal employees and annuitants, in conformance with amendments made by the Patient Protection and Affordable Care Act.

S.J. RES. 29

At the request of Mrs. FEINSTEIN, the names of the Senator from Alaska (Mr. BEGICH), the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S.J. Res. 29, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

S.J. RES. 30

At the request of Mr. ISAKSON, the names of the Senator from Nevada (Mr. ENSIGN), the Senator from Missouri (Mr. BOND) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of S.J. Res. 30, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Mediation Board relating to representation election procedures.

AMENDMENT NO. 3746

At the request of Mr. WHITEHOUSE, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of amendment No. 3746 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3754

At the request of Mrs. MURRAY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 3754 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3774

At the request of Mr. LEMIEUX, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of amendment No. 3774 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3789

At the request of Mr. BROWNBACK, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of amendment No. 3789 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3823

At the request of Mr. LEAHY, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of amendment No. 3823 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3860

At the request of Mr. CARPER, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of amendment No. 3860 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3877

At the request of Mr. MENENDEZ, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of amendment No. 3877 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3879

At the request of Ms. COLLINS, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of amendment No. 3879 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3883

At the request of Ms. SNOWE, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Minnesota (Mr. FRANKEN) were added as cosponsors of amendment No. 3883 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3887

At the request of Mr. CARPER, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of amendment No. 3887 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3931

At the request of Mr. MERKLEY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of amendment No. 3931 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3939

At the request of Mrs. FEINSTEIN, the name of the Senator from Maine (Ms. COLLINS) was withdrawn as a cosponsor of amendment No. 3939 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

At the request of Mrs. FEINSTEIN, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of amendment No. 3939 intended to be proposed to S. 3217, supra.

AMENDMENT NO. 3949

At the request of Mr. CARPER, the names of the Senator from North Carolina (Mr. BURR) and the Senator from Wyoming (Mr. BARRASSO) were added as cosponsors of amendment No. 3949 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3966

At the request of Mr. GRASSLEY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3966 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to

protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3978

At the request of Mr. JOHNSON, the names of the Senator from Montana (Mr. TESTER) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of amendment No. 3978 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3980

At the request of Mr. CARDIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of amendment No. 3980 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3985

At the request of Mr. GRASSLEY, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of amendment No. 3985 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3989

At the request of Mr. DURBIN, the names of the Senator from Vermont (Mr. SANDERS), the Senator from Maryland (Mr. CARDIN) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of amendment No. 3989 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3991

At the request of Mr. FRANKEN, the names of the Senator from Michigan (Mr. LEVIN), the Senator from Oregon (Mr. WYDEN) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of amendment No. 3991 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4003

At the request of Mr. VITTER, the names of the Senator from Kansas (Mr. ROBERTS), the Senator from Tennessee (Mr. CORKER) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of amendment No. 4003 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. UDALL of Colorado (for himself, Ms. COLLINS, Mr. BURRIS, Mr. MERKLEY, Mrs. MURRAY, and Mr. TESTER):

S. 3364. A bill to amend the Energy Policy and Conservation Act to establish the Office of Energy and Renewable Energy as the lead Federal agency for coordinating Federal, State, and local assistance provided to promote the energy retrofitting of schools; to the Committee on Energy and Natural Resources.

Mr. UDALL of Colorado. Mr. President, today I am introducing a bipartisan bill along with my colleague Senator COLLINS entitled the Streamlining Energy Efficiency for Schools Act of 2010. This bill is designed to streamline the Federal Government's efforts to improve the health and efficiency of our schools, while creating much-needed jobs in the process.

I am pleased that Senators BURRIS, MERKLEY and MURRAY are also joining us as original cosponsors of this bill.

For the past year I have been travelling across Colorado as part of a work force tour to talk directly to Coloradans and hear their innovative policy ideas to create jobs. These ongoing efforts help me identify ways the Federal Government can help or is not as effective as it can be in supporting economic development and meeting our national energy goals. The Streamlining Energy Efficiency for Schools Act of 2010 comes directly from visiting with Coloradans. This bill is just one of several job-creation proposals developed after I hosted an Energy Jobs Summit in February in Colorado.

There are numerous Federal programs and funds already available to schools to help them become more energy efficient. However, schools face a morass of programs and agency offices across the government and it is challenging for schools to take full advantage of them. This bipartisan bill will force the government to coordinate their efforts so that schools are less confused and they can better navigate the existing federal programs and financing options available to them. Put simply, it will streamline the Federal Government while still leaving decisions to the states, school boards and local officials to determine what is best for their schools.

I have had a longstanding interest in energy efficiency technologies. These technologies further our national goals of broad-based economic growth, environmental protection, national security, and economic competitiveness.

I have also been a long-time champion of energy efficiency in our schools, introducing and co-sponsoring many bills over the years in the House of Representatives that promoted the efficient use of energy by our schools.

I have seen these energy efficient buildings first hand when traveling in Colorado. It is good to see that there are schools in my state that are already incorporating this technology into their buildings. For example, the Cherry Creek School District in Greenwood Village, CO, has incorporated day lighting techniques and ice storage to cool the buildings during the day. Because of these innovative improvements, the school district has enjoyed significant cost savings. This is good news not just for Colorado students, but also for Colorado taxpayers.

In another example, Colorado's Poudre School District in Fort Collins, CO, actively promotes sustainable design guidelines, calling it their ''Ethic of Sustainability.'' This program includes an elementary school in Fort Collins that actually uses recycled blue jeans as insulation for the school buildings. This school has a ''Truth Wall,'' an exposed cross-section where kids can see the denim at work, look at pipes and electrical systems, and check school energy use.

I hope that in passing this bill we will see more examples of these successful and creative projects across the country—projects that will increase the efficiency of our schools and teach our students about the importance of saving energy.

Through effective use of existing Federal Government programs and financing options, schools can reduce costs and create jobs at the same time becoming more energy efficient. Though it is often overlooked, energy efficiency is a huge job creator. Not only does it create jobs through the purchase and installation of efficient materials, it frees up scarce school finances to retain teachers and important programs.

What excites me most about this bill is that it will create jobs for Americans in every neighborhood where schools improve their energy efficiency. Right now, creating jobs is priority one for all of us.

But additionally, this bill helps reduce barriers to schools wishing to incorporate innovative energy efficiency measures, and creates a simple, streamlined structure to allow schools

to more effectively use existing Federal funds and programs—at a low cost. These cutting edge actions—which we are all seeing across our states—are making government more efficient and saving taxpayer dollars, a goal we all share. I urge my colleagues—of both parties—to join me in supporting this bipartisan legislation.

By Mr. AKAKA:

S. 3367. A bill to amend title 38, United States Code, to increase the rate of pension for disabled veterans who are married to one another and both of whom require regular aid and attendance, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, as Chairman of the Senate Committee on Veterans' Affairs, I introduce legislation today to correct an inequity which affects a small number of couples where both the husband and wife are wartime veterans and each meets the criteria for VA pension with additional aid and attendance benefits. Currently these couples receive annual benefits of $30,480. Under my bill, the annual amount would be increased by $825 to $31,305.

This measure would correct a mistake which occurred in 1998 with the enactment of Public Law 105–178. Section 8206 of that law increased the aid and attendance rates for veterans in receipt of VA pension who were in need of aid and attendance. Due to a drafting error, this increase was not provided to couples where both members were pension receipients in need of aid and attendence. This bill would correct that mistake by bringing the pension of a wartime veteran couple eligible for pension and aid and attendance into conformity with what their peers receive.

This is an appropriate result. Both members of such couples served our Nation with honor. In their time of need, they should not be short-changed by this mistake. Although only a small number of veterans qualify for this benefit, those who do so often pay large amounts of money to receive care in nursing homes, assisted-living facilities, or at home. My bill would increase the amounts paid so that each member of the couple would have their service taken into account in determining the benefit level.

I urge our colleagues to support this bill so that all veterans who served during wartime and are eligible for VA pension receive the same benefit payments and no member of a wartime veteran couple is shortchanged.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3367

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN RATE OF PENSION FOR DISABLED VETERANS MARRIED TO ONE ANOTHER AND BOTH OF WHOM REQUIRE REGULAR AID AND ATTENDANCE.

(a) IN GENERAL.—Section 1521(f)(2) of title 38, United States Code, is amended by striking ''$8,911'' and inserting ''$31,305''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

By Mr. AKAKA:

S. 3368. A bill to amend title 38, United States Code, to authorize certain individuals to sign claims filed with the Secretary of Veterans Affairs on behalf of claimants, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, as Chairman of the Senate Committee on Veterans' Affairs, I introduce legislation today that would give the Department of Veterans Affairs the same authority as the Social Security Administration with respect to claimants who are unable to complete applications for benefits without requiring assistance.

Occasionally, claimants for VA benefits are so disabled as to be incapable of understanding the information on the application form. VA lacks authority to authorize a court appointee or caregiver to sign an application form allowing the adjudication of the claim to proceed. Without a signed application, the claim cannot proceed.

The Social Security Administration has specific authority under the Social Security Act that permit an certain individuals, such as court appointed representatives, to sign a claim form on behalf of individuals unable to sign a claim form.

My bill would extend the same authority to the Department of Veterans Affairs, and would allow court appointed representatives and caregivers of applicants for VA benefits and services, including institutional representatives, to sign application forms. This bill does not alter the responsibility of VA to evaluate and appoint a fiduciary in cases where the beneficiary is determined to be incompetent to manage his or her benefits.

I urge our colleagues to support this bill so that unnecessary delays in the adjudication of these claims will be avoided.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY FOR CERTAIN INDIVIDUALS TO SIGN CLAIMS FILED WITH SECRETARY OF VETERANS AFFAIRS ON BEHALF OF CLAIMANTS.

(a) IN GENERAL.—Section 5101 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''A specific'' and inserting ''(1) A specific''; and

(B) by adding at the end the following new paragraph:

''(2) If an individual has not attained the age of 18 years, is mentally incompetent, or is physically unable to sign a form, a form filed under paragraph (1) for the individual may be signed by a court appointed representative or a person who is responsible for the care of the individual, including a spouse or other relative. If the individual is in the care of an institution, the manager or principal officer of the institution may sign the form.'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting '', signs a form on behalf of a person to apply for,'' after ''who applies for''; and

(ii) by inserting '', or TIN in the case that the person is not an individual,'' after ''of such person''; and

(B) in paragraph (2), by inserting ''or TIN'' after ''social security number'' each place it appears; and

(3) by adding at the end the following new subsection:

''(d) In this section:

''(1) The term 'mentally incompetent' with respect to an individual means that the individual lacks the mental capacity—

''(A) to provide substantially accurate information needed to complete a form; or

''(B) to certify that the statements made on a form are true and complete.

''(2) The term 'TIN' has the meaning given the term in section 7701(a)(41) of the Internal Revenue Code of 1986.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to claims filed on or after the date of the enactment of this Act.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mr. SCHUMER, Mr. CORNYN, Mrs. BOXER, Mrs. HUTCHISON, Mr. BINGAMAN, Mr. MCCAIN, Mr. DURBIN, and Mr. CRAPO):

S. 3376. A bill to authorize to be appropriated $950,000,000 for each of the fiscal years 2012 through 2015 to carry out the State Criminal Alien Assistance Program; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to introduce a bill, the SCAAP Reauthorization Act, on behalf of myself and Mr. KYL, to assist with alleviating the costs of illegal immigration to State and local governments by reauthorizing the State Criminal Alien Assistance Program, SCAAP, though 2015.

We are pleased to be joined today by Senators SCHUMER, CORNYN, BOXER, HUTCHISON, BINGAMAN, MCCAIN, DURBIN, and CRAPO.

I believe that immigration policy and control of our borders is exclusively a Federal responsibility. Yet many undocumented criminal aliens are housed in our State prisons and our county jails at a cost that rises into the hundred of millions of dollars.

Understanding the expenses that States and localities bear, Congress enacted the State Criminal Alien Assistance Program, (SCAAP), in 1994 as part of the Violent Crime Control Act. The program was designed to help reimburse States and localities for the costs of incarcerating undocumented criminal aliens. Under this program, States can be reimbursed for costs for housing undocumented aliens who are convicted of a felony or two or more misdemeanors in violation of State or

local law and incarcerated for at least 4 consecutive days.

Over the years, Senator KYL and I have worked to increase Congressional funding of SCAAP. Last year, Congress appropriated 393 million dollars to SCAAP. While this is only a fraction of the costs that States and localities bear for housing undocumented criminal aliens, even this level of funding is critical.

In 2009, undocumented aliens comprised approximately 11 percent of the inmates in California's State prison system. This year, the State of California is expected to spend 970.3 million dollars from the general fund on the incarceration of undocumented criminal aliens. However, it is expected that California will only receive reimbursement for 10 percent of its total costs. The State of California and its counties simply cannot afford to take on these costs, which stretch already thin budgets.

When the Federal Government does not reimburse States and localities for the cost of incarcerating criminal aliens, it is at the expense of our local educators, social services, and law enforcement. Insufficient SCAAP funding forces localities to engage in the ''early release'' of prisoners with misdemeanors as a cost saving measure and make cuts to other necessary public safety services. American communities simply cannot afford to shoulder the weight of our immigration policies.

I believe this legislation will reaffirm the Federal government's commitment to working with States and localities to address their financial concerns.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3376

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''SCAAP Reauthorization Act''.

SEC. 2. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS FOR THE STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

Subparagraph (C) of section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking ''2011.'' and inserting ''2015.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 524—SUPPORTING THE GOALS AND IDEALS OF NATIONAL STUTTERING AWARENESS WEEK 2010

Mr. KAUFMAN (for himself, Mr. BARRASSO, Mr. BROWN of Ohio, Mr. BURRIS, Mr. CARDIN, Mr. CARPER, Ms. CANTWELL, Mr. CASEY, Mr. CORNYN, Mr. DURBIN, Mr. ENZI, Mr. GREGG, Mrs. HAGAN, Mr. ISAKSON, Mr. LEMIEUX, Mr. LEVIN, Ms. MIKULSKI, Mr. PRYOR, Mr. REED, Mr. RISCH, Mr. SESSIONS, Mrs. SHAHEEN, Ms. SNOWE, Ms. STABENOW, Mr. TESTER, Mr. WARNER, Mr. WHITEHOUSE, and Mr. UDALL of New Mexico) submitted the following resolution; which was considered and agreed to:

S. RES. 524

Whereas an estimated 3,000,000 Americans are affected by stuttering;

Whereas stuttering is a communication disorder experienced by children and adults alike;

Whereas individuals who stutter frequently experience embarrassment, anxiety about speaking, and physical tension in their speech muscles;

Whereas many different types of stuttering exist, and the symptoms of stuttering can range from mild to severe;

Whereas the cause of stuttering is unknown, but research suggests stuttering may be genetic;

Whereas stuttering commonly begins in children between the ages of 2 and 5;

Whereas parents are encouraged to consult with pediatricians or qualified speech-language pathologists as soon as stuttering becomes apparent in a child in order to take advantage of early-intervention therapies;

Whereas it is known that stuttering is not—

(1) a nervous disorder;

(2) the result of emotional problems; or

(3) the fault of the individual who stutters or the family of that individual;

Whereas a 2009 survey by the National Stuttering Association found that—

(1) 40 percent of adults and teenagers who stutter feel that they have been denied a job, a promotion, or a school opportunity as a result of stuttering; and

(2) 8 out of 10 children who stutter report being bullied or teased;

Whereas many individuals who stutter do not have access to qualified speech-language pathologists or helpful resources;

Whereas several treatments for stuttering exist that can help individuals who stutter learn to speak more easily and gain confidence in themselves and their ability to communicate effectively;

Whereas organizations like the National Stuttering Association have been working for many years to raise awareness about stuttering, the effect stuttering has on the lives of individuals who stutter, available treatment options, and research being conducted to investigate the causes of stuttering;

Whereas, on April 13, 1988, the President of the United States signed a proclamation designating the week of May 9 through 16 of that year as National Stuttering Awareness Week;

Whereas since 1988, individuals who stutter and the families and friends of those individuals, as well as medical practitioners, speech language pathologists, researchers, and others have marked the second week of May as National Stuttering Awareness Week; and

Whereas the goals of the National Stuttering Awareness Week 2010 include increasing awareness among the people of the United States about stuttering and educating the people of the United States about ways to improve the lives of those who stutter: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of National Stuttering Awareness Week 2010; and

(2) encourages all of the people of the United States to learn more about stuttering and ways to help individuals who stutter feel more confident and comfortable speaking with others.

SENATE RESOLUTION 525—EXPRESSING SYMPATHY TO THE FAMILIES OF THOSE KILLED IN THE SINKING OF THE REPUBLIC OF KOREA SHIP CHEONAN, AND SOLIDARITY WITH THE REPUBLIC OF KOREA IN THE AFTERMATH OF THIS TRAGIC INCIDENT

Mr. LIEBERMAN (for himself, Mr. LEVIN, Mr. MCCAIN, Mr. KERRY, and Mr. LUGAR) submitted the following resolution; which was considered and agreed to:

S. RES. 525

Whereas on March 26, 2010, the Republic of Korea Ship (ROKS) Cheonan was sunk by an external explosion in the vicinity of Baengnyeong Island, Republic of Korea;

Whereas of the 104 members of the crew of the Republic of Korea Ship Cheonan, 46 were killed in this incident, including 6 lost at sea;

Whereas on April 25, 2010, the Government of the Republic of Korea commenced a five-day period of mourning for these 46 sailors;

Whereas the Government of the Republic of Korea continues to lead an international investigation into the circumstances surrounding the sinking of the Republic of Korea Ship Cheonan;

Whereas the alliance between the United States and the Republic of Korea has been a vital anchor for security and stability in Asia for more than 50 years; and

Whereas the United States and the Republic of Korea are bound together by the shared values of democracy and the rule of law: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its sympathy and condolences to the families and loved ones of the sailors of the Republic of Korea Ship (ROKS) Cheonan who were killed in action on March 26, 2010;

(2) stands in solidarity with the people and the Government of the Republic of Korea in the aftermath of this tragic incident;

(3) reaffirms its enduring commitment to the alliance between the Republic of Korea and the United States and to the security of the Republic of Korea;

(4) urges the continuing full cooperation and assistance of the United States Government in aiding the Government of the Republic of Korea as it investigates the cause of the sinking of the Republic of Korea Ship Cheonan;

(5) urges the international community to provide all necessary support to the Republic of Korea as the Government of the Republic of Korea investigates the sinking of the Republic of Korea Ship Cheonan; and

(6) further urges the international community to fully and faithfully implement all United Nations Security Council Resolutions pertaining to security on the Korean Peninsula, including United Nations Security Council Resolution 1695 (2006), United Nations Security Council Resolution 1718 (2006), and United Nations Security Council Resolution 1874 (2009).

AMENDMENTS SUBMITTED AND PROPOSED ON MAY 12, 2010

SA 4005. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3754 submitted by Mrs. MURRAY and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4006. Mr. PRYOR (for himself, Mr. ROBERTS, and Mr. BROWNBACK) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4007. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4008. Mr. DORGAN (for himself, Mr. LEVIN, Ms. CANTWELL, Mr. FEINGOLD, Mr. SANDERS, and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4009. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4010. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4011. Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4012. Mrs. SHAHEEN (for herself, Mr. BROWN of Massachusetts, Mr. KERRY, Mr. GREGG, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4013. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4014. Mrs. MCCASKILL (for herself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4015. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3823 proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, AND MS. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4016. Mr. UDALL of Colorado (for himself, Mr. LUGAR, Mr . LAUTENBERG, Mr. BOND, Mr. BEGICH, Mr. SCHUMER, Mr. LEVIN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4017. Mr. ENZI (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4018. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4019. Mr. DODD (for Mr. WYDEN (for himself, Mr. GRASSLEY, Mr. INHOFE, Mr. BENNET, Mr. UDALL of Colorado, Mr. BROWN of Ohio, Mr. MERKLEY, and Ms. COLLINS)) proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4020. Mr. CRAPO (for himself, Mr. GREGG, Mr. SHELBY, Mr. MCCAIN, Mr. VITTER, Mrs. HUTCHISON, and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4021. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4022. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4023. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4024. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4025. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4026. Mr. REID submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4027. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4028. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4029. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4030. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4031. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4032. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3823 proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4033. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4034. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4035. Mr. LEVIN (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4036. Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4037. Mr. BOND (for himself, Mr. WARNER, Mr. BROWN of Massachusetts, and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4038. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes.

SA 4039. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, supra.

SA 4040. Mrs. MCCASKILL (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4041. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS ON MAY 12, 2010

SA 4005. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3754 submitted by Mrs. MURRAY and intended to be proposed to

the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, after line 21, add the following:

(3) NO INDEPENDENT MEMBER OF THE COUNCIL.—Notwithstanding any other provision of this section, there shall not be an independent member of the Council.

TEXT OF AMENDMENTS

SA 4006. Mr. PRYOR (for himself, Mr. ROBERTS, and Mr. BROWNBACK) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 19, strike line 16 and all that follows through page 21, line 23 and insert the following:

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States as, a bank holding company or a subsidiary thereof) that is—

(i) incorporated or organized in a country other than the United States; and

(ii) predominantly engaged (as defined in section 4(n) of the Bank Holding Company Act of 1956) in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(B) U.S. NONBANK FINANCIAL COMPANY.—The term ''U.S. nonbank financial company'' means a company (other than a bank holding company or a subsidiary thereof, or a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et. seq.)) that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) predominantly engaged (as defined in section 4(n) of the Bank Holding Company Act of 1956) in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

(5) OFFICE OF FINANCIAL RESEARCH.—The term ''Office of Financial Research'' means the office established under section 152.

(6) SIGNIFICANT INSTITUTIONS.—The terms ''significant nonbank financial company'' and ''significant bank holding company'' have the meanings given those terms by rule of the Board of Governors.

(b) FOREIGN NONBANK FINANCIAL COMPANIES.—

SA 4007. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1522, between lines 6 and 7, insert the following:

Subtitle I—Appraisal Activities

SEC. 1111. PROPERTY APPRAISAL REQUIREMENTS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129B (as added by this Act) the following new section:

''SEC. 129C. PROPERTY APPRAISAL REQUIREMENTS.

''(a) IN GENERAL.—A creditor may not extend credit in the form of a subprime mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

''(b) APPRAISAL REQUIREMENTS.—

''(1) PHYSICAL PROPERTY VISIT.—An appraisal of property to be secured by a subprime mortgage does not meet the requirement of this section unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

''(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

''(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

''(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

''(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term 'qualified appraiser' means a person who—

''(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

''(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

''(c) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

''(d) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at their own expense.

''(e) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $2,000.

''(f) SUBPRIME MORTGAGE DEFINED.—For purposes of this section, the term 'subprime mortgage' means a residential mortgage loan, other than a reverse mortgage loan insured by the Federal Housing Administration, secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

''(1) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

''(2) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

''(3) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B the following new item:

''129C. Property appraisal requirements.''.

SEC. 1112. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 1111(a)) the following new section:

''SEC. 129D. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

''(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

''(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), unfair and deceptive practices shall include—

''(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe,

or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

''(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

''(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

''(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered.

''(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to provide 1 or more of the following services:

''(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

''(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

''(3) Correct errors in the appraisal report.

''(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

''(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

''(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

''(g) RULEMAKING PROCEEDINGS.—The Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission—

''(1) shall, for purposes of this section, jointly prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no later than 1 year after the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations; and

''(2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

''(h) PENALTIES.—

''(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

''(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting '$20,000' for '$10,000' with respect to all subsequent violations.

''(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129C the following new item:

''129D. Unfair and deceptive practices and acts relating to certain consumer credit transactions.''.

SEC. 1113. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) CONSUMER PROTECTION MISSION.—

(1) PURPOSES.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331) is amended by inserting ''and to provide the Appraisal Subcommittee with a consumer protection mandate'' before the period at the end.

(2) FUNCTIONS OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—

(A) by striking ''and'' at the end of paragraph (3); and

(B) by amending paragraph (4) to read as follows:

''(4) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer's principal dwelling; and''.

(3) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: '', and that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing''.

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

''(5) transmit an annual report to the Congress not later than January 31 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.''.

(c) OPEN MEETINGS.—Section 1104(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3333(b)) is amended by inserting ''in public session after notice in the Federal Register'' after ''shall meet''.

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting ''prescribe regulations after notice and opportunity for comment,'' after ''hold hearings''; and

(2) at the end by inserting ''Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, and government agencies, and hold meetings as necessary to support the development of regulations.''.

(e) APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(1) by striking ''In determining'' and inserting ''(a) IN GENERAL.—In determining'';

(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: '', where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical''; and

(3) by adding at the end the following new subsection:

''(b) APPRAISALS AND APPRAISAL REVIEWS.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All appraisal reviews, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.''.

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is further amended—

(A) by amending paragraph (1) to read as follows:

''(1) monitor the requirements established by States—

''(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

''(B) for the registration and supervision of the operations and activities of an appraisal management company;''; and

(B) by adding at the end the following new paragraph:

''(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.''.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

''SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.

''(a) IN GENERAL.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish minimum qualifications to be applied by a State in the registration of appraisal management companies. Such qualifications shall include a requirement that such companies—

''(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

''(2) verify that only licensed or certified appraisers are used for federally related transactions;

''(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

''(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129C of the Truth in Lending Act.

''(b) EXCEPTION FOR FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency. In such case, the appropriate federal financial institutions regulatory agency shall, at a minimum, develop regulations affecting the operations of the appraisal management company to—

''(1) verify that only licensed or certified appraisers are used for federally related transactions;

''(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

''(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129C of the Truth in Lending Act.

''(c) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

''(d) REGULATIONS.—The Appraisal Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to the State appraiser certifying and licensing agencies. The Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

''(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.''.

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: ''The duties of such agency may additionally include the registration and supervision of appraisal management companies.''.

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

''(11) APPRAISAL MANAGEMENT COMPANY.—The term 'appraisal management company' means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

''(A) to recruit, select, and retain appraisers;

''(B) to contract with licensed and certified appraisers to perform appraisal assignments;

''(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

''(D) to review and verify the work of appraisers.''.

(g) STATE AGENCY REPORTING REQUIREMENT.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

''(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

''(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and''.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 9503(g)) to read as follows:

''(4) collect—

''(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

''(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

''(i) in the case of such a company that has been in existence for more than a year, $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title; and

''(ii) in the case of such a company that has not been in existence for more than a year, $25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title.''; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

''Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.''.

(2) INCREMENTAL REVENUES.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the ''Appraisal Subcommittee Account''.

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

''(5) to make grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with this title, including—

''(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

''(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

''(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.''.

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the ''Appraisal Subcommittee Account'' pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting ''whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers'' before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

''(e) MINIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for individuals in the position of 'Trainee Appraiser' and 'Supervisory Appraiser' shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.''.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

''(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

''(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

''(2) processes complaints and completes investigations in a reasonable time period;

''(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

''(4) maintains an effective regulatory program; and

''(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.''.

(2) in subsection (b)(2), by inserting after ''authority'' the following: ''or sufficient funding''.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

''(b) RECIPROCITY.—A State appraiser certifying or licensing agency shall issue a reciprocal certification or license for an individual from another State when—

''(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

''(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.''.

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking ''shall not exclude'' and all that follows through the end of the subsection and inserting the following: ''may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.''.

(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following new subsection:

''(g) APPRAISER INDEPENDENCE MONITORING.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.''.

(o) APPRAISER EDUCATION.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

''(h) APPROVED EDUCATION.—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program.''.

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is further amended by adding at the end the following new subsection:

''(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—If, 1 year after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.''.

(q) AUTOMATED VALUATION MODELS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

''SEC. 1125. AUTOMATED VALUATION MODELS USED TO VALUE CERTAIN MORTGAGES.

''(a) IN GENERAL.—Automated valuation models shall adhere to quality control standards designed to—

''(1) ensure a high level of confidence in the estimates produced by automated valuation models;

''(2) protect against the manipulation of data;

''(3) seek to avoid conflicts of interest; and

''(4) require random sample testing and reviews, where such testing and reviews are performed by an appraiser who is licensed or certified in the State where the testing and reviews take place.

''(b) ADOPTION OF REGULATIONS.—The Appraisal Subcommittee and its member agencies, in consultation with the Appraisal Standards Board of the Appraisal Foundation and other interested parties, shall promulgate regulations to implement the quality control standards required under this section.

''(c) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

''(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

''(2) with respect to other persons, the Appraisal Subcommittee.

''(d) AUTOMATED VALUATION MODEL DEFINED.—For purposes of this section, the term 'automated valuation model' means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.''.

(r) BROKER PRICE OPINIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following

new section (and amending the table of contents accordingly):

''SEC. 1126. BROKER PRICE OPINIONS.

''(a) GENERAL PROHIBITION.—In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

''(b) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term 'broker price opinion' means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).''.

(s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: ''and the Federal Housing Finance Agency''; and

(2) by inserting at the end the following: ''At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.''.

(t) TECHNICAL CORRECTIONS.—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking ''council,'' and inserting ''Council,''.

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking ''Corporations,'' and inserting ''Corporation,''.

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking ''council'' and inserting ''Council''.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking ''Federal Financial Institutions Examination Council'' and inserting ''Financial Institutions Examination Council''; and

(ii) by striking ''the council's functions'' and inserting ''the Council's functions''.

SEC. 1114. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.

(a) STUDY.—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal Subcommittee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of appraisals provided through different distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last 10 years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

(c) ADDITIONAL STUDY REQUIRED.—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—

(1) quality and costs of appraisals;

(2) length of time for obtaining appraisals;

(3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;

(4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and

(5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) ADDITIONAL REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (c). Such additional report shall take into consideration the Small Business Administration's views on how small businesses are affected by the Home Valuation Code of Conduct.

SEC. 1115. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended to read as follows:

''(e) COPIES FURNISHED TO APPLICANTS.—

''(1) IN GENERAL.—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

''(2) WAIVER.—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

''(3) REIMBURSEMENT.—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

''(4) FREE COPY.—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

''(5) NOTIFICATION TO APPLICANTS.—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

''(6) REGULATIONS.—The Board shall prescribe regulations to implement this subsection within 1 year of the date of the enactment of this subsection.

''(7) VALUATION DEFINED.—For purposes of this subsection, the term 'valuation' shall include any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.''.

SEC. 1116. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

''(c) The standard form described in subsection (a) shall include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

''(1) the fee paid directly to the appraiser by such company; and

''(2) the administration fee charged by such company.''.

SEC. 1117. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) PROMULGATION OF NEW REQUIREMENTS.—The Director shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act, the Negotiated Rulemaking Act, and section 1022(b) of this title to promulgate appraisal independence requirements for residential loan purposes, and such Committee shall promulgate such requirements not later than the end of the 60-day period beginning on the date of the enactment of this title.

(b) CERTAIN REGULATION REQUIREMENTS.—Regulations promulgated by the Negotiated Rulemaking Committee under this section—

(1) shall not prohibit lenders, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation from accepting any appraisal report completed by an appraiser selected, retained, or compensated in any manner by a mortgage loan originator—

(A) licensed or registered in accordance with the SAFE Mortgage Licensing Act of 2008; and

(B) subject to Federal or State laws that make it unlawful for a mortgage loan originator to make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property, except that nothing in this section shall prohibit a person with an interest in a real estate transaction from asking an appraiser to—

(i) consider additional, appropriate property information;

(ii) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) correct errors in the appraisal report; and

(2) shall include a requirement that lenders and their agents compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

(c) SUNSET.—Effective on the date the appraisal independence requirements are promulgated pursuant to subsection (a), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

SA 4008. Mr. DORGAN (for himself, Mr. LEVIN, Ms. CANTWELL, Mr. FEINGOLD, Mr. SANDERS, and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 584, line 7, after the first period insert the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

On page 808, line 8, after the first period, insert the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

SA 4009. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 893, after line 25, insert the following:

SEC. 774. STANDARDS OF CONDUCT FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

''(k) STANDARDS OF CONDUCT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title or the Investment Advisers Act of 1940, the Commission shall issue rules to provide, in substance, that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice about securities to retail customers, shall be to act in the interest of the customer, without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

''(2) EXCLUSION FOR LIMITED RANGE OF PRODUCTS OFFERED.—Paragraph (1) shall not apply with respect to any limited representative-investment company and variable contracts products, or for any other broker or dealer, as defined by the Commission, who sells only proprietary or other limited range of products.

''(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) RETAIL CUSTOMER DEFINED.—The term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(i) receives personalized investment advice about securities from a broker or dealer; and

''(ii) uses such advice primarily for personal, family, or household purposes.

''(B) LIMITED REPRESENTATIVE-INVESTMENT COMPANY AND VARIABLE CONTRACTS PRODUCTS.—The term 'limited representative-investment company and variable contracts product' shall have the meaning given such term by rule of the Commission, and includes any person that is licensed by a registered security association pursuant to section 15A—

''(i) the activities of which in the investment banking and securities business are limited to the solicitation, purchase, and sale of—

''(I) redeemable securities of companies registered pursuant to the Investment Company Act of 1940;

''(II) securities of closed-end companies registered pursuant to the Investment Company Act of 1940, during the period of original distribution only; and

''(III) variable contracts and insurance premium funding programs and other contracts issued by an insurance company, other than any contract that is an exempt security pursuant to section 3(a)(8) of the Securities Act of 1933; and

''(ii) does not function as a representative in any financial instrument that is not described in clause (i).

''(l) OTHER MATTERS.—

''(1) IN GENERAL.—The Commission shall—

''(A) facilitate the provision of clear, appropriate disclosures to customers regarding the terms of their relationships with, material conflicts of interest of, and direct and indirect compensation to, brokers, dealers, and investment advisers; and

''(B) examine and, where appropriate, promulgate rules regulating sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that the Commission deems contrary to the public interest and the interests of investors.

''(2) RULE OF CONSTRUCTION.—The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of the standard, under paragraph (1)(A), when applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

''(m) HARMONIZATION OF ENFORCEMENT AND REMEDY REGULATIONS.—The Commission shall issue regulations to ensure, to the extent practicable, that the enforcement options and remedies available for violations of the standard of conduct applicable to a broker or dealer providing investment advice to a customer are commensurate with those enforcement options and remedies available for violations of the standard of conduct applicable to investment advisers under the Investment Advisers Act of 1940.''.

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended by adding at the end the following:

''(f) STANDARDS OF CONDUCT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title or the Securities Exchange Act of 1934, the Commission shall promulgate rules to provide that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice to retail customers, shall be to act in the best interest of the customer, without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

''(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(A) receives personalized investment advice about securities from a broker or dealer; and

''(B) uses such advice primarily for personal, family, or household purposes.

''(g) OTHER MATTERS.—

''(1) IN GENERAL.—The Commission shall—

''(A) facilitate the provision of clear, appropriate disclosures to customers regarding the terms of their relationships with, material conflicts of interest of, and direct and indirect compensation to, brokers, dealers, and investment advisers; and

''(B) examine and, where appropriate, promulgate rules regulating sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that the Commission deems contrary to the public interest and the interests of investors.''.

SA 4010. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1223, strike line 9 and all that follows through page 1225, line 3 and insert the following:

(a) ANNUAL ASSESSMENTS.—

(1) IN GENERAL.—The Bureau shall establish, by rule, a system of assessments to fund the operations of the Bureau. Such rules shall apply only to those covered persons having total consolidated assets of more than $50,000,000,000, and shall require annual assessments from each such covered person.

(2) FUNDING CAP.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be collected by the Bureau through assessments in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2006, of the Board of Governors, equal to—

(A) 10 percent of such expenses in fiscal year 2011;

(B) 11 percent of such expenses in fiscal year 2012; and

(C) 12 percent of such expenses in fiscal year 2013, and in each fiscal year thereafter.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date, which amount may not exceed 8 percent of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2006, of the Board of Governors.

SA 4011. Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 104, line 24, insert before the period the following: '', and shall require such companies to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses''.

SA 4012. Mrs. SHAHEEN (for herself, Mr. BROWN of Massachusetts, Mr. KERRY, Mr. GREGG, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 295, between lines 19 and 20, insert the following:

(t) TREATMENT OF CERTAIN NONBANK FINANCIAL COMPANIES NOT SUBJECT TO ORDERLY LIQUIDATION.—

(1) IN GENERAL.—Subsections (n) and (o) shall not apply to any nonbank financial company that is subject to liquidation or rehabilitation under State law, unless such company—

(A) is determined to be a nonbank financial company supervised by the Board of Governors pursuant to section 113; or

(B) is determined by the Corporation to have benefitted financially from the orderly liquidation of a covered financial company and the use of the Fund under this title by receiving payments or credit pursuant to subsection (b)(4), (d)(4), or (h)(5)(E).

(2) EXCLUSION OF ASSETS.—Any assets of a nonbank financial company described in paragraph (1) shall be excluded for purposes of calculating a financial company's total consolidated assets under subsection (o).

SA 4013. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, line 25, strike the period at the end and insert the following: ''.

SEC. 1077. TREATMENT OF REVERSE MORTGAGES.

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for—

(A) the purpose of preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction; and

(B) the purpose of providing timely, appropriate, and effective disclosures to consumers in connection with a reverse mortgage transaction that incorporate the requirements of section 138 of the Truth in Lending Act (15 U.S.C. 1648), and otherwise are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(2) with respect to the requirements under paragraph (1), be consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title; and

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), with the disclosures required to be provided to consumers for home equity conversion mortgages under section 255 of the National Housing Act (12 U.S.C. 12 U.S.C. 1715z–20).

(c) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection (a) not later than 12 months after the date of enactment of this Act.

SA 4014. Mrs. MCCASKILL (for herself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect

consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, line 25, strike the period at the end and insert the following: ''.

SEC. 1077. TREATMENT OF REVERSE MORTGAGES.

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the recommendation or offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for the purpose of—

(A) preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction (including the solicitation or recommendation of a reverse mortgage transaction);

(B) providing timely, appropriate, and effective disclosures to consumers in connection with a reverse mortgage transaction that incorporate the requirements of section 138 of the Truth in Lending Act (15 U.S.C. 1648), and otherwise are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(C) making a determination of the suitability of a reverse mortgage for a consumer—

(i) creating a presumption of unsuitability, if—

(I) the mortgagor plans to use the funds obtained from the reverse mortgage to purchase an annuity or make an investment;

(II) the mortgagor is married and the spouse of the mortgagor is not a party to the mortgage; or

(III) a person is removed from the title to the dwelling in the process of obtaining the reverse mortgage; and

(ii) taking into consideration—

(I) whether the mortgagor intends to reside in the property on a long-term basis;

(II) if the mortgagor is married or has a dependent, the potential impact of a reverse mortgage on the future economic security of the spouse or dependent of the mortgagor and all tenants of the home;

(III) whether a reverse mortgage will affect the eligibility of the mortgagor to receive Government benefits;

(IV) whether the mortgagor intends to pass the residence to an heir and the ability of such heir to repay the reverse mortgage loan;

(V) whether a resident of the home who is not the mortgagor could be displaced at the maturity of the reverse mortgage against the wishes of the mortgagor, and, if any such resident is disabled, the consequences of the displacement for such resident; and

(VI) any other circumstances, as the Director may require;

(2) with respect to the requirements under paragraph (1), be consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), with the disclosures required to be provided to consumers for home equity conversion mortgages under section 255 of the National Housing Act (12 U.S.C. 1715z–20);

(4) prohibit any person from advertising a reverse mortgage in a manner that—

(A) is false or misleading;

(B) fails to present equally the risks and benefits of reverse mortgages; or

(C) fails to reveal—

(i) negative facts that are material to a representation made in such advertisement;

(ii) facts relating to the responsibilities of the mortgagor for property taxes, insurance, maintenance, or repairs and the consequences of failing to meet such responsibilities, including default and foreclosure;

(iii) the consequences of obtaining a reverse mortgage; or

(iv) any forms of default that might lead to foreclosure;

(5) prohibit a person from requiring or recommending that a mortgagor purchase insurance (except for title, flood, and other peril insurance, as determined by the Director), an annuity, or other similar product in connection with a reverse mortgage;

(6) require that each reverse mortgage provide that prepayment, in whole or in part, may be made without penalty at any time during the period of the mortgage;

(7) require that any mortgagor under a reverse mortgage receive adequate counseling, including—

(A) in the case of a reverse mortgage in which a person was removed from the title to the dwelling, information about—

(i) the consequences of being removed from such title; and

(ii) the consequences upon the death of the mortgagor or a divorce settlement;

(B) general information about the potential consequences of borrowing more funds than are necessary to meet the immediate personal financial goals of the mortgagor;

(C) the responsibilities of the mortgagor relating to property taxes, insurance, maintenance, and repairs and the consequences of failing to meet such responsibilities, including default and foreclosure;

(D) an explanation of the actions that would constitute a default under the terms of the reverse mortgage and how a default might lead to foreclosure;

(E) an explanation of the circumstances, if any, under which the mortgagor, an heir of the mortgagor, or the estate of the mortgagor, would be liable for any amount by which the amount of the indebtedness of the mortgagor under the reverse mortgage exceeds the appraised value of the dwelling securing the mortgage upon termination of the mortgage;

(F) an explanation of the circumstances, if any, under which the spouse, heir, or estate of the mortgagor would be prevented from purchasing the dwelling securing the mortgage upon termination of the mortgage; and

(G) any other information that the Director may require; and

(8) require that any person that provides counseling to a mortgagor under a reverse mortgage report to the Bureau any suspected mortgage-related fraud against a mortgagor.

(c) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection (a) not later than 12 months after the date of enactment of this Act.

SA 4015. Mr. VITTER submitted an amendment intended to be proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. _____. SUSPENSION OF THE HEALTH CARE ACT.

If at the beginning of any fiscal year OMB determines that the deficit targets set forth in the CBO budget report of March 20, 2010 will not be met, the provisions of Public Law 111–148 shall be suspended for that year.

SA 4016. Mr. UDALL of Colorado (for himself, Mr. LUGAR, Mr. LAUTENBERG, Mr. BOND, Mr. BEGICH, Mr. SCHUMER, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, after line 25, insert the following:

SEC. 1077. USE OF CONSUMER REPORTS.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by inserting after paragraph (1) the following:

''(2) provide to the consumer written or electronic disclosure—

''(A) of a numerical credit score as defined in section 609(f)(2)(A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and

''(B) of the information set forth in subparagraphs (B) through (E) of section 609(f)(1);''; and

(C) in paragraph (4) (as so redesignated), by striking ''paragraph (2)'' and inserting ''paragraph (3)''; and

(2) in subsection (h)(5)—

(A) in subparagraph (C), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (D), by striking the period and inserting ''; and''; and

(C) by inserting at the end the following:

''(E) include a statement informing the consumer of—

''(i) a numerical credit score as defined in section 609(f)(2)(A), used by such person in connection with the credit decision described in paragraph (1) based in whole or in part on any information in a consumer report; and

''(ii) the information set forth in subparagraphs (B) through (E) of section 609(f)(1).''.

SA 4017. Mr. ENZI (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1257, after line 25, insert the following:

(g) WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, this section shall apply to any Federal contractor, agent, or employee involved in originating, servicing, debt collection, refinancing, or other consumer related activity relating to a loan under the William D. Ford Federal Direct Loan Program under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.).

(2) DEFINITIONS.—For purposes of carrying out this title—

(A) the term ''covered person'' includes any person acting as a contractor, agent, or employee of the Federal Government in providing a loan under the William D. Ford Federal Direct Loan Program;

(B) the term ''enumerated consumer laws'' includes any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) relating to such program; and

(C) the term ''financial product or service'' includes a loan under such program.

SA 4018. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, line 4, strike ''respectively.'' insert the following: ''respectively.

(s) CONSUMER PRIVACY.—Notwithstanding any other provision of this Act, any provision of the enumerated consumer laws, or any other provision of Federal law, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of the consumer.

SA 4019. Mr. DODD (for Mr. WYDEN (for himself, Mr. GRASSLEY, Mr. INHOFE, Mr. BENNET, Mr. UDALL of Colorado, Mr. BROWN of Ohio, Mr. MERKLEY, and Ms. COLLINS)) proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. ___. ELIMINATING SECRET SENATE HOLDS.

(a) IN GENERAL.—

(1) COVERED REQUEST.—This standing order shall apply to a notice of intent to object to the following covered requests:

(A) A unanimous consent request to proceed to a bill, resolution, joint resolution, concurrent resolution, conference report, or amendment between the Houses.

(B) A unanimous consent request to pass a bill or joint resolution or adopt a resolution, concurrent resolution, conference report, or the disposition of an amendment between the Houses.

(C) A unanimous consent request for disposition of a nomination.

(2) RECOGNITION OF NOTICE OF INTENT.—The majority and minority leaders of the Senate or their designees shall recognize a notice of intent to object to a covered request of a Senator who is a member of their caucus if the Senator—

(A) submits the notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name; and

(B) not later than 2 session days after submitting the notice of intent to object to the appropriate leader, submits a copy of the notice of intent to object to the Congressional Record and to the Legislative Clerk for inclusion in the applicable calendar section described in subsection (b).

(3) FORM OF NOTICE.—To be recognized by the appropriate leader a Senator shall submit the following notice of intent to object:

''I, Senator _____, intend to object to _____, dated _____. I will submit a copy of this notice to the Legislative Clerk and the Congressional Record within 2 session days and I give my permission to the objecting Senator to object in my name.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date that the notice of intent to object is submitted.

(b) CALENDAR.—Upon receiving the submission under subsection (a)(2)(B), the Legislative Clerk shall add the information from the notice of intent to object to the applicable Calendar section entitled ''Notices of Intent to Object to Proceeding'' created by Public Law 110–81. Each section shall include the name of each Senator filing a notice under subsection (a)(2)(B), the measure or matter covered by the calendar to which the notice of intent to object relates, and the date the notice of intent to object was filed.

(c) REMOVAL.—A Senator may have a notice of intent to object relating to that Senator removed from a calendar to which it was added under subsection (b) by submitting for inclusion in the Congressional Record the following notice:

''I, Senator _____, do not object to _____, dated _____.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date of the submission to the Congressional Record under this subsection.

(d) OBJECTING ON BEHALF OF A MEMBER.—If a Senator who has notified his or her leader of an intent to object to a covered request fails to submit a notice of intent to object under subsection (a)(2)(B) within 2 session days following an objection to a covered request by the leader or his or her designee on that Senator's behalf, the Legislative Clerk shall list the Senator who made the objection to the covered request in the applicable ''Notice of Intent to Object to Proceeding'' calendar section.

SA 4020. Mr. CRAPO (for himself, Mr. GREGG, Mr. SHELBY, Mr. MCCAIN, Mr. VITTER, Mrs. HUTCHISON, and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE XIII—FANNIE MAE AND FREDDIE MAC

Subtitle A—Ending Bailouts

SEC. 1311. SHORT TITLE.

This subtitle may be cited as the ''Ending Bailouts of Fannie Mae and Freddie Mac Act''.

SEC. 1312. REESTABLISHING THE MAXIMUM AGGREGATE AMOUNT PERMITTED TO BE PROVIDED BY THE TAXPAYERS TO FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(L) REESTABLISHMENT OF TAXPAYER FUNDING CAPS.—The Agency, as conservator, shall prevent a regulated entity from requesting or receiving any funds from the United States Department of the Treasury, as part of the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United State Department of the Treasury and the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, that exceeds a maximum aggregate amount of $200,000,000,000.''.

SEC. 1313. REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity

does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such entity in accordance with generally accepted accounting principles.''.

SEC. 1314. ENSURING CONGRESSIONAL REVIEW FOR AGREEMENTS INCREASING TAXPAYER RISK.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)), as amended by sections 1203 and 1204, is further amended by adding at the end the following new subparagraph:

''(N) AGREEMENTS.—

''(i) IN GENERAL.—The Agency, as conservator or receiver, may enter into agreements that are consistent with its appointment as conservator or receiver with the regulated entity and that expire prior to, or upon, the regulated entity's emergence from conservatorship or receivership provided—

''(I) the agreement does not expose the United States taxpayers to additional risk; and

''(II) the agreement was approved by Congress pursuant to clause (ii).

''(ii) PROCEDURE FOR CONGRESSIONAL APPROVAL.—

''(I) IN GENERAL.—Notwithstanding clause (i), the Agency may enter into, on an interim basis, an agreement, even if the agreement exposes the taxpayer to additional risk, including if such agreement exceeds the limitations established under subparagraphs (L) and (M), if such an agreement—

''(aa) is deemed necessary by the Agency, based upon the Agency's duties as conservator or receiver; and

''(bb) is approved by Congress through adoption of a concurrent resolution of approval, not more than 120 days after the later of—

''(AA) the signing of the agreement; or

''(BB) the date of enactment of the Ending Bailouts of Fannie Mae and Freddie Mac Act.

''(II) REQUIRED SUBMISSIONS FOR CONGRESSIONAL REVIEW.—During the 120-day period described under subclause (I), the Director shall submit to Congress—

''(aa) the text of the agreement;

''(bb) a certification and justification of how the agreement is consistent with the Agency's duties as conservator or receiver;

''(cc) budgetary projections demonstrating the cost to the taxpayer in a 1, 5, and 10-year window;

''(dd) independent risk analysis from the Government Accountability Office of the agreement, considering the risk to the short and long-term viability of the regulated entity and the United States taxpayer;

''(ee) a time table for the expiration of the agreement;

''(ff) a list and description of assets included within each enterprises portfolio, including gross size of each enterprises portfolio and a detailed explanation of the components;

''(gg) the prices that each enterprise is paying on delinquent mortgages, and what mechanism is being applied to protect the United States taxpayer;

''(hh) a list and description of risk management practices by each enterprise to protect United States taxpayer dollars, and the differences between each enterprises practices in such regard, including whether there are any investigations into the accounting practices of either enterprise;

''(ii) a list and description of any interaction between the Department of the Treasury and the mortgage portfolio of any other Government entity and its effect on each enterprise;

''(jj) an updated disclosure of any taxpayer funds provided for and at risk to each enterprise from the Department of the Treasury; and

''(kk) an updated disclosure of the debt activity by each enterprise and the sensitivity to any interest rate changes.

''(iii) TESTIMONY REQUIRED IF FUNDING LIMITATION EXCEEDED.—The Director shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives if either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association requests amounts from the Director in excess of the limitation established under subparagraphs (L) and (M).''.

SEC. 1315. CONGRESSIONAL TESTIMONY.

The Director of the Federal Housing Finance Agency and the Secretary shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives each time that $10,000,000,000 of funds are expended pursuant to the Amended and Restated Senior Preferred Stock Purchase Agreements, dated September 26, 2008, as amended May 6, 2009. The testimony required under this section shall include the reasons why such additional expenditure of taxpayer funds is necessary.

SEC. 1316. INTERNET POSTING BY THE SECRETARY.

The Secretary shall post, on the front page of the website of the Department of the Treasury—

(1) the aggregate portfolio holdings of each enterprise; and

(2) a weekly summary of taxpayer funds provided for and at risk to each enterprise, based on any interest rate changes.

Subtitle B—Fannie Mae and Freddie Mac in the Federal Budget

SEC. 1321. ON-BUDGET STATUS OF FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Notwithstanding any other provision of law, the receipts and disbursements, including the administrative expenses, of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the Budget of the United States Government as submitted by the President;

(2) the congressional budget;

(3) the Statutory Pay-As-You-Go Act of 2010; and

(4) the Balanced Budget and Emergency Deficit Control Act of 1985 (or any successor statute).

(b) EXPIRATION.—The budgetary treatment of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements under subsection (a) shall continue with respect to such entities until such entities are no longer under Federal conservatorship or receivership as authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1322. BUDGETARY TREATMENT OF FANNIE MAE AND FREDDIE MAC.

All costs to the Government of the activities of or under the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and any functional replacements or any modification of such entities shall be determined on a fair value basis.

SEC. 1323. FANNIE MAE AND FREDDIE MAC DEBT SUBJECT TO PUBLIC DEBT LIMIT.

(a) IN GENERAL.—For purposes of section 3101(b) of chapter 31 of title 31, United States Code, the face amount of obligations issued by the Federal National Mortgage Association and by the Federal Home Loan Mortgage Corporation or any functional replacements and outstanding shall be treated as issued by the United States Government under that section.

(b) TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT.—The limit on the obligation in section 3101(b) of title 31, United States Code, shall be increased by the face amount of obligations issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and outstanding on April 15, 2010.

(c) EXPIRATION.—

(1) OBLIGATIONS.—The obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements shall continue to be treated as issued by the United States Government with respect to such entities until such entities no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

(2) DEBT LIMIT.—Any temporary increase in the public debt limit authorized in subsection (b) with respect to the obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation shall be reversed with respect to such entities when Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1324. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) FAIR VALUE.—The term ''fair value'' shall have the same meaning as the definition of fair value outlined in Financial Accounting Standards No. 157, or any successor thereto, issued by the Financial Accounting Standards Board.

(2) FUNCTIONAL REPLACEMENTS.—The term ''functional replacements'' means any organization, agreement, or other arrangement that would perform the public functions of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(3) MODIFICATION.—

(A) IN GENERAL.—The term ''modification'' means any government action that alters the estimated fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements.

(B) COST.—The cost of a modification is the difference between the current estimate of the fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements and the estimate of the fair value of such activities as modified.

SA 4021. Mr. GREGG submitted an amendment intended to be proposed to

amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 623, line 14, insert '', including price and volume,'' after ''transaction''.

On page 623, line 16, insert '', consistent with joint rules adopted by the Commission'' after ''executed''.

On page 623, line 18, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 21, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 23, strike ''is'' and insert ''and the Securities and Exchange Commission are''.

On page 623, line 24, strike ''provide by rule'' and insert ''engage in joint rulemaking to jointly adopt rules providing''.

On page 624, line 1, insert '', volume,'' after ''transaction''.

On page 624, line 8, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 15, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 23, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 624, line 23, strike ''make available to the public'' and insert ''require real time public reporting for such transactions''.

On page 625, line 1, strike '', aggregate data on such swap trading volumes and positions''.

On page 625, strike lines 3 through 7.

On page 625, line 9, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 625, line 14, strike ''rule'' and insert ''rules''.

On page 625, line 16, strike ''(i) and (ii)'' and insert ''(i) through (iii)''.

On page 625, line 17, strike ''rule'' and insert ''rules''.

On page 625, line 18, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 625, line 20, strike ''identify the participants'' and insert ''disclose the identity of any market participant or proprietary information about the swap transactions, positions, or trading strategies of any market participant''.

On page 625, line 22, strike ''large notional''.

On page 625, line 23, strike the ''(block trade)'' and insert ''block trade''.

On page 626, line 2, strike ''large notional''.

On page 626, line 3, strike the ''(block trades)'' and insert ''block trades''.

On page 626, lines 5 through 6, strike ''whether the public disclosure will materially reduce market liquidity'' and insert ''the effect public disclosure will have on measures of market quality, including market liquidity and transaction costs''.

On page 626, line 13, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 626, after line 13 insert the following:

''(G) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to subparagraph (C) in a timely manner, at the request of either the Commission or the Securities and Exchange Commission, the Financial Stability Oversight Council shall resolve the dispute—

''(i) within a reasonable time after receiving the request;

''(ii) after consideration of relevant information provided by the Commission and the Securities and Exchange Commission; and

''(iii) by agreeing with the Commission or the Securities and Exchange Commission regarding the entirety of the matter or by determining a compromise position.''.

On page 800, line 15, insert '', including price and volume,'' after ''transaction''.

On page 800, line 18, insert '', consistent with joint rules adopted by the Commission'' after ''executed''.

On page 800, line 20, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 800, line 23, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 1, insert ''and required to engage in joint rulemaking to jointly adopt rules providing'' after ''Commission''.

On page 801, line 2, strike ''to provide by rule''.

On page 801, line 3, insert '', volume,'' after ''transaction''.

On page 801, line 10, insert '' pursuant to (a)(10)'' after ''requirements)''.

On page 801, line 10, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 17, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 24, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 800, line 25, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 25, strike ''make available to the public'' and insert ''require real time public reporting for such transactions''.

On page 802, line 3, strike '', aggregate data on such swap trading volumes and positions''.

On page 802, strike lines 6 through 11.

On page 802, line 13, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 802, line 19, strike ''rule'' and insert ''rules''.

On page 802, line 21, strike ''(i) and (ii)'' and insert ''(i) through (iii)''.

On page 802, line 22, strike ''rule'' and insert ''rules''.

On page 802, line 23, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 802, line 25, strike ''identify the participants'' and insert ''disclose the identity of any market participant or proprietary information about the security-based swap transactions, positions, or trading strategies of any market participant''.

On page 803, line 2, strike ''large notional''.

On page 803, lines 3 and 4, strike the ''(block trade)'' and insert ''block trade''.

On page 803, line 7, strike ''large notional''.

On page 803, line 8 strike the ''(block trades)'' and insert ''block trades''.

On page 803, lines 10 through 12, strike ''whether the public disclosure will materially reduce market liquidity'' and insert ''the effect public disclosure will have on measures of market quality, including market liquidity and transaction costs''.

On page 803, line 19, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 803, between lines 19 and 20, insert the following:

''(G) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commission and the Commodity Futures Trading Commission fail to jointly prescribe rules pursuant to subparagraph (C) in a timely manner, at the request of either the Commission or the Commodity Futures Trading Commission, the Financial Stability Oversight Council shall resolve the dispute—

''(i) within a reasonable time after receiving the request;

''(ii) after consideration of relevant information provided by the Commission and the Commodity Futures Trading Commission; and

''(iii) by agreeing with the Commission or the Commodity Futures Trading Commission regarding the entirety of the matter or by determining a compromise position.''.

SA 4022. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 558, strike line 8 and all that follows through page 559, line 14, and insert the following:

(d) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) is amended by adding at the end the following:

''(6) The Commission, by rule, regulation, or order may conditionally or unconditionally exempt any person, swap, or transaction, or any class or classes of persons, swaps, or transactions, from any provision of this Act that was added by an amendment in the Wall Street Transparency and Accountability Act of 2010, to the extent that such exemption is necessary or appropriate in the public interest, and is not inconsistent with the purposes of such Act.''.

On page 892, strike line 23 and all that follows through page 893, line 2, and insert the following:

''(c) DERIVATIVES.—The Commission, by rule, regulation, or order may conditionally or unconditionally exempt any person, security-based swap, or transaction, or any class or classes of persons, security-based swaps, or transactions, from any provision of this Act that was added by an amendment in the Wall Street Transparency and Accountability Act of 2010, to the extent that such exemption is necessary or appropriate in the public interest, and is not inconsistent with the purposes of such Act.''.

SA 4023. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 541, strike lines 13 through 24, and insert the following:

''(D) RISK BASED CAPITAL.—In setting risk-based capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account—

''(i) the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a major swap participant;

''(ii) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(iii) whether the swap is used to offset or hedge another instrument or asset owned by such major swap participant; and

''(iv) whether the swap is cleared, in addition to any other factor the prudential regulator and the Commission deem material.''.

On page 556, strike lines 11 through 21, and insert the following:

''(C) RISK BASED CAPITAL.—In setting risk-based capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account—

''(i) the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer;

''(ii) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(iii) whether the swap is used to offset or hedge another instrument or asset owned by such swap dealer; and

''(iv) whether the swap is cleared, in addition to any other factor the prudential regulator and the Commission deem material.''.

On page 646, strike line 6, and insert the following:

''(e) RISK-BASED CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall meet at all times such risk-based capital and margin requirements as the appropriate Federal banking agencies, the Commission, or the Securities and Exchange Commission, as applicable, shall prescribe, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this title.

''(2) CAPITAL AND MARGIN CONSIDERATIONS.—In determining capital and margin requirements in this subsection, the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission, respectively, shall set risk-based capital and margin requirements that such authorities deem appropriate and necessary for the risk associated with the swaps activities of each registered swap dealer and major swap participant. In setting such risk-based capital and margin requirements pursuant to the authorities established in paragraphs (3) through (10), the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission each shall consider, among other factors—

''(A) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(B) whether the swap is used to offset or hedge another instrument or asset owned by such registered swap dealers and major swap participants; and

''(C) whether the swap is cleared.''.

On page 646, line 7, strike ''(1) IN GENERAL.—'' and insert ''(3) DEPOSITORY AND NONDEPOSITORY INSTITUTIONS.—''.

On page 646, line 18, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 647, line 7, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 647, line 9, strike ''(2)'' and insert ''(4)''.

On page 648, line 5, strike ''(3)'' and insert ''(5)''.

On page 648, line 9, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 649, line 6, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 649, line 12, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 650, line 21, strike ''(4)'' and insert ''(6)''.

On page 651, line 4, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 651, line 13, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 651, line 22, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 651, line 23, strike ''(5)'' and insert ''(7)''.

On page 652, line 11, strike ''(6)'' and insert ''(8)''.

On page 653, line 5, strike ''(7)'' and insert ''(9)''.

On page 653, line 7, strike ''(4)(A)(i)'' and insert ''(6)(A)(i)''.

On page 653, line 8, strike ''(4)(A)(ii)'' and insert ''(6)(A)(ii)''.

On page 653, line 9, strike ''(4)(B)(i)'' and insert ''(6)(B)(i)''.

On page 653, line 10, strike ''(4)(B)(ii)'' and insert ''(6)(B)(ii)''.

On page 653, line 15, strike ''(8)'' and insert ''(9)''.

On page 653, line 16, strike ''(4)'' and insert ''(6)''.

On page 852, strike line 19, and insert the following:

''(e) RISK-BASED CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall meet at all times such risk-based capital and margin requirements as the appropriate Federal banking agencies, the Commission, or the Securities and Exchange Commission, as applicable, shall prescribe, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this title.

''(2) CAPITAL AND MARGIN CONSIDERATIONS.—In determining capital and margin requirements in this subsection, the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission, respectively, shall set risk-based capital and margin requirements that such authorities deem appropriate and necessary for the risk associated with the security-based swaps activities of each registered security-based swap dealer and major security-based swap participant. In setting such risk-based capital and margin requirements pursuant to the authorities established in paragraphs (3) through (10), the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission each shall consider, among other factors—

''(A) the liquidity of each security-based swap, including whether such instrument is traded on a liquid market;

''(B) whether the security-based swap is used to offset or hedge another instrument or asset owned by such registered security-based swap dealers and major security-based swap participants; and

''(C) whether the security-based swap is cleared.''.

On page 852, line 20, strike ''(1) IN GENERAL.—'' and insert ''(3) DEPOSITORY AND NONDEPOSITORY INSTITUTIONS.—''.

On page 853, line 8, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 853, line 22, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 854, line 1, strike ''(2)'' and insert ''(4)''.

On page 854, line 25, strike ''(3)'' and insert ''(5)''.

On page 855, line 5, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 855, line 25, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 856, line 7, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 857, line 13, strike ''(4)'' and insert ''(6)''.

On page 857, line 22, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 858, line 6, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 858, line 13, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 858, line 14, strike ''(5)'' and insert ''(7)''.

On page 859, line 3, strike ''(6)'' and insert ''(8)''.

On page 859, line 22, strike ''(7)'' and insert ''(9)''.

On page 859, line 24, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 860, line 1, strike ''(4)(B)'' and insert ''(6)(B)''.

On page 860, line 6, strike ''(8)'' and insert ''(10)''.

On page 860, line 7, strike ''(4) and (5)'' and insert ''(6) and (7)''.

SA 4024. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 577, line 24, after ''paragraph (9)'', insert '', or to any swap transaction that is a large notional swap transaction (block trade) for the particular market or contract''.

On page 793, line 23, strike ''or''.

On page 794, line 3, strike the period and insert ''; or''.

On page 794, between lines 3 and 4, insert the following:

''(iii) , or to any security-based swap transaction that is a large notional security-based swap transaction (block trade) for the particular market or contract.''.

SA 4025. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 567, line 24, after ''shall'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 568, line 6, after ''5b(c)(2)'' insert '', taking into account the factors described in

clauses (I) through (vii) of subparagraph (4)(A)''.

On page 571, between lines 21 and 22, insert the following:

''(vi) The effect on the mitigation of systemic risk, taking into account the size of the market for the group, category, type, or class of swaps, the resources of derivatives clearing organizations available to clear the group, category, type, or class of swaps, and the existence of reasonable legal certainty in the event of the insolvency of any such derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.''.

On page 571, line 22, strike ''(vi)'' and insert ''(vii)''.

On page 572, line 1, after ''may'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 572, line 6, strike ''(vi)'' and insert ''(vii)''.

On page 577, line 8, after ''(1)'' insert ''and designated by the Commission pursuant to subparagraph (C)''.

On page 577, line 10, after ''on'' insert '', through or subject to the rules of''.

On page 577, line 13, after ''on'' insert '', through or subject to the rules of''.

On page 577, after line 24, insert the following:

''(C) COMMISSION DESIGNATIONS.—The Commission may, by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code, separately designate a particular swap or class of swaps that is subject to the clearing requirement of paragraph (1) as subject to the execution requirement of subparagraph (A) if the Commission determines that effective pre-trade price transparency does not already exist in the market, and taking into account the potential impact of such requirement on price discovery, competition, market liquidity, and costs of execution.''.

On page 783, line 22, after ''shall'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 784, line 3, after ''17A'' insert '', taking into account the factors described in clauses (i) through (vii) of subparagraph (4)(A)''.

On page 788, before line 1, insert the following:

''(vi) The effect on the mitigation of systemic risk, taking into account the size of the market for the group, category, type, or class of security-based swaps, the resources of clearing agencies available to clear the group, category, type, or class of security-based swaps, and the existence of reasonable legal certainty in the event of the insolvency of any such clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.''.

On page 788, line 1, strike ''(vi)'' and insert ''(vii)''.

On page 788, line 5, after ''may'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 788, line 10, strike ''(vi)'' and insert ''(vii)''.

On page 793, line 8, after ''(1)'' insert ''and designated by the Commission pursuant to subparagraph (C)''.

On page 793, line 10, after ''on'' insert '', through or subject to the rules of''.

On page 793, line 13, after ''on'' insert '', through or subject to the rules of''.

On page 794, between lines 3 and 4, insert the following:

''(C) COMMISSION DESIGNATIONS.—The Commission may, by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code, separately designate a particular security-based swap or class of security-based swaps that is subject to the clearing requirement of paragraph (1) as subject to the execution requirement of subparagraph (A) if the Commission determines that effective pre-trade price transparency does not already exist in the market, and taking into account the potential impact of such requirement on price discovery, competition, market liquidity, and costs of execution.''.

SA 4026. Mr. REID submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1309, lines 23 and 24, strike ''in State court having jurisdiction over the defendant'' and insert ''in a State court in that State''.

SA 4027. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1552, line 12, strike ''SELECTION OF THE PRESIDENT'' and insert ''CLASS B DIRECTORS''.

On page 1552, beginning on line 16, strike ''the President'' and all that follows through ''years'' on line 19 and insert the following: ''the Class B directors of the Federal Reserve Bank of New York shall be designated by the Board of Governors''.

On page 1552, line 21, insert ''OF NEW YORK'' after ''BANK''.

On page 1553, line 1, strike ''supervised by the Board'' and insert ''subject to enhanced supervision and prudential standards under section 115''.

On page 1553, beginning on line 2, strike ''a Federal reserve bank, and no past or'' and insert ''the Federal Reserve Bank of New York, and no''.

On page 1553, line 6, strike ''a Federal reserve bank'' and insert ''the Federal Reserve Bank of New York''.

SA 4028. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1552, strike line 8 and all that follows through page 1553, line 6.

SA 4029. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1565, after line 23, insert the following:

TITLE XIII—FINANCIAL MARKETS OVERSIGHT CONSOLIDATION AND INVESTOR PROTECTION ACT OF 2010

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Financial Markets Oversight Consolidation and Investor Protection Act of 2010''.

SEC. 1302. PURPOSES.

The purposes of this title are—

(1) to establish a single Federal regulatory body with jurisdiction over securities and derivatives, including options, futures, swaps, and related markets and instruments and including over-the-counter derivatives;

(2) to consolidate and revise the authority for setting margin requirements;

(3) to coordinate the regulation of all financial markets;

(4) to strengthen investor protections in United States financial markets; and

(5) to ensure the competitiveness of United States markets.

SEC. 1303. DEFINITIONS.

As used in this title—

(1) the term ''Chairman'' means the Chairman of the Financial Markets Commission designated under section 1312;

(2) the term ''Commission'' means the Financial Markets Commission established by section 1311 of this title;

(3) the term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(4) the term ''transfer date'' means the date designated under section 1361.

SEC. 1304. EFFECT ON CONGRESSIONAL JURISDICTION.

It is the sense of Congress that this title should not be construed to affect the jurisdiction of any committee or subcommittee of the Congress with respect to any function transferred to the Commission by this title.

Subtitle A—Establishment of Commission

SEC. 1311. ESTABLISHMENT.

There is established in the executive branch an independent agency to be known as the ''Financial Markets Commission''.

SEC. 1312. MEMBERS: APPOINTMENT; TERMS.

(a) COMPOSITION OF COMMISSION.—

(1) NUMBER OF COMMISSIONERS.—The Commission shall be composed of 5 commissioners appointed by the President, by and with the advice and consent of the Senate.

(2) CHAIRMAN.—One of the commissioners shall be designated by the President as the Chairman of the Commission, who shall be the chief executive of the Commission.

(3) QUALIFICATIONS.—Each commissioner shall be selected solely on the basis of integrity and demonstrated knowledge of the operations of the markets that are subject to the jurisdiction of the Commission.

(4) POLITICAL AFFILIATION.—Not more than 3 of the commissioners shall be members of the same political party.

(b) TERMS.—

(1) IN GENERAL.—Except as provided in this subsection, each commissioner shall be appointed for a term of 5 years.

(2) SUCCESSION.—A commissioner may continue to serve after the expiration of such term until a successor is appointed and has qualified, but may not continue to so serve beyond the expiration of the next session of Congress beginning after the expiration of such term.

(3) FIRST COMMISSIONERS.—The terms of office of the commissioners first taking office after the enactment of this title shall expire, as designated by the President at the time of their appointment—

(A) 1 at the end of 1 year;

(B) 1 at the end of 2 years;

(C) 1 at the end of 3 years;

(D) 1 at the end of 4 years; and

(E) 1 at the end of 5 years.

(4) VACANCY.—

(A) IN GENERAL.—A commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term; and

(B) EFFECT OF VACANCY.—A vacancy in the Commission shall not impair the right of the remaining commissioners to exercise all the powers of the Commission.

(c) CONFLICTS OF INTEREST.—

(1) IN GENERAL.—No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any market operations or transactions of a character subject to regulation by the Commission pursuant to this title.

(2) REIMBURSEMENT FOR TRAVEL.—

(A) IN GENERAL.—Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission.

(B) PAYMENTS AND REIMBURSEMENTS CREDITED.—Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission.

(C) LIMITATION ON AMOUNT.—The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) FEES.—Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide, by rule—

(1) that the fee shall be paid in a manner other than in cash; and

(2) the time period within which the fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(e) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority—

(A) for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation under section 21(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(2)); or

(B) in providing any other assistance to a foreign securities authority.

(2) TREATMENT OF FUNDS.—Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

SEC. 1313. ORGANIZATION OF COMMISSION.

(a) DIVISION OF RETAIL INVESTOR PROTECTION AND RETAIL FINANCIAL SERVICES.—

(1) IN GENERAL.—There shall be within the Commission a Division of Retail Investor Protection and Retail Financial Services.

(2) HEAD OF DIVISION.—The head of the Division of Retail Investor Protection and Retail Financial Services shall be appointed by the Chairman.

(3) SUBDIVISIONS.—There shall be within the Division of Retail Investor Protection and Retail Financial Services—

(A) a subdivision with responsibility for functions relating to investor outreach and education; and

(B) a subdivision with responsibility for functions relating to inspections and examinations.

(b) DIVISION OF TRADING.—

(1) IN GENERAL.—There shall be within the Commission a Division of Trading.

(2) HEAD OF DIVISION.—The head of the Division of Trading shall be appointed by the Chairman.

(3) SUBDIVISIONS.—There shall be within the Division of Trading—

(A) a subdivision with responsibility for functions relating to markets in physical commodities; and

(B) a subdivision with responsibility for functions relating to inspections and examinations.

(c) DIVISION OF CORPORATE DISCLOSURE.—

(1) IN GENERAL.—There shall be within the Commission a Division of Corporate Disclosure.

(2) HEAD OF DIVISION.—The head of the Division of Corporate Disclosure shall be appointed by the Chairman.

(3) SUBDIVISION.—There shall be within the Division of Corporate Disclosure a subdivision with responsibility for functions relating to accounting and auditing matters.

(d) DIVISION OF ECONOMIC ANALYSIS.—

(1) PURPOSES.—The purpose of this subsection is to enhance the ability of the Commission to use professional and objective economic analysis to inform the design and implementation of rulemaking and other actions of the Commission.

(2) DIVISION ESTABLISHED.—There shall be within the Commission a Division of Economic Analysis.

(3) SUBDIVISIONS.—There shall be within the Division of Economic Analysis—

(A) a subdivision with responsibility for functions relating to risk analysis and financial innovation; and

(B) a subdivision with responsibility for functions relating to international technical assistance.

(4) CHIEF ECONOMIST.—

(A) APPOINTMENT.—The Division shall be headed by a Chief Economist, appointed by the Chairman of the Commission, subject to approval of a vote of at least a majority of the members of the Commission then in office, such majority to include at least 1 member of the Commission who is not a member of the same political party as the Chairman, if any such member is then in office.

(B) CRITERIA.—The Chief Economist—

(i) shall be an experienced economist of distinction, with a doctorate in economics or the equivalent in education and experience;

(ii) shall report to and be under the general supervision of the Chairman; and

(iii) shall not report to, or be subject to supervision by, any other officer or employee of the Commission.

(C) REMOVAL.—The Chairman of the Commission may remove the Chief Economist from office. The Chairman shall communicate in writing to both Houses of Congress the reasons for any such removal, not later than 30 days before the effective date of such removal.

(5) REPORTS.—

(A) IN GENERAL.—Except as provided in subparagraph (D), whenever using its authority under any provision of law, the Commission publishes a release giving notice of a proposed rulemaking or other proposed action by the Commission, and affords interested persons an opportunity to comment on such proposed rulemaking or other action or publishes a release adopting a final rule or otherwise taking action after such publication and opportunity to comment, such release shall include as a part thereof a report by the Division.

(B) CONTENT.—Each report required by subparagraph (A)—

(i) shall set forth in reasonable detail an economic analysis of the consequences of the Commission action that is the subject of the report, in light of the statutory responsibilities of the Commission and the stated purposes of the Commission for the action, including when the responsibilities of the Commission so require, the effects of the action on efficiency, competition, and capital formation;

(ii) shall refer to any peer-reviewed or other relevant literature, including any study undertaken by the staff of the Commission, that provides support for the analysis contained in the report (except that the Division is not required to undertake original research in the preparation thereof);

(iii) shall describe the extent to which the conclusions of the report remain subject to uncertainty; and

(iv) with respect to a report delivered in connection with a proposed rulemaking or other proposed action, may request information or comment from the public.

(C) FORM AND OVERSIGHT.—Each report required by subparagraph (A)—

(i) shall be prepared under the direction of, and expressly approved by and published over the name of, the Chief Economist;

(ii) shall not be subject to approval by the Chairman of the Commission or the Commission;

(iii) shall be in final form, dated not later than 1 week prior to the vote of the Commission (or the circulation of a seriatim or other means of Commission action) to which the report relates, to ensure adequate opportunity for the Commission to consider its contents prior to such action;

(iv) shall include a statement confirming that the Chairman of the Commission informed the Division, not later than 60 days prior to the date of the report, of all material aspects of the proposed action covered by the report, in sufficient detail for the purposes of the report or, if a lesser time was afforded, that such lesser time was reasonably sufficient for the preparation of the report; and

(v) shall include a statement confirming that the Division was afforded reasonably sufficient resources for the preparation of the report, or describing any lack thereof.

(D) EXCEPTION.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), no report shall be required under this paragraph—

(I) if the subject Commission action does not propose or adopt a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, unless at least 2 members of the Commission (or 1 member, if 5 members of the Commission are not then in office) request a report; or

(II) at the time of issuance of an interim final rulemaking or other emergency action by the Commission, provided that a report regarding such rulemaking or action is published not later than 60 days thereafter.

(ii) PROCEDURE.—The Commission may adopt rules of procedure governing the time and manner by which requests described in clause (i)(I) shall be made by members of the Commission.

(e) DIVISION OF ENFORCEMENT.—

(1) IN GENERAL.—There shall be within the Commission a Division of Enforcement.

(2) HEAD OF DIVISION.—The head of the Division of Enforcement shall be appointed by the Chairman.

(3) SUBDIVISION.—There shall be within the Division of Enforcement a subdivision with responsibility for functions relating to international enforcement assistance.

SEC. 1314. OFFICE OF THE CHAIRMAN.

(a) OFFICE ESTABLISHED.—There shall be in the Commission an Office of the Chairman, which shall manage the resources and operations of the Commission.

(b) OFFICE OF THE EXECUTIVE DIRECTOR.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of the Executive Director.

(2) EXECUTIVE DIRECTOR AND DUTIES OF THE EXECUTIVE DIRECTOR.—The head of the Office of the Executive Director shall be the Executive Director, who shall oversee the compliance of the Commission with Federal law, including requirements imposed by the Director of Office of Management and Budget, the Government Accountability Office, and the Office of Personnel Management.

(c) OFFICE OF THE SECRETARY.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of the Secretary.

(2) SECRETARY AND DUTIES OF THE SECRETARY.—The head of the Office of the Secretary shall be the Secretary, who shall—

(A) be appointed by the Chairman; and

(B) oversee the procedural administration of meetings, rulemaking, practice, and procedure of the Commission.

(d) OFFICE OF EXTERNAL AFFAIRS.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of External Affairs.

(2) DIRECTOR OF EXTERNAL AFFAIRS.—The head of the Office of External Affairs shall be the Director of External Affairs, who shall—

(A) be appointed by the Chairman;

(B) serve as the formal liaison of the Commission with the Congress, the executive branch, State and local governments, and foreign governments and regulators; and

(C) coordinate the international regulatory policy initiatives of the Commission with the Secretary of the Treasury.

SEC. 1315. GENERAL COUNSEL.

(a) OFFICE ESTABLISHED.—There shall be in the Commission an Office of General Counsel.

(b) GENERAL COUNSEL.—

(1) IN GENERAL.—The head of the Office of the General Counsel shall be the General Counsel, who shall be appointed by the Chairman.

(2) DUTIES OF THE GENERAL COUNSEL.—The General Counsel shall—

(A) report directly to the Commission;

(B) serve as the legal advisor of the Commission;

(C) represent the Commission in all disciplinary proceedings pending before the Commission;

(D) represent the Commission in courts of law whenever appropriate;

(E) assist the Department of Justice in litigation concerning the Commission; and

(F) perform such other legal duties and functions as the Commission may direct.

(3) ADDITIONAL COUNSEL.—The Commission shall appoint such other attorneys as the Commission determines are necessary to assist the General Counsel in carrying out the duties under this section.

SEC. 1316. OMBUDSMAN.

(a) OFFICE ESTABLISHED.—There shall be in the Commission the Office of the Ombudsman.

(b) OMBUDSMAN.—The head of the Office of the Ombudsman shall be the Ombudsman, who shall—

(1) be appointed by the Chairman;

(2) assist registrants, those seeking to be registered, and regulated entities in resolving problems with the Commission;

(3) identify areas in which registrants, those seeking to be registered, and regulated entities have problems in dealings with the Commission;

(4) to the extent possible, propose changes in the administrative practices of the Commission to mitigate problems identified under paragraph (3); and

(5) identify potential legislative changes that may be appropriate to mitigate problems identified under paragraph (3).

SEC. 1317. INSPECTOR GENERAL.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting ''the Financial Markets Commission,'' after ''the Federal Trade Commission,''.

Subtitle B—Transfers of Functions

SEC. 1321. TRANSFER OF FUNCTIONS.

(a) COMMODITY FUTURES TRADING COMMISSION.—All functions of the Commodity Futures Trading Commission and of any officer or component of the Commodity Futures Trading Commission are transferred to the Commission.

(b) SECURITIES AND EXCHANGE COMMISSION.—All functions of the Securities and Exchange Commission and of any officer or component of the Securities and Exchange Commission are transferred to the Commission.

SEC. 1322. ABOLISHMENT.

(a) COMMODITY FUTURES TRADING COMMISSION ABOLISHED.—Effective on [the transfer date], the Commodity Futures Trading Commission is abolished.

(b) SECURITIES AND EXCHANGE COMMISSION ABOLISHED.—Effective on [the transfer date], the Securities and Exchange Commission.

SEC. 1323. JURISDICTION OF MARGIN AUTHORITY.

(a) MARGIN AUTHORITY WITH RESPECT TO SECURITIES.—There are transferred to the Commission the functions of the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g).

(b) CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 3(a)(15) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(15)) is amended by striking ''Securities and Exchange Commission established by section 4 of this title'' and inserting ''Financial Markets Commission''.

(2) MARGIN REQUIREMENTS.—Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended—

(A) in subsection (a), by striking ''the Board of Governors of the Federal Reserve System shall, prior to the effective date of this section and from time to time thereafter,'' and inserting ''the Commission shall'';

(B) in subsection (b)—

(i) by striking ''the Board of Governors of the Federal Reserve System'' and inserting ''the Commission''; and

(ii) in subsection (b), by striking ''(1) prescribe'' and all that follows through ''and (2)'';

(C) in subsection (c)—

(i) in paragraph (1)(A), by striking ''the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board')'' and inserting ''the Commission'';

(ii) in paragraph (2)—

(I) by striking subparagraph (A) and inserting the following:

''(A) COMPLIANCE WITH MARGIN RULES.—It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations which the Commission shall prescribe pursuant to subparagraph (B).''; and

(II) in subparagraph (B)—

(aa) by striking ''The Board'' and all that follows through ''jointly deem appropriate'' and inserting ''The Commission shall prescribe such regulations to establish margin requirements, including the establishment of levels of margin (initial and maintenance) for security futures products under such terms, and at such levels, as the Commission deems appropriate'';

(bb) by striking clause (ii); and

(cc) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively; and

(iii) by striking ''the Board'' each place that term appears and inserting ''the Commission'';

(D) in subsection (d)—

(i) in paragraph (3), in the paragraph header, by striking ''BOARD'' and inserting ''COMMISSION''; and

(ii) by striking ''the Board'' each place that term appears and inserting ''the Commission'';

(E) in subsection (e), by striking ''on or before July 1, 1937'' and all that follows through ''Federal Reserve Board'' and inserting ''on or before October 1, 2011, except to the extent that the Commission'';

(F) in subsection (f)(3), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Commission''; and

(G) in subsection (g), by striking ''Board of Governors of the Federal Reserve System'' each place that term appears and inserting ''Commission''.

(c) MARGIN AUTHORITY WITH RESPECT TO FUTURES.—The Commission may, as necessary to ensure the financial integrity of the contract markets—

(1) by order, direct a contract market to adjust the level of margin required on any contract; or

(2) by regulation, prescribe limits on the level of margin that a contract market may require on any class or category of contract.

(d) MARGIN AUTHORITY WITH RESPECT TO SWAPS.—The Commission may prescribe limits on the level of margin on non-cleared swaps—

(1) in accordance with section 15F(e) of the Securities Exchange Act of 1934, as added by the Wall Street Transparency and Accountability Act of 2010, for security-based swaps; and

(2) in accordance with section 4s(e) of the Commodity Exchange Act, as amended in the Wall Street Transparency and Accountability Act of 2010, for commodity-based swaps.

Subtitle C—Administrative Provisions

PART I—PERSONNEL PROVISIONS

SEC. 1331. OFFICERS AND EMPLOYEES.

(a) APPOINTMENT AND COMPENSATION.—The Commission may appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Commission, in accordance with title 5, United States Code.

(b) LIMITED-TERM APPOINTEES.—Notwithstanding any other provision of law, the Director of the Office of Personnel Management shall establish positions within the Senior Executive Service for 10 limited-term appointees. The Commission shall appoint individuals to such positions as provided by section 3394 of title 5, United States Code. Such positions shall expire upon the later of 3 years after the transfer date or 3 years after the initial appointment to each position. Positions in effect under this subsection shall be taken into account in applying the limitations on positions prescribed under section 3134(e) and section 5108 of title 5, United States Code.

SEC. 1332. EXPERTS AND CONSULTANTS.

The Commission may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, and may compensate such experts and consultants at rates not to exceed the daily rate prescribed for SK–18 of the Special Rate Schedule under section 5332 of such title.

PART II—GENERAL ADMINISTRATIVE PROVISIONS

SEC. 1333. GENERAL AUTHORITY.

In carrying out any function transferred by this title, the Commission, or any officer or employee of the Commission, may exercise any authority available by law (including appropriation Acts) with respect to such function to the official or agency from which such function is transferred, and the actions of the Commission in exercising such authority shall have the same force and effect as when exercised by such official or agency.

SEC. 1334. DELEGATION.

(a) IN GENERAL.—Except as otherwise provided in this title, the Commission may delegate any function to such officers and employees of the Commission as the Commission may designate, and may authorize such successive redelegations of such functions within the Commission as may be necessary or appropriate.

(b) AUTOMATIC SUNSET OF DELEGATIONS.—Each delegation of function shall automatically expire 3 years after the effective date of the delegation, unless renewed by the Commission.

(c) EXISTING DELEGATIONS.—Each delegation of function in effect on the date of enactment of this Act shall automatically expire 3 years after the date of enactment of this Act, unless renewed by the Commission.

(d) COMMISSION RESPONSIBILITY FOR ADMINISTRATION OF DELEGATED FUNCTIONS.—No delegation of functions by the Commission under this section or under any other provision of this title shall relieve the Commission of responsibility for the administration of such functions.

SEC. 1335. RULES.

(a) IN GENERAL.—The Commission may prescribe such rules, regulations, and orders as the Commission determines necessary or appropriate to administer and manage the functions of the Commission.

(b) COMPREHENSIVE REVIEW OF MAJOR RULES.—The Commission shall conduct a comprehensive review of each major rule (as that term is defined in section 804(2) of title 5, United States Code) issued by the Commission not later than 5 years after the effective date of the major rule, and every 5 years thereafter. The comprehensive review shall include a public comment period.

(c) STATUS REVIEW OF MINOR RULES.—The Commission shall conduct a status review for each rule of the Commission that is not a major rule (as that term is defined in section 804(2) of title 5, United States Code) not later than 5 years after the effective date of the rule, and every 5 years thereafter, to determine whether such rule should be designated as a major rule.

(d) REPORT ON EXISTING RULES.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report containing a schedule for the review in accordance with this section of rules in effect on the date of enactment of this Act.

SEC. 1336. CONTRACTS.

(a) IN GENERAL.—Subject to the provisions of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Commission may—

(1) make, enter into, and perform such contracts, grants, leases, cooperative agreements, or other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons; and

(2) make such payments, by advance or reimbursement, as the Commission may determine necessary or appropriate to carry out functions of the Commission.

(b) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance under appropriation Acts.

SEC. 1337. REGIONAL AND FIELD OFFICES.

The Commission may establish, alter, discontinue, or maintain such regional or other field offices of the Commission as the Commission determines necessary or appropriate to perform functions of the Commission.

SEC. 1338. USE OF FACILITIES.

(a) USE BY COMMISSION.—The Commission may, with or without reimbursement and with the consent of the entity concerned, use the research, equipment, services, or facilities of any agency or instrumentality of the United States, of any State or political subdivision thereof, or of any foreign government, in carrying out any function of the Commission.

(b) USE BY OTHERS.—

(1) IN GENERAL.—Except as provided in paragraph (4), the Commission may permit public and private agencies, corporations, associations, organizations, or individuals to use any real property, or any facilities, structures, or other improvements thereon, under the custody and control of the Commission for the purposes of the Commission.

(2) TERMS AND RATES.—The Commission shall permit the use of such property, facilities, structures, or improvements under this subsection under such terms and rates and for such period as may be in the public interest, except that the periods of such uses may not exceed 5 years.

(3) RECONDITIONING AND MAINTENANCE.—The Commission may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements used by such permittees under this subsection to a standard satisfactory to the Commission.

(4) EXCEPTION.—This subsection shall not apply to excess property, as that term is defined in section 102 of title 40, United States Code.

(c) PROCEEDS FROM REIMBURSEMENTS.—Proceeds from reimbursements under this section may be credited to the appropriation of funds that bear or will bear all or part of the cost of such equipment or facilities provided or to refund excess sums when necessary.

(d) TITLE TO PROPERTY.—Any interest in real property acquired pursuant to this title shall be acquired in the name of the United States Government.

SEC. 1339. FUNDS TRANSFER.

The Commission may, when authorized in an appropriation Act in any fiscal year, transfer funds from 1 appropriation to another within the Commission, except that no appropriation for any fiscal year shall be either increased or decreased pursuant to this section by more than 5 percent and no such transfer shall result in increasing any such appropriation above the amount authorized to be appropriated therefor.

SEC. 1340. SEAL OF COMMISSION.

The Commission shall cause a seal of office to be made for the Commission of such design as the Commission shall approve. Judicial notice shall be taken of such seal.

SEC. 1341. ANNUAL REPORT.

(a) REPORT REQUIRED.—The Commission shall, as soon as practicable after the close of each fiscal year, make a single, comprehensive report to the President for transmission to the Congress on the activities of the Commission during such fiscal year.

(b) CONTENTS.—Each report under subsection (a) shall include—

(1) a statement of goals, priorities, and plans of the Commission;

(2) an assessment of the progress made by the Commission toward—

(A) the attainment of the goals, priorities, and plans of the Commission; and

(B) the more effective and efficient management of the Commission and the coordination of its functions;

(3) recommendations, if any, for proposed legislation for the achievement of the goals, priorities, and plans of the Commission; and

(4) an estimate of—

(A) the number of the non-Federal personnel employed pursuant to contracts entered into by the Commission under section 1336 or under any other authority (including any subcontract thereunder);

(B) the number of such contracts and subcontracts pursuant to which non-Federal personnel are employed; and

(C) the total cost of such contracts and subcontracts.

Subtitle D—Transitional, Savings, and Conforming Provisions

SEC. 1351. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) TRANSFER OF EMPLOYEES.—All employees of the Securities and Exchange Commission and the Commodity Futures Trading Commission shall be transferred to the Commission.

(2) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Securities and Exchange Commission and the Commodity Futures Trading Commission under Federal law that relates to the functions transferred under section 1321, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Chairman.

(B) DECLINING TRANSFERS ALLOWED.—The Chairman may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive

service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees under this title shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS ACT.—If any provision of this title conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) STATUS AND ELIGIBILITY OF EMPLOYEES.—The transfer of functions and employees under this title, and the abolishment of the Securities and Exchange Commission and the Commodity Futures Trading Commission under section 1322, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—

(1) STATUS AND TENURE.—Each transferred employee shall be placed in a position at the Commission with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) FUNCTIONS.—To the extent practicable, each transferred employee shall be placed in a position at the Commission responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position in the Commission, if the examiner carries out examinations of the same type of institutions as an employee of the Commission as the examiner carried out before the date on which the employee was transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the transfer date, an employee holding a permanent position on the day before the date on which the employee was transferred shall not be involuntarily separated or involuntarily reassigned outside the locality pay area (as defined by the Office of Personnel Management) of the employee.

(2) EXCEPTIONS.—The Chairman may—

(A) separate a transferred employee for cause, including for unacceptable performance; or

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the date on which the employee was transferred under this title, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the 2-year period immediately preceding the date on which the employee was transferred.

(2) EXCEPTIONS.—The Chairman may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by the Commission.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Chairman to increase the pay of a transferred employee.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Commission.

(ii) EMPLOYER'S CONTRIBUTION.—The Chairman shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) DEFINITION.—In this paragraph, the term ''existing retirement plan'' means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee transferred, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Chairman shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Chairman determines that the Commission will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee transferred, a transferred employee who is a member of the program may, before the decision of the Chairman takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code; and

(iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Chairman determines that the Commission will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Chairman takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

(D) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(i) IN GENERAL.—Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) COST DIFFERENTIAL.—The Chairman shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on the date of enactment of this Act and the plan provided by the Chairman under this section.

(iii) FUNDS TRANSFER.—The Chairman shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Chairman and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this Act on the day before the transfer date shall be eligible for coverage by a life insurance plan under section 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Chairman, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Chairman shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Chairman shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Chairman and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, the Chairman immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the transfer date, the Chairman shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Chairman—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other transferred employee on the basis of prior employment by the Securities and Exchange Commission or the Commodity Futures Trading Commission; and

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee.

SEC. 1352. PROPERTY TRANSFERRED.

(a) PROPERTY DEFINED.—For purposes of this section, the term ''property'' includes all real property (including leaseholds) and all personal property (including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers and correspondence related to such reports, and any other information or materials).

(b) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Securities and Exchange Commission and the Commodity Futures Trading Commission shall be transferred to the Commission.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Commission by this section shall be transferred to the Commission together with the property.

(d) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 1353. SAVINGS PROVISIONS.

(a) SECURITIES AND EXCHANGE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1321(a) and 1322 shall not affect the validity of any right, duty, or obligation of the United States, the Commissioners of the Securities and Exchange Commission, the Securities and Exchange Commission, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Commissioners of the Securities and Exchange Commission or the Securities and Exchange Commission before the transfer date, except that the Chairman or the Commission shall be substituted for the Commissioners or the Securities and Exchange Commission, as the case may be, as a party to any such action or proceeding as of the transfer date.

(b) COMMODITY FUTURES TRADING COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1321(b) and 1322 shall not affect the validity of any right, duty, or obligation of the United States, the Commissioners of the Commodity Futures Trading Commission, the Commodity Futures Trading Commission, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any action or proceeding commenced by or against the Commissioners of the Commodity Futures Trading Commission or the Commodity Futures Trading Commission before the transfer date, except that the Chairman or the Commission shall be substituted for the Commissioners of the Commodity Futures Trading Commission or the Commodity Futures Trading Commission, as the case may be, as a party to the action or proceeding as of the transfer date.

(c) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—

(1) SECURITIES AND EXCHANGE COMMISSION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the Securities and Exchange Commission, or by a court of competent jurisdiction, that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against the Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

(2) COMMODITY FUTURES TRADING COMMISSION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Commodity Futures Trading Commission, or by a court of competent jurisdiction, that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against the Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the transfer date, the Chairman shall—

(1) in consultation with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, identify the regulations continued under subsection (c) that will be enforced by the Commission; and

(2) publish a list of such regulations in the Federal Register.

(e) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Securities and Exchange Commission or the Commodity Futures Trading Commission which that agency, in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Commission.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Securities and Exchange Commission or the Commodity Futures Trading Commission which that agency, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Commission according to the terms of the regulation.

SEC. 1354. SEVERABILITY.

If any provision of this title or the application thereof to any person or circumstance is held invalid, neither the remainder of this title nor the application of such provision to other persons or circumstances shall be affected thereby.

SEC. 1355. REFERENCES IN FEDERAL LAW.

On and after the transfer date of this title, any reference in any other Federal law to any function of any department, commission, or agency, or any officer or office that is transferred under this title shall be deemed to be a reference to the Commission, or the official or component of the Commission to which this title transfers such functions.

SEC. 1356. AMENDMENTS.

(a) EXECUTIVE SCHEDULE SALARIES.—

(1) CHAIRMAN.—Section 5314 of title 5, United States Code, is amended—

(A) by striking the item relating to ''Chairman, Securities and Exchange Commission.'' and inserting the following:

''Chairman, Financial Markets Commission.''; and

(B) by striking the item relating to ''Chairman, Commodity Futures Trading Commission.''.

(2) MEMBERS.—Section 5315 of title 5, United States Code, is amended—

(A) by striking the item relating to ''Members, Securities and Exchange Commission'' and inserting the following:

''Members, Financial Markets Commission''; and

(B) by striking the item relating to ''Members, Commodity Futures Trading Commission.''.

(b) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT.—Sections 4 and 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78d and 78kk) are repealed.

(2) COMMODITY EXCHANGE ACT.—Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking paragraphs (2), (3), and (4).

SEC. 1357. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY.

(a) INTERIM AUTHORITY OF CHAIRMAN.—During the period beginning on the date on which the first Chairman is appointed under section 1312 and ending on the transfer date, the Chairman shall—

(1) consult and cooperate with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission to facilitate the orderly transfer of functions to the Commission;

(2) determine, from time to time—

(A) the amount of funds necessary to pay the expenses of the Commission (including expenses for personnel, property, and administrative services);

(B) which personnel are appropriate to facilitate the orderly transfer of functions under this title; and

(C) what property and administrative services are necessary to support the Commission; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) INTERIM RESPONSIBILITIES.—Before the transfer date, upon the request of the Chairman, the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission shall each—

(1) pay to the Chairman, from funds appropriated to such agencies, such funds as the Chairman determines to be necessary under subsection (a)(2)(A);

(2) detail to the Commission such personnel as the Chairman determines to be appropriate under subsection (a)(2)(B); and

(3) make available to the Commission such property and provide to the Commission such administrative services as the Chairman determines to be necessary under subsection (a)(2)(C).

(c) NOTICE REQUIRED.—The Chairman shall give to the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission reasonable notice of any request that the Chairman intends to make under subsection (b).

Subtitle E—Transfer Date

SEC. 1361. TRANSFER DATE.

(a) TRANSFER DATE.—Except as provided in subsection (b), the term ''transfer date'' means the date that is 1 year after the date of enactment of this title.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The President may designate a transfer date that is not later than 18 months after the date of enactment of this Act, if the President transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 180 days after the date of enactment of this Act, the President shall publish in the Federal Register notice of any date designated under paragraph (1).

SA 4030. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 965 and insert the following:

SEC. 965. ORGANIZATION OF COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 4D, as added by section 996 of this Act, the following:

''SEC. 4E. ORGANIZATION OF THE COMMISSION.

''(a) DIVISION OF RETAIL INVESTOR PROTECTION AND RETAIL FINANCIAL SERVICES.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Retail Investor Protection and Retail Financial Services.

''(2) HEAD OF DIVISION.—The head of the Division of Retail Investor Protection and Retail Financial Services shall be appointed by the Chairman.

''(3) SUBDIVISIONS.—There shall be within the Division of Retail Investor Protection and Retail Financial Services—

''(A) a subdivision with responsibility for functions relating to investor outreach and education; and

''(B) a subdivision with responsibility for functions relating to inspections and examinations.

''(b) DIVISION OF TRADING.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Trading.

''(2) HEAD OF DIVISION.—The head of the Division of Trading shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Trading a subdivision with responsibility for functions relating to inspections and examinations.

''(c) DIVISION OF CORPORATE DISCLOSURE.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Corporate Disclosure.

''(2) HEAD OF DIVISION.—The head of the Division of Corporate Disclosure shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Corporate Disclosure a subdivision with responsibility for functions relating to accounting and auditing matters.

''(d) DIVISION OF ECONOMIC ANALYSIS.—

''(1) PURPOSES.—The purpose of this subsection is to enhance the ability of the Commission to use professional and objective economic analysis to inform the design and implementation of rulemaking and other actions of the Commission.

''(2) DIVISION ESTABLISHED.—There shall be within the Commission a Division of Economic Analysis.

''(3) SUBDIVISIONS.—There shall be within the Division of Economic Analysis—

''(A) a subdivision with responsibility for functions relating to risk analysis and financial innovation; and

''(B) a subdivision with responsibility for functions relating to international technical assistance.

''(4) CHIEF ECONOMIST.—

''(A) APPOINTMENT.—The Division shall be headed by a Chief Economist, appointed by the Chairman of the Commission, subject to approval of a vote of at least a majority of the members of the Commission then in office, such majority to include at least 1 member of the Commission who is not a member of the same political party as the Chairman, if any such member is then in office.

''(B) CRITERIA.—The Chief Economist—

''(i) shall be an experienced economist of distinction, with a doctorate in economics or the equivalent in education and experience;

''(ii) shall report to and be under the general supervision of the Chairman; and

''(iii) shall not report to, or be subject to supervision by, any other officer or employee of the Commission.

''(C) REMOVAL.—The Chairman of the Commission may remove the Chief Economist from office. The Chairman shall communicate in writing to both Houses of Congress the reasons for any such removal, not later than 30 days before the effective date of such removal.

''(5) REPORTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), whenever using its authority under any provision of law, the Commission publishes a release giving notice of a proposed rulemaking or other proposed action by the Commission, and affords interested persons an opportunity to comment on such proposed rulemaking or other action or publishes a release adopting a final rule or otherwise taking action after such publication and opportunity to comment, such release shall include as a part thereof a report by the Division.

''(B) CONTENT.—Each report required by subparagraph (A)—

''(i) shall set forth in reasonable detail an economic analysis of the consequences of the Commission action that is the subject of the report, in light of the statutory responsibilities of the Commission and the stated purposes of the Commission for the action, including when the responsibilities of the Commission so require, the effects of the action on efficiency, competition, and capital formation;

''(ii) shall refer to any peer-reviewed or other relevant literature, including any study undertaken by the staff of the Commission, that provides support for the analysis contained in the report (except that the Division is not required to undertake original research in the preparation thereof);

''(iii) shall describe the extent to which the conclusions of the report remain subject to uncertainty; and

''(iv) with respect to a report delivered in connection with a proposed rulemaking or other proposed action, may request information or comment from the public.

''(C) FORM AND OVERSIGHT.—Each report required by subparagraph (A)—

''(i) shall be prepared under the direction of, and expressly approved by and published over the name of, the Chief Economist;

''(ii) shall not be subject to approval by the Chairman of the Commission or the Commission;

''(iii) shall be in final form, dated not later than 1 week prior to the vote of the Commission (or the circulation of a seriatim or other means of Commission action) to which the report relates, to ensure adequate opportunity for the Commission to consider its contents prior to such action;

''(iv) shall include a statement confirming that the Chairman of the Commission informed the Division, not later than 60 days prior to the date of the report, of all material aspects of the proposed action covered by the report, in sufficient detail for the purposes of the report or, if a lesser time was afforded, that such lesser time was reasonably sufficient for the preparation of the report; and

''(v) shall include a statement confirming that the Division was afforded reasonably sufficient resources for the preparation of the report, or describing any lack thereof.

''(D) EXCEPTION.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), no report shall be required under this paragraph—

''(I) if the subject Commission action does not propose or adopt a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, unless at least 2 members of the Commission (or 1 member, if 5 members of the Commission are not then in office) request a report; or

''(II) at the time of issuance of an interim final rulemaking or other emergency action by the Commission, provided that a report regarding such rulemaking or action is published not later than 60 days thereafter.

''(ii) PROCEDURE.—The Commission may adopt rules of procedure governing the time and manner by which requests described in clause (i)(I) shall be made by members of the Commission.

''(e) DIVISION OF ENFORCEMENT.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Enforcement.

''(2) HEAD OF DIVISION.—The head of the Division of Enforcement shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Enforcement a subdivision with responsibility for functions relating to international enforcement assistance.''.

SA 4031. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1258, strike line 24 and all that follows through page 1267, line 12 and insert the following:

(B) obtaining information about the activities subject to such law and the associated compliance systems or procedures of such persons; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau and the prudential regulators shall coordinate their supervisory activities for persons described in subsection (a), in a manner that—

(A) avoids duplication;

(B) shares information relevant to the supervision of the depository institution or affiliate by each agency; and

(C) ensures that the depository institution or affiliate is not subject to conflicting supervisory demands by the agencies.

(3) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate supervisory activities in a manner consistent with paragraph (2).

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, as permitted by the subject provision of Federal law.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SA 4032. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3823 proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 2 of the amendment, strike line 21 and insert the following:

Act.

TITLE XIII—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Pharmaceutical Market Access and Drug Safety Act of 2010''.

SEC. 1302. FINDINGS.

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American spend more than $200,000,000,000 on prescription drugs every year;

(6) the Congressional Budget Office has found that the cost of prescription drugs are between 35 to 55 percent less in other highly-developed countries than in the United States; and

(7) promoting competitive market pricing would both contribute to health care savings and allow greater access to therapy, improving health and saving lives.

SEC. 1303. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

SEC. 1304. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 1303, is further amended by inserting after section 803 the following:

''SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.

''(a) IMPORTATION OF PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—In the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

''(A) the limitation on importation that is established in section 801(d)(1) is waived; and

''(B) the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

''(2) IMPORTERS.—A qualifying drug may not be imported under paragraph (1) unless—

''(A) the drug is imported by a pharmacy, group of pharmacies, or a wholesaler that is a registered importer; or

''(B) the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

''(3) RULE OF CONSTRUCTION.—This section shall apply only with respect to a drug that is imported or offered for import into the United States—

''(A) by a registered importer; or

''(B) from a registered exporter to an individual.

''(4) DEFINITIONS.—

''(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

''(i) The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

''(ii) The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

''(iii) The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

''(B) QUALIFYING DRUG.—For purposes of this section, the term 'qualifying drug' means a drug for which there is a corresponding U.S. label drug.

''(C) U.S. LABEL DRUG.—For purposes of this section, the term 'U.S. label drug' means a prescription drug that—

''(i) with respect to a qualifying drug, has the same active ingredient or ingredients, route of administration, dosage form, and strength as the qualifying drug;

''(ii) with respect to the qualifying drug, is manufactured by or for the person that manufactures the qualifying drug;

''(iii) is approved under section 505(c); and

''(iv) is not—

''(I) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

''(II) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262), including—

''(aa) a therapeutic DNA plasmid product;

''(bb) a therapeutic synthetic peptide product;

''(cc) a monoclonal antibody product for in vivo use; and

''(dd) a therapeutic recombinant DNA-derived product;

''(III) an infused drug, including a peritoneal dialysis solution;

''(IV) an injected drug;

''(V) a drug that is inhaled during surgery;

''(VI) a drug that is the listed drug referred to in 2 or more abbreviated new drug applications under which the drug is commercially marketed; or

''(VII) a sterile opthlamic drug intended for topical use on or in the eye.

''(D) OTHER DEFINITIONS.—For purposes of this section:

''(i)(I) The term 'exporter' means a person that is in the business of exporting a drug to individuals in the United States from Canada or from a permitted country designated by

the Secretary under subclause (II), or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(II) The Secretary shall designate a permitted country under subparagraph (E) (other than Canada) as a country from which an exporter may export a drug to individuals in the United States if the Secretary determines that—

''(aa) the country has statutory or regulatory standards that are equivalent to the standards in the United States and Canada with respect to—

''(AA) the training of pharmacists;

''(BB) the practice of pharmacy; and

''(CC) the protection of the privacy of personal medical information; and

''(bb) the importation of drugs to individuals in the United States from the country will not adversely affect public health.

''(ii) The term 'importer' means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(iii) The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(iv) The term 'pharmacy' means a person that—

''(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

''(II) employs 1 or more pharmacists.

''(v) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(vi) The term 'wholesaler'—

''(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

''(II) does not include a person authorized to import drugs under section 801(d)(1).

''(E) PERMITTED COUNTRY.—The term 'permitted country' means—

''(i) Australia;

''(ii) Canada;

''(iii) a member country of the European Union, but does not include a member country with respect to which—

''(I) the country's Annex to the Treaty of Accession to the European Union 2003 includes a transitional measure for the regulation of human pharmaceutical products that has not expired; or

''(II) the Secretary determines that the requirements described in subclauses (I) and (II) of clause (vii) will not be met by the date on which such transitional measure for the regulation of human pharmaceutical products expires;

''(iv) Japan;

''(v) New Zealand;

''(vi) Switzerland; and

''(vii) a country in which the Secretary determines the following requirements are met:

''(I) The country has statutory or regulatory requirements—

''(aa) that require the review of drugs for safety and effectiveness by an entity of the government of the country;

''(bb) that authorize the approval of only those drugs that have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs;

''(cc) that require the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country to be adequate to preserve their identity, quality, purity, and strength;

''(dd) for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective; and

''(ee) that require the labeling and promotion of drugs to be in accordance with the approval of the drug.

''(II) The valid marketing authorization system in the country is equivalent to the systems in the countries described in clauses (i) through (vi).

''(III) The importation of drugs to the United States from the country will not adversely affect public health.

''(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

''(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a 'registrant') submits to the Secretary a registration containing the following:

''(A)(i) In the case of an exporter, the name of the exporter and an identification of all places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter.

''(ii) In the case of an importer, the name of the importer and an identification of the places of business of the importer at which the importer initially receives a qualifying drug after importation (which shall not exceed 3 places of business except by permission of the Secretary).

''(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

''(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of imported qualifying drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

''(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the sources of exported qualifying drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation; and maintenance of records and samples).

''(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

''(D) An agreement by the registrant to—

''(i) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

''(ii) provide for the return to the registrant of such drug; and

''(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

''(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

''(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

''(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

''(H) An agreement by the registrant to notify the Secretary not more than 30 days before the registrant intends to make the change, of—

''(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

''(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

''(I) In the case of an exporter:

''(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

''(ii) An agreement to post a bond, payable to the Treasury of the United States that is equal in value to the lesser of—

''(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

''(II) $1,000,000.

''(iii) An agreement by the exporter to comply with applicable provisions of Canadian law, or the law of the permitted country designated under subsection (a)(4)(D)(i)(II) in which the exporter is located, that protect the privacy of personal information with respect to each individual importing a prescription drug from the exporter under subsection (a)(2)(B).

''(iv) An agreement by the exporter to report to the Secretary—

''(I) not later than August 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the 6-month period from January 1 through June 30 of that year; and

''(II) not later than January 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the previous fiscal year.

''(J) In the case of an importer, an agreement by the importer to report to the Secretary—

''(i) not later than August 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the 6-month period from January 1 through June 30 of that fiscal year; and

''(ii) not later than January 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the previous fiscal year.

''(K) Such other provisions as the Secretary may require by regulation to protect the public health while permitting—

''(i) the importation by pharmacies, groups of pharmacies, and wholesalers as registered importers of qualifying drugs under subsection (a); and

''(ii) importation by individuals of qualifying drugs under subsection (a).

''(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

''(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(H) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

''(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website and the information provided through the toll-free telephone number accordingly.

''(4) SUSPENSION AND TERMINATION.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

''(i) Subject to clause (ii), the Secretary may suspend the registration if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with a registration condition.

''(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not comply with subsection (g)(2)(A) or (g)(4), or has exported a qualifying drug to an individual in violation of subsection (i), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

''(5) DEFAULT OF BOND.—A bond required to be posted by an exporter under paragraph (1)(I)(ii) shall be defaulted and paid to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has—

''(A) exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsection (g)(2)(A), (g)(4), or (i); or

''(B) failed to permit the Secretary to conduct an inspection described under subsection (d).

''(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported into the United States only if there is compliance with the following:

''(1) The drug was manufactured in an establishment—

''(A) required to register under subsection (h) or (i) of section 510; and

''(B)(i) inspected by the Secretary; or

''(ii) for which the Secretary has elected to rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided for under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(2) The establishment is located in any country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug is manufactured for distribution in a foreign country that is not a permitted country).

''(3) The exporter or importer obtained the drug—

''(A) directly from the establishment; or

''(B) directly from an entity that, by contract with the exporter or importer—

''(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

''(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

''(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities, including records, of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

''(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

''(4)(A) The foreign country from which the importer will import the drug is a permitted country; or

''(B) The foreign country from which the exporter will export the drug is the permitted country in which the exporter is located.

''(5) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

''(6) The exporter or importer retains a sample of each lot of the drug for testing by the Secretary.

''(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

''(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

''(A) the exporter agrees to permit the Secretary—

''(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

''(ii) to have access, including on a day-to-day basis, to—

''(I) records of the exporter that relate to the export of such drugs, including financial records; and

''(II) samples of such drugs;

''(iii) to carry out the duties described in paragraph (3); and

''(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

''(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary randomly, but not less than 12 times annually, on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

''(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

''(B) include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies.

''(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the exporter at which qualifying drugs are stored and from which qualifying drugs are shipped.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an exporter.

''(C) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

''(D) Monitoring the affixing of markings under paragraph (2).

''(E) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records, of other parties in the chain of custody of qualifying drugs.

''(F) Determining whether the exporter is in compliance with all other registration conditions.

''(4) PRIOR NOTICE OF SHIPMENTS.—A registration condition is that, not less than 8 hours and not more than 5 days in advance of the time of the importation of a shipment of qualifying drugs, the importer involved agrees to submit to the Secretary a notice with respect to the shipment of drugs to be imported or offered for import into the United States under subsection (a). A notice under the preceding sentence shall include—

''(A) the name and complete contact information of the person submitting the notice;

''(B) the name and complete contact information of the importer involved;

''(C) the identity of the drug, including the established name of the drug, the quantity of

the drug, and the lot number assigned by the manufacturer;

''(D) the identity of the manufacturer of the drug, including the identity of the establishment at which the drug was manufactured;

''(E) the country from which the drug is shipped;

''(F) the name and complete contact information for the shipper of the drug;

''(G) anticipated arrival information, including the port of arrival and crossing location within that port, and the date and time;

''(H) a summary of the chain of custody of the drug from the establishment in which the drug was manufactured to the importer;

''(I) a declaration as to whether the Secretary has ordered that importation of the drug from the permitted country cease under subsection (g)(2)(C) or (D); and

''(J) such other information as the Secretary may require by regulation.

''(5) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the importer involved agrees, before wholesale distribution (as defined in section 503(e)) of a qualifying drug that has been imported under subsection (a), to affix to each container of such drug such markings or other technology as the Secretary determines necessary to identify the shipment as being in compliance with all registration conditions, except that the markings or other technology shall not be required on a drug that bears comparable, compatible markings or technology from the manufacturer of the drug. Markings or other technology under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings or other technology to any container that is not authorized to bear the markings; and

''(B) shall include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of such technologies.

''(6) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the importer at which a qualifying drug is initially received after importation.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an importer.

''(C) Reviewing notices under paragraph (4).

''(D) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records of other parties in the chain of custody of qualifying drugs.

''(E) Determining whether the importer is in compliance with all other registration conditions.

''(e) IMPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the importer involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for importers for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered importers, including the costs associated with—

''(i) inspecting the facilities of registered importers, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(6);

''(ii) developing, implementing, and operating under such subsection an electronic system for submission and review of the notices required under subsection (d)(4) with respect to shipments of qualifying drugs under subsection (a) to assess compliance with all registration conditions when such shipments are offered for import into the United States; and

''(iii) inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered importers under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during that fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered importers during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered importer on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an importer shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of qualifying drugs imported by importers under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(f) EXPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of $10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the exporter involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for exporters for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered exporters, including the costs associated with—

''(i) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(3);

''(ii) developing, implementing, and operating under such subsection a system to screen marks on shipments of qualifying drugs under subsection (a) that indicate compliance with all registration conditions, when such shipments are offered for import into the United States; and

''(iii) screening such markings, and inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered exporters under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered

exporter during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during that fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered exporters during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered exporter on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an exporter shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of qualifying drugs exported by exporters under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(g) COMPLIANCE WITH SECTION 801(a).—

''(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

''(2) SECTION 505; APPROVAL STATUS.—

''(A) IN GENERAL.—A qualifying drug that is imported or offered for import under subsection (a) shall comply with the conditions established in the approved application under section 505(b) for the U.S. label drug as described under this subsection.

''(B) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

''(i) IN GENERAL.—The person that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country shall in accordance with this paragraph submit to the Secretary a notice that—

''(I) includes each difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling); or

''(II) states that there is no difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling).

''(ii) INFORMATION IN NOTICE.—A notice under clause (i)(I) shall include the information that the Secretary may require under section 506A, any additional information the Secretary may require (which may include data on bioequivalence if such data are not required under section 506A), and, with respect to the permitted country that approved the qualifying drug for commercial distribution, or with respect to which such approval is sought, include the following:

''(I) The date on which the qualifying drug with such difference was, or will be, introduced for commercial distribution in the permitted country.

''(II) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the qualifying drug from a condition established in the approved application for the U.S. label drug.

''(III) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

''(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

''(I) the information provided in the notice is complete and true; and

''(II) a copy of the notice has been provided to the Federal Trade Commission and to the State attorneys general.

''(iv) FEE.—

''(I) IN GENERAL.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

''(II) FEE AMOUNT FOR CERTAIN YEARS.—If no fee amount is in effect under section 736(a)(1)(A)(ii) for a fiscal year, then the amount paid by a person under subclause (I) shall—

''(aa) for the first fiscal year in which no fee amount under such section in effect, be equal to the fee amount under section 736(a)(1)(A)(ii) for the most recent fiscal year for which such section was in effect, adjusted in accordance with section 736(c); and

''(bb) for each subsequent fiscal year in which no fee amount under such section is effect, be equal to the applicable fee amount for the previous fiscal year, adjusted in accordance with section 736(c).

''(v) TIMING OF SUBMISSION OF NOTICES.—

''(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (C) applies shall be submitted to the Secretary not later than 120 days before the qualifying drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the qualifying drug with the difference begin less than 120 days after the country requires the difference.

''(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than the day on which the qualifying drug with the difference is introduced for commercial distribution in a permitted country.

''(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary on the date that the qualifying drug is first introduced for commercial distribution in a permitted country and annually thereafter.

''(vi) REVIEW BY SECRETARY.—

''(I) IN GENERAL.—In this paragraph, the difference in a qualifying drug that is submitted in a notice under clause (i) from the U.S. label drug shall be treated by the Secretary as if it were a manufacturing change to the U.S. label drug under section 506A.

''(II) STANDARD OF REVIEW.—Except as provided in subclause (III), the Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, using the safe and effective standard for approving or disapproving a manufacturing change under section 506A.

''(III) BIOEQUIVALENCE.—If the Secretary would approve the difference in a notice submitted under clause (i) using the safe and effective standard under section 506A and if the Secretary determines that the qualifying drug is not bioequivalent to the U.S. label drug, the Secretary shall—

''(aa) include in the labeling provided under paragraph (3) a prominent advisory that the qualifying drug is safe and effective but is not bioequivalent to the U.S. label drug if the Secretary determines that such an advisory is necessary for health care practitioners and patients to use the qualifying drug safely and effectively; or

''(bb) decline to approve the difference if the Secretary determines that the availability of both the qualifying drug and the U.S. label drug would pose a threat to the public health.

''(IV) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

''(V) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection of the establishment in which the qualifying drug is manufactured—

''(aa) such inspection by the Secretary shall be authorized; and

''(bb) the Secretary may rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(vii) PUBLICATION OF INFORMATION ON NOTICES.—

''(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall readily make available to the public a list of notices submitted under clause (i).

''(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

''(aa) a notice is under review;

''(bb) the Secretary has ordered that importation of the qualifying drug from a permitted country cease; or

''(cc) the importation of the drug is permitted under subsection (a).

''(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

''(C) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under subsection (c) or (d)(3)(B)(i) of section 506A, require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general that the notice has been submitted with respect to the qualifying drug involved.

''(ii) If the Secretary has not made a determination whether such a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the qualifying drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country not begin until the Secretary completes review of the notice; and

''(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the order.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall—

''(I) vacate the order under clause (ii), if any;

''(II) consider the difference to be a variation provided for in the approved application for the U.S. label drug;

''(III) permit importation of the qualifying drug under subsection (a); and

''(IV) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(D) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the qualifying drug involved continues in effect.

''(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the difference shall be considered to be a variation provided for in the approved application for the U.S. label drug.

''(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of a notice under subparagraph (B)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

''(i) shall consider such difference to be a variation provided for in the approved application for the U.S. label drug;

''(ii) may not order that the importation of the qualifying drug involved cease; and

''(iii) shall promptly notify registered exporters and registered importers.

''(F) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

''(i) IN GENERAL.—A person who manufactures a drug approved under section 505(b) shall submit an application under section 505(b) for approval of another drug that is manufactured for distribution in a permitted country by or for the person that manufactures the drug approved under section 505(b) if—

''(I) there is no qualifying drug in commercial distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the drug approved under section 505(b); and

''(II) each active ingredient of the other drug is related to an active ingredient of the drug approved under section 505(b), as defined in clause (v).

''(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

''(I) request approval of the other drug for the indication or indications for which the drug approved under section 505(b) is labeled;

''(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the other drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

''(III) include a right of reference to the application for the drug approved under section 505(b); and

''(IV) include such additional information as the Secretary may require.

''(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on which the information referred to in clause (ii)(II) is submitted to the government of the permitted country.

''(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

''(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

''(I) the same; or

''(II) different salts, esters, or complexes of the same moiety.

''(3) SECTION 502; LABELING.—

''(A) IMPORTATION BY REGISTERED IMPORTER.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the qualifying drug bears—

''(I) a copy of the labeling approved for the U.S. label drug under section 505, without regard to whether the copy bears any trademark involved;

''(II) the name of the manufacturer and location of the manufacturer;

''(III) the lot number assigned by the manufacturer;

''(IV) the name, location, and registration number of the importer; and

''(V) the National Drug Code number assigned to the qualifying drug by the Secretary.

''(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

''(iii) REQUESTED LABELING.—The labeling provided by the Secretary under clause (ii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the qualifying drug;

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof;

''(III) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the qualifying drug is safe and effective but not bioequivalent to the U.S. label drug; and

''(IV) if the inactive ingredients of the qualifying drug are different from the inactive ingredients for the U.S. label drug, include—

''(aa) a prominent notice that the ingredients of the qualifying drug differ from the ingredients of the U.S. label drug and that the qualifying drug must be dispensed with an advisory to people with allergies about this difference and a list of ingredients; and

''(bb) a list of the ingredients of the qualifying drug as would be required under section 502(e).

''(B) IMPORTATION BY INDIVIDUAL.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the packaging and labeling of the qualifying drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and the labeling of the qualifying drug includes—

''(I) directions for use by the consumer;

''(II) the lot number assigned by the manufacturer;

''(III) the name and registration number of the exporter;

''(IV) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug;

''(V) if the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(aa) a prominent advisory that persons with an allergy should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(bb) a list of the ingredients of the drug as would be required under section 502(e); and

''(VI) a copy of any special labeling that would be required by the Secretary had the U.S. label drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears any trademark involved.

''(ii) PACKAGING.—A qualifying drug offered for import to an individual by an exporter under this section that is packaged in a unit-of-use container (as those items are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(I) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(II) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the exporter will provide the drug in packaging that is compliant at no additional cost.

''(iii) REQUEST FOR COPY OF SPECIAL LABELING AND INGREDIENT LIST.—The Secretary shall provide to the registered exporter involved a copy of the special labeling, the advisory, and the ingredient list described under clause (i), upon request of the exporter.

''(iv) REQUESTED LABELING AND INGREDIENT LIST.—The labeling and ingredient list provided by the Secretary under clause (iii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the drug; and

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof.

''(4) SECTION 501; ADULTERATION.—A qualifying drug that is imported or offered for import under subsection (a) shall be considered to be in compliance with section 501 if the drug is in compliance with subsection (c).

''(5) STANDARDS FOR REFUSING ADMISSION.—A drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

''(A) The drug is not a qualifying drug.

''(B) A notice for the drug required under paragraph (2)(B) has not been submitted to the Secretary.

''(C) The Secretary has ordered that importation of the drug from the permitted country cease under subparagraph (C) or (D) of paragraph (2).

''(D) The drug does not comply with paragraph (3) or (4).

''(E) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

''(F) The Secretary becomes aware that—

''(i) the drug may be counterfeit;

''(ii) the drug may have been prepared, packed, or held under insanitary conditions; or

''(iii) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

''(G) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

''(H) The Secretary has under section 505(e) withdrawn approval of the drug.

''(I) The manufacturer of the drug has instituted a recall of the drug.

''(J) If the drug is imported or offered for import by a registered importer without submission of a notice in accordance with subsection (d)(4).

''(K) If the drug is imported or offered for import from a registered exporter to an individual and 1 or more of the following applies:

''(i) The shipping container for such drug does not bear the markings required under subsection (d)(2).

''(ii) The markings on the shipping container appear to be counterfeit.

''(iii) The shipping container or markings appear to have been tampered with.

''(h) EXPORTER LICENSURE IN PERMITTED COUNTRY.—A registration condition is that the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

''(1) the exporter is authorized under the law of the permitted country in which the exporter is located to dispense prescription drugs; and

''(2) the exporter employs persons that are licensed under the law of the permitted country in which the exporter is located to dispense prescription drugs in sufficient number to dispense safely the drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such drugs to individuals.

''(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION.—

''(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

''(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

''(i) is valid under applicable Federal and State laws; and

''(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

''(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of the permitted country in which the exporter is located, as a condition of dispensing the drug to the individual.

''(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

''(i) to indicate that the prescription, and the equivalent document in the permitted country in which the exporter is located, have been filled; and

''(ii) to prevent a duplicative filling by another pharmacist.

''(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

''(E) The quantity of the drug does not exceed a 90-day supply.

''(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an 'ineligible subpart H drug' if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

''(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

''(j) MAINTENANCE OF RECORDS AND SAMPLES.—

''(1) IN GENERAL.—A registration condition is that the importer or exporter involved shall—

''(A) maintain records required under this section for not less than 2 years; and

''(B) maintain samples of each lot of a qualifying drug required under this section for not more than 2 years.

''(2) PLACE OF RECORD MAINTENANCE.—The records described under paragraph (1) shall be maintained—

''(A) in the case of an importer, at the place of business of the importer at which the importer initially receives the qualifying drug after importation; or

''(B) in the case of an exporter, at the facility from which the exporter ships the qualifying drug to the United States.

''(k) DRUG RECALLS.—

''(1) MANUFACTURERS.—A person that manufactures a qualifying drug imported from a permitted country under this section shall promptly inform the Secretary—

''(A) if the drug is recalled or withdrawn from the market in a permitted country;

''(B) how the drug may be identified, including lot number; and

''(C) the reason for the recall or withdrawal.

''(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

''(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of qualifying drugs in the country; or

''(B) monitor recalls and withdrawals of qualifying drugs in the country using any information that is available to the public in any media.

''(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a qualifying drug in a permitted country.

''(l) DRUG LABELING AND PACKAGING.—

''(1) IN GENERAL.—When a qualifying drug that is imported into the United States by an importer under subsection (a) is dispensed by a pharmacist to an individual, the pharmacist shall provide that the packaging and labeling of the drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and shall include with any other labeling provided to the individual the following:

''(A) The lot number assigned by the manufacturer.

''(B) The name and registration number of the importer.

''(C) If required under paragraph (2)(B)(vi)(III) of subsection (g), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug.

''(D) If the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(i) a prominent advisory that persons with allergies should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(ii) a list of the ingredients of the drug as would be required under section 502(e).

''(2) PACKAGING.—A qualifying drug that is packaged in a unit-of-use container (as those terms are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(A) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(B) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the pharmacist will provide the drug in packaging that is compliant at no additional cost.

''(m) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, this section does not authorize the importation into the United States of a qualifying drug donated or otherwise supplied for free or at nominal cost by the manufacturer of the drug to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country.

''(n) UNFAIR AND DISCRIMINATORY ACTS AND PRACTICES.—

''(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing agreement or other agreement), to—

''(A) discriminate by charging a higher price for a prescription drug sold to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section than the price that is charged, inclusive of rebates or other incentives to the permitted country or other person, to another person that is in the same country and that does not export a qualifying drug into the United States under this section;

''(B) discriminate by charging a higher price for a prescription drug sold to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a qualifying drug under this section, or that does not distribute, sell, or use such a drug;

''(C) discriminate by denying, restricting, or delaying supplies of a prescription drug to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(D) discriminate by publicly, privately, or otherwise refusing to do business with a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or with a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(E) knowingly fail to submit a notice under subsection (g)(2)(B)(i), knowingly fail to submit such a notice on or before the date specified in subsection (g)(2)(B)(v) or as otherwise required under paragraphs (3), (4), and (5) of section 1304(e) of the Pharmaceutical Market Access and Drug Safety Act of 2010, knowingly submit such a notice that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such a notice;

''(F) knowingly fail to submit an application required under subsection (g)(2)(F), knowingly fail to submit such an application on or before the date specified in subsection (g)(2)(F)(iii), knowingly submit such an application that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such an application;

''(G) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country;

''(H) refuse to allow an inspection authorized under this section of an establishment that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country;

''(I) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country to good manufacturing practice under this Act;

''(J) become a party to a licensing agreement or other agreement related to a qualifying drug that fails to provide for compliance with all requirements of this section with respect to such drug;

''(K) enter into a contract that restricts, prohibits, or delays the importation of a qualifying drug under this section;

''(L) engage in any other action to restrict, prohibit, or delay the importation of a qualifying drug under this section; or

''(M) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages or attempts to engage in the importation of a qualifying drug under this section.

''(2) REFERRAL OF POTENTIAL VIOLATIONS.—The Secretary shall promptly refer to the Federal Trade Commission each potential violation of subparagraph (E), (F), (G), (H), or (I) of paragraph (1) that becomes known to the Secretary.

''(3) AFFIRMATIVE DEFENSE.—

''(A) DISCRIMINATION.—It shall be an affirmative defense to a charge that a manufacturer has discriminated under subparagraph (A), (B), (C), (D), or (M) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial, restriction, or delay of supplies of a prescription drug to a person, the refusal to do business with a person, or other discriminatory activity against a person, is not based, in whole or in part, on—

''(i) the person exporting or importing a qualifying drug into the United States under this section; or

''(ii) the person distributing, selling, or using a qualifying drug imported into the United States under this section.

''(B) DRUG DIFFERENCES.—It shall be an affirmative defense to a charge that a manufacturer has caused there to be a difference described in subparagraph (G) of paragraph (1) that—

''(i) the difference was required by the country in which the drug is distributed;

''(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug;

''(iii) the person manufacturing the drug for distribution in the United States has given notice to the Secretary under subsection (g)(2)(B)(i) that the drug for distribution in the United States is not different from a drug for distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries; or

''(iv) the difference was not caused, in whole or in part, for the purpose of restricting importation of the drug into the United States under this section.

''(4) EFFECT OF SUBSECTION.—

''(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

''(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

''(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

''(ii) require that such discounts be made available to other purchasers of the prescription drug; or

''(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

''(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

''(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

''(ii) apply to such donations or supplying of a prescription drug.

''(5) ENFORCEMENT.—

''(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

''(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

''(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section; and

''(ii) may seek monetary relief threefold the damages sustained, in addition to any other remedy available to the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

''(6) ACTIONS BY STATES.—

''(A) IN GENERAL.—

''(i) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State have been adversely affected by any manufacturer that violates paragraph (1), the attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction to—

''(I) enjoin that practice;

''(II) enforce compliance with this subsection;

''(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

''(IV) obtain such other relief as the court may consider to be appropriate.

''(ii) NOTICE.—

''(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

''(aa) written notice of that action; and

''(bb) a copy of the complaint for that action.

''(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

''(B) INTERVENTION.—

''(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Federal Trade Commission shall have the right to intervene in the action that is the subject of the notice.

''(ii) EFFECT OF INTERVENTION.—If the Federal Trade Commission intervenes in an action under subparagraph (A), it shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

''(i) conduct investigations;

''(ii) administer oaths or affirmations; or

''(iii) compel the attendance of witnesses or the production of documentary and other evidence.

''(D) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Federal Trade Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

''(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(G) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

''(H) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

''(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(8) MANUFACTURER.—In this subsection, the term 'manufacturer' means any entity, including any affiliate or licensee of that entity, that is engaged in—

''(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

''(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.''.

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

''(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

''(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

''(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

''(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

''(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(B) or in an application required under section 804(g)(2)(F), or the failure to submit such a notice or application.

''(4) The importation of a drug in violation of a registration condition or other requirement under section 804, the falsification of any record required to be maintained, or provided to the Secretary, under such section, or the violation of any registration condition or other requirement under such section.''; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

''(6) Notwithstanding subsection (a), any person that knowingly violates section 301(i)(2) or (3) or section 301(aa)(4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.''.

(c) AMENDMENT OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

''(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

''(1) the drug has been refused admission because the drug was not a lawful import under section 804;

''(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

''(3) the individual may under section 804 lawfully import certain prescription drugs from exporters registered with the Secretary under section 804; and

''(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration or through a toll-free telephone number required under section 804.''.

(2) ESTABLISHMENT REGISTRATION.—Section 510(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) is amended in paragraph (1) by inserting after ''import into the United States'' the following: '', including a drug that is, or may be, imported or offered for import into the United States under section 804,''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) EXHAUSTION.—

(1) IN GENERAL.—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.''.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

(e) EFFECT OF SECTION 804.—

(1) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall permit the importation of qualifying drugs (as defined in such section 804) into the United States without regard to the status of the issuance of implementing regulations—

(A) from exporters registered under such section 804 on the date that is 90 days after the date of enactment of this Act; and

(B) from permitted countries, as defined in such section 804, by importers registered under such section 804 on the date that is 1 year after the date of enactment of this Act.

(2) REVIEW OF REGISTRATION BY CERTAIN EXPORTERS.—

(A) REVIEW PRIORITY.—In the review of registrations submitted under subsection (b) of such section 804, registrations submitted by entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of enactment of this Act will have priority during the 90 day period that begins on such date of enactment.

(B) PERIOD FOR REVIEW.—During such 90-day period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) LIMITATION.—That an exporter in Canada exports, or has exported, prescription drugs to individuals in the United States on or before the date that is 90 days after the date of enactment of this Act shall not serve as a basis, in whole or in part, for disapproving a registration under such section 804 from the exporter.

(D) FIRST YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') may limit the number of registered exporters under such section 804 to not less than 50, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(E) SECOND YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 100, so

long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(F) FURTHER LIMIT ON NUMBER OF EXPORTERS.—During any 1-year period beginning on a date that is 2 or more years after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 25 more than the number of such exporters during the previous 1-year period, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(3) LIMITS ON NUMBER OF IMPORTERS.—

(A) FIRST YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 100 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs imported into the United States.

(B) SECOND YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 2 years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 200 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs into the United States.

(C) FURTHER LIMIT ON NUMBER OF IMPORTERS.—During any 1-year period beginning on a date that is 3 or more years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 50 more (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups) than the number of such importers during the previous 1-year period, so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs to the United States.

(4) NOTICES FOR DRUGS FOR IMPORT FROM CANADA.—The notice with respect to a qualifying drug introduced for commercial distribution in Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 30 days after the date of enactment of this Act if—

(A) the U.S. label drug (as defined in such section 804) for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period most recently completed before the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(5) NOTICE FOR DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notice with respect to a qualifying drug introduced for commercial distribution in a permitted country other than Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act if—

(A) the U.S. label drug for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period that is first completed on the date that is 120 days after the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(6) NOTICE FOR OTHER DRUGS FOR IMPORT.—

(A) GUIDANCE ON SUBMISSION DATES.—The Secretary shall by guidance establish a series of submission dates for the notices under subsection (g)(2)(B)(i) of such section 804 with respect to qualifying drugs introduced for commercial distribution as of the date of enactment of this Act and that are not required to be submitted under paragraph (4) or (5).

(B) CONSISTENT AND EFFICIENT USE OF RESOURCES.—The Secretary shall establish the dates described under subparagraph (A) so that such notices described under subparagraph (A) are submitted and reviewed at a rate that allows consistent and efficient use of the resources and staff available to the Secretary for such reviews. The Secretary may condition the requirement to submit such a notice, and the review of such a notice, on the submission by a registered exporter or a registered importer to the Secretary of a notice that such exporter or importer intends to import such qualifying drug to the United States under such section 804.

(C) PRIORITY FOR DRUGS WITH HIGHER SALES.—The Secretary shall establish the dates described under subparagraph (A) so that the Secretary reviews the notices described under such subparagraph with respect to qualifying drugs with higher dollar volume of sales in the United States before the notices with respect to drugs with lower sales in the United States.

(7) NOTICES FOR DRUGS APPROVED AFTER EFFECTIVE DATE.—The notice required under subsection (g)(2)(B)(i) of such section 804 for a qualifying drug first introduced for commercial distribution in a permitted country (as defined in such section 804) after the date of enactment of this Act shall be submitted to and reviewed by the Secretary as provided under subsection (g)(2)(B) of such section 804, without regard to paragraph (4), (5), or (6).

(8) REPORT.—Beginning with the first full fiscal year after the date of enactment of this Act, not later than 90 days after the end of each fiscal year during which the Secretary reviews a notice referred to in paragraph (4), (5), or (6), the Secretary shall submit a report to Congress concerning the progress of the Food and Drug Administration in reviewing the notices referred to in paragraphs (4), (5), and (6).

(9) USER FEES.—

(A) EXPORTERS.—When establishing an aggregate total of fees to be collected from exporters under subsection (f)(2) of such section 804, the Secretary shall, under subsection (f)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered exporters during the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365.

(B) IMPORTERS.—When establishing an aggregate total of fees to be collected from importers under subsection (e)(2) of such section 804, the Secretary shall, under subsection (e)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered importers during—

(i) the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365; and

(ii) the second fiscal year in which this title is in effect to be $3,000,000,000.

(C) SECOND YEAR ADJUSTMENT.—

(i) REPORTS.—Not later than February 20 of the second fiscal year in which this title is in effect, registered importers shall report to the Secretary the total price and the total volume of drugs imported to the United States by the importer during the 4-month period from October 1 through January 31 of such fiscal year.

(ii) REESTIMATE.—Notwithstanding subsection (e)(3)(C)(ii) of such section 804 or subparagraph (B), the Secretary shall reestimate the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during the second fiscal year in which this title is in effect. Such reestimate shall be equal to—

(I) the total price of qualifying drugs imported by each importer as reported under clause (i); multiplied by

(II) 3.

(iii) ADJUSTMENT.—The Secretary shall adjust the fee due on April 1 of the second fiscal year in which this title is in effect, from each importer so that the aggregate total of fees collected under subsection (e)(2) for such fiscal year does not exceed the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during such fiscal year as reestimated under clause (ii).

(D) FAILURE TO PAY FEES.—Notwithstanding any other provision of this section, the Secretary may prohibit a registered importer or exporter that is required to pay user fees under subsection (e) or (f) of such section 804 and that fails to pay such fees within 30 days after the date on which it is due, from importing or offering for importation a qualifying drug under such section 804 until such fee is paid.

(E) ANNUAL REPORT.—

(i) FOOD AND DRUG ADMINISTRATION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e), (f), or (g)(2)(B)(iv) of such section 804, the Secretary shall prepare and submit to the House of Representatives and the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for the fiscal year for which the report is made and credited to the Food and Drug Administration.

(ii) CUSTOMS AND BORDER PROTECTION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e) or (f) of such section 804, the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall prepare and submit to the House of Representatives and the Senate a report on the use, by the Bureau of Customs and Border Protection, of the fees, if any, transferred by the Secretary to the Bureau of Customs and Border Protection for the fiscal year for which the report is made.

(10) SPECIAL RULE REGARDING IMPORTATION BY INDIVIDUALS.—

(A) IN GENERAL.—Notwithstanding any provision of this title (or an amendment made by this title), the Secretary shall expedite the designation of any additional permitted countries from which an individual may import a qualifying drug into the United States under such section 804 if any action implemented by the Government of Canada has

the effect of limiting or prohibiting the importation of qualifying drugs into the United States from Canada.

(B) TIMING AND CRITERIA.—The Secretary shall designate such additional permitted countries under subparagraph (A)—

(i) not later than 6 months after the date of the action by the Government of Canada described under such subparagraph; and

(ii) using the criteria described under subsection (a)(4)(D)(i)(II) of such section 804.

(f) IMPLEMENTATION OF SECTION 804.—

(1) INTERIM RULE.—The Secretary may promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

(2) NO NOTICE OF PROPOSED RULEMAKING.—The interim rule described under paragraph (1) may be developed and promulgated by the Secretary without providing general notice of proposed rulemaking.

(3) FINAL RULE.—Not later than 1 year after the date on which the Secretary promulgates an interim rule under paragraph (1), the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule provided for under paragraph (1), to the extent that such provisions are not modified.

(g) CONSUMER EDUCATION.—The Secretary shall carry out activities that educate consumers—

(1) with regard to the availability of qualifying drugs for import for personal use from an exporter registered with and approved by the Food and Drug Administration under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by this section, including information on how to verify whether an exporter is registered and approved by use of the Internet website of the Food and Drug Administration and the toll-free telephone number required by this title;

(2) that drugs that consumers attempt to import from an exporter that is not registered with and approved by the Food and Drug Administration can be seized by the United States Customs Service and destroyed, and that such drugs may be counterfeit, unapproved, unsafe, or ineffective;

(3) with regard to the suspension and termination of any registration of a registered importer or exporter under such section 804; and

(4) with regard to the availability at domestic retail pharmacies of qualifying drugs imported under such section 804 by domestic wholesalers and pharmacies registered with and approved by the Food and Drug Administration.

(h) EFFECT ON ADMINISTRATION PRACTICES.—Notwithstanding any provision of this title (and the amendments made by this title), the practices and policies of the Food and Drug Administration and Bureau of Customs and Border Protection, in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, shall remain in effect.

(i) REPORT TO CONGRESS.—The Federal Trade Commission shall, on an annual basis, submit to Congress a report that describes any action taken during the period for which the report is being prepared to enforce the provisions of section 804(n) of the Federal Food, Drug, and Cosmetic Act (as added by this title), including any pending investigations or civil actions under such section.

SEC. 1305. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 1304, is further amended by adding at the end the following section:

''SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.

''(a) IN GENERAL.—The Secretary of Homeland Security shall deliver to the Secretary a shipment of drugs that is imported or offered for import into the United States if—

''(1) the shipment has a declared value of less than $10,000; and

''(2)(A) the shipping container for such drugs does not bear the markings required under section 804(d)(2); or

''(B) the Secretary has requested delivery of such shipment of drugs.

''(b) NO BOND OR EXPORT.—Section 801(b) does not authorize the delivery to the owner or consignee of drugs delivered to the Secretary under subsection (a) pursuant to the execution of a bond, and such drugs may not be exported.

''(c) DESTRUCTION OF VIOLATIVE SHIPMENT.—The Secretary shall destroy a shipment of drugs delivered by the Secretary of Homeland Security to the Secretary under subsection (a) if—

''(1) in the case of drugs that are imported or offered for import from a registered exporter under section 804, the drugs are in violation of any standard described in section 804(g)(5); or

''(2) in the case of drugs that are not imported or offered for import from a registered exporter under section 804, the drugs are in violation of a standard referred to in section 801(a) or 801(d)(1).

''(d) CERTAIN PROCEDURES.—

''(1) IN GENERAL.—The delivery and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

''(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to described in subsection (c) are identified and destroyed.

''(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

''(f) RULE OF CONSTRUCTION.—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than $10,000.''.

(b) PROCEDURES.—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

SEC. 1306. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.

(a) STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''and who is not the manufacturer or an authorized distributor of record of such drug'';

(B) by striking ''to an authorized distributor of record or''; and

(C) by striking subparagraph (B) and inserting the following:

''(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

''(C)(i) The Secretary shall by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as 'alternative requirements') to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include standardized anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the discrete package of the drug from which the drug is dispensed with equal or greater certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

''(ii) When the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition may be met in lieu of the registration condition established in such clause (i).'';

(2) in paragraph (2)(A), by adding at the end the following: ''The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.''; and

(3) in paragraph (3), by striking ''and subsection (d)—'' in the matter preceding subparagraph (A) and all that follows through ''the term 'wholesale distribution' means'' in subparagraph (B) and inserting the following: ''and subsection (d), the term 'wholesale distribution' means''.

(b) CONFORMING AMENDMENT.—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

''(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

''(5) For purposes of this subsection, the term 'authorized distributors of record' means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on January 1, 2012.

(2) DRUGS IMPORTED BY REGISTERED IMPORTERS UNDER SECTION 804.—Notwithstanding paragraph (1), the amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act with respect to qualifying drugs imported under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by section 1304.

(3) EFFECT WITH RESPECT TO REGISTERED EXPORTERS.—The amendment made by subsection (a)(2) shall take effect on the date that is 90 days after the date of enactment of this Act.

(4) ALTERNATIVE REQUIREMENTS.—The Secretary shall issue regulations to establish

the alternative requirements, referred to in the amendment made by subsection (a)(1), that take effect not later than January 1, 2012.

(5) INTERMEDIATE REQUIREMENTS.—The Secretary shall by regulation require the use of standardized anti-counterfeiting or track-and-trace technologies on prescription drugs at the case and pallet level effective not later than 1 year after the date of enactment of this Act.

(6) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary shall, not later than 18 months after the date of enactment of this Act, require that the packaging of any prescription drug incorporates—

(i) a standardized numerical identifier unique to each package of such drug, applied at the point of manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacturing); and

(ii)(I) overt optically variable counterfeit-resistant technologies that—

(aa) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(bb) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(cc) are manufactured and distributed in a highly secure, tightly controlled environment; and

(dd) incorporate additional layers of nonvisible convert security features up to and including forensic capability, as described in subparagraph (B); or

(II) technologies that have a function of security comparable to that described in subclause (I), as determined by the Secretary.

(B) STANDARDS FOR PACKAGING.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to this paragraph, the manufacturers of such drugs shall incorporate the technologies described in subparagraph (A) into at least 1 additional element of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

SEC. 1307. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503B the following:

"SEC. 503C. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (e)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be

brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

''(d) EFFECT OF SECTION.—This section shall not apply to a person that is a registered exporter under section 804.

''(e) GENERAL DEFINITIONS.—For purposes of this section:

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(f) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(g) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.

''(h) NO EFFECT ON OTHER REQUIREMENTS; COORDINATION.—The requirements of this section are in addition to, and do not supersede, any requirements under the Controlled Substances Act or the Controlled Substances Import and Export Act (or any regulation promulgated under either such Act) regarding Internet pharmacies and controlled substances. In promulgating regulations to carry out this section, the Secretary shall coordinate with the Attorney General to ensure that such regulations do not duplicate or conflict with the requirements described in the previous sentence, and that such regulations and requirements coordinate to the extent practicable.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503C.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503C of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF FEDERAL AND STATE LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of Federal or State laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the first 3 fiscal years in which this section is in effect.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect 90 days after the date of enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

SEC. 1308. PROHIBITING PAYMENTS TO UNREGISTERED FOREIGN PHARMACIES.

(a) IN GENERAL.—Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following:

''(h) RESTRICTED TRANSACTIONS.—

''(1) IN GENERAL.—The introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system is prohibited.

''(2) PAYMENT SYSTEM.—

''(A) IN GENERAL.—The term 'payment system' means a system used by a person described in subparagraph (B) to effect a credit transaction, electronic fund transfer, or money transmitting service that may be used in connection with, or to facilitate, a restricted transaction, and includes—

''(i) a credit card system;

''(ii) an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service; and

''(iii) any other system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic fund transfers, or money transmitting services.

''(B) PERSONS DESCRIBED.—A person referred to in subparagraph (A) is—

''(i) a creditor;

''(ii) a credit card issuer;

''(iii) a financial institution;

''(iv) an operator of a terminal at which an electronic fund transfer may be initiated;

''(v) a money transmitting business; or

''(vi) a participant in an international, national, regional, or local network used to effect a credit transaction, electronic fund transfer, or money transmitting service.

''(3) RESTRICTED TRANSACTION.—The term 'restricted transaction' means a transaction or transmittal, on behalf of an individual who places an unlawful drug importation request to any person engaged in the operation of an unregistered foreign pharmacy, of—

''(A) credit, or the proceeds of credit, extended to or on behalf of the individual for the purpose of the unlawful drug importation request (including credit extended through the use of a credit card);

''(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the individual for the purpose of the unlawful drug importation request;

''(C) a check, draft, or similar instrument which is drawn by or on behalf of the individual for the purpose of the unlawful drug importation request and is drawn on or payable at or through any financial institution; or

''(D) the proceeds of any other form of financial transaction (identified by the Board by regulation) that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the individual for the purpose of the unlawful drug importation request.

''(4) UNLAWFUL DRUG IMPORTATION REQUEST.—The term 'unlawful drug importation request' means the request, or transmittal of a request, made to an unregistered foreign pharmacy for a prescription drug by mail (including a private carrier), facsimile, phone, or electronic mail, or by a means that involves the use, in whole or in part, of the Internet.

''(5) UNREGISTERED FOREIGN PHARMACY.—The term 'unregistered foreign pharmacy' means a person in a country other than the United States that is not a registered exporter under section 804.

''(6) OTHER DEFINITIONS.—

''(A) CREDIT; CREDITOR; CREDIT CARD.—The terms 'credit', 'creditor', and 'credit card' have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(B) ACCESS DEVICE; ELECTRONIC FUND TRANSFER.—The terms 'access device' and 'electronic fund transfer'—

''(i) have the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a); and

''(ii) the term 'electronic fund transfer' also includes any fund transfer covered under Article 4A of the Uniform Commercial Code, as in effect in any State.

''(C) FINANCIAL INSTITUTION.—The term 'financial institution'—

''(i) has the meaning given the term in section 903 of the Electronic Transfer Fund Act (15 U.S.C. 1693a); and

''(ii) includes a financial institution (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

''(D) MONEY TRANSMITTING BUSINESS; MONEY TRANSMITTING SERVICE.—The terms 'money transmitting business' and 'money transmitting service' have the meaning given the terms in section 5330(d) of title 31, United States Code.

''(E) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(7) POLICIES AND PROCEDURES REQUIRED TO PREVENT RESTRICTED TRANSACTIONS.—

''(A) REGULATIONS.—The Board shall promulgate regulations requiring—

''(i) an operator of a credit card system;

''(ii) an operator of an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service;

''(iii) an operator of any other payment system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic transfers or money transmitting services where at least one party to the transaction or transfer is an individual; and

''(iv) any other person described in paragraph (2)(B) and specified by the Board in such regulations,

to establish policies and procedures that are reasonably designed to prevent the introduction of a restricted transaction into a payment system or the completion of a restricted transaction using a payment system.

''(B) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In promulgating regulations under subparagraph (A), the Board shall—

''(i) identify types of policies and procedures, including nonexclusive examples, that shall be considered to be reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; and

''(ii) to the extent practicable, permit any payment system, or person described in paragraph (2)(B), as applicable, to choose among alternative means of preventing the introduction or completion of restricted transactions.

''(C) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTION.—

''(i) IN GENERAL.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, and any participant in such payment system that prevents or otherwise refuses to honor transactions in an effort to implement the policies and procedures required under this subsection or to otherwise comply with this subsection shall not be liable to any party for such action.

''(ii) COMPLIANCE.—A person described in paragraph (2)(B) meets the requirements of this subsection if the person relies on and complies with the policies and procedures of a payment system of which the person is a member or in which the person is a participant, and such policies and procedures of the payment system comply with the requirements of the regulations promulgated under subparagraph (A).

''(D) ENFORCEMENT.—

''(i) IN GENERAL.—This subsection, and the regulations promulgated under this subsection, shall be enforced exclusively by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

''(ii) FACTORS TO BE CONSIDERED.—In considering any enforcement action under this subsection against a payment system or person described in paragraph (2)(B), the Federal functional regulators and the Federal Trade Commission shall consider the following factors:

''(I) The extent to which the payment system or person knowingly permits restricted transactions.

''(II) The history of the payment system or person in connection with permitting restricted transactions.

''(III) The extent to which the payment system or person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.

''(8) TRANSACTIONS PERMITTED.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, is authorized to engage in transactions with foreign pharmacies in connection with investigating violations or potential violations of any rule or requirement adopted by the payment system or person in connection with complying with paragraph (7). A payment system, or such a person, and its agents and employees shall not be found to be in violation of, or liable under, any Federal, State or other law by virtue of engaging in any such transaction.

''(9) RELATION TO STATE LAWS.—No requirement, prohibition, or liability may be imposed on a payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, under the laws of any state with respect to any payment transaction by an individual because the payment transaction involves a payment to a foreign pharmacy.

''(10) TIMING OF REQUIREMENTS.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, must adopt policies and procedures reasonably designed to comply with any regulations required under paragraph (7) within 60 days after such regulations are issued in final form.

''(11) COMPLIANCE.—A payment system, and any person described in paragraph (2)(B), shall not be deemed to be in violation of paragraph (1)—

''(A)(i) if an alleged violation of paragraph (1) occurs prior to the mandatory compliance date of the regulations issued under paragraph (7); and

''(ii) such entity has adopted or relied on policies and procedures that are reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; or

''(B)(i) if an alleged violation of paragraph (1) occurs after the mandatory compliance date of such regulations; and

''(ii) such entity is in compliance with such regulations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day that is 90 days after the date of enactment of this Act.

(c) IMPLEMENTATION.—The Board of Governors of the Federal Reserve System shall promulgate regulations as required by subsection (h)(7) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333), as added by subsection (a), not later than 90 days after the date of enactment of this Act.

SEC. 1309. IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

Section 1006(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)(2)) is amended by striking ''not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.'' and inserting ''import into the United States not more than 10 dosage units combined of all such controlled substances.''.

SEC. 1310. SEVERABILITY.

If any provision of this title, an amendment by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SA 4033. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. COMMISSION ON ECONOMIC SECURITY.

(a) FINDINGS.—Congress finds that—

(1) the recent financial crisis could serve as a road map for actors seeking to destabilize economic systems;

(2) the economy's growing interconnectedness increases vulnerabilities;

(3) the ability of malevolent actors to rapidly network and mask their activities undermines the fundamentals of the financial markets and economy;

(4) as it is reported that a recent war game of the Department of Defense—

(A) exposed the seriousness of threats to our economy;

(B) was won by a group representing the Government of China; and

(C) indicated a significant lack of understanding of these issues across the divides between the national security and financial communities;

(5) a leading financial executive recently noted that the financial crisis, sparked by the September 15th, 2008, collapse of Lehman Brothers, could serve as a road map for actors seeking to destabilize economic systems;

(6) prominent counterterrorism expert Professor Bruce Hoffman of Georgetown University has stated that al Qaeda and other terrorists groups were devoting new attention to derailing our financial system in the wake of that crisis;

(7) foreign governments have developed economic warfare capabilities or organizations, such as an economic warfare bureau in China; and

(8) former Directors of National Intelligence and other top experts have warned of

cyber-security and other threats capable of disrupting our financial institutions or critical infrastructure, such as the national power grid.

(b) ESTABLISHMENT.—There is established a commission to be known as the ''Security Threats to Financial Markets and Economic Recovery Commission'' (referred to in this section as the ''Commission'').

(c) DUTIES OF COMMISSION.—

(1) MANDATORY LEGISLATIVE RECOMMENDATIONS.—The Commission shall examine the threats and vulnerabilities to the United States financial markets and to develop legislative recommendations designed to address—

(A) potential threats to financial markets and economies from state actors and non-state actors;

(B) vulnerabilities in financial markets with substantial economic implications;

(C) the divide between national security concerns and economic concerns; and

(D) national security vulnerabilities associated with current Federal debt levels.

(2) POLICY SOLUTIONS.—Legislative recommendations developed to address the issues described in paragraph (1) may include—

(A) reforms necessary to address gaps in government and private capabilities to combat threats to financial markets;

(B) reforms that strengthen the security of financial markets;

(C) reforms that address financial systemic weakness; and

(D) any other reforms designed to address the issues described in paragraph (1).

(d) REPORT.—

(1) IN GENERAL.—The Commission shall, not later than September 5, 2010, submit an interim report to Congress and, not later than 1 year after the date of the enactment of this Act, shall submit a full report to Congress and the President containing—

(A) a detailed description of the activities of the Commission;

(B) a detailed statement of any findings of the Commission as to public preferences regarding the issues, policies, and tradeoffs presented in the town hall style public hearings;

(C) a list of policy options for addressing those problems; and

(D) criteria for the legislative recommendations to be developed by the Commission.

(2) FORM.—The reports submitted under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.

(e) LEGISLATIVE RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 60 days after the date on which the full report is submitted under subsection (d)(1) and by a vote of at least 10 of the members, the Commission shall submit legislative recommendations to Congress and the President designed to address the issues described in subsection (c).

(2) PROPOSAL REQUIREMENTS.—The proposal under paragraph (1) shall, to the extent feasible, be designed—

(A) to achieve financial market and systemic security;

(B) to address the comments and suggestions of the consulted non-governmental experts and government officials; and

(C) to meet the criteria set forth in the Commission report.

(f) MEMBERSHIP AND MEETINGS.—

(1) MEMBERSHIP.—

(A) IN GENERAL.—The Commission shall be composed of 12 voting members appointed pursuant to subparagraph (B) and 3 non-voting members described in subparagraph (C).

(B) VOTING MEMBERS.—The Commission shall be composed of 12 voting members, of whom not fewer than 4 members should be currently in the private sector, or have significant experience in the private sector, of whom—

(i) 3 shall be appointed by the Speaker of the House of Representatives;

(ii) 3 shall be appointed by the minority leader of the House of Representatives;

(iii) 3 shall be appointed by the majority leader of the Senate; and

(iv) 3 shall be appointed by the minority leader of the Senate.

(C) EXECUTIVE BRANCH CONSULTATION.—The Director of National Intelligence, the Secretary, and the Chairman of the Board of Governors shall advise and assist the Commission, at the request of the Commission.

(D) CHAIR AND CO-CHAIR.—The Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall designate 2 co-chairpersons of the Commission from the members appointed under subparagraph (B), one of whom must be a Republican and one of whom must be a Democrat.

(2) LIMITATIONS AS TO MEMBERS OF CONGRESS.—

(A) MEMBERS OF CONGRESS ON COMMISSION.—Each appointing authority described in paragraph (1)(B) shall appoint not more than 2 Members of Congress, nor fewer than 1 member of Congress, to the Commission.

(B) CONTINUATION OF VOTING MEMBERSHIP.—In the case of an individual appointed pursuant to paragraph (1)(A) who was appointed as a Member of Congress under subparagraph (A), if such individual ceases to be a Member of Congress, that individual shall cease to be a member of the Commission.

(3) DATE FOR ORIGINAL APPOINTMENT.—The appointing authorities described in paragraph (1)(B) shall appoint the initial members of the Commission not later than 30 days after the date of enactment of this Act.

(4) TERMS.—

(A) IN GENERAL.—The term of each member is for the life of the Commission.

(B) VACANCIES.—A vacancy in the Commission shall be filled not later than 30 days after such vacancy occurs and in the manner in which the original appointment was made.

(5) PAY AND REIMBURSEMENT.—

(A) NO COMPENSATION FOR MEMBERS OF COMMISSION.—Except as provided in subparagraph (B), a member of the Commission may not receive pay, allowances, or benefits by reason of their service on the Commission.

(B) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence under subchapter I of chapter 57 of title 5, United States Code.

(6) MEETINGS.—The Commission shall meet upon the call of the chairperson or a majority of its voting members.

(7) QUORUM.—Six voting members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) STAFF OF COMMISSION.—

(1) STAFF.—In accordance with rules agreed upon by the Commission, subject to paragraph (2), and to the extent provided in advance in appropriation Acts, the co-chairpersons of the Commission may appoint and fix the pay of no more than 3 staff persons, subject to paragraph (3).

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(3) COMPENSATION.—A staff person of the Commission may not be paid at a rate of pay that exceeds the maximum rate of pay for a position at GS–14 of the General Schedule.

(4) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of their regular employment without interruption.

(5) EXPERTS AND CONSULTANTS.—In accordance with rules agreed upon by the Commission and to the extent provided in advance in appropriation Acts, the director may procure the services of experts and consultants under section 3109(b) of title 5, United States Code, but at rates not to exceed the daily equivalent of the annual rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(h) POWERS OF COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this subsection.

(3) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(5) CONTRACT AUTHORITY.—To the extent provided in advance in appropriation Acts, the Commission may enter into contracts to enable the Commission to discharge its duties under this section.

(i) FUNDING.—There are authorized to be appropriated to the Commission, such sums as may be necessary to carry out this section. Funding for the Commission shall be provided through discretionary appropriations.

(j) TERMINATION.—The Commission shall terminate 60 days after the date of submission of its legislative proposal to Congress under this section.

SA 4034. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1315, strike line 18, and all that follows through page 1325, line 20 and insert the following:

''(B) the State consumer financial law is preempted in accordance with the legal standards of the decision of the Supreme Court in Barnett Bank v. Nelson (517 U.S. 25 (1996)), and any preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency, on a case-by-case basis, in accordance with applicable law; or

''(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

''(2) SAVINGS CLAUSE.—This title does not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

''(3) CASE-BY-CASE BASIS.—

''(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

''(5) STANDARDS OF REVIEW.—

''(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

''(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

''(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

''(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

''(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

''(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

''(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

''(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

''(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).''.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

''(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

''Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(j) VISITORIAL POWERS.—

''(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C., 5 (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action in a court of appropriate jurisdiction to enforce an applicable nonpreempted State law against a national bank, as authorized by such law, and to seek relief as authorized by such law.

''(2) EXCLUSION.—The powers granted to State attorneys general and State regulators under section 1042 of the Restoring American Financial Stability Act of 2010 shall not apply to any national bank, or any subsidiary thereof, regulated by the Office of the Comptroller of the Currency.

''(k) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—The provisions of sections 5136C(j) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.

SA 4035. Mr. LEVIN (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers

from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 525, between lines 9 and 10, insert the following:

SEC. 719. PROHIBITION ON REGISTRATION, DESIGNATION, OR APPROVAL.

(a) PROHIBITION.—Neither the Commodity Futures Trading Commission nor the Securities and Exchange Commission may register, designate, approve, or otherwise permit an entity to operate within the United States as one or more of the following, if that entity has been, plans to be, or later is established outside the United States, in whole or in part, in a manner which permits that entity to avoid or assist others to avoid the payment of United States taxes—

(1) a derivatives clearing organization;

(2) a swap execution facility;

(3) a board of trade as a contract market under section 5 of the Commodity Exchange Act (7 U.S.C. 7);

(4) a clearing agency;

(5) a security-based swap execution facility; or

(6) an exchange as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(b) DEFINITIONS.—For purposes of this section, the terms ''derivatives clearing organization,'' ''swap execution facility'' and ''board of trade'' have the meanings given the terms in Section1a of the Commodity Exchange Act (7 U.S.C. 1a), and the terms ''clearing agency'', ''security-based swap execution facility'', and ''exchange'' have the meanings given the terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SA 4036. Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 431, line 22, strike ''3'' and insert ''2''.

SA 4037. Mr. BOND (for himself, Mr. WARNER, Mr. BROWN of Massachusetts, and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 387, strike line 13 and all that follows through page 388, line 3, and insert the following:

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, the net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

On page 388, line 14, strike ''1 year'' and insert ''3 years''.

On page 998, strike line 12 and all that follows through page 1001, line 25, and insert the following:

SEC. 926. DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offering statement; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SA 4038. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Transportation Safety Board Reauthorization Act of 2010''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 1118(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter $98,050,000 for fiscal year 2011 and $98,050,000 for fiscal year 2012. Such sums shall remain available until expended.''.

(b) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—Section 1118(c) of such title is amended to read as follows:

''(c) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—

''(1) IN GENERAL.—The Board may impose and collect such fees, refunds, reimbursements, and advances as it determines to be appropriate for activities, services, and facilities provided by or through the Board.

''(2) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee, refund, reimbursement, or advance collected under this subsection—

''(A) shall be credited as offsetting collections to the account that finances the activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;

''(B) shall be available for expenditure only to pay the costs of activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated; and

''(C) shall remain available until expended.

''(3) RECORD.—The Board shall maintain an annual record of collections received under paragraph (2).

''(4) REFUNDS.—The Board may refund any fee or advance paid by mistake or any amount paid in excess of that required.''.

SEC. 3. TECHNICAL CORRECTIONS.

(a) DEFINITIONS.—Section 1101 of title 49, United States Code, is amended by striking ''otherwise.'' and inserting ''otherwise, and may include incidents not involving destruction or damage, but significantly affecting transportation safety, as the Board may prescribe or Congress may direct.''.

(b) GENERAL ORGANIZATION.—Section 1111(d) of title 49, United States Code, is

amended by striking ''absent'' and inserting ''unavailable''.

(c) ADMINISTRATIVE.—Section 1113 of title 49, United States Code, is amended—

(1) by inserting ''or depositions'' in paragraph (a)(1) after ''hearings''; and

(2) by inserting ''In the interest of transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain any and all evidence relevant to an accident investigation conducted under this chapter.'' after ''(2)'' in subsection (a)(2).

(d) DISCLOSURE, AVAILABILITY, AND USE OF INFORMATION.—Section 1114 of title 49, United States Code, is amended—

(1) by striking the heading for subsection (b) and inserting ''(b) TRADE SECRETS; COMMERCIAL OR FINANCIAL INFORMATION.—'';

(2) by inserting ''submitted to the Board in the course of a Board investigation or study and'' in subsection (b)(1) after ''information'' the first place it appears;

(3) by striking ''title 18'' in subsection (b)(1) and inserting ''title 18, or commercial or financial information,'';

(4) by striking ''safety'' in subsection (b)(1)(D) the first place it appears and inserting ''safety, including through the issuance of reports of accident investigation or safety studies and safety recommendations,'';

(5) by inserting ''subparagraphs (A) through (C) of'' after ''under'' in subsection (b)(2);

(6) by adding at the end of subsection (b) the following:

''(4) Each person submitting to the Board trade secrets, commercial or financial information, or information that could be classified as controlled under the International Traffic in Arms Regulations shall appropriately annotate the information to indicate the restricted nature of the information in order to facilitate proper handling of such materials by the Board.'';

(7) by striking ''shall'' in paragraph(1)(A) of subsection (f) and inserting ''may'';

(8) by striking ''information'' in paragraph (2) of subsection (f) and inserting ''information, or other relevant information authorized for disclosure under this chapter,''; and

(9) by adding at the end thereof the following:

''(g) ONGOING BOARD INVESTIGATIONS.—(1) Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, may publicly disclose records related to an ongoing Board investigation, and such records shall be exempt from disclosure under section 552(b)(3) of title 5. Notwithstanding the preceding sentence, the Board may make public specific records relevant to the investigation, release of which in the Board's judgment is necessary to promote transportation safety—

''(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing;

''(B) if the Board does not hold a public hearing, at the time the Board determines that substantial portions of the underlying factual reports on the accident or incident, and supporting evidence, will be placed in the public docket; or

''(C) if the Board determines during an ongoing investigation or study that circumstances warrant disclosure of specific factual material and that such material need be placed in the public docket to facilitate dialogue with other agencies or instrumentalities, regulatory bodies, industry or industry groups, or Congress.

''(2) This subsection does not prevent the Board from referring at any time to evidence from an ongoing investigation in making safety recommendations.

''(3) In this subsection, the term 'ongoing investigation' means that period beginning at the time the Board is notified of an accident or incident and ending when the Board issues a final report or brief, or determines to close an investigation without issuing a report or brief.''.

(e) REPORTS AND STUDIES—Section 1116(b) of title 49, United States Code, is amended—

(1) by striking ''carry out'' in paragraph (1) and inserting ''conduct''; and

(2) by striking paragraph (3) and inserting the following:

''(3) prescribe requirements for persons reporting accidents and incidents that may be investigated by the Board under this chapter;''.

(f) DISCOVERY AND USE OF COCKPIT AND SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—Section 1154(a)(1)(A) of title 49, United States Code, is amended by striking ''and'' and inserting ''or''.

SEC. 4. AUTHORITY OF THE BOARD.

(a) EVALUATION AND AUDIT.—Section 1138(a) of title 49, United States Code, is amended by striking ''conducted at least annually, but may be''.

(b) TRAINING OF BOARD EMPLOYEES AND OTHERS.—Section 1115(d) of title 49, United States Code, is amended—

(1) by striking ''investigation.'' and inserting ''investigation, including investigation theory and techniques and transportation safety, to advance Board safety recommendations.'';

(2) by striking ''training.'' and inserting ''training or who influence transportation safety through support or adoption of Board safety recommendations.''; and

(3) by striking ''collections.'' and inserting ''collections under the provisions of section 1118 of this chapter.''.

(c) ACCIDENT INVESTIGATION AUTHORITY.—Section 1131 of title 49, United States Code, is amended—

(1) by striking subsection (a)(1)(C) and inserting the following:

''(C) a freight or passenger railroad accident in which there is a fatality (other than a fatality involving a trespasser), substantial property damage, or significant injury to the environment;'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(E);

(3) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(1)(F);

(4) by striking ''chapter.'' in subsection (a)(1)(F) and inserting ''chapter;'';

(5) by adding at the end of subsection (a)(1) the following:

''(G) an accident or incident in response to an international request and delegation under appropriate international conventions, coordinated through the Department of State and accepted by the Board; and

''(H) an incident or incidents significantly affecting transportation safety, as defined by the Board, under rules and in such detail as the Board may prescribe.'';

(6) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(3);

(7) by inserting ''or relevant to'' after ''developed about'' in subsection (a)(3);

(8) by inserting ''AND INCIDENT'' after ''ACCIDENT'' in the heading for subsection (e); and

(9) by inserting ''and incident'' in subsection (e) after ''each accident''.

(d) CIVIL AIRCRAFT AND MARITIME ACCIDENT INVESTIGATIONS.—

(1) IN GENERAL.—Section 1132 of title 49, United States Code, is amended—

(A) by inserting ''or have investigated'' in subsection (a)(1) after ''investigate'';

(B) by striking ''aircraft;'' in subsection (a)(1)(A) and inserting ''aircraft or a commercial space launch vehicle;''; and

(C) by adding at the end the following:

''(e) AUTHORITY OF BOARD REPRESENTATIVE.—The Board may, with the consent of the Secretary, delegate to the Department of Transportation full authority to obtain the facts of any aviation accident or incident the Board shall investigate, and the on-scene representative of the Secretary shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where an aviation accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.

''(f) MARITIME ACCIDENT INVESTIGATIONS.—The Board may, with the consent of the Secretary of the department in which the Coast Guard is operating, delegate to the Coast Guard full authority to obtain the facts of any maritime accident or incident the Board shall investigate, and the on-scene representative of the Commandant of the Coast Guard shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where a maritime accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1132 of title 49, United States Code, is amended to read as follows:

''§ 1132. Civil aircraft and maritime accident investigations''.

(B) The table of contents for chapter 11 of title 49, United States Code, is amended by striking the item relating to section 1132 and inserting the following:

''1132. Civil aircraft and maritime accident investigations''.

(e) INSPECTIONS AND AUTOPSIES.—Section 1134 of title 49, United States Code, is amended—

(1) by striking ''officer or employee of the National Transportation Safety Board—'' in subsection (a) and inserting ''officer, employee, or designee of the National Transportation Safety Board in the conduct of any accident or incident investigation or study—'';

(2) by adding at the end of subsection (b)(1) the following: ''The Board may download or seize any recording device and recordings and may require specific information only available from the manufacturer to enable the Board to read and interpret any flight parameter or navigation storage device or media on board the accident aircraft. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''; and

(3) by inserting after ''component.'' in subsection (c) the following: ''The officer or employee may download or seize any recording device and recordings, and may require the production of specific information only available from the manufacturer to enable the Board to read and interpret any operational parameter or navigation storage device or media on board the accident vehicle, vessel, or rolling stock. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''.

SEC. 5. AVIATION PENALTIES AND FAMILY ASSISTANCE.

(a) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS.—Section 41113(b)(7) of title 49, United States Code, is amended by striking ''months.'' and inserting ''months

and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

(b) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS INVOLVING FOREIGN CARRIERS.—Section 41313(c)(7) of title 49, United States Code, is amended by striking ''accident.'' and inserting ''accident and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

SEC. 6. ACCIDENT-RELATED INFORMATION RELEASE POLICY REPORT.

Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report describing the policies, procedures, and guidelines used by the Board in the expedited release of factual accident-related information to victims and their families, Federal, State, and local accident investigators and agencies, private or third party investigation partners, the public, and other stakeholders.

SA 4039. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes; as follows:

Amend the title so as to read ''A Bill To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes.''

SA 4040. Mrs. MCCASKILL (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 122. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 4041. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, between lines 22 and 23, insert the following:

''(G) to coordinate with other Federal agencies (including the Federal Emergency Management Agency), States (including State insurance regulators), and insurance companies efforts to facilitate the timely processing of flood insurance claims by insurance companies and agents (including through recommending best practices such as telephone hotlines for victims or deployment of personnel of the Office to flood areas) in any area for which the President declares a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) relating to flooding; and

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AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on May 13, 2010, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on May 13, 2010, at 10 a.m., in room 215 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on May 13, 2010, at 9:30 a.m. in room 628 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Judiciary be authorized to meet during the session of the Senate on May 13, 2010, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on May 13, 2010, at 2:30 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Nominations.''

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Intelligence be authorized to meet during the session of the Senate on May 13, 2010, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

VIRGIN ISLAND NATIONAL PARK LEASE ACT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 296, H.R. 714, the Virgin Islands National Park.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 714) to authorize the Secretary of the Interior to lease certain lands in Virgin Islands National Park, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

H.R. 714

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CANEEL BAY LEASE AUTHORIZATION.

(a) DEFINITIONS.—In this section:

(1) PARK.—The term ''Park'' means the Virgin Islands National Park.

(2) RESORT.—The term ''resort'' means the Caneel Bay resort on the island of St. John in the Park.

(3) RETAINED USE ESTATE.—The term ''retained use estate'' means the retained use estate for the Caneel Bay property on the island of St. John entered into between the Jackson Hole Preserve and the United States on September 30, 1983 *(as amended, assigned, and assumed)*.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(b) LEASE AUTHORIZATION.—

(1) IN GENERAL.—If the Secretary determines that the long-term benefit to the Park would be greater by entering into a lease with the owner of the retained use estate than by authorizing a concession contract upon the termination of the retained use estate, the Secretary may enter into a lease *with the owner of the retained use estate* for the operation and management of the resort.

(2) ACQUISITIONS.—The Secretary may—

(A) acquire associated property from the owner of the retained use estate; and

(B) on the acquisition of property under subparagraph (A), administer the property as part of the Park.

(3) AUTHORITY.—Except as otherwise provided by this section, a lease shall be in accordance with subsection (k) of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(k)), notwithstanding paragraph (2) of that subsection.

(4) TERMS AND CONDITIONS.—A lease authorized under this section shall—

(A) be for the minimum number of years practicable, taking into consideration the need for the lessee to secure financing for necessary capital improvements to the resort, but in no event shall the term of the lease exceed 40 years;

(B) prohibit any transfer, assignment, or sale of the lease or otherwise convey or pledge any interest in the lease **[**with**]** *without* prior written notification to, and approval by the Secretary;

(C) ensure that the general character of the resort property remains unchanged, including a prohibition against—

(i) any increase in the overall size of the resort; or

(ii) any increase in the number of guest accommodations available at the resort;

(D) prohibit the sale of partial ownership shares or timeshares in the resort; **[**and**]**

(E) include provisions to ensure the protection of the natural, cultural, and historic features of the resort and associated property, consistent with the laws and policies applicable to property managed by the National Park Service; and

[*(E)****]****(F)* include any other provisions determined by the Secretary to be necessary to protect the Park and the public interest.

(5) RENTAL AMOUNTS.—In determining the fair market value rental of the lease required under section 3(k)(4) of Public Law 91–383 (16 U.S.C. 1a–2(k)(4)), the Secretary shall take into consideration—

(A) the value of any associated property conveyed to the United States; and

(B) the value, if any, of the relinquished term of the retained use estate.

(6) USE OF PROCEEDS.—Rental amounts paid to the United States under a lease shall be available to the Secretary, without further appropriation, for visitor services and resource protection within the Park.

(7) CONGRESSIONAL NOTIFICATION.—The Secretary shall submit a proposed lease under this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives at least 60 days before the **[**effective date**]** *award* of the lease.

(8) RENEWAL.—A lease entered into under this section may not be extended or renewed.

(9) TERMINATION.—Upon the termination of a lease entered into under this section, if the Secretary determines the continuation of commercial services at the resort to be appropriate, the services shall be provided in accordance with the National Park Service Concessions Management Improvement Act of 1998 (16 U.S.C. 5951 et seq.).

(c) RETAINED USE ESTATE.—

(1) IN GENERAL.—As a condition of the lease, the owner of the retained use estate shall terminate, extinguish, and relinquish to the Secretary all rights under the retained use estate and shall transfer, without consideration, ownership of improvements on the retained use estate to the National Park Service.

(2) APPRAISAL.—

(A) IN GENERAL.—The Secretary shall require an appraisal by an independent, qualified appraiser **[**that**]** *who* is agreed to by the Secretary and the owner of the retained use estate to determine the value, if any, of the relinquished term of the retained use estate.

(B) REQUIREMENTS.—An appraisal under paragraph (1) shall be conducted in accordance with—

(i) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(ii) the Uniform Standards of Professional Appraisal Practice.

Mr. DODD. Mr. President, I ask unanimous consent that the committee-reported amendments be considered and agreed to, the bill, as amended, be read three times, passed, and the motions to reconsider be laid upon the table en bloc; and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 714), as amended, was read the third time and passed.

LAW ENFORCEMENT OFFICERS SAFETY ACT IMPROVEMENTS ACT OF 2010

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 315, S. 1132.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1132) to amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Law Enforcement Officers Safety Act Improvements Act of 2010''.

SEC. 2. AMENDMENTS TO LAW ENFORCEMENT OFFICER SAFETY PROVISIONS OF TITLE 18.

(a) IN GENERAL.—Section 926B of title 18, United States Code, is amended—

(1) in subsection (c)(3), by inserting ''which could result in suspension or loss of police powers'' after ''agency''; and

(2) by adding at the end the following:

''(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.''.

(b) ACTIVE LAW ENFORCEMENT OFFICERS.—Section 926B of title 18, United States Code is amended by striking subsection (e) and inserting the following:

''(e) As used in this section, the term 'firearm'—

''(1) except as provided in this subsection, has the same meaning as in section 921 of this title;

''(2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

''(3) does not include—

''(A) any machinegun (as defined in section 5845 of the National Firearms Act);

''(B) any firearm silencer (as defined in section 921 of this title); and

''(C) any destructive device (as defined in section 921 of this title).''.

(c) RETIRED LAW ENFORCEMENT OFFICERS.—Section 926C of title 18, United States Code is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

(i) by striking ''retired'' and inserting ''separated from service''; and

(ii) by striking '', other than for reasons of mental instability'';

(B) in paragraph (2), by striking ''retirement'' and inserting ''separation'';

(C) in paragraph (3)—

(i) in subparagraph (A), by striking ''retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more'' and inserting ''separation, served as a law enforcement officer for an aggregate of 10 years or more''; and

(ii) in subparagraph (B), by striking ''retired'' and inserting ''separated'';

(D) by striking paragraph (4) and inserting the following:

''(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards

used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;''; and

(E) by striking paragraph (5) and replacing it with the following:

''(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

''(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);'';

(2) in subsection (d)—

(A) paragraph (1)—

(i) by striking ''retired'' and inserting ''separated''; and

(ii) by striking ''to meet the standards'' and all that follows through ''concealed firearm'' and inserting ''to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm'';

(B) paragraph (2)—

(i) in subparagraph (A), by striking ''retired'' and inserting ''separated''; and

(ii) in subparagraph (B), by striking ''that indicates'' and all that follows through the period and inserting ''or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met—

''(I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or

''(II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.''; and

(3) by striking subsection (e) and inserting the following:

''(e) As used in this section—

''(1) the term 'firearm'—

''(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

''(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

''(C) does not include—

''(i) any machinegun (as defined in section 5845 of the National Firearms Act);

''(ii) any firearm silencer (as defined in section 921 of this title); and

''(iii) any destructive device (as defined in section 921 of this title); and

''(2) the term 'service with a public agency as a law enforcement officer' includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.''.

Mr. LEAHY. Mr. President, I thank all Senators for joining me in support of the Law Enforcement Officers Safety Act Improvements Act of 2010. Passage of this legislation demonstrates the Senate's strong bipartisan support of all the men and women who serve in law enforcement roles in the United States. I thank the Judiciary Committee's Ranking Member Senator SESSIONS, Senator KYL, and Senator CONRAD for joining me as cosponsors of this legislation.

In March, for the third time since 2007, the Senate Judiciary Committee favorably reported legislation making needed improvements to the Law Enforcement Officers Safety Act of 2004, which allows qualified active and retired law enforcement officers to obtain certification to carry firearms across State lines. I am very pleased the Senate has at last given its approval to these important improvements to the original law.

In 2004, Congress passed the Law Enforcement Officers Safety Act. I worked with Senator Ben Nighthorse Campbell and 68 other Senators to show our strong support for the Nation's law enforcement community. Since enactment, however, many retired officers have experienced substantial difficulty in gaining the benefits the law was intended to confer. I listened carefully to the feedback and advice from those in the law enforcement community to make the existing law stronger and more workable in a responsible and measured way. I especially thank the Fraternal Order of Police, the Federal Law Enforcement Officers Association, and the National Association of Police Organizations for their strong support.

The amendments we pass today will make the original law's operation more efficient while maintaining the rigorous standards that apply to those who seek its benefits. It will ensure that law enforcement officers who have served honorably and who are now retired will have flexibility in achieving the law's benefits and privileges which Congress determined they deserve.

It is especially appropriate that we pass this legislation this week at a time when tens of thousands of law enforcement officers are in the Nation's Capital to honor and remember their fellow officers who have lost their lives in the line of duty. As I do each year, and in recognition of the ceremonies in Washington, I introduced a resolution to officially recognize May 15 as National Peace Officers Memorial Day. The Senate unanimously adopted that resolution. All of the men and women who serve and who are in Washington to remember and celebrate their fallen fellow officers should know that the Senate recognizes the extraordinary work they do on behalf of all Americans.

I thank all Senators who supported this measure and express my deep appreciation for the sacrifices and service of all of the men and women who give so much in the service of their fellow citizens.

Mr. DODD. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1132), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT OF 2009

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 273, S. 2768.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2768) to amend title 49, United States Code, authorizing appropriations for the National Transportation Safety Board for fiscal years 2010 through 2014, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Transportation Safety Board Reauthorization Act of 2009''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 1118(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter $100,000,000 for fiscal year 2010, $105,000,000 for fiscal year 2011, $112,000,000 for fiscal year 2012, $118,000,000 for fiscal year 2013, and $124,000,000 for fiscal year 2014. Such sums shall remain available until expended.''.

(b) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—Section 1118(c) of such title is amended to read as follows:

''(c) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—

''(1) IN GENERAL.—The Board may impose and collect such fees, refunds, reimbursements, and advances as it determines to be appropriate for activities, services, and facilities provided by or through the Board.

''(2) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee, refund, reimbursement, or advance collected under this subsection—

''(A) shall be credited as offsetting collections to the account that finances the activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;

''(B) shall be available for expenditure only to pay the costs of activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated; and

''(C) shall remain available until expended.

''(3) RECORD.—The Board shall maintain an annual record of collections received under paragraph (2).

''(4) REFUNDS.—The Board may refund any fee or advance paid by mistake or any amount paid in excess of that required.''.

SEC. 3. TECHNICAL CORRECTIONS.

(a) DEFINITIONS.—Section 1101 of title 49, United States Code, is amended by striking

''otherwise.'' and inserting ''otherwise, and may include incidents not involving destruction or damage, but significantly affecting transportation safety, as the Board may prescribe or Congress may direct.''.

(b) GENERAL ORGANIZATION.—Section 1111(d) of title 49, United States Code, is amended by striking ''absent'' and inserting ''unavailable''.

(c) ADMINISTRATIVE.—Section 1113 of title 49, United States Code, is amended—

(1) by inserting ''or depositions'' in paragraph (a)(1) after ''hearings''; and

(2) by inserting ''In the interest of transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain any and all evidence relevant to an accident investigation conducted under this chapter.'' after ''(2)'' in subsection (a)(2).

(d) DISCLOSURE, AVAILABILITY, AND USE OF INFORMATION.—Section 1114 of title 49, United States Code, is amended—

(1) by striking the heading for subsection (b) and inserting ''(b) TRADE SECRETS; COMMERCIAL OR FINANCIAL INFORMATION.—'';

(2) by inserting ''submitted to the Board in the course of a Board investigation or study and'' in subsection (b)(1) after ''information'' the first place it appears;

(3) by striking ''title 18'' in subsection (b)(1) and inserting ''title 18, or commercial or financial information,'';

(4) by striking ''safety'' in subsection (b)(1)(D) the first place it appears and inserting ''safety, including through the issuance of reports of accident investigation or safety studies and safety recommendations,'';

(5) by inserting ''subparagraphs (A) through (C) of'' after ''under'' in subsection (b)(2);

(6) by adding at the end of subsection (b) the following:

''(4) Each person submitting to the Board trade secrets, commercial or financial information, or information that could be classified as controlled under the International Traffic in Arms Regulations shall appropriately annotate the information to indicate the restricted nature of the information in order to facilitate proper handling of such materials by the Board.'';

(7) by striking ''shall'' in paragraph(1)(A) of subsection (f) and inserting ''may'';

(8) by striking ''information'' in paragraph (2) of subsection (f) and inserting ''information, or other relevant information authorized for disclosure under this chapter,''; and

(9) by adding at the end thereof the following:

''(g) ONGOING BOARD INVESTIGATIONS.—(1) Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, may publicly disclose records related to an ongoing Board investigation, and such records shall be exempt from disclosure under section 552(b)(3) of title 5. Notwithstanding the preceding sentence, the Board may make public specific records relevant to the investigation, release of which in the Board's judgment is necessary to promote transportation safety—

''(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing;

''(B) if the Board does not hold a public hearing, at the time the Board determines that substantial portions of the underlying factual reports on the accident or incident, and supporting evidence, will be placed in the public docket; or

''(C) if the Board determines during an ongoing investigation or study that circumstances warrant disclosure of specific factual material and that such material need be placed in the public docket to facilitate dialogue with other agencies or instrumentalities, regulatory bodies, industry or industry groups, or Congress.

''(2) This subsection does not prevent the Board from referring at any time to evidence from an ongoing investigation in making safety recommendations.

''(3) In this subsection, the term 'ongoing investigation' means that period beginning at the time the Board is notified of an accident or incident and ending when the Board issues a final report or brief, or determines to close an investigation without issuing a report or brief.''.

(e) REPORTS AND STUDIES—Section 1116(b) of title 49, United States Code, is amended—

(1) by striking ''carry out'' in paragraph (1) and inserting ''conduct''; and

(2) by striking paragraph (3) and inserting the following:

''(3) prescribe requirements for persons reporting accidents and incidents that may be investigated by the Board under this chapter;''.

(f) DISCOVERY AND USE OF COCKPIT AND SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—Section 1154(a)(1)(A) of title 49, United States Code, is amended by striking ''and'' and inserting ''or''.

SEC. 4. AUTHORITY OF THE BOARD.

(a) EVALUATION AND AUDIT.—Section 1138(a) of title 49, United States Code, is amended by striking ''conducted at least annually, but may be''.

(b) TRAINING OF BOARD EMPLOYEES AND OTHERS.—Section 1115(d) of title 49, United States Code, is amended—

(1) by striking ''investigation.'' and inserting ''investigation, including investigation theory and techniques and transportation safety, to advance Board safety recommendations.'';

(2) by striking ''training.'' and inserting ''training or who influence transportation safety through support or adoption of Board safety recommendations.''; and

(3) by striking ''collections.'' and inserting ''collections under the provisions of section 1118 of this chapter.''.

(c) ACCIDENT INVESTIGATION AUTHORITY.—Section 1131 of title 49, United States Code, is amended—

(1) by striking subsection (a)(1)(C) and inserting the following:

''(C) a freight or passenger railroad accident in which there is a fatality (other than a fatality involving a trespasser), substantial property damage, or significant injury to the environment;'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(E);

(3) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(1)(F);

(4) by striking ''chapter.'' in subsection (a)(1)(F) and inserting ''chapter;'';

(5) by adding at the end of subsection (a)(1) the following:

''(G) an accident or incident in response to an international request and delegation under appropriate international conventions, coordinated through the Department of State and accepted by the Board; and

''(H) an incident or incidents significantly affecting transportation safety, as defined by the Board, under rules and in such detail as the Board may prescribe.'';

(6) by striking ''paragraph (1)(A)–(D) or (F)'' in subsection (a)(2)(A) and inserting ''any of subparagraphs (A) through (F) of paragraph (1)'';

(7) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(3);

(8) by inserting ''or relevant to'' after ''developed about'' in subsection (a)(3);

(9) by inserting ''AND INCIDENT'' after ''ACCIDENT'' in the heading for subsection (e); and

(10) by inserting ''and incident'' in subsection (e) after ''each accident''.

(d) CIVIL AIRCRAFT AND MARITIME ACCIDENT INVESTIGATIONS.—

(1) IN GENERAL.—Section 1132 of title 49, United States Code, is amended—

(A) by inserting ''or have investigated'' in subsection (a)(1) after ''investigate'';

(B) by striking ''aircraft;'' in subsection (a)(1)(A) and inserting ''aircraft or a commercial space launch vehicle;''; and

(C) by adding at the end the following:

''(e) AUTHORITY OF BOARD REPRESENTATIVE.—The Board may, with the consent of the Secretary, delegate to the Department of Transportation full authority to obtain the facts of any aviation accident or incident the Board shall investigate, and the on-scene representative of the Secretary shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where an aviation accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.

''(f) MARITIME ACCIDENT INVESTIGATIONS.—The Board may, with the consent of the Secretary of the department in which the Coast Guard is operating, delegate to the Coast Guard full authority to obtain the facts of any maritime accident or incident the Board shall investigate, and the on-scene representative of the Commandant of the Coast Guard shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where a maritime accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1132 of title 49, United States Code, is amended to read as follows:

''§ 1132. Civil aircraft and maritime accident investigations''.

(B) The table of contents for chapter 11 of title 49, United States Code, is amended by striking the item relating to section 1132 and inserting the following:

''1132. Civil aircraft and maritime accident investigations''.

(e) INSPECTIONS AND AUTOPSIES.—Section 1134 of title 49, United States Code, is amended—

(1) by striking ''officer or employee of the National Transportation Safety Board—'' in subsection (a) and inserting ''officer, employee, or designee of the National Transportation Safety Board in the conduct of any accident or incident investigation or study—'';

(2) by adding at the end of subsection (b)(1) the following: ''The Board may download or seize any recording device and recordings and may require specific information only available from the manufacturer to enable the Board to read and interpret any flight parameter or navigation storage device or media on board the accident aircraft. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''; and

(3) by inserting after ''component.'' in subsection (c) the following: ''The officer or employee may download or seize any recording device and recordings, and may require the production of specific information only available from the manufacturer to enable the Board to read and interpret any operational parameter or navigation storage device or media on board the accident vehicle, vessel, or rolling stock. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''.

SEC. 5. AVIATION PENALTIES AND FAMILY ASSISTANCE.

(a) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS.—Section 41113(b)(7) of title 49, United States Code, is amended by striking ''months.'' and inserting ''months and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

(b) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS INVOLVING FOREIGN CARRIERS.—Section 41313(c)(7) of title 49, United States Code, is amended by striking ''accident.'' and inserting ''accident and that, prior to destruction of unclaimed possessions, a reasonable

attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

SEC. 6. ACCIDENT-RELATED INFORMATION RELEASE POLICY REPORT.

Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report describing the policies, procedures, and guidelines used by the Board in the expedited release of factual accident-related information to victims and their families, Federal, State, and local accident investigators and agencies, private or third party investigation partners, the public, and other stakeholders.

Mr. DODD. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be considered; that a Dorgan-Rockefeller amendment, which is at the desk, be agreed to; the substitute amendment, as amended, be agreed to; the bill, as amended, be read a third time and passed; an amendment to the title, which is at the desk, be agreed to; the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4038) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2768), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2768

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Transportation Safety Board Reauthorization Act of 2010''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 1118(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter $98,050,000 for fiscal year 2011 and $98,050,000 for fiscal year 2012. Such sums shall remain available until expended.''.

(b) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—Section 1118(c) of such title is amended to read as follows:

''(c) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—

''(1) IN GENERAL.—The Board may impose and collect such fees, refunds, reimbursements, and advances as it determines to be appropriate for activities, services, and facilities provided by or through the Board.

''(2) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee, refund, reimbursement, or advance collected under this subsection—

''(A) shall be credited as offsetting collections to the account that finances the activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;

''(B) shall be available for expenditure only to pay the costs of activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated; and

''(C) shall remain available until expended.

''(3) RECORD.—The Board shall maintain an annual record of collections received under paragraph (2).

''(4) REFUNDS.—The Board may refund any fee or advance paid by mistake or any amount paid in excess of that required.''.

SEC. 3. TECHNICAL CORRECTIONS.

(a) DEFINITIONS.—Section 1101 of title 49, United States Code, is amended by striking ''otherwise.'' and inserting ''otherwise, and may include incidents not involving destruction or damage, but significantly affecting transportation safety, as the Board may prescribe or Congress may direct.''.

(b) GENERAL ORGANIZATION.—Section 1111(d) of title 49, United States Code, is amended by striking ''absent'' and inserting ''unavailable''.

(c) ADMINISTRATIVE.—Section 1113 of title 49, United States Code, is amended—

(1) by inserting ''or depositions'' in paragraph (a)(1) after ''hearings''; and

(2) by inserting ''In the interest of transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain any and all evidence relevant to an accident investigation conducted under this chapter.'' after ''(2)'' in subsection (a)(2).

(d) DISCLOSURE, AVAILABILITY, AND USE OF INFORMATION.—Section 1114 of title 49, United States Code, is amended—

(1) by striking the heading for subsection (b) and inserting ''(b) TRADE SECRETS; COMMERCIAL OR FINANCIAL INFORMATION.—'';

(2) by inserting ''submitted to the Board in the course of a Board investigation or study and'' in subsection (b)(1) after ''information'' the first place it appears;

(3) by striking ''title 18'' in subsection (b)(1) and inserting ''title 18, or commercial or financial information,'';

(4) by striking ''safety'' in subsection (b)(1)(D) the first place it appears and inserting ''safety, including through the issuance of reports of accident investigation or safety studies and safety recommendations,'';

(5) by inserting ''subparagraphs (A) through (C) of'' after ''under'' in subsection (b)(2);

(6) by adding at the end of subsection (b) the following:

''(4) Each person submitting to the Board trade secrets, commercial or financial information, or information that could be classified as controlled under the International Traffic in Arms Regulations shall appropriately annotate the information to indicate the restricted nature of the information in order to facilitate proper handling of such materials by the Board.'';

(7) by striking ''shall'' in paragraph(1)(A) of subsection (f) and inserting ''may'';

(8) by striking ''information'' in paragraph (2) of subsection (f) and inserting ''information, or other relevant information authorized for disclosure under this chapter,''; and

(9) by adding at the end thereof the following:

''(g) ONGOING BOARD INVESTIGATIONS.—(1) Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, may publicly disclose records related to an ongoing Board investigation, and such records shall be exempt from disclosure under section 552(b)(3) of title 5. Notwithstanding the preceding sentence, the Board may make public specific records relevant to the investigation, release of which in the Board's judgment is necessary to promote transportation safety—

''(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing;

''(B) if the Board does not hold a public hearing, at the time the Board determines that substantial portions of the underlying factual reports on the accident or incident, and supporting evidence, will be placed in the public docket; or

''(C) if the Board determines during an ongoing investigation or study that circumstances warrant disclosure of specific factual material and that such material need be placed in the public docket to facilitate dialogue with other agencies or instrumentalities, regulatory bodies, industry or industry groups, or Congress.

''(2) This subsection does not prevent the Board from referring at any time to evidence from an ongoing investigation in making safety recommendations.

''(3) In this subsection, the term 'ongoing investigation' means that period beginning at the time the Board is notified of an accident or incident and ending when the Board issues a final report or brief, or determines to close an investigation without issuing a report or brief.''.

(e) REPORTS AND STUDIES—Section 1116(b) of title 49, United States Code, is amended—

(1) by striking ''carry out'' in paragraph (1) and inserting ''conduct''; and

(2) by striking paragraph (3) and inserting the following:

''(3) prescribe requirements for persons reporting accidents and incidents that may be investigated by the Board under this chapter;''.

(f) DISCOVERY AND USE OF COCKPIT AND SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—Section 1154(a)(1)(A) of title 49, United States Code, is amended by striking ''and'' and inserting ''or''.

SEC. 4. AUTHORITY OF THE BOARD.

(a) EVALUATION AND AUDIT.—Section 1138(a) of title 49, United States Code, is amended by striking ''conducted at least annually, but may be''.

(b) TRAINING OF BOARD EMPLOYEES AND OTHERS.—Section 1115(d) of title 49, United States Code, is amended—

(1) by striking ''investigation.'' and inserting ''investigation, including investigation theory and techniques and transportation safety, to advance Board safety recommendations.'';

(2) by striking ''training.'' and inserting ''training or who influence transportation safety through support or adoption of Board safety recommendations.''; and

(3) by striking ''collections.'' and inserting ''collections under the provisions of section 1118 of this chapter.''.

(c) ACCIDENT INVESTIGATION AUTHORITY.—Section 1131 of title 49, United States Code, is amended—

(1) by striking subsection (a)(1)(C) and inserting the following:

''(C) a freight or passenger railroad accident in which there is a fatality (other than a fatality involving a trespasser), substantial property damage, or significant injury to the environment;'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(E);

(3) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(1)(F);

(4) by striking ''chapter.'' in subsection (a)(1)(F) and inserting ''chapter;'';

(5) by adding at the end of subsection (a)(1) the following:

''(G) an accident or incident in response to an international request and delegation under appropriate international conventions, coordinated through the Department of State and accepted by the Board; and

''(H) an incident or incidents significantly affecting transportation safety, as defined by the Board, under rules and in such detail as the Board may prescribe.'';

(6) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(3);

(7) by inserting ''or relevant to'' after ''developed about'' in subsection (a)(3);

(8) by inserting ''AND INCIDENT'' after ''ACCIDENT'' in the heading for subsection (e); and

(9) by inserting ''and incident'' in subsection (e) after ''each accident''.

(d) CIVIL AIRCRAFT AND MARITIME ACCIDENT INVESTIGATIONS.—

(1) IN GENERAL.—Section 1132 of title 49, United States Code, is amended—

(A) by inserting ''or have investigated'' in subsection (a)(1) after ''investigate'';

(B) by striking ''aircraft;'' in subsection (a)(1)(A) and inserting ''aircraft or a commercial space launch vehicle;''; and

(C) by adding at the end the following:

''(e) AUTHORITY OF BOARD REPRESENTATIVE.—The Board may, with the consent of the Secretary, delegate to the Department of Transportation full authority to obtain the facts of any aviation accident or incident the Board shall investigate, and the on-scene representative of the Secretary shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where an aviation accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.

''(f) MARITIME ACCIDENT INVESTIGATIONS.—The Board may, with the consent of the Secretary of the department in which the Coast Guard is operating, delegate to the Coast Guard full authority to obtain the facts of any maritime accident or incident the Board shall investigate, and the on-scene representative of the Commandant of the Coast Guard shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where a maritime accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1132 of title 49, United States Code, is amended to read as follows:

''§ 1132. Civil aircraft and maritime accident investigations''.

(B) The table of contents for chapter 11 of title 49, United States Code, is amended by striking the item relating to section 1132 and inserting the following:

''1132. Civil aircraft and maritime accident investigations''.

(e) INSPECTIONS AND AUTOPSIES.—Section 1134 of title 49, United States Code, is amended—

(1) by striking ''officer or employee of the National Transportation Safety Board—'' in subsection (a) and inserting ''officer, employee, or designee of the National Transportation Safety Board in the conduct of any accident or incident investigation or study—'';

(2) by adding at the end of subsection (b)(1) the following: ''The Board may download or seize any recording device and recordings and may require specific information only available from the manufacturer to enable the Board to read and interpret any flight parameter or navigation storage device or media on board the accident aircraft. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''; and

(3) by inserting after ''component.'' in subsection (c) the following: ''The officer or employee may download or seize any recording device and recordings, and may require the production of specific information only available from the manufacturer to enable the Board to read and interpret any operational parameter or navigation storage device or media on board the accident vehicle, vessel, or rolling stock. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''.

SEC. 5. AVIATION PENALTIES AND FAMILY ASSISTANCE.

(a) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS.—Section 41113(b)(7) of title 49, United States Code, is amended by striking ''months.'' and inserting ''months and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

(b) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS INVOLVING FOREIGN CARRIERS.—Section 41313(c)(7) of title 49, United States Code, is amended by striking ''accident.'' and inserting ''accident and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

SEC. 6. ACCIDENT-RELATED INFORMATION RELEASE POLICY REPORT.

Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report describing the policies, procedures, and guidelines used by the Board in the expedited release of factual accident-related information to victims and their families, Federal, State, and local accident investigators and agencies, private or third party investigation partners, the public, and other stakeholders.

The amendment (No. 4039) was agreed to, as follows:

Amend the title so as to read ''A Bill To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes.''

EXPRESSING SYMPATHY TO AND SOLIDARITY WITH THE REPUBLIC OF KOREA

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 525, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 525) expressing sympathy to the families of those killed in the sinking of the Republic of Korea Ship Cheonan, and solidarity with the Republic of Korea in the aftermath of this tragic incident.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 525) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 525

Expressing sympathy to the families of those killed in the sinking of the Republic of Korea Ship Cheonan, and solidarity with the Republic of Korea in the aftermath of this tragic incident.

Whereas on March 26, 2010, the Republic of Korea Ship (ROKS) Cheonan was sunk by an external explosion in the vicinity of Baengnyeong Island, Republic of Korea;

Whereas of the 104 members of the crew of the Republic of Korea Ship Cheonan, 46 were killed in this incident, including 6 lost at sea;

Whereas on April 25, 2010, the Government of the Republic of Korea commenced a five-day period of mourning for these 46 sailors;

Whereas the Government of the Republic of Korea continues to lead an international investigation into the circumstances surrounding the sinking of the Republic of Korea Ship Cheonan;

Whereas the alliance between the United States and the Republic of Korea has been a vital anchor for security and stability in Asia for more than 50 years; and

Whereas the United States and the Republic of Korea are bound together by the shared values of democracy and the rule of law: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its sympathy and condolences to the families and loved ones of the sailors of the Republic of Korea Ship (ROKS) Cheonan who were killed in action on March 26, 2010;

(2) stands in solidarity with the people and the Government of the Republic of Korea in the aftermath of this tragic incident;

(3) reaffirms its enduring commitment to the alliance between the Republic of Korea and the United States and to the security of the Republic of Korea;

(4) urges the continuing full cooperation and assistance of the United States Government in aiding the Government of the Republic of Korea as it investigates the cause of the sinking of the Republic of Korea Ship Cheonan;

(5) urges the international community to provide all necessary support to the Republic of Korea as the Government of the Republic of Korea investigates the sinking of the Republic of Korea Ship Cheonan; and

(6) further urges the international community to fully and faithfully implement all United Nations Security Council Resolutions pertaining to security on the Korean Peninsula, including United Nations Security Council Resolution 1695 (2006), United Nations Security Council Resolution 1718 (2006), and United Nations Security Council Resolution 1874 (2009).

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 111–5

Mr. DODD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on May 13, 2010, by the President of the United States:

Treaty with Russia on Measures for Further Reduction and Limitation of

Strategic Offensive Arms (Treaty Document No. 111–5.)

I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol. The Protocol is an integral part of the Treaty and contains three Annexes. I also transmit, for the information of the Senate, the report of the Department of State and three unilateral statements associated with the Treaty. These unilateral statements are not legally binding and are not integral parts of the Treaty. The Department of State report includes a detailed article-by-article analysis of the Treaty, as well as an analysis of the unilateral statements.

The Treaty will enhance the national security of the United States. It mandates mutual reductions and limitations on the world's two largest nuclear arsenals. The Treaty will promote transparency and predictability in the strategic relationship between the United States and the Russian Federation and will enable each Party to verify that the other Party is complying with its obligations through a regime that includes on-site inspections, notifications, a comprehensive and continuing exchange of data regarding strategic offensive arms, and provisions for the use of national technical means of verification. The Treaty further includes detailed procedures for the conversion or elimination of Treaty-accountable items, and provides for the exchange of certain telemetric information on selected ballistic missile launches for increased transparency.

Additionally, the Treaty creates a Bilateral Consultative Commission that will meet regularly to promote effective implementation of the Treaty regime. This Commission will provide an important channel for communication between the United States and the Russian Federation regarding the Treaty's implementation.

The United States will continue to maintain a strong nuclear deterrent under this Treaty, as validated by the Department of Defense through rigorous analysis in the Nuclear Posture Review. The Treaty preserves our ability to determine for ourselves the composition and structure of our strategic forces within the Treaty's overall limits, and to modernize those forces. The Treaty does not contain any constraints on testing, development, or deployment of current or planned U.S. missile defense programs or current or planned U.S. long-range conventional strike capabilities.

The Treaty, upon its entry into force, will supersede the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions, signed in Moscow on May 24, 2002.

I urge the Senate to give early and favorable consideration to the Treaty, including its Protocol, and to give its advice and consent to ratification.

BARACK OBAMA,
THE WHITE HOUSE, *May 13, 2010*.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the majority and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives, pursuant to Section 301 of Public Law 104–1, as amended by Public Law 108–349, and further amended by Public Law 111–114, announces the joint re-appointment of the following individuals as members of the Board of Directors of the Office of Compliance: Barbara L. Camens of the District of Columbia and Roberta L. Holzwarth of Illinois.

The Chair, on behalf of the Vice President, pursuant to Public Law 93–642, appoints the Senator from Alaska (Mr. BEGICH) to be a member of the Harry S. Truman Scholarship Foundation Board of Trustees, vice the Senator from Montana (Mr. BAUCUS).

ORDERS FOR FRIDAY, MAY 14, 2010

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., tomorrow, Friday, May 14; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of S. 3217, Wall Street reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DODD. Mr. President, as previously announced, there will be no rollcall votes during Friday's session of the Senate.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DODD. If there is no further business to come before the Senate, I ask unanimous consent it adjourn under the previous order.

There being no objection, the Senate, at 8:16 p.m., adjourned until Friday, May 14, 2010 at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

MARK FEIERSTEIN, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE PAUL J. BONICELLI.

EXPORT-IMPORT BANK OF THE UNITED STATES

OSVALDO LUIS GRATACS MUNET, OF PUERTO RICO, TO BE INSPECTOR GENERAL, EXPORT-IMPORT BANK, VICE MICHAEL W. TANKERSLEY, RESIGNED.

IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT AS PERMANENT COMMISSIONED REGULAR OFFICERS IN THE UNITED STATES COAST GUARD IN THE GRADES INDICATED UNDER TITLE 14, U.S.C., SECTION 211:

To be lieutenant commander

EMILY S. MCINTYRE

To be lieutenant

PETER M. EVONUK
JUSTIN H. HARPER
SCOTT J. MCCANN

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. PAUL H. MCGILLICUDDY

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203(A):

To be colonel

PASCAL UDEKWU

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADES INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

To be lieutenant colonel

MARK R. ANDERSON
TIMOTHY P. DEVINE
HOWARD M. GUTHMANN II
TERRY A. HAAG
BRET E. LESUEUR
DERRICK B. WILLSEY

To be major

PAUL F. AMPER
KAREN E.A. BOWMAN
MARIE A. DANLEY
JEFFREY E. EERTMOED
MICHELLE S. FLORES
IAN R. JOHNSON
PAMELA R. LECLAIRE
RANDELL J. NETT
BETH L. ROACH
CYNTHIA S. SHEN
JONATHAN A. SOSNOV

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

FRED M. CHESBRO
HUGH T. CORBETT
DONALD H. DELLINGER
WILLIAM C. FRENCH
LOREN S. FULLER
ANTHONY L. HALL
MICHAEL R. HILDRETH
MARK D. MCCORMACK
TIMOTHY S. PHEIL
PAUL W. RAINWATER
LINDA L. SINGH
DEREK J. TOLMAN

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

MONIQUE C. BIERWIRTH
ROBERT A. HEDGEPETH
MARVIN T. HUNT
KENNETH L. MCCREARY
CHRISTOPHER W. RATCHFORD
JOHN A. STASNEY
DAVID E. WOOD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

CAROLYN A. WALTZ

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant colonel

DENNY S. HEWITT
PATRICIA J. ROACH
THOMAS P. WEIKERT

To be major

MATTHEW D. GIOVANNI
ELIZABETH R. GUM
KENNETH M. SIKORSKY
PATTIE M. VEDDER
JOHN D. WILSON

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant commander

JOHN M. HOLMES

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5589:

To be lieutenant commander

LEONARD J. LONG

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

ALEXANDER DAVILA

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

ANTONIO L. SCINICARIELLO

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

CHRISTOPHER R. SWANSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

DOMINICK E. FLOYD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

JOSEPH A. NELLIS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

RACHEL J. VELASCO-LIND

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

JAMES R. PELTIER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

JOSEPH C. AQUILINA
BRIAN K. AUGE
JOHN L. BASTIEN
MARY F. BAVARO
LYNN L. BEACH
LINDA J. BELTRA
OCTAVIO A. BORGES
WILLIAM C. BRUNNER
JANIS R. CARLTON
CHRISTOPHER D. CLAGETT
JOSEPH B. CLEM
MICHAEL E. COMPEGGIE
CARL R. COWEN
THOMAS A. CRAIG
STEVEN D. CRONQUIST
MICHAEL H. DANENBERG
ANTHONY E. DELGADO
MARK L. DICK
ROBERT J. DONOVAN
ALAN B. DOUGLASS
MARK J. FLYNN
STEVEN E. GABELE
MICHELE L. GASPER
LOUIS G. GILLERAN
JOHN GILSTAD
WAYNE M. GLUF
DANIEL L. GRAMINS
JOHN S. HAMMES
TONY S. HAN
JAMES L. HANCOCK
KAREN J. HANNA
CARY E. HARRISON
JOHN F. HAWLEY
DANIEL J. HEBERT
ELIZABETH M. HOFMEISTER
TIM B. HOPKINS
PETER M. JOHNSON
STEVEN A. KEWISH
RICHARD KNITTIG
BARBARA E. KNOLLMANNRITSCHEL
CHRISTOPHER A. KURTZ
LOUIS V. LAVOPA
BENJAMIN K. LEE
JOHN L. LYSZCZARZ
DANIEL F. MAHER
ELIZABETH A. MALEY
PAUL D. MCADAMS
MICHAEL B. MCGINNIS
PATRICIA L. MCKAY
MELANIE J. MERRICK
FERNANDO MORENO
LISA P. MULLIGAN
DAVID P. MURPHY
JANET N. MYERS
AMY L. OBOYLE
PHILIP M. OCONNELL
MICHAEL G. PENNY
TODD B. PETERSON
STEVEN J. PORTOUW
MATTHEW C. RINGS
PETER F. ROBERTS
JASON J. ROSS
RICHARD J. SAVARINO, JR.
JAY SCHEINER
ASHLEY A. SCHROEDER
ERIC L. SCHWARTZMAN
CHRISTINE L. G. SEARS
STEPHEN T. SEARS
CRAIG D. SHEPPS
AMANDA J. SIMSIMAN
GEORGE H. SMITH
KEITH A. STUESSI
EDWARD T. WATERS
WILLIAM D. WATSON
CHRISTOPHER WESTBROOK
WILLIAM M. WIKE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

STEPHEN G. ALFANO
SOOK K. CHAI
STEPHEN L. CHRISTOPHER
WILLIAM E. DANDO
ELIZABETH B. GASKIN
JORGE A. GRAZIANI
SCOTT KOOISTRA
SEAN C. MEEHAN
ANTHONY J. OPILKA
MARGARET K. OROURKE
TIMOTHY B. TINKER
KEVIN R. TORSKE
TERRY D. WEBB

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

CHRISTOPHER A. BLOW
KEVIN R. BRADSHAW
DAVID T. CLONTZ
DONNA L. DAVISURGO
DEBRA L. DUNCAN
ROBERT S. FRY
THINH V. HA
RICHARD G. HAGERTY
ERIC R. HALL
RICHARD D. HAYDEN
ROY L. HENDERSON
KURT J. HOUSER
BARBARA R. IDONE
DONNA M. JEFCOAT
STEVEN M. JEFFS
JOHN A. LAMBERTON
MARCUS S. LARKIN
CARLOS I. LEBRON
RONALD R. MARTEL
SHIRLEY A. MAXWELL
EDWARD C. NORTON, JR.
CORAZON D. ROGERS
EDILBERTO M. SALENGA
GEORGE B. SCHOELER
JEOSALINA N. SERBAS
CAMERON L. WAGGONER
LINDA D. YOUBERG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

JEFFREY A. FISCHER
CHRISTOPHER C. FRENCH
ANDREW H. HENDERSON
LAWRENCE D. HILL, JR.
ALBERT S. JANIN IV
ROBERT F. JOHNSON
PAUL C. LEBLANC
MARY E. B. MOSS
KEVIN R. ONEIL
ROBERT J. ONEILL
TRACY V. RIKER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

CATHERINE A. BAYNE
CHERYL W. BLANZOLA
IRIS A. BOEHNKE
JULIA E. BOND
PATRICIA M. BURNS
PAULA Y. CHAMBERLAIN
LAURIE GENTENE
BRADLEY J. HARTGERINK
PENNY M. HEISLER
ALISA K. HODGES
LINDA J. A. HOUDE
ANNA W. HURT
CYNTHIA R. JOYNER
KIM M. LEBEL
CATHERINE M. MACDONALD
JOHN P. MAYE
KERRI S. PEGG
TANYA M. PONDER
KAREN S. PRUETTBAER
LAVENCION V. STARKS
SUSAN A. STEINER
AMY M. TARBAY
MOISE WILLIS
JAMIE H. WISE
MARY A. YONK

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

JOHN D. BRUGHELLI
KENNETH W. EPPS
ANDREW C. ESCRIVA
MARTIN F. FIELDS, JR.
DIONISIO S. GAMBOA
MATTHEW J. GIBBONS
TIMOTHY J. HARRINGTON
RICHARD D. HEINZ
JAMES M. JOHNSON
JAMES M. LOWTHER
PAUL E. MARTIN
KENNETH W. MCKINLEY
JOSEPH D. NOBLE, JR.
JOAN R. OLDMIXON
TIMOTHY L. PHILLIPS
MARK R. PIMPO
ROBERT A. REICHART
TIFFANY A. SCHAD
DAVID A. SHEALY
KEITH E. SYKES
DERRIC T. TURNER
MICHAEL J. WILSON
POLLY S. WOLF

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

BILLY M. APPLETON
BRUCE H. BOYLE
GARY W. CLORE
ALAN M. HANSEN
J P. HEDGES, JR.
MARK R. HENDRICKS
WAYNE A. MACRAE
MICHAEL A. MIKSTAY
CARLOS B. ORTIZ
TIMOTHY L. OVERTURF
BRENT W. SCOTT
STEVEN P. UNGER
MIL A. YI

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

ERIC M. AABY
JOSEPH F. ALLING
KEITH E. AUTRY
MARK K. EDELSON
PATRICK A. GARIN
CHERYL M. HANSEN
JOHN A. KLIEM
CHRISTOPHER M. KURGAN
RODNEY M. MOORE
BRUCE C. NEVEL
GLENN A. SHEPHARD
GEORGE N. SUTHER

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant colonel

DAVID S. PHILLIPS