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Senate

The Senate met at 10 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

PRAYER

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

Let us pray.

O God, we pray many prayers for many reasons, and we thank You for hearing us. Today, we ask You to give our Senators a spirit of wisdom that will save them from all false choices and will provide them with a straight path on which to walk without stumbling. Set a seal upon their lips so that no thoughtless words shall sting or harm another. May they meet today's tasks with courage and kindness, showing that they are Your children. Lord, empower them to see clearly the solutions they couldn't discover without Your help, as You remind them that all things are possible to those who believe in You. Help them to commit to You the challenges and decisions they will face, believing that You will enable them to serve with excellence.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROLAND W. BURRIS 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 22, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BURRIS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, there will be a period of morning business for 1 hour, with Senators permitted to speak for up to 10 minutes each. The Republicans will control the first half, the majority will control the final half-hour.

Following morning business, the Senate will resume consideration of H.R. 2996, the Interior appropriations bill. At 12 o'clock, the Senate will proceed to a vote in relation to the Feinstein amendment. The Senate will then recess from 12:30 to 2:15 p.m. for the weekly caucus luncheons.

The official Senate photograph of the 111th Congress is at 2:15 p.m. today. Senators should be seated at their desks in the Chamber promptly at 2:15.

Several things. No. 1, on the Interior appropriations bill, today is the day for Members to offer amendments. They had Thursday, yesterday, and today, so this is the time they should act because I am not sure what we will do after today, but we are not going to spend more time on this bill. We shouldn't, at least. I hope we don't have to because we have to get to the Defense appropriations bill at the earliest possible date.

As to the photograph, normally what we do is we come in and convene at 2:15 and recess until the photograph is completed, and that is what we will do today, more than likely.

I would also say that, as we speak, the Finance Committee has been involved in a markup of that important piece of legislation for 1 hour now. They started at 9 o'clock. They probably will only make opening statements this morning before the weekly caucus luncheons. After that, the amendment process will start.

There will be a decision made, hopefully within the next several days, as to how we will proceed on this legislation. It is my hope we will have a bill reported out of that committee that will be brought to the floor, and then my responsibility will be to meld that bill with the HELP bill so we can have a piece of legislation on the Senate floor in the near future.

This is an important step in the process. It is a step I am confident will bring results that will be favorable to the country. If we can't work this out—to do something within the committee structure—then we will be forced to do the reconciliation. Of course, that will be a last resort. I know a number of steps we can take before we do that, but a reconciliation bill is there for us. It was put there by the Budget Committee.

If we can't come up with a bipartisan bill with the help of a few Republicans, then we will have to go the route of reconciliation. On reconciliation, under the order, there is only 20 hours of debate. It would be a free amendment process, which would take some time. We have done reconciliation on many different issues in recent years. We have done it on a number of health care issues, including the Medicare legislation. But it remains to be seen as to whether we will have to do reconciliation. I am confident and hopeful we won't have to do that but only time will tell.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

I would also say, we have scheduled the recess for the Columbus Day week. The reason that is done is because if we don't have that break, there would be 11 weeks until Thanksgiving and that is difficult. The Senate has changed over the years. Many Senators' families are in places other than Washington and 11 weeks is difficult not to have a week you can go home. But whether we will be able to keep that whole week depends a lot on when we get to health care legislation. It is obvious that if we are in the middle of health care, we can't take a recess for 1 week. So we will see as time goes on.

We have CBO scoring and that will take a little bit of time and there are always difficulties that arise when you have a major piece of legislation such as this. But the schedule is as we have outlined it. We have given all interested parties the days that there will be no votes, and we do have that week scheduled now for a recess, but when that was done, we did it indicating it may not come to be. It is according to what happens with the schedule.

We have a number of must-do things, and hopefully some of those will be done before the end of the month. We have to make a decision on the highway bill, we have postal reform, and we have a continuing resolution because we won't be able to complete all the appropriations bills prior to the end of the month. So there are a lot of things to do, and we will do our best to get them all done.

RECOGNITION OF THE MINORITY LEADER

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

HEALTH CARE

Mr. MCCONNELL. Mr. President, today, the Senate Finance Committee will start to amend the health care proposal that its chairman, Senator BAUCUS, released last week. Before that work begins, I think it is important to remind Americans what this plan would mean for them.

Put simply, this plan calls for more and more government intrusion into the health care system and pays for it with $350 billion in new taxes and hundreds of billions of dollars in Medicare cuts. So in the name of cutting costs, this plan raises taxes on virtually every American who uses our health care system.

Here are some of the tax increases in this plan: If you have insurance, this plan taxes you in the form of a new tax on insurance companies, which will then be passed on to consumers.

If you don't have insurance, this plan taxes you, too, by saying that the consequence of not maintaining insurance is an excise tax that could run as high as $3,800 a year.

If you use a medical device—such as a hearing aid or an artificial heart—this plan taxes you, and it also includes new taxes on everything from MRIs to contact lenses.

If you need laboratory tests for prevention, screening or diagnosis, this plan taxes them too.

If you are an employer who can't afford to provide health insurance to your employees, this plan taxes you—a tax that businesses across the country have warned could kill more jobs in the middle of a recession.

If you, similar to tens of millions of other Americans, take prescription drugs, this plan taxes you too.

This plan also increases taxes on about 1 in 10 family insurance policies, according to one policy group, and this tax will extend to more and more plans over time.

In short, if you have health insurance or you don't, you are taxed. If you seek preventive care, you are taxed. If you need a medical device, well, that is taxed too. At a time when Americans are demanding lower health care costs, this plan would drive them even higher.

As I said earlier, this plan also contains hundreds of billions of dollars in Medicare cuts, which will hurt America's seniors. It contains $130 billion in cuts to Medicare Advantage, a program that gives 11 million seniors more choices and options when it comes to their health care. One Democratic Senator described these cuts as ''intolerable.''

The President recently said that seniors currently on Medicare Advantage would be able to get coverage that is ''just as good.'' Seniors, however, want to keep the insurance they already have.

This plan contains nearly $120 billion in Medicare cuts for hospitals that care for seniors—cuts that organizations such as the Kentucky Hospital Association have warned against because of the negative effect they would have on services to seniors in Kentucky and in other States.

This plan includes more than $40 billion in cuts to home health agencies that let seniors receive care in their homes rather than having to go into a nursing home. This plan contains $8 billion in cuts to hospice care, a service that provides dignity and comfort to seniors at the end of life.

Everyone agrees that Medicare needs reform but, instead of trying to address the problems at hand, this plan uses Medicare as a piggy bank to pay for new government programs that could very well have the same fiscal problems Medicare does.

Americans want reforms that make care more affordable and keep government out of health care decisions. They do not want a so-called reform that would actually make care more expensive and would put government bureaucrats in charge of health care decisions.

Americans have sent a clear message to lawmakers in Washington over the past months: No more trillion-dollar programs, no more debt, and no more taxes. This plan for health care fails all these tests. That is why it is so important for the Finance Committee to give this proposal serious and careful consideration. I have listed just a few of the things that concern people about this plan. With 564 amendments filed from both Democrats and Republicans, it is clear we need to slow down and take the time necessary to address the serious bipartisan concerns about the plan.

I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the second half.

The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the Senator from New Hampshire and I be permitted to engage in a colloquy.

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

STUDENT LOANS

Mr. ALEXANDER. Mr. President, I don't think we can say it too often—though some people may tire of hearing Republican Senators saying it—we have too much debt and too many Washington takeovers. Today, we want to talk about the latest Washington takeover, the latest huge addition to the national debt, which is the voluntary takeover of the Federal Family Education Loan Program.

Rather than describe the situation myself, let me go to the New York Times article, on September 14, to paint the picture.

> Between financial rescue missions and the economic stimulus program, government spending accounts for a bigger share of the nation's economy—26 percent—than at any time since World War II. The government is financing 9 out of 10 new mortgages in the United States. If you buy a car from General Motors, you are buying from a company that is 60 percent owned by the government. If you take out a car loan or run up your credit card, the chances are good that the government is financing both your debt and that of your bank. And if you buy life insurance from the American International Group, you will be buying from a company that is almost 80 percent federally owned. Mr. Obama plans to argue, [the Obama administration says], that these government intrusions will be temporary.

If that is true, then why is the Obama administration insisting and the Democrats in the Senate and the House are insisting that we take the Federal student loan program which works very well and turn it wholly into a government-run program; borrow a lot more money, maybe $500 billion or $600 billion over the next 5 or 6 years, and turn the Secretary of Education into a competitor for banker of the year instead of educator of the year?

Just the size of this undertaking is enough to stagger the imagination. There are 19 million new student loans every year. They are made through 2,000 lenders at 4,421 schools. At 1,600 schools, one out of four of the student loans, you can get the money directly from the Federal Government. But ever since I was U.S. Secretary of Education in the early 1990s, students have preferred their local institutions. Now the President comes along and says we are going to have a lot of savings, we are going to have $87 billion in savings over the next 10 years, so we should end the student loan program as we know it and turn it all over to the government and have people stand in line at the U.S. Department of Education each year to get 19 million loans.

The Senator from New Hampshire is the former chairman of the Budget Committee, the ranking member of the Budget Committee, perhaps the leading Senator in this body on budgetary matters. I would ask him this question: Is there really $87 billion in savings over the next 10 years which the President and the Democratic majorities should be able to spend?

Mr. GREGG. Let me first congratulate the Senator from Tennessee for bringing this matter to the attention of the Senate because if there were ever a shell game being played on the American people, this is it.

The administration has alleged they are going to save $87 billion. Then they have gone out with great zeal and enthusiasm and spent every cent of it—spent every cent of it. It turns out there is not $87 billion saved. CBO, when it looks at this and does so in a forthright way, using standard accounting procedures which we would use in most instances, determines the savings are closer to $47 billion.

Mr. ALEXANDER. If I may interrupt the Senator for a moment, you mean the Congressional Budget Office, whose Director is appointed by the Democratic majority, has said that instead of $87 billion in savings, it is $47 billion; is that correct?

Mr. GREGG. That is correct. But they are subject to very arcane rules. They came up with the $87 billion using the arcane rules. I asked them to look at this in an honest way, using standard accounting rules, the same rules used by the Congressional Budget Office for other credit events. They concluded that if we use those and were able to use those and were not bound by the arcane score-keeping rules—it is not their fault, they are bound by law to use a different standard here—the real savings is $47 billion. That is what they said. They said that using the proper accounting methods for looking at this, the true savings is $47 billion, which, of course, begs the question of, what are you going to use that for? They are going to spend $87 billion, so actually they are going to run up a deficit on this whole exercise of a lot of money on the taxpayers in the claim that they are saving money.

Mr. ALEXANDER. This $47 billion, just so I follow this, is the actual savings. Let me see if I can understand the figures a little better. The government's basic argument here is it can borrow money cheaper than banks can borrow money and then re-lend it to students, which is true. I think the government can borrow money at one-quarter of 1 percent. But the government is lending the money to students at about 6.8 percent depending on the loan. So even if it is $87 billion or $47 billion over 10 years, doesn't that mean the government is overcharging students who are getting student loans and then using that money for new programs?

Mr. GREGG. The Senator is going to the essence of what really drove this decision. This is not a decision about saving money, this is a decision about spending money. That may seem counterintuitive, but what you have to understand is that if the administration could get a score from CBO that says they are going to save $87 billion or they are going to save $47 billion, then they get to spend that money. So no money is being saved—none. The money is being spent on different programs.

What should have happened here, if they were going to have integrity about their proposals, is exactly what the Senator from Tennessee is basically suggesting, which is the whole $87 billion should have been saved. It should not have been spent, it should have been saved and added to reduce the debt.

There is no reason the government should be making $47 billion off our students any more than they should be making $87 billion off our students, if they are going to go solely to a Federal direct loan program.

Mr. ALEXANDER. These 19 million loans every year, we know who these people are. They are our sons and daughters. They are people in our families. Sometimes they have two jobs while they try to go to school. Maybe they have no job; they have gotten laid off and they are going back to school. They can get a student loan. But the government has borrowed the money at one-quarter of 1 percent and loaned it to them at nearly 7 percent and is taking that profit, whatever the amount is, and spending it on something else.

Mr. GREGG. The Senator from Tennessee is absolutely right. It truly is a cynical act because basically they are claiming savings when they are actually creating a capacity to spend more money, which they spend. This is Washington-speak at its worst. It reflects the attitude, really, of this administration, which is that they are not interested in controlling spending or reducing the debt. When they find $87 billion, which they claim they have—they actually only have $47 billion—they want to spend it as soon as they can, and they have. This spending has already occurred even though the program has not been put in place to save this money. They have already outlined how they are going to put this money out the door, not using it to reduce the debt.

But the Senator from Tennessee is right on a second point too. It should have been zero. In other words, there is no reason, if you are going to take this course of action and you are going to maintain intellectual integrity, that there should be any money being spent here. The full $47 billion should flow to the benefit of the students.

Mr. ALEXANDER. I am not ready to say there is $47 billion of savings. That assumes the U.S. Department of Education, which makes about a fourth of the current student loans in the country—which is 3 million loans a year, and it spends about $700 million a year on that—can make 18 or 19 million student loans a year from the same amount of administrative costs. That doesn't sound likely to me. If that is true, then even the $47 billion is a wrong number.

Mr. GREGG. No one is more expert in this area than the Senator from Tennessee, having served as one of the leading Governors on the issue of education when he was Governor of Tennessee and then going on to be the Secretary of Education. He understands how the Department of Education works. I certainly subscribe to his view. It does not smell right. Clearly, if they are going to increase their activities by this size, they are going to have a massive increase in cost.

Another question on which I would be interested in the thoughts of the Senator from Tennessee is, what happens to the students? I know some people get a little frustrated just trying to get their driver's licenses renewed in this country. Can you imagine having to go find the Department of Education and getting a student loan from that Department? I would be interested to get the Senator's thoughts on what kind of nightmare that is going to be for our students.

Mr. ALEXANDER. That is a pretty big nightmare. The Senator and I both worked on ways of simplifying the Free Application for Federal Student Aid or FAFSA. There are millions of individuals and families this year in America who have to get this government form, fill it out, and tell all about themselves in order to get a Pell grant or apply for a student loan, one way or the other. That is very complicated. I have been trying to imagine how the U.S. Department of Education, one of the smallest departments in the country, which has

in its higher education part of its division simply a mechanism for sending money out—Pell grants, paying bills—how it is going to make 19 million new loans a year.

In my State of Tennessee, the nonprofit provider of student loans, one of the 2,000 lenders that exist in the country to serve students in New Hampshire or everywhere—these are some of the things they do. They have five regional outreach counselors to canvass Tennessee to provide college and career planning; they made 443 presentations through college fairs; they worked 12,000 students to improve their understanding of college admissions and financial aid; they provided training to over 1,000 school counselors so they could work with students; they sent out 1.5 million financial aid brochures for Tennessee students. I cannot imagine the Department of Education having the capacity to do that.

I think the Senator is right. I think we are going to see long lines of very upset students, starting in January—because that is when they start filling out those forms—saying: What has happened here? I have to line up at the U.S. Department of Education to get my student loan, 19 million of us?

Mr. GREGG. I think the Senator from Tennessee has hit one of the core issues here, independent of the fact that this is just a scam to create more room to spend more money to spend on other programs, and it is scamming the students by hitting them with $47 billion of interest payments which they should not have to pay if this is followed. But the Senator has raised another valuable question here, which is obviously students were reasonably comfortable with the system the way it worked because 75 percent of the students had opted to pursue the private sector loan process. Granted it was a little more expensive for them—not dramatically by student; obviously cumulatively it was, but not dramatically by student. But I think they took that option because it was so much more convenient.

In our society, which is reasonably capitalistic—but becoming less so under this administration; obviously we are moving down the road toward a Socialist state—but independent of that, people often pay a little more for the convenience of it, for the convenience of having an efficiently delivered loan, for the convenience of knowing whom to talk to when you have a problem, for the convenience of basically being able to go get answers quickly to your questions. Essentially, that is what these higher education authorities created in every State. Tennessee has one. New Hampshire has one. They are really good people. They are, for the most part, except for their executive director, volunteers. Their purpose is to make sure students have very prompt access to student loans which are significant enough for them to pay for their education and that it is also done in a way that is convenient so they do not have to end up just getting lost in a massive bureaucracy. I suspect every congressional office is going to have to become a massive clearinghouse for student loan problems. We don't have that now. We have problems with a lot of programs and agencies, but student loans is not one of them.

It really is a big issue of the marketplace having voted with their feet, so to say. The students in this country voted to use the guaranteed loan system, pay a little bit more for the purposes of the convenience they were being given by having that sort of easy access and substantive information right at hand, versus going to the government and getting overwhelmed by a government bureaucracy which is often indifferent to consumer issues and is difficult to deal with.

Mr. ALEXANDER. I appreciate the comments of the Senator.

In President Obama's address to us on health care the other day, he said:

> My guiding principle is and always has been, the consumers do better when there is choice and competition. That is how the market works.

I guess he means except when we are talking about student loans.

Twenty years ago, we set up a system to give people a choice, and, as you said, they voted with their feet. This past year, 14 million students made a choice to be under the regular student loan program. They are at 4,000 campuses, went to 2,000 lenders, they got a lot of extra services, I assume, or they could have come to the Department of Education, which about 4.5 million students chose to do. The Senator has made it clear that the excuse for doing—but, well, let me say this.

I guess the Senator has heard many times the President and people on the other side of the aisle say: Well, we inherited this problem. The reason we own General Motors, or 60 percent of it, is because we inherited it from President Bush. Or: The reason we are dealing with the American International Group Insurance Company is because we inherited that problem. Or: The reason we had to take over the banks is we inherited that problem.

Well, this is a completely voluntary Washington takeover, if I am not mistaken.

Mr. GREGG. The Senator is once again correct. There is a macro issue of economics here. Although it is tangential to the Senator's primary concern, which is the very legitimate concern of: Why are we taking all of this money from students if we are going to do this type of program? And why are we spending all of this money even before we take it in? And why are we putting students through having to stand in line like at the DMV to get a loan?

There is a macro issue here, which is for the government to take over all of this debt means we are going to add $500 billion to $600 billion to the government ledger. We are now nowhere near that in the student loan area because we are not primarily responsible for the debt.

As a result, you are going to have some significant crowding out. It could easily aggravate our ability to borrow money for the purposes of financing these massive deficits the President wants to run, the trillion-dollar deficits every year for the next 10 years that are in the budget.

I do not think it will be a massive issue, but it will be a significant issue. It could affect the rate of interest which we have to pay as a government. It could affect other nations looking at us and saying: Do we have too much debt on our books?

Most of this debt will go into a revolving fund, and hopefully it will be repaid, as it is traditionally. But the initial debt will still have to be put on the books at some point.

Mr. ALEXANDER. Well, I thank the Senator. I think what we have seen is getting to be too familiar around here, an action by the administration, another Washington takeover, more debt, to the tune of $500 billion or $600 billion, more debt. You said on the $87 billion or $47 billion spending of money we do not really have.

Mr. GREGG. Well, the $87 billion is what has been spent. That is what they are going to spend.

Mr. ALEXANDER. They are going to spend the $87 billion. As you have eloquently said: There is no $87 billion. That adds to the debt.

Then there is the problem of 19 million students lining up at the Department of Education to get their student loans starting in January. Perhaps we need a piece of truth-in-lending legislation that would go on every student loan application that says: Congratulations. Your government is making you a student loan. We borrowed it at one-quarter of 1 percent, and we are going to loan it to you at 6.8 percent, and we are going to spend twice that much on new programs that we thought of while we take over the entire student loan program.

Mr. GREGG. I would say the Senator from Tennessee has hit on a very appropriate disclosure issue that should be on every one of those loans.

Mr. ALEXANDER. Unless the Senator from New Hampshire has further comments, I yield the floor.

Mr. GREGG. I appreciate the courtesy of the Senator from Tennessee.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. How much time is remaining?

The ACTING PRESIDENT pro tempore. There is 9½ minutes.

Mr. ALEXANDER. Please let me know when 1 minute remains.

NUCLEAR POWER

Mr. ALEXANDER. Mr. President, today President Obama told the countries of the world thatthe United States is ready to lead on climate change. But while he is reassuring world leaders, he has a lot of work to do with us in the Senate.

Only yesterday in The Wall Street Journal, John Bruton, the European Ambassador to the United States, chided the Senate, saying:

Is the US. Senate really expecting all the other countries to make a serious effort on climate change at the Copenhagen Conference in the absence of a clear commitment from the United States? Asking an international Conference to sit around looking out the window for months, while one chamber of the legislature of one country deals with its otherbusiness, is simply not a realistic political position.

Now I understand the Ambassador's frustration, but I hope he understands that the Senate has work to do other than deal with climate change and energy. Reforming health care involving one-sixth of our Nation's economy is not somethingthe Senate is going to do in a hurry.

On the matter of climate change, however, he is asking a legitimate question. An even better question might be this: ''How can the United States lecture other countries about climate change when we won't take advantage of the one technology that shows the most promise of dealing with it?'' I am talking, of course, about nuclear power, which produces 19 percent of all our electricity but 70 percent of our carbon-free electricity.

Coal-fired powerplants produce 36 percent of the carbon dioxide; the principal greenhouse gas that most scientists believe contributes to global warming. Of the top five countries that produce carbon, indeed that produce most of the carbon in the world, four, China, Russia, India and Japan, are committed to a bold program of expansion of nuclear power.

Only the United States is not. We are the country that invented nuclear power, and we have not started a new nuclear plant in 30 years even though the 104 reactors we built during the 1970s which produce 19 percent of all our electricity, and produce 70 percent of our carbon-free electricity.

So, if climate change is the inconvenient problem, as my fellow Tennessean Al Gore says, the other large carbon-emitting nations are posing a legitimate and truly inconvenient question: If we, they may say, are building dozens of carbon-free nuclear powerplants in an effort to deal with climate change, why are you lecturing us when you have not started a new plant in 30 years and yourPresident and everyone in his administration seems to become tongue-tied or get a stomach ache whenever someone mentions the idea of nuclear power.

Everyone, that is, except the one member of the administration who knows the most about nuclear power, Dr.Steven Chu, the Nobel Prize winning scientist who heads the Energy Department. We have heard many say that the Bushadministration did a poor job of listening to scientists. Well, then, perhaps it is fair for me to suggest that the Obamaadministration, including the President, might do more listening to their chief scientist, Dr. Chu.

In testimony before Congress, Dr. Chu has flatly said that nuclear powerplants are safe.

He has said that the used nuclear fuel from those plants,the nuclear waste, can be safely stored on site for 40–60 years while scientists engage in a mini-Manhattan Project like the one we had in World War II to find the best possible way to recycleused nuclear fuel. Most likely that will mean that the waste's massis reduced by 97 percent and it will only be radioactive for 300 years instead of 1 million, or that it will be continuously used over and over again so there is none of the plutonium that might be used to make bombs.

In an interview on National Public Radio the other day, Dr.Chu said that he would rather live down the river from a nuclear plant than other forms of producing energy. ''There's less pollution we know about that's very dangerous. The nuclear power plants' record in the United States is really very, very good,'' he said.

Our whole fleet of 104 reactors is up and running 90 percent of the time, which shows we know how to operate nuclear powerplants better and more safely than any other country. Even France does not run its reactors as well and they have got plenty of experience, they get 80 percent of their electricity from nuclear power.

But if we have learned to run reactors in this country, we stillcannot bring ourselves to build any new ones. We have been stuck at about 100 reactors for 20 years now. We built those 100 reactors from 1970 to 1990 at a time when we had never built any before yet now that we have got all that under our belt we cannot seem to get started on the new generation.

But while we have not been able to start a new plant in 30 years, the rest of the world is taking the technology we invented and using it to create cheap, reliable, carbon-free electricity from nuclear plants. There are 44 reactors under construction right this minute, most of them in Asia. Asia? Yes, without most Americans realizing it, the center of gravity of nuclear innovation has moved to the Far East. China has four reactors under construction and has announced plans for 130 more. Russia intends to build two reactors a year in order to replace the 30 percent of their electricity they get from natural gas so they can sell the gas to Europe at six times the price they get at home. Japan already gets 36 percent of its electricity from nuclear, almost twice what we get, and is building two more reactors. South Korea gets nearly 40 percent of its electricity from nuclear and is planning eight more reactors by 2015. They have even got their own design now, a 1400-megawatt next generation reactor that evolved out of something they borrowed from us. India is developing thorium reactors instead of uranium and has a design for a mini-reactor that they are going to market to developed countries.

Just look down the list of the ten top carbon-emitting countries as listed in yesterday's Wall Street Journal. I have already mentioned that of the top five, China, the U.S., Russia, India and Japan, we are the only one that does not have an active nuclear construction program. Of the next four, Germany, Canada, the U.K., and South Korea, only Germany claims they do not want nuclear, but they are buying significant amounts of nuclear electricity from France.

Then there is the number 10 carbon emitter, Iran. Now that is an interesting case. A few months ago, President Obama said it was OK for Iran to develop a civilian nuclear power program, he did not have any problem with that. But if it is alright for Iran to have a nuclear power program, why cannot we do the same thing over here?

Leading on climate change does not require passing a complicated cap-and-trade regime with renewable energy mandates that will impose a huge new tax on energy, stifle economic growth, and leave us with intermittent and unreliable alternative energy sources such as wind and solar. That is the wrong direction.

It is time to lead by example and not just words. It is time to embrace the one technology that truly has the possibility of powering a prosperous planet without ruining the environment or covering our treasured landscapes with energy sprawl. It is time to build 100 new nuclear plants in the next 20 years.

And the bonus is we will get plenty of so-called green jobs out of it, twice as many as building the 186,000 wind turbines that it would take to create an amount of electricity equal to 100 new nuclear plants. Building 100 new reactors is going to mean rebuilding a forgotten American infrastructure. We are going to have to build steel forges that can turn out these 600-ton reactor vessels, which is something we cannot do in this country right now. The Japanese and the Chinese and the Russians are all working on it, but we are not. We are going to need scientists, we are going to need construction workers, and we are going to need a whole new generation of nuclear engineers and technicians to replace the last generation that is getting ready to retire.

I ask unanimous consent for 1 additional minute.

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

But the prize we are going to get for it is stable, reliable, low-cost, as well as carbon-free electricity, that will once again allow us to manufacture things in this country again instead of shipping all those jobs overseas looking for cheap energy. We can put America back to work building a whole new infrastructure based on the greatest scientific discovery of the 20th century.

Then when our President visits the United Nations or Copenhagen, he might be able to lead on climate change and he might not receive so

many lectures from other countries that are busy building nuclear powerplants because they understand that if climate change is the inconvenient problem, nuclear power is the inconvenient but best and most environmentally beneficial solution.

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

Mr. CARDIN. I ask unanimous consent that I be permitted to speak for up to 10 minutes, followed by Senator DURBIN.

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

WATER INFRASTRUCTURE

Mr. CARDIN. I am happy that when morning business comes to an end we will resume consideration of the fiscal year 2010 Interior Appropriations bill.

I have come to the floor today to support the significant increase in funding for water infrastructure included in that legislation. We in Maryland have witnessed one more dramatic reminder that the water infrastructure of this country is in dire straits and in desperate need of new attention and greater investment.

This past Friday afternoon, water surged for hours from a broken 6-foot-wide water main in Dundalk, MD. The raging water covered streets, pouring water into basements of many homes in Baltimore County, causing significant property damage. The raging water washed out main roads in the area causing significant damage to the infrastructure of the community. Here we see the road being washed out by the water that flowed through this community.

This past Friday I was in Dundalk for the groundbreaking of a new housing development. This is a proud, historic community in Baltimore County. It was devastating, the damage that was done to this community as a result of infrastructure that failed. I would like to say this is an isolated episode but, unfortunately, this is not the first time in the past year we have witnessed instances such as this. Last December, a water main broke sending a 4-foot wall of water down a busy commuter road in Bethesda, MD, just outside of Washington. Here we see the headlines from the paper. Rescue workers were trying to rescue stranded drivers. This was River Road that turned into a river as a result of another water main break in Maryland. The water flowed with such force that Maryland State emergency workers had to rescue some drivers by boat and even by helicopter. Here we see a dramatic rescue. Fortunately, no one was injured, but we could have seen the loss of life.

We need to deal with infrastructure, the pipes of our Nation. While these incidents were perhaps some of the most dramatic, there have been hundreds of water main breaks, large and small, across Maryland over the last year alone, and we are likely to see more instances such as this in the future. According to the EPA's 2004 clean watershed needs survey, Maryland has nearly $6 billion in wastewater infrastructure needs alone. But Maryland is not unique in facing a crisis when it comes to water infrastructure. These episodes have been repeated throughout the Nation. Our water infrastructure is reaching a tipping point in many places, having long outlived its 50-year lifespan. The American Society of Civil Engineers rated both wastewater and drinking water systems a D minus, the lowest rating of any infrastructure category.

These problems are compounded by a growing population and more frequent cycles of floods and droughts affecting communities. The Environmental Protection Agency estimates an additional $6 billion per year will be needed to meet the Nation's wastewater infrastructure needs, and $5 billion will be needed for drinking water needs.

This is a matter of protecting the safety of people. This is an issue of preventing property damage. Many don't have insurance to cover it because they didn't think they lived in a flood-prone area. They didn't expect a water main to cause a flood in their homes. We need it to save water. We are wasting a lot of water. We need it to save energy because we transport water in an inefficient energy way.

The Interior appropriations bill, which we will be considering today, makes a significant investment in our Nation's water infrastructure. It contains $2.1 billion for improvements to wastewater infrastructure through the Clean Water State Revolving Fund. This amounts to $1.4 billion more than Congress appropriated in the last fiscal year. The bill also contains almost $1.4 billion for the Drinking Water State Revolving Fund. This is almost $600 million more than Congress appropriated last year. These funding levels come on top of $6 billion for water infrastructure that is going to States as part of the American Recovery and Reinvestment Act. Much of this new commitment is thanks to a new administration that has recognized the infrastructure crisis and is doing something about it. That commitment is echoed by my colleagues, Senators Feinstein and Alexander, who have included investments in the bill we are considering today. I thank them for their commitment, but new investment alone is not enough. That is why I have introduced, along with Senators Boxer, Inhofe, and Crapo, S. 1005, the Water Infrastructure Financing Act of 2009. This is a bipartisan effort, as it should be, to improve America's infrastructure.

The Water Infrastructure Financing Act of 2009 truly represents a watershed moment in the legislative history of the Clean Water Act and the Safe Drinking Water Act. First and foremost, the bill makes it possible for us to continue considerable investment in the Nation's aging infrastructure by significantly increasing authorizations for clean water and drinking water. The bill provides $20 billion for the Clean Water State Revolving Fund and nearly $15 billion for the Drinking Water State Revolving Fund over the next 5 years.

The bill goes further to develop new tools to address some of our pressing and growing water infrastructure needs. It allows new and important types of projects to qualify for funding, including efforts to secure wastewater and drinking water facilities and green infrastructure that is often more effective and less expensive than traditional infrastructure. The bill provides additional flexibility in the Clean Water State Revolving Fund to help poor communities by providing loan forgiveness and improving financing, an ability that is especially important as budget cuts make critical infrastructure investment beyond the reach of many communities.

The legislation creates nearly $2 billion in grant programs to make infrastructure upgrades that will reduce the number of combined and sanitary sewer overflows. These overflows are estimated to contribute 850 billion gallons of untreated sewage and storm water to the Nation's waterways every year. There is a new $60-million-per-year nationwide grant program to provide funding to States and municipalities to reduce lead in drinking water to protect our children. The bill also contains a new $50 billion nationwide grant program to address water quality issues associated with agriculture. The bill gives new incentives for water utilities to plan for the future so we don't face another crisis of failing infrastructure 20, 50, or 75 years down the road.

This legislation has the support of broad constituencies: utility construction contractors, engineers and manufacturers, labor organizations, environmental groups, the clean water agencies, regulators, academics, and local government.

The bill was reported out of the Environment and Public Works Committee by a voice vote, a strong bipartisan vote. Americans have the right to clean water flowing through their streams, rivers, and bays. We have the right to drinking water that is healthy.

While I proudly support H.R. 2996, the Department of Interior Appropriations Act of 2010, I hope the full Senate will have the opportunity to vote on the Water Infrastructure Financing Act of 2009 this year. If so, we will be keeping faith with the American people by providing the tools necessary to meet their basic human health and environmental needs. We will help provide water systems that can keep water running through the pipes rather than down the streets, as we saw in Dundalk this past weekend.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I commend the Senator from Maryland. The

issue he has spoken of is one we can address in every single State where aging infrastructure is taking its toll in terms of the public services each family and business expects. It is something we can use to our advantage by channeling the resources of this country into building and rebuilding infrastructure and creating much needed jobs.

I thank the Senator from Maryland. I am more than happy to support his efforts.

HEALTH CARE REFORM

Mr. DURBIN. Mr. President, I come to the floor to speak about an issue that looms over the Senate and the Capitol like no other. In the ebb and flow of the history of the Senate, many issues come and go, but few come before us with the importance of the issue of health care reform.

Earlier this month, the U.S. Census Bureau released data on the income, poverty, and health coverage of Americans. The number of Americans living without health insurance is staggering: 46.3 million people were uninsured last year. The issue of the uninsured is not a question of us versus them. The uninsured are everywhere in America. Most of the people without health insurance today are working or are in a family with someone who works.

Who are these people? They are not the poorest in America; we care for the poorest. We provide them health insurance known as Medicaid. They are not the fortunate ones such as myself or many others who have health insurance. They are folks who get up and go to work every day without the peace of mind of knowing that they have health insurance protection for themselves and their families. These are the people who made your bed and cleaned your hotel room this morning, the ones who fixed your breakfast and cleared the dishes off the table in the restaurant. They are watching your children and your grandchildren even as you go to work. They are taking care of your mom in an assisted living center and changing her bed linens. They include the realtor who helped you find your new home or sell the home. They include many veterans who served our country with pride and now find themselves in an unfortunate circumstance. In fact, 8 in 10 of the nonelderly uninsured live in families where the head of the family goes to work every single day. Not everyone who works for a large employer is lucky enough to have health coverage. Twenty-two percent of people in America working for firms with 500 or more employees are uninsured.

Here is another important part to understand. Many people without health insurance are not among the poorest. One-third of the families without health insurance are making more than $44,000 a year. Despite making a moderate income, these individuals either work for an employer who doesn't offer health coverage or they can't find coverage they can afford. For the average U.S. family who has coverage, the worker and employer together paid an extra $1,017 last year in health care premiums to compensate for the uninsured.

When the uninsured people reach a stage in life where they desperately need health care, they go to an emergency room. Hospitals don't turn them away; they treat them. Their expenses are not paid for. They are passed along to those with health insurance. It means those of us who pay health insurance premiums pay about $90 a month more to cover uncompensated care for the uninsured. That is a reality.

The lack of insurance is not only about dollars though; it is also about lives. A study released last week by the American Journal of Public Health revealed that nearly 45,000 annual deaths in America are associated with lack of health insurance. In other words, the myth that people without insurance ultimately get the same care as everyone else is not true. The uninsured in America are more likely to die. I will give two examples. Things are getting worse for these families. This figure linking ''uninsurance'' or lack of insurance with premature death is 2.5 times higher than an estimate from the Institute of Medicine for just 5 years ago. Deaths associated with lack of health insurance now exceed those caused by many common killers. The increase in the number of uninsured and our Nation's eroding medical safety net for the disadvantaged help explain the substantial increase we have seen in the number of deaths associated with the lack of health insurance. The simple fact is that the uninsured are more likely to go without needed care, and that lack of health care coverage takes its toll.

Is this what America has come to? We have too many people who are unable to get health care when they need it. My constituents know the story well. Let me cite a story about a woman from Chicago. To protect her identity, I will call her Monica. Monica came to the State of Illinois after Hurricane Katrina destroyed her home and took her sister's life. Today she has a small tatoo of her sister's name on her arm with a hurricane over it. She came to Chicago, lived in FEMA-funded emergency housing but became homeless when the FEMA funds ran out. She stayed in overnight emergency shelters for 2 years. She found herself in desperate need of help. But when she thought things couldn't get worse, she was stabbed outside one of these overnight shelters and admitted to Sinai Hospital in Chicago. Sinai is one of the great hospitals that serves some of the poorest people in that great city. I commend all of the people who keep that hospital's doors open and work to keep quality services available for even the poorest in the city.

As it turned out, that stabbing saved her life. In the hospital, the medical team discovered she had hypertension and hepatitis C. The social worker enrolled Monica in a local program for the homeless and uninsured with chronic medical conditions. With help from this program and the hospital's social worker, she learned where to go for medical care and how to find help to rebuild her life. That was last summer. Today Monica has her own apartment and is managing her health. She is one of thousands of people who walk around with life-threatening chronic conditions such as hypertension and hepatitis C, conditions that go undiagnosed and untreated because these people can't seek care without health insurance.

She is trying. Monica is doing her best. She wants to be self-sufficient. She wants to be a contributing member of society, a giver not a taker. But she still lives in fear of being one accident, one illness, one diagnosis away from losing everything she has been able to accumulate in her life.

That is the fear people face when they don't have insurance. Let me tell you of another fear. It is a fear that many families face every day, and Verta Wells' children know this fear.

Verta is a constituent of mine from the downstate area—right near my home in Springfield. She and her sister were adopted by loving parents, and she has grown up in the town I call home since she was 5 years old. Verta is a veteran of the U.S. Army. She raised two sons in Springfield and had a steady job. Health insurance was not a problem, and she was working.

As the parent of two boys, Verta's medical care was covered by Illinois Children's Health Insurance Program. It covers just not the kids but also a single mom such as Verta. She was a young and healthy mother. She worked at the local Steak n' Shake, which in my part of the world is the local restaurant to go for a hamburger and a milkshake. It is a great restaurant. It is clean and the help is always very good.

Working at that restaurant, she enrolled in school part time to become a medical assistant. She wanted to do better in her life. Without a pressing illness, she took the insurance card for granted because she did not need it. As time went on, though, she learned how valuable that insurance card could be.

One night, Verta, doing a self-examination, found a lump in her breast. Her youngest son was then 17 years old, which meant Verta had 1 more year of health insurance under the Children's Health Insurance Program. Thankfully, she was able to go to a doctor for a mammogram. Three days later, the doctors told her the sad news that the lump was malignant.

The All Kids Program—the version of CHIP in our State of Illinois—paid for her treatment, and Verta was happy to come out the other side as a healthy breast cancer survivor. Her son graduated from high school and life looked good. Unfortunately, this is not where the story ended.

For some time after her initial surgery for breast cancer, Verta experienced a pain in her chest. There was just one difference. With her kids now grown and over the age of 18, Verta did not have any health insurance anymore.

The pain grew worse. Verta knew she had lost her insurance, but she was aware of a program called the Breast and Cervical Cancer Early Detection Program—a program that provides free care to uninsured women in our community.

She enrolled in the program and went in for a mammogram. Despite the pain, the doctor did not find anything. Given her history, the doctor recommended, though, that she go see an oncologist at that point just in case, just to be absolutely sure.

Verta might have gone, but it worried her that the visit was not covered by any health insurance. She was worried about the bills that were starting to pile up. After all, that earlier mammogram was clean, and the program covers women with breast cancer, so she felt somewhat confident she did not have to go any further.

She loved working with her oncologist. The last thing she wanted to do was stick him with an unpaid bill. And she knew she could not pay a large medical bill on her waitress's salary. So she went on as if everything was OK.

But several months later, she felt another lump in her chest. Still thinking her mammogram was fine, still worried about medical care she could not pay for, Verta did not check in with her specialist, her oncologist—until one day when she felt so dizzy she was forced to go to the emergency room. They diagnosed Verta with metastatic cancer. That was just a few months ago. Today, Verta is no longer with us.

Is this what we have come to in America—a hard-working young mother without access to health insurance, afraid to go to the doctor, delaying care, and dying too soon? That is the reality.

So when we talk about health care reform, we talk about several needs here. Earlier on the floor, the Republican leader came and talked about the fact that we are talking about changes—basic changes—in the system, he said, that involved taxes, and certainly we have to be honest about the cost of any reform. But, unfortunately, most on the other side of the aisle have not joined us in this debate. They are not sitting down with us and trying to work out a bipartisan bill. And, sadly, very few, if any, of them have any alternative to the current health care system in this country.

Even if you are happy with your insurance today, most people have this lingering doubt about whether it will be there when they need it. Will that health insurance company turn you down when you absolutely need to have them pay for a serious surgery or important medical work? Are they going to fight you over how much money they will pay? Will they go through your application for insurance and say: Oh, you didn't disclose a preexisting condition and, therefore, we are not going to cover you? That happens way too often. As it happens, more and more people end up in debt—sometimes crippling debt.

In the last few years, the number of individuals and families in America filing for personal bankruptcy because of medical bills has doubled. It went from 31 percent to 62 percent in just a few years. Of the 62 percent who filed for bankruptcy because they could not pay their medical bills, 78 percent of them had health insurance. It turned out to be health insurance that did not mean much. It was not worth much when they needed it.

That is the reality today. It turns out that many people who go to bed at night rest easy believing they have health insurance but find—because of that accident or that diagnosis—they are in a pitched battle with the health insurance companies, which they often lose. Losing it destroys their life savings and everything they have ever worked for.

That kind of uncertainty, that kind of insecurity is why we are in the midst of this important debate. It is why we should have both sides of the aisle looking for practical, commonsense solutions, focused on keeping people healthy and well in America, and giving them security and stability when it comes to their health insurance. But, instead, there is not enough conversation and dialogue in the Senate. Unfortunately, at many town meetings across America, there was much more shoving and shouting than there was real conversation about how to solve this challenge that faces America.

There are several things we need to do. We need to end insurance company discrimination. Insurance companies must be stopped from denying coverage to Americans with preexisting conditions, such as heart disease, cancer or diabetes. No longer should they be free to raise premiums or drop coverage when it turns out you are sick and need your health insurance.

We also need to lower health care costs and reduce the Federal deficit because if we do not tackle health care, believe me, the cost of Medicaid and Medicare and the overall cost to governments at every level will continue to escalate, and those who are genuinely concerned about the debt facing our country have to acknowledge this could drive America's debt out of control, unless we do something about the cost of health care.

The Congressional Budget Office estimates that one of the bills, being considered today in the Finance Committee, will lower premium costs for Americans purchasing coverage in the individual and small group markets. They say the bill effectively slows the growth of Federal health care spending over the long term and could save us up to $49 billion over the next 10 years.

We need to also improve our focus on wellness and prevention. We need to work to change the focus of our health care from sickness to wellness, how we can avoid medical costs, keep people healthy, give them the independence of living at home with the peace of mind to know they are in good hands with a good doctor and good hospital, if they need it, but they are doing important things, making personal decisions to improve their own health. We do this in most of the bills before Congress, focusing on preventive care and wellness.

We need to ensure quality health care coverage for millions of Americans who go without every single day. This is not just a matter of economics; it is a matter of justice. To think that we live in this great and prosperous nation—even struggling with this recession—that we turn and find 46 million Americans without health insurance coverage has to be unacceptable. I know what I am about to say some will disagree with, but I think peace of mind and health care coverage should be a right in America, not a privilege for those lucky enough to work in the right place or have enough money.

We also need to cut down on fraud, waste, and abuse. There is a program called Medicare Advantage. The private health insurance companies came to us several years ago and said: Government, you are not running this government program well. Let us offer Medicare benefits, and we are going to show you something. We could offer more coverage, better care, at a lower cost than the government.

So Congress said: Be our guest. Today, the Medicare Advantage Program, which is supposed to be the private health insurance answer to Medicare, costs 14 percent more than the Medicare Program. We are paying a subsidy to private health insurance companies that set out to prove they could do it more cheaply than Medicare, when, in fact, they are charging us more.

Should we continue to subsidize these private health insurance companies to give them more profit or should we go back to the basic model, Medicare, that provides more cost-efficient care for most Americans who have reached the age of 65 and face disability? There are other examples of fraud and abuse, too, in this system. We can clean it up, and with those savings we can start to do more to help America.

We need to improve choice and competition. The five largest health insurance carriers in America have 82 percent of the business. In some communities, you do not have a choice. There is one dominant or two dominant health insurance companies, and if you do not like the way they do business, you do not have any choice. That is what it comes down to. Those of us in the Federal Employees Health Benefit Program—Members of Congress and 8

million Federal employees and their families—have real choice: open enrollment every year to choose from private insurance companies, to pick the one right for our family and right for our pocketbook. That is what every American should have. That is not a luxury or something over the rainbow.

For 8 million of us, Federal employees and Members of Congress, it is a reality. Why can't we offer that to every American, to say: You can keep the insurance you have if you want to. But if you want to look and shop, you should have some choices—some real choices—because of real competition. So we need reform that creates a competitive and transparent market that allows consumers to compare plans and choose what is best for them.

Finally, we need to modernize our health care system, to bring computers and the electronics of our modern age into hospitals and doctors' offices, so they have a complete record on each patient, so they understand if there is something in your background that should be noted and taken into consideration before they make a diagnosis and order a prescription or a test, to make certain in a hospital you are not given drugs you are allergic to that could take your life, to avoid medical accidents and death that is associated with them.

All these move us in a more efficient situation, a more competitive situation, and one which will bring better care to America and improve patient safety.

Let me conclude by saying health care is too often a luxury. In Cook County, we struggle to provide patients with timely access to care. In the area around Chicago, at the local public hospital, the waiting time for some specialty services can range from 6 months to 1 or 2 years right now—too long to wait for critical services.

Those who criticize this health care reform debate and say it is going to lead to lines and waiting and rationing are not accepting the reality of the current system. There are many waits that are unnecessary and some of them dangerous today. The stories I gave earlier about Monica and Verta demonstrate the need to reform our system. But there are millions more like them.

Too many individuals and families bypass health care because they cannot afford it. The high cost of health care and the lack of insurance for millions of people are more than a financial problem, they are life threatening.

Today, about 11,000 Americans will lose their health insurance. Can you imagine at the end of the day coming home and facing your children or your family saying: I have bad news. Because I lost my job or because my employer no longer can provide it or because we cannot afford it, we don't have health insurance anymore. Keep your fingers crossed, folks, because this family is now living on the edge, just one accident or one diagnosis away from facing the grim reality of the cost of health care.

Every day in America, families are forced to choose a different doctor when their health care plan is changed because their employer cannot afford to provide health insurance. Every day in America, families see their health plan benefits erode because they cannot keep up with higher premiums, copays, and deductibles. Every day in America, people decide to skip a doctor's visit, medication, and treatment because they cannot afford it.

Families are confronted with losing their health insurance altogether because their employers cannot afford it, and year after year health care costs keep going up and up and up. Are we going to stand by and watch this happen? Are the people who have been elected to this Senate and the House of Representatives going to accept their responsibility to those who sent us here to tackle one of the toughest, most complicated, most controversial issues of our time but one we cannot afford to ignore?

I hope my friends on the other side of the aisle will join us in that effort. It is time to tell our constituents across America: It does not matter where you live, what you do or how much money you make, in the United States of America every American should have the opportunity to access health care they can afford, to give them the peace of mind they deserve.

I yield the floor.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator from Illinois.

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

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

Mr. BURRIS. Madam President, I thank the Senator from California for the time yielded to me.

In the halls of power and in living rooms across America, on cable news and around the dinner table, everyone seems to be talking about health care reform. From coast to coast—and on both sides of the aisle—there seems to be broad consensus. The American people and their elected leaders see the clear need for reform. But we often disagree about how to meet such a challenge.

As we consider health care reform, and as we try to seek consensus, I believe we can find common ground on the need to address disparities in the health care system. I say we need to address the disparities in the health care system.

In a country founded on the principles of freedom and equality, we currently possess a health care system that is anything but free and equal. This is simply not right. We need to ensure that quality, affordable health care is available to all Americans. We need to cut down on the widening disparity between minority individuals and the wider population so no one is left behind because of their racial or ethnic identity.

People of color make up about a third of the population in the United States, but they represent half the Nation's uninsured. In Illinois alone, more than 21 percent of minorities do not have health insurance compared with 12 percent of Whites. It is time to correct this inequity and move toward a sustainable system that serves every single American regardless of skin color or economic background.

This begins before birth. Only 76 percent of Black mothers and 77 percent of Hispanic mothers have access to prenatal care in the first 3 months of pregnancy. For White mothers, the number stands at more than 88 percent. This is unacceptable. It demonstrates that minority individuals are at a clear disadvantage even before they are born. This places them at a greater risk for problems down the road, problems ranging from higher infant mortality to increased rates of chronic diseases in later life. Combine these risks with a higher poverty rate and lower insurance coverage and we have a recipe for disaster.

For no reason other than the color of their skin, millions of Americans are poor and uninsured. They have reduced access to health care and an elevated risk of illnesses such as high blood pressure and heart disease. This leads to a shortage of preventive care and forces some people to go to emergency rooms when they have nowhere else to turn. No wonder our health care system is strained to the limit. No wonder costs are through the roof, positive health outcomes are down, and we are unable to break this destructive cycle.

We must address these disparities as part of our responsible health care reform package. We must work hard to make sure all Americans can benefit from health care reform. This means eliminating barriers to Federal health programs for American Indian tribes. It means increasing access to quality care for children, pregnant mothers, and every legal resident of this country—I say every legal resident. It means expanding preventive care and screening programs so we can stop diseases before they start. This is especially important for those who live below the poverty line.

As we move forward, it is our responsibility to make sure we include every member of society in our reform proposals. We must not rest until everyone is a part of the solution.

I urge my colleagues to join me in these efforts. If we work together, we can extend the promise of prosperity to every single American, regardless of race or ethic background. We can make sure this country is more free, more fair, and more equal.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative 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 ask that the Interior bill be reported.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2996, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2996) making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Feinstein modified amendment No. 2460, to support the participation of the Smithsonian Institution in activities under the Civil Rights History Project Act of 2009.

Carper amendment No. 2456, to require the Administrator of the Environmental Protection Agency to conduct a study on black carbon emissions.

Mrs. FEINSTEIN. Madam President, it is my understanding we are now on the bill and that the time until 12 o'clock noon will be equally divided. At noon, there will be a vote on the Feinstein amendment. So the floor is now open. I hope individuals who have amendments will come to the floor and that we will be able to offer those amendments and debate them as soon as possible.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative 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 ask unanimous consent that the time in a quorum call be equally divided between both sides.

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

Mrs. FEINSTEIN. 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. BROWN. 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. BROWN. 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.

HEALTH CARE

Mr. BROWN. Madam President, I have come to the Senate floor pretty much every day since the start of the session—for the last couple of months—sharing letters from Ohioans about health care. I just did a big townhall meeting in Cleveland yesterday and I did one in Columbus, Cincinnati, Youngstown, and I have done other meetings in Dayton and Cambridge and other places. But my office gets dozens—hundreds, really, a week—of letters from people who oftentimes were very pleased and satisfied with their health insurance, and then when they got particularly sick, they found out they lost their health insurance coverage.

I just want to read a couple of letters my office has received in the last couple of weeks or so.

James, from Hancock County, in northwest Ohio—in Findlay—writes:

When my kidneys began to fail, I was forced to leave my job as an engineer for an electronics company. I went on dialysis for several years and eventually had a transplant. I currently have health care because of my wife's employment. In trying to find a new job, I've had employers tell me my preexisting conditions could drive up their health costs and that they could find other workers without health issues. I, and other people with chronic health problems, will never find good paying jobs with benefits. Please, I want to work and contribute to society. I didn't choose to get sick.

Several things are happening with James in this letter. First of all, we are outlining the whole idea of preexisting conditions. As the Presiding Officer from New York State knows, insurance companies will no longer be allowed to deny care for a preexisting condition or discriminate based on gender, disability, or geography. Companies will not be able to put a lifetime or annual cap on coverage.

The second thing is that this legislation will help those small businesses that too often have one employee who is very expensive so that the small business will see its premiums jacked up so high they often have to cancel their insurance and then their other employees lose their insurance coverage. Our legislation will help those small businesses while eliminating these but through insurance company reforms, and then a public option, will help to enforce those rules.

Robert from Columbus writes:

Last year, I lost my job and, as a result, my wife, teenage son, and I needed to pick up private health insurance. After researching various companies, we applied to one insurer. My son and I were accepted, but my wife was rejected. Her sin? A preexisting condition. During a previous job while insured, she was diagnosed with mild and treatable high blood pressure. She had one office visit and one prescription a couple of years ago and she gets turned down today.

How absurd, Madam President, that someone with a very treatable preexisting health care problem—high blood pressure, but not a problem so chronic that she missed work or spent time in hospitals and all that, but a very treatable condition—was denied care as a result of this preexisting condition and then couldn't get coverage that her husband and her teenage son could get. Our legislation again, through these insurance company reforms, would make sure that doesn't happen.

Let me share one more letter because I know Senator ALEXANDER and Senator FEINSTEIN are going to call a vote in a minute. Georgene from Cuyahoga County, in the Cleveland area, writes:

My 52 year old sister inherited muscular dystrophy and has been on total disability for a few years. She's also had double knee replacement and hip replacement surgeries. Due to her condition, she's fallen several times and damaged her knees. The doctor recommended she get her leg amputated and fit with a prosthetic. Her husband's insurance covers her and approved the amputation surgery but is now denying her the prosthetic and wheelchair. They had to file for bankruptcy due mainly because of medical bills and now live in a small apartment. I could go on with personal stories from my own life or extended family, but you get the picture.

Madam President, this simply happens too much, where people such as Georgene have not been well served by the system. They have insurance, and they were relatively happy with it, but it has now become inadequate. Insurance isn't real insurance, it is not adequate insurance, if people get so sick or have such high costs that they get excluded from their insurance.

What happens too many times is bankruptcy. The most common cause for bankruptcy in this country is because of huge health care costs. The most common situation among those who declare bankruptcy is because of health care costs, and the most common situation is among people who have insurance but their insurance simply doesn't cover everything. Their expenses are such that their insurance gets canceled and they end up in bankruptcy.

Madam President, I again urge my colleagues to look seriously at this bill as we move forward—the bill that came out of the Health, Education, Labor and Pension Committee, as it merges with the bill coming out of the Finance Committee—in the next week or two to get this bill to the President's desk this fall. In my State alone, 390 people every single day are losing their insurance. And for people around here trying to delay this, it is simply wrong. We need to move, not hurriedly, but at a steady pace to get this bill to the President's desk this fall.

Madam President, I yield the floor, and I thank Senator FEINSTEIN and Senator ALEXANDER.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent that once the Senate reconvenes at 2:15 today, it then stand in recess subject to the call of the Chair.

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

Mrs. FEINSTEIN. Obviously that is for the purpose of the Senate photograph.

Madam President, I note that 12 o'clock has arrived. We will have a vote on the Feinstein-Alexander amendment No. 2460. I will take a brief moment to describe it.

This is an amendment cosponsored by Senators ALEXANDER, LEVIN, SCHUMER, COCHRAN, BENNETT, WARNER, and I ask unanimous consent to add the name of Senator BOXER.

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

Mrs. FEINSTEIN. Madam President, this amendment simply makes $250,000 available so the Smithsonian can carry out activities under the Civil Rights History Project Act of 2009. Obviously this means this has been authorized. It is also paid for.

This is a joint project between the Library of Congress and the Smithsonian, which aims to collect video and audio recordings of the personal histories and testimonials of individuals who participated in the civil rights movement.

By coordinating the effort at the national level, the project will build upon and complement previous and ongoing documentary work on the American civil rights movement. I think it is a very special effort because it essentially will mean that youngsters who are present in 20, 30, 40, or 50 years, will be able to have audios and videos that contain the actual photographs and actual wording of people who participated themselves in the great civil rights movement of this country.

I urge my colleagues to support the amendment.

If there are no other comments by the ranking member—would the ranking member like to make a comment? Then we will ask for the yeas and nays.

Mr. ALEXANDER. Madam President, I congratulate the Senator from California for her leadership. We Americans are united by our founding documents and our language and our history, not by our race or ethnicity or where we come from, so therefore we are very hungry for stories about ourselves. The great writers of American history, such as David McCullough, whose books are sold out immediately, would wish we had the same sort of documentation the Senator from California has proposed here about the writing of the Constitution or the American Revolution or the Civil War or the great world wars. Ken Burns would like to have more of it for his upcoming series on the national parks. This will mean we will have more of it for the great civil rights struggles of the 1950s and 1960s and 1970s. Alex Haley, the author of ''Roots,'' said an older person dying is like a library burning down. This will help to make sure we keep those libraries.

Mrs. FEINSTEIN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

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 Wisconsin (Mr. KOHL) are necessarily absent.

I also announce that the Senator from Arkansas (Mrs. LINCOLN) is absent due to a death in the family.

Mr. KYL. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. COBURN).

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 290 Leg.]

YEAS—95

Akaka	Enzi	Merkley
Alexander	Feingold	Mikulski
Barrasso	Feinstein	Murkowski
Baucus	Franken	Murray
Bayh	Gillibrand	Nelson (NE)
Begich	Graham	Nelson (FL)
Bennet	Grassley	Pryor
Bennett	Gregg	Reed
Bingaman	Hagan	Reid
Bond	Harkin	Risch
Boxer	Hatch	Roberts
Brown	Hutchison	Rockefeller
Brownback	Inhofe	Sanders
Bunning	Inouye	Schumer
Burr	Isakson	Sessions
Burris	Johanns	Shaheen
Cantwell	Johnson	Shelby
Cardin	Kaufman	Snowe
Carper	Kerry	Specter
Casey	Klobuchar	Stabenow
Chambliss	Kyl	Tester
Cochran	Landrieu	Thune
Collins	Lautenberg	Udall (CO)
Conrad	LeMieux	Udall (NM)
Corker	Leahy	Vitter
Cornyn	Levin	Voinovich
Crapo	Lieberman	Warner
DeMint	Lugar	Webb
Dodd	McCain	Whitehouse
Dorgan	McCaskill	Wicker
Durbin	McConnell	Wyden
Ensign	Menendez	

NOT VOTING—4

Byrd	Kohl
Coburn	Lincoln

The amendment (No. 2460), as modified, was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:34 p.m., the Senate recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB.)

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess subject to the call of the Chair.

Thereupon, the Senate, at 2:16 p.m., recessed subject to the call of the Chair and reassembled at 2:35 p.m. when called to order by the Presiding Officer.

DEPARTMENT OF THE INTERIOR, ENVIRONMENTAL, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Continued

Mr. REID. Mr. President, what is the matter before the Senate?

The PRESIDING OFFICER. Amendment No. 2456 offered by Senator CARPER.

AMENDMENT NO. 2494

Mr. REID. I ask unanimous consent that the amendment be set aside, and at this time I call up amendment No. 2494.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 2494.

Mr. REID. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for an evaluation of the aquifers in the area of the Jungo Disposal Site in Humboldt County, Nevada)

On page 240, between lines 13 and 14, insert the following:

SEC. 423. JUNGO DISPOSAL SITE EVALUATION.

Using funds made available under this Act, the Director of the United States Geological Survey shall conduct an evaluation of the aquifers in the area of the Jungo Disposal Site in Humboldt County, Nevada (referred to in this section as the ''site''), to evaluate—

(1) how long it would take waste seepage (including asbestos, discarded tires, and sludge from water treatment plants) from the site to contaminate local underground water resources;

(2) the distance that contamination from the site would travel in each of—

(A) 95 years; and

(B) 190 years;

(3) the potential impact of expected waste seepage from the site on nearby surface water resources, including Rye Patch Reservoir and the Humboldt River;

(4) the size and elevation of the aquifers; and

(5) any impact that the waste seepage from the site would have on the municipal water resources of Winnemucca, Nevada.

Mr. REID. Mr. President, I offer this amendment to address a crisis affecting Native Americans served by the Indian Health Service's Schurz Service Unit in Nevada.

This amendment to H.R. 2996, the Interior, Environment and Related Agencies Appropriations Act, would direct the Indian Health Service to use any unobligated contract health service funds from fiscal year 2009 to pay the Service's obligations to private health providers who have treated Nevadans. The Service's Schurz Service Unit administers contract health funds for thousands of eligible Indian beneficiaries who receive care from the Fallon Tribal Health Center, Reno-Sparks Health Center, Pyramid Lake Health Center, Walker River Paiute Health Clinic, and other tribal health clinics and stations.

I understand that it may difficult to coordinate care and referrals where the

Indian Health Service administers contract health funds and the tribes enter Federal contracts or compacts to provide all other health services. But this arrangement does not relieve the Indian Health Service of its responsibilities—to provide timely responses and communications between patients, primary physicians, private health providers and specialists; to ensure that proper procedures and payment schedules are followed at the Indian Health Service Unit or the Phoenix Area Office or by the State of Nevada and private providers; and to complete payments and reimbursements in a timely and business-like manner. At the Schurz Service Unit, these responsibilities have not been fulfilled, and individuals have suffered because they have been denied care or decided not to seek care because they could not pay for the service.

This amendment would provide immediate relief for some of the problems identified by the Indian Health Board of Nevada, tribal leaders, and private health providers. It would direct the Indian Health Service to pay outstanding contract health obligations incurred by the Schurz Service within 90 days of enactment of this bill. Briefly, these obligations cover debts that the Indian Health Service has approved and date from fiscal years 2000, 2005, 2006, 2007, 2008 and 2009. The oldest obligations, those before October 1, 2008, total less than $1.4 million, while the current fiscal year includes more than $5 million in outstanding bills. There are hundreds of providers who have not been paid for services rendered—services that the Indian Health Service has determined should be paid.

In my home State, Native Americans rely on private and community health providers for a range of services. These providers are critical components in our Indian communities' network of health care. And, unlike other Indian Health Service Units in the Phoenix Area Office, there are no Indian Health Service hospitals in Nevada and Nevada's Indians are expected to travel to the Phoenix Indian Medical Center to be treated for serious health care problems. We must work with private providers so they continue to serve IHS-eligible patients and prevent further erosion of the health care network serving some of our most vulnerable citizens.

I will continue to fight for our Native Nevadans and health providers who are valued members of Indian country's health care team. This amendment does both, by helping the Indian Health Service deal with a critical problem at the federally operated service unit in Schurz and by honoring its obligations with our private care providers. And I believe that by directing this one-time payment, the Indian Health Service, working with tribes and health providers, will be able to implement necessary procedural and structural changes to better coordinate care and manage contract health funds for fiscal year 2010.

Mr. President, I ask unanimous consent to set aside the amendment for Senator MCCAIN.

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

The Senator from Arizona.

AMENDMENT NO. 2461

Mr. MCCAIN. Mr. President, I ask unanimous consent that amendment No. 2461 be called up and the pending business be set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 2461.

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

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

The amendment is as follows:

(Purpose: To prohibit the use of appropriated funds for the Des Moines Art Center in the State of Iowa)

On page 135, line 2, insert before the period at the end the following: ": *Provided*, That none of the funds made available under this Act may be used for the Des Moines Art Center in the State of Iowa".

Mr. MCCAIN. Mr. President, this amendment would simply prohibit the use of funds for the Des Moines Art Center in Des Moines, IA—just one of the 308 earmarks contained in this bill which total $246 million. This earmark is like most other earmarks posing as a national spending priority. Many of these earmarks were not authorized and were not competitively bid in any way, and no hearing was held to judge whether these are worthy of scarce taxpayers' dollars.

Every summer we hear news of major wildfires destroying people's homes and businesses across the country. According to the National Interagency Fire Center, over 5.5 million acres of land were scorched this year so far. Spending bills such as this one are vitally necessary for fire suppression activities and forest health programs—programs that save lives and property. As we look for ways to pay for the escalating cost of wildfires, we must also address the mixed messages we are sending to taxpayers about our spending priorities.

Buried in the committee report, as usual, is a $200,000 earmark for historic preservation needs at the Des Moines Art Center in Iowa. I am all for preserving our Nation's historic buildings, but good intentions or not, the process of earmarking is how appropriators steer taxpayers' dollars to pet projects that wouldn't otherwise win a grant competition or pass a prioritization formula. They are placed above more deserving projects simply because of their "connections" in Washington.

According to an article in the Des Moines Register dated August 27, 2009, entitled "Look Out Below: Des Moines Art Center is Adding Space Underground," the Art Center is embarking on a $7.5 million capital improvement project which includes building a $3.5 million basement level "storage addition and a new glass elevator." The Art Center raised this money as part of its ongoing $34 million fundraising campaign launched in 2005.

The multimillion dollar underground addition will double as a ground level "green roof," says the art center's director Jeff Fleming: "People can walk on it without even knowing it's a roof . . . a great space for outdoor gatherings."

The article also notes that the art center will gladly name the new addition to whichever benefactor closes out their $34 million fundraising campaign.

Americans are hurting. The unemployment rate is nearly 10 percent. The deficit is estimated to be $1.6 trillion for this year, and the projected 10-year deficit jumped from $7.1 trillion to $9 trillion, et cetera, et cetera. Obviously, it might be nice if we started thinking about the future of America and the future generations who are going to pay the tab for our continued spending.

I am offering this amendment on behalf of taxpayers who will rightfully question what makes the Des Moines Art Center a national spending priority. Why is the Des Moines Art Center allowed to bypass the proper procedures for determining historic preservation spending? Why can't the Des Moines Art Center cough up $200,000 from its $7.5 million capital improvement project? Why can't they address this $200,000 need in their $34 million fundraising campaign?

I urge my colleagues to support this amendment.

I spent, as did many of my colleagues, the last few days at home in Arizona, traveling around my State. When this issue of earmarking and porkbarrel spending is brought up, there is a visible reaction. Americans are sick and tired of it. Sooner or later, while those who continue to vote for and support this unnecessary, unneeded porkbarrel spending while we have a 10-year $9 trillion deficit, Americans are going to rise up in an even more vociferous fashion than they are today.

I believe what is going on around the country is not just the issue of health care. What is going on around the country is people are sick and tired of this unbridled spending in porkbarrel and earmark projects which have bred corruption here in our Nation's Capital. They figured it out. They have had enough of it.

I ask my colleagues to vote in support of this amendment, being aware that those on the Appropriations Committee will probably vote to turn down this amendment even though it is only a $200,000 unnecessary spending project. So do so. You have done it in the past. I am going to continue, and the American people are going to continue, to demand some kind of accountability for this outrageous, out-of-control spending which has mortgaged future

generations of Americans and, believe me, at least in the State of Arizona, they are sick and tired of it.

Mr. President, I ask for the yeas and nays on this amendment at a time to be determined by the majority leader.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays are ordered.

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I ask unanimous consent to proceed as in morning business.

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

HEALTH CARE REFORM

Mr. MCCONNELL. Mr. President, I rise to call my colleagues' attention to a truly disturbing development in the health care debate. A colleague of ours—a colleague of ours—has called for an investigation into a major health care company because this company informed its customers of its concerns about health care legislation that this colleague of ours introduced. Let me say that again. A colleague of ours has called for an investigation of a major health care company because this company disagreed with a bill our colleague introduced.

As a result, the Federal Government has now told all companies that provide Medicare Advantage to stop communicating with their clients about the effects of that legislation. Let me say that again. The Federal Government has now told these companies to stop communicating with their clients about the effects of a piece of legislation that is before us, even telling them what they can and cannot post on their Web sites. This gag order, enforced through an agency of the Federal Government at the request of a Senator, is wrong.

It started when a company based in my hometown of Louisville, KY—Humana—had the temerity in the eyes of some of our colleagues to explain to its customers that if Medicare Advantage is cut, as the chairman's mark requires, it may reduce benefits which, of course, is a commonsense conclusion.

This is America, the United States of America. Citizens, either as individuals or grouped together in companies, have a fundamental right—a fundamental right—to talk about legislation they favor or oppose in this country.

This is the core of the first amendment's protections of speech. Unfortunately, this is part of a troubling trend of efforts to dismiss the concerns raised by the American people over the past few months.

Over the summer, we saw American citizens who raised concerns about the health care proposals before Congress dismissed—utterly dismissed—as somehow un-American by leaders in Congress. That is bad enough, but using the full weight of the Federal Government's enforcement powers to stifle free speech should trouble all Americans—and all of us—even more. We cannot allow government officials to target individuals or companies because they do not like what they say.

The latest effort to squelch free speech raises several serious questions.

Is this what we have come to as a country; that an individual or company can no longer factually advocate their position on an incredibly important public policy issue? Is this what we have come to in America?

Shouldn't customers have a right to know the potential impact of a congressional action?

Is this what we believe as a Senate; that this body should debate a trillion-dollar health care bill that affects every single American while using the powerful arm of the government to shut down speech?

Is this how citizens and companies can expect to be treated if health care reform passes; that any health provider that disagrees with a powerful Senator will be subject to an investigation and a gag order for disagreeing with a powerful Senator?

How is this any different than what the Washington Post and the New York Times have done in lobbying for a reporter shield law? Would we stand by if the Judiciary Committee asked the FBI to investigate the media for taking positions on pending legislation with which we do not agree? Of course not.

Humana is headquartered in my hometown of Louisville, and, yes, I care deeply about its 8,000 employees in Kentucky. But this gag order now applies to all Medicare Advantage providers. Shut up, the government says. Don't communicate with your customers. Be quiet and get in line.

I remind my colleagues that I have spent a good part of my career defending the first amendment rights of people to criticize their elected officials, including me. I would make the same argument if this were a company based in San Francisco or Helena, MT, or Chicago.

The right to free speech is at the core of our democracy. Free citizens have a first amendment right to petition their government for a redress of grievances. This gag order on companies such as Humana and those in all our States, in my view, is a clear violation of that right and it is wrong.

Employers who warn their customers about the effects of legislation are not the ones who should be getting warnings. They are not the ones who ought to be getting warnings. Senators who threaten first amendment rights are the ones who should be getting the warnings.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, before the Republican leader leaves, I congratulate him for his statement. Over the years, he has been a consistent defender of first amendment rights, even for a great many Americans with whom he disagreed. Senator BYRD, who is the constitutional conscience of the Senate, often encourages Senators to carry with us a little pocket version of the Constitution.

I am reading the first amendment to the Constitution, which the Senator from Kentucky spent a great deal of his career defending:

> Congress shall make no law—
>
> No law—
>
> respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

I ask the Senator through the Chair whether, as he understands the first amendment to the Constitution, it would be clearly unconstitutional for us to pass a law that would tell a major health care company that if they objected to a piece of legislation by informing their customers of its consequences that there would be some penalty?

Mr. MCCONNELL. Mr. President, I say to my friend from Tennessee, he is absolutely correct. There are two obvious violations of the first amendment here. One is the right to speak freely and the other is the right to petition Congress for a redress of grievances.

Here you have an industry, the health insurance industry, at least one company of which is communicating with its customers the truth about this legislation and being threatened by a powerful Senator and a government agency to shut up.

Mr. ALEXANDER. Mr. President, as I understand it from reading it in the newspapers some of the big drug companies are lined up with the Obama administration with the Democratic health care bill. I wonder what the Republican leader would think if some Republican Senator called one of the big drug companies and said: You are going to suffer serious consequences or even went to one of the agencies of government and caused them to tell a big drug company that because of their speeches and remarks, they were going to suffer some consequences.

Mr. MCCONNELL. Mr. President, once again, I say to my friend from Tennessee, to call an agency of the government for the purpose of implementing a gag order against a company that is speaking freely about the impact of legislation on its business and its employees is an astonishing thing to behold in the United States of America.

I assume the particular industry the Senator from Tennessee is talking about, which has been out running millions of ads in support of what the administration is trying to do, is not getting such threats.

Mr. ALEXANDER. I assume, Mr. President, that the big drug companies that are running ads against Republican Senators for questioning the health care reform bill, they have a right to do that. I know what is happening in Memphis is people are seeing the ads and calling me and telling me: Continue to oppose what is going on. But that is part of our system.

I congratulate the Republican leader for bringing to the attention of all his colleagues this action.

Mr. MCCONNELL. I thank my friend from Tennessee. I yield the floor.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Senator from Delaware be permitted to speak in morning business not to exceed 5 minutes.

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

The Senator from Delaware is recognized.

FIRST STATE ROBOTICS

Mr. KAUFMAN. Mr. President, imagine a robot that could play ball. Imagine a robot that could actually pick up a ball from the ground, hold on to it, and then, when the time is right, successfully toss it to another robot. Finally, imagine that this robot was built by a group of high school students.

I recently met an extraordinary group of students who turned this vision into reality. As part of Delaware's Miracle Workers robotics team, students designed and built this robot to compete in the For Inspiration and Recognition of Science and Technology, for FIRST, national robotics competition.

The FIRST Program was founded in 1989 by inventor Dean Kamen to inspire young people to pursue careers in science, technology, engineering, and math, or STEM. Since that time, FIRST has grown significantly. In 2008, drawing from the support of thousands of volunteers and mentors, sponsorships from some of the world's largest and smallest companies, educational institutions, and the Federal Government, FIRST introduced nearly 160,000 students from all 50 States and 37 countries to the joys of problem solving and engineering.

In Delaware, participating students spent an entire school year building their robot, which is taller than some humans, decorated in green and black, and even wearing a bow tie. The first half of the year the team was dedicated to learning the basics of engineering, programming, and project management. The remainder of the year was slated for designing, building, testing, and refining the robot for competition. Students worked in specific subteams, including electrical, programming, mechanical, fundraising, publicity, scouting, 3–D animation, Web team, and more. Students engaged with adult volunteers—many of them engineering professionals—who helped train and mentor the team.

Incredibly, these types of programs are not just for those in high school. Delaware's First State Robotics organization oversees several other programs and provides engineering experience for students from prekindergarten through college. First State Robotics aims to inspire in young people, schools, and communities an appreciation for science, engineering, and technology.

The results are remarkable. Ninety-seven percent of First State Robotics participants have attended college, with 82 percent pursuing degrees in science and engineering. Many have earned credits at a local community college for their participation in the program, and several have earned scholarships applicable toward higher education.

Communities also benefit from these programs. Participating students take part in book drives, blood drives, and mentoring. They give robot demonstrations in local schools and community events to promote recruitment and education.

It is clear that First State Robotics is having an incredible impact on students. Alumni of the program are more interested in pursuing careers in the sciences and engineering, and they are involved with their communities as volunteers. Many graduates say that participating in First State Robotics was the most positive and rewarding experience of their lives, and through these experiences they decided to pursue further study of engineering.

We must continue to encourage today's students to become tomorrow's engineers by highlighting and promoting programs such as First State Robotics. It is through comprehensive programs such as these that students learn that engineering can be a path to making a difference.

Through hands-on activities, students participating in First State Robotics are given the opportunity to learn that engineers, such as the Presiding Officer, are the world's problem solvers, do make a difference in people's lives and quality of life, and can help us reach the goal of clean water, lifesaving cures for cancer and disease, clean renewable energy, affordable health care, and environmental sustainability.

The national FIRST Program shows how important it is that the American people, the Federal Government, and industries united to support STEM initiatives. These educational programs will lead us not only to new frontiers in health, energy, technology, and security but to new jobs and, ultimately, a sustainable economic recovery.

I know that if given the opportunity, a new generation of engineers and scientists will lead us into the new frontiers, and many FIRST alumni have already done so.

I commend the students of First State Robotics and dedicated mentors for their shining examples of the miracles of engineering.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I compliment the Senator from Delaware. He did go 5 minutes.

I believe Senator BARRASSO has an amendment he wishes to offer.

The PRESIDING OFFICER. The Senator from Wyoming.

AMENDMENT NO. 2471

Mr. BARRASSO. Mr. President, I wish to speak on amendment No. 2471.

On Friday, September 11, the Washington Times ran a front-page story on an issue titled ''Forest Fire Aid Allotted to DC, Western States Feel Burned.''

That is about right. The story talks about the U.S. Forest Service plans to spend $2.8 million of wildland fire management funds in the District of Columbia. This is ridiculous, it is outrageous, and we should not stand for it.

Mr. President, just to read the first paragraph:

> Even with forest fires raging out west, the U.S. Forest Service this week announced it will spend nearly $2.8 million of forest firefighting money in Washington—a city with no national forests and where the last major fire was probably lit by British troops in 1814.

The article continued:

> The vast majority of the money—$2.7 million—is going to Washington Parks & People, which sponsors park festivals and refurbishes urban parks in the Washington area.

Mr. President, in Wyoming, we have over 9 million acres of national forest land. There are seven national forests in our State. We face many management challenges in those forests. The agency struggles to meet its basic responsibilities. Over 1 million acres are infested with mountain pine beetle in Wyoming. That is just one species of beetle—a species that has killed over 1 million acres of trees. The devastation stretches well beyond the horizon in many places. And where the beetle infestation is at its worst—in the Medicine-Bow National Forest—the affected acres have doubled between 2007 and 2008. The problem is severe. It is growing exponentially, and we are facing extreme risk of wildland fire in Wyoming.

So when the U.S. Forest Service recommended $500 million and received that amount of money for Wildland Fire Management in the stimulus package, one would think maybe the agency would use those funds to combat threats to forest health in its lands nationwide. One would think that maybe we would see some real results on the ground in Wyoming and in the State of Colorado. Instead, Wyoming was awarded zero dollars in the first round of U.S. Forest Service projects under the stimulus, and only after the congressional delegation and the Governor of Wyoming appealed to the Department of Agriculture were funds awarded for forest projects in Wyoming. Meanwhile, the agency wants to spend $2.8 million on wildland fire in Washington, DC?

The people and forest communities in my State deserve better, and the people of America demand better. Wyoming boasts incredible wildlife populations, unique ecosystems, and breathtaking views. Over half the land in Wyoming is public land. One can see rangelands, alpine forests, glacial basins, and desert landscapes in Wyoming. We host millions of visitors every year who will enjoy Wyoming's wilderness.

The District of Columbia is not under threat of wildland fire. In fact, the government's National Interagency Fire Center defines what qualifies as a wildland fire—and DC does not qualify. Clearly, the District should not receive wildland fire management funds. The U.S. Forest Service should not spend vital funds for wildfire fighting and for prevention in Washington, DC.

I have introduced this amendment with a number of other Senators from the West. Senator KYL and Senator ENSIGN and Senator MCCAIN are cosponsoring, and we want to make sure the U.S. Forest Service is not wasting management opportunities. We will not stand by and watch our State's burn when resources are available to prevent that, and I would ask all Senators to support this amendment.

Mr. President, at this time, I ask unanimous consent to set aside the pending business and call up amendment No. 2471.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Wyoming [Mr. BARRASSO], for himself, Mr. KYL, Mr. ENSIGN, Mr. MCCAIN, Mr. RISCH, and Mr. CRAPO, proposes an amendment numbered 2471.

The amendment is as follows:

(Purpose: To prohibit the use of wildland fire management stimulus funds in the District of Columbia)

On page 240, between lines 13 and 14, insert the following:

SEC. 423. PROHIBITION ON USE OF WILDLAND FIRE MANAGEMENT STIMULUS FUNDS IN THE DISTRICT OF COLUMBIA.

Notwithstanding any other provision of law, none of the funds made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115) for wildland fire management shall be used in the District of Columbia.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Wyoming. He has a very good point and a very good amendment. This was not the intention of the Interior part of the stimulus bill. It is not the intention of this bill. Therefore, I think the amendment of the Senator from Wyoming is completely in order. It has been called up, and our side is prepared to accept it.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I want to congratulate the Senator from Wyoming on his vigilance. There is no Senator—certainly on this side of the aisle, and I suspect not in this Chamber—who gets up earlier, works harder, or keeps in closer touch with what is going on in Wyoming and in this country than Senator BARRASSO, and he is exactly right on this issue.

The chairman, Mrs. FEINSTEIN, the Senator from California, has made fighting wildfires a major part of her effort this year. She and the administration have included within this appropriations bill the firefighting money that usually is set aside for emergency appropriations. So that money needs to be spent correctly, as it should be. I think Senator BARRASSO and the other Senators who cosponsored it are exactly right, and I agree with the chairman of the subcommittee that it is a good amendment.

Mrs. FEINSTEIN. So we will accept it, Mr. President.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2471) was agreed to.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, I thank the chairman and Senator ALEXANDER for their gracious reception and acceptance of this amendment in the Chamber with that resounding voice vote in support of the amendment.

AMENDMENT NO. 2472

Mr. President, I also filed amendment No. 2472, and I wish to speak on that amendment at this time.

Mrs. FEINSTEIN. Mr. President, is the Senator calling up that amendment?

Mr. BARRASSO. I am not at this point.

Mr. President, I have serious concerns about the recent Interior Secretarial Order No. 3289. This order will incorporate climate change into all decisionmaking at the Department of the Interior.

Although I commend the Secretary for attempting to address this issue, I have concerns that we are getting the cart before the horse. Congress has not passed a climate change bill. Yet sweeping regulations are being proposed by the Secretary of the Interior. These regulations put into question the future and past land management agreements regarding oil and gas development, renewable energy development, recreational use, and wildlife protection.

Under these rules, a dark cloud is placed over all existing agreements regarding these activities. In addition, all pending decisions regarding both energy development and recreational use will also be put on hold indefinitely. All this will occur through regulations that did not have the approval or the consent of the American people.

I would ask my colleagues, no matter where they stand on the issue of climate change, to vote for this amendment. We need to get the order right. First, a climate change bill that has the public's approval; then after that is voted upon, and if approved, let the regulatory process at the agency level begin. That is what my colleagues are voting on if they vote for this amendment.

So I urge adoption of the amendment at the point when it is called up.

AMENDMENT NO. 2473

Mr. President, I also filed amendment No. 2473, and I will also speak on that at this time. That amendment would prevent the Environmental Protection Agency's endangerment finding from going into effect until the EPA grants the petition of the U.S. Chamber of Commerce to have an on-the-record, trial-like hearing on the scientific data behind the EPA's endangerment finding.

The chamber petitioned the EPA for a trial-like hearing on the scientific data behind the endangerment finding before an administrative judge or EPA official. The chamber stated in their petition that:

An endangerment finding would give rise to the most far-reaching rulemaking in American history. Before embarking on that long, costly process, the EPA ought to do everything possible to assure the American people of the ultimate scientific accuracy of its decision.

The on-the-record proceeding would be a great opportunity for EPA to ensure transparency. This administration claims to be the most transparent administration in history. What better opportunity to demonstrate this by authorizing the chamber's petition. The administrative proceeding is allowed by law. It will be a short on-the-record proceeding. To deny this request is an admission by the EPA that their work on endangerment can't stand scrutiny. This should be a concern for all Americans at this point.

AMENDMENT NO. 2474

Mr. President, I would like to move on to another amendment which I have filed—amendment No. 2474—and I will speak on it at this point.

This amendment would require the Environmental Protection Agency inspector general to complete an investigation into the treatment of Dr. Alan Carlin by his superiors at the Environmental Protection Agency. Under this amendment, the endangerment finding could not proceed until the investigation is completed.

Dr. Alan Carlin and a colleague prepared a 98-page analysis arguing that the EPA should ''take another look'' at the EPA's scientific data behind the endangerment finding that carbon dioxide is a threat to public health. According to a report by Kimberly Strassel with the Wall Street Journal, a senior EPA official suppressed this detailed account of the most up-to-date science on climate change.

These reports raise serious questions about the process behind and the substance of the EPA's proposed finding that greenhouse gases endanger public

health and welfare. On August 21, Inside Washington Publishers reported that the EPA is considering scrapping the National Center for Environmental Economics' role in scientific analysis. Well, this would essentially eliminate the EPA office that Dr. Carlin has worked in for years.

In an editorial in the Washington Times, the paper stated:

> This attempt to marginalize a true whistleblower smacks of insincerity . . . and . . . its implications for economic and environmental policy are dangerous.

This is an administration that claims to put a premium on transparency and openness. Their actions to date have demonstrated neither. My colleague, Senator THUNE, has requested an inspector general's investigation into this matter. I believe the investigation should be conducted and completed before the EPA proceeds further with endangerment.

So, Mr. President, at this time I ask unanimous consent to set aside the pending business and call up amendment No. 2474.

Mrs. FEINSTEIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BARRASSO. Mr. President, I am very concerned by what I am seeing today. My effort in offering this amendment is to promote transparency and good government. Dr. Carlin, a 38-year veteran of the EPA, wrote a report critical of the EPA's process behind the endangerment finding. He said the EPA relied solely on outside sources for their science. He also pointed out that the scientific data they are relying on is 3 years old.

The EPA tried to quash his report. Dr. Carlin's boss warned Carlin to drop the subject altogether. He was told:

> With the endangerment finding nearly final, you need to move on to other issues and subjects. I don't want you to spend any additional EPA time on climate change. No papers, no research etcetera, at least until we see what EPA is going to do with climate.

Mr. Carlin was ordered not to have any direct communication with anyone outside his small group at EPA on the topic of climate change and was informed that his report would not be shared with the agency group working on that very topic. To not even allow the Senate to have a vote to decide whether to investigate this matter looks like political expediency. It is wrong and it should concern all of those who claim to care about transparency.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I want to make clear that it would be my intent, should the other two climate change amendments be called up, to object to them. However, this has nothing to do with the distinguished Senator, whom I respect enormously. It does have something to do with putting climate change on this bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DEMINT. 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. DEMINT. Mr. President, I would like to talk about an issue that is very important to our country. It involves our food supply and it involves thousands of jobs. While it may appear to affect just one State, the input we are getting from around the country is that this is very much a national issue.

I have an amendment to address it which I would like to discuss. This amendment, I believe, if we would take the time, we could find agreement. It addresses a major problem in the State of the Senator from California, but it also addresses a problem that affects the Nation's food supply by allowing us to focus on balancing jobs, the economy, and food with environmental laws.

As the chairman knows, there is a major water problem in California's Central Valley. Some very narrowly interested environmental groups have used the Endangered Species Act to shut off water to a region that produces 13 percent of the Nation's food supply. The result has been devastating. The land is dry, crops have been destroyed, and tens of thousands of jobs—tens of thousands of people are out of work. A recent University of California, Davis, study found that up to 40,000 jobs will be lost by the end of this year. In one city, the unemployment rate has reached 40 percent.

This is certainly a local water crisis, but it has also become a national issue. The problem has been the subject of several national television programs, and people across the country are beginning to realize that this problem on the west coast could touch us all in the form of higher food prices if we don't address it. It is also another precedent that affects my State, as environmentalists have really swung the balance away from good economy and jobs to something that seems much more radical to us—the development of our port in South Carolina, the passage of ships. And you see development all over the country being affected. So we need to focus on this issue in this bill. This is a good place for the amendment.

It is almost impossible to overstate the value of California's agriculture to the Nation's economy, most of which is produced—most of the food supply we are talking about—right in the Central Valley. This region provides the lion's share of California's crops, which account for, and I want to stress this, 94 percent of America's tomatoes, 93 percent of our broccoli, 89 percent of our carrots, 86 percent of our garlic, 78 percent of our lettuce, 90 percent of our strawberries, and 88 percent of our grapes, just to name a few. We can hardly say this is the issue of one State. This is a national issue that we need to address.

People are also coming to realize that if we do not begin to bring a measure of balance back to our environmental laws, special interest groups and activist courts will be able to use this statute and others to destroy thousands of jobs at a time when our country is in recession.

I thank the chairman of the subcommittee for her work on this issue. The senior Senator from California has been a leader. She has pledged to work with the Department of Interior to find a solution, and she recently called for an independent review of the science underlying the two biological opinions that created this manmade drought.

My amendment today is very simple and represents a modest and balanced approach. It turns the water back on for 1 year to provide time for all leaders at the local, State, and Federal levels to find a long-term solution.

It will also give farmers the predictability they need to plan for next year's crops. They can't make the loans and get the seeds and plow the fields if they know in December the water will be turned off again and won't be turned back on until after July. One cannot farm with that type of unpredictability.

I know there are those who say there is no problem because the pumps are currently on. But those pumps are set to shut off in December, leaving Central Valley farms dry as planting season comes around.

My amendment has precedent. In fact, the last time this environmental provision was waived was in 2003, when water was turned off in New Mexico. That time the Senate voted unanimously for a bill that included a complete waiver of ESA for 2 years, which was even more aggressive than what I am proposing today.

I know this is a very important issue to the Senator from California. I hope she will support my amendment. I know many people are working on long-term solutions, but we need to do something now. The provision in the bill to study this is likely to take 2 years. We are likely to lose another 2 years of farm products as well as thousands of jobs in the Central Valley. This is not something I have made up on my own. A number of groups, farm groups in California, as well as the National Cotton Council of America, the Tulare County Farm Bureau, Fresno County Farm Bureau, Kings County Farm Bureau, Families Protecting the Valley, Westland Water District—I have a whole page of large groups that involves many jobs and families in California and across the country supporting this amendment which won't cost taxpayers anything but will actually create jobs, put people back to work, and expand the Nation's food supply.

We cannot allow a judge or radical environmental group to cut off water

to people who are producing the Nation's food supply. My amendment would address this in a very reasonable way. I call on the Senator from California to work with me in support of this amendment.

I ask unanimous consent to set aside the pending amendment and send my amendment to the desk.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. FEINSTEIN. After the Senator completes his remarks, I would like the opportunity to say why.

The PRESIDING OFFICER. The Senator from South Carolina.

MOTION TO RECOMMIT WITH AMENDMENT NO. 2500

Mr. DEMINT. Mr. President, I am disappointed I was unable to offer the amendment. Certainly it relates to the underlying bill. Since there are so many people and jobs across the country depending on us doing something quickly, I send a motion to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The bill clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] moves to recommit the bill H.R. 2996 to the Committee on Appropriations of the Senate with instructions to report the same back to the Senate forthwith with the following amendment No. 2500:

At the appropriate place, insert the following:

None of the funds made available by this Act may be used by the Secretary of the Interior to restrict, reduce, or reallocate any water, as determined in—

(1) the biological opinion published by the United States Fish and Wildlife Service and dated December 15, 2008; and

(2) the biological opinion published by the National Marine Fisheries Service and dated June 4, 2009.

Mr. DEMINT. Mr. President, I thank the Senator from California. I look forward to more discussion, because I know there are many people in the Senate concerned about the same issue. There may be better ways to resolve the problem. I am certainly open to work with anyone. This is an immediate problem. We cannot continue to spend trillions of dollars of taxpayer money to create jobs while we allow government agencies to shut down jobs and jeopardize food supply. We need to be able to act as a body to solve some small problems instead of what we are doing here, which is to totally revamp the health care system or major changes that do not address the problems right in front of our face. I encourage my colleagues to consider this. Let's debate it and discuss it. I believe we can come up with a solution.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I am rather surprised about this. I don't think anyone in my State or in this body has spent as much time as I have on water in the State of California. The motion offered by the Senator from South California surprises me since no one from California has called, written, or indicated they wanted this on the calendar. No one has indicated to me, as chairman of the committee, in all of the time Senator ALEXANDER and I have been working on this bill that this is what they wanted. In fact, what this would do is prohibit the Secretary of Interior from expending appropriate funds to restrict, reduce, reallocate water supplies from the Central Valley Project and the California State Water Project under biological opinions issued by the Fish and Wildlife Service of the United States and the NOAA fisheries.

The Senator from South Carolina is venturing into a very complicated area. This would prohibit the approval on two gates. It would prohibit work on the intertie where water is now being transferred from one system, State-run, to Federal and back and forth based on need, water transfers in the hundreds of thousands of acre-feet. It would prohibit Interior from working on the Bay Delta Conservation Plan. It would prevent Federal agencies from working on water quality issues in the delta.

What is the delta? The delta is a large inland body of water in northern California. It is the drinking water for 16 million people. It is the source of water, some of which trickles down to southern California. The Metropolitan Water district, for example, in Los Angeles uses between 800,000 acre-feet and a million acre-feet a year of this water. Jurisdictions all over the State use some of this water. The agriculture community uses 80 percent of the water in the delta. There are enormous endangered species issues in the delta, the death of certain kinds of fish, the nonnative species of fish, deteriorating levees that when they deteriorate, the peat soil drifts into the water and creates all kinds of problems for treatment and would likely collapse in the instance of a major earthquake.

What is happening is a whole effort to restore the delta, to develop a management plan for the delta, how to rebuild it, how to shore it up, and also whether in fact there should be some conveyance around the delta to bring some of the water south. This is a very hot issue in California. It is not a hot issue in South Carolina, trust me.

It is interesting to me that groups go to the Senator from South Carolina instead of to the chairman of the committee for something which is preemptive and would handcuff the Secretary of Interior. The Secretary of the Interior has appointed his No. 2 person, David Hayes, to handle western water. David Hayes has been in California. He has solved many problems. He came with me in August to a meeting in the southern Central Valley to discuss these problems and say what the Department was prepared to do about them.

On September 30 of this month, the Interior Secretary is holding a meeting to announce what actions he is going to take on 2 Gates, on the intertie, on water transfers. I don't understand why we would want to handcuff the Secretary of the Interior by saying no money can go for any of these things, that water has to be released to the Central Valley with no controls on it. This makes no sense to me.

I see a series of letters that have come in from people I have talked with. I know there is a problem with the biological opinions. There are 30 lawsuits against the biological opinions. I understand that. To that end, I have been asked to put $750,000 in this bill to allow the National Academy of Sciences to come in and do an overarching but quick, within 6 months, look at the biological opinions and either say the opinions are founded in sound science or they are not. That is in the heart of this bill.

The ranking member has agreed to put this money in this bill for that purpose. Along comes something now which would totally handcuff the Secretary of Interior, which would mean no permits to move water between the California aqueduct and the Central Valley Project and back and forth and no permits for 2 Gates, two of the emergency solutions that have been put forward.

If this passes, we can be sure there will be court action, and we will most likely be enjoined. To my view, it makes no sense. We need the help of Interior. I have asked the Department of Interior, in terms of Federal agencies, to take the lead in dealing with California water. A specific person has been designated, the No. 2 person in the Department, David Hayes. A whole process has been entered into now for the administration, through the Secretary of Interior, to begin to put its hands on the problem and deal with it.

I cannot support legislation that says: Go ahead and release water, regardless of endangered species, regardless of any court that might come down on top of you and say stop. I can't do that. It isn't responsible to do so.

It is interesting to me—and I am looking at some of the letters—the people who I meet with, whose phone calls I respond to, who have never called and said: Look, this is what we need.

I don't quite understand what is going on here. That is the reason for my objection. I am not going to put the State of California and the bay delta in the threat of another lawsuit. We have enough already. Water is a huge, complicated, and difficult issue. No one cares more about it than I do or has tried harder to sort out the problems.

In a way, this is a kind of Pearl Harbor on everything we are trying to do, which is to work together to put Interior in the lead, not to handcuff Interior. That is the reason I objected to the amendment.

I understand on the motion there will be a vote. I urge a no vote.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. KAUFMAN). Without objection, it is so ordered.

AMENDMENT NO. 2461

Mr. HARKIN. Mr. President, I rise in opposition to the amendment offered by the senior Senator from Arizona. The amendment by Senator MCCAIN singles out one instance of congressionally directed funding that I had included in the bill now before us, fiscal year 2010 Interior appropriations. The Senator claims this earmark, which provides $200,000 in funding for repair and renovation of the historic Des Moines Art Center, is somehow inappropriate and should be removed from the bill. Well, it comes as no surprise that I strenuously disagree.

First of all, as a constitutional matter, I take issue with the premise underlying the Senator's amendment—the idea that Congress has no business directing the expenditure of Federal moneys to earmarks, that there is something inherently wrong or evil in this traditional practice, and that only the executive branch should determine where Federal moneys are spent. Well, I beg to differ.

The Constitution, article I, section, 9, expressly gives Congress the power of the purse. The executive branch can't spend one nickel unless this Congress gives it the authority to do so. Over the centuries, over the last couple hundred years, we have given to the executive branch the authority to make budgets, spend money on different things through all the different departments and agencies, but if Congress wanted to, we could take it all back. We could take it all back because the Constitution gives Congress the sole power to spend money.

What is more, compared to executive branch individuals, Members of Congress have a much better understanding of where and how Federal funds can be spent most effectively in their respective districts and States, and that is certainly the case with the earmark in question.

I assume the Senator from Arizona doesn't know a lot about the Des Moines Art Center. Well, let me explain it for the RECORD. The Des Moines Art Center encompasses three nationally significant buildings, two of which have been listed on the National Register of Historic Places since 2004. One of these buildings was designed by the famous architect, Eliel Saarinen, and another by the world renowned I.M. Pei. These buildings are architectural gems but, unfortunately, they have suffered from deterioration over the years.

So I secured the modest funding in this earmark—$200,000—for the specific purpose of replacing windows that were causing inconsistent temperatures and high condensation, resulting in damage to the building's plaster, the wood paneling, and the floors. There is nothing the least bit wasteful or frivolous about these renovations. In fact, they will create jobs and put people to work.

I also wish to point out that this funding is awarded through an authorized program called Save America's Treasures. This program was established within the National Park Service to protect:

> America's threatened cultural treasures, including historic structures, collections, works of art, maps and journals that document and illuminate the history and culture of the United States.

Money for the program is awarded both competitively through grants and through congressionally designated funding.

Over the years, the Save America's Treasures Program has helped to protect many important buildings and artifacts across our country. There is no question that the Des Moines Art Center is both worthy and in urgent need of this modest funding. The buildings of the center, as I said, are architectural masterpieces. They contribute mightily to making Iowa's capital city a livable, attractive urban center with a lively cultural scene.

Bear in mind that the Des Moines Art Center is a cultural institution in the State of Iowa, drawing hundreds of thousands of visitors not only from Iowa but from around the United States and from all over the world every year. In the last 12 months, the center has served nearly half a million people. School kids from all over our State come into Des Moines in buses from their schools out in the countryside, out in the small districts, to go to the art center to see these magnificent, wonderful works of art and the buildings themselves.

I wish to emphasize that in terms of fundraising for renovations and operations, the art center and the Des Moines community are more than pulling their own weight. The center currently is in the midst of a $34 million fundraising campaign. However, only $7.5 million of that is for capital and building improvement. The remaining $26.5 million is for the center's operating endowment. That allows the art center to be free and open to the entire community all year-round. Moreover, the $200,000 in Federal funds will leverage $1.9 million in public and private challenge grants—not a bad leveraging of Federal dollars.

The fact is, the Des Moines Art Center is struggling to meet its fundraising targets in any and all ways possible, including in relatively modest increments. The center has received $275,000 from Polk County—that is the county encompassing our capital city of Des Moines. They received $25,000 from the city of Des Moines. At this point, the center has exhausted their private fundraising options. So the $200,000 grant from the Federal Government, along with the additional $1.9 million that it will leverage, is critical to meeting the center's goal of renovation.

I appreciate this opportunity to share with our colleagues my reasons for including this earmark in the bill before us. I am proud of this congressionally directed funding. It would go to a worthy and urgent public purpose.

I believe the effort by Senator MCCAIN to remove this money from the bill is misguided, and I urge my colleagues to vote against the McCain amendment.

Mr. President, I yield the floor and 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. Mr. 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. Mr. President, earlier while I was arguing the opposite side of the question of the DeMint amendment which is now before this body, I mentioned that there were 30 lawsuits pending against the biological opinions having to do with the bay delta. The number is actually 13. I apologize. I wish to have the record corrected. Thirteen is enough.

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.

Ms. COLLINS. 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. 2498

Ms. COLLINS. Mr. President, I call up amendment No. 2498 and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the amendment.

The assistant bill clerk read as follows:

> The Senator from Maine [Ms. COLLINS] proposes an amendment numbered 2498.

Ms. COLLINS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

> (Purpose: To provide that no funds may be used for the administrative expenses of any official identified by the President to serve in a position without express statutory authorization and which is responsible for the interagency development or coordination of any rule, regulation, or policy unless the President certifies to Congress that such official will respond to all reasonable requests to testify before, or provide information to, any congressional committee with jurisdiction over such matters, and such official submits certain reports biannually to Congress)
>
> At the appropriate place, insert the following:

FUNDING LIMITATION

SEC. __. None of the funds made available by this Act or any other Act may be used for the administrative expenses of any official identified by the President to serve in a position without express statutory authorization and which is responsible for the interagency development or coordination of any rule, regulation, or policy unless—

(1) the President certifies to Congress that such official will respond to all reasonable requests to testify before, or provide information to, any congressional committee with jurisdiction over such matters; and

(2) such official submits a report biannually to each congressional committee with jurisdiction over such matters, describing the activities of the official and the office of such official, any rule, regulation, or policy that the official or the office of such official participated or assisted in the development of, or any rule, regulation, or policy that the official or the office of such official directed be developed by the department or agency with statutory responsibility for the matter.

Ms. COLLINS. Mr. President, I rise today to call up an amendment to ensure that the so-called czars appointed by this administration can be held accountable to Congress and to the American people.

The effective functioning of our democracy is predicated on open government, on providing a transparent process for the people we serve. It cannot instill trust and confidence in its citizenry unless government fosters accountability. It is against that backdrop I raise my concerns regarding the administration's appointment of at least 18 new czars to manage some of the most complex issues facing our country.

I am not talking about traditional offices within the office of the President. I am not talking about, for example, the position of his Chief of Staff or the position of his press secretary. Similarly, I am not talking about officials who have responsibility to coordinate policy across agency lines that are specifically established in law. A good example of that is the Director of National Intelligence. That is a position that was established by Congress and whose head is nominated by the President and confirmed by Congress. So I am not talking about those officials either.

What I am talking about are new positions not created in law that have been established and which have significant policy responsibilities, or so it seems. Part of the problem here is we don't know exactly what the responsibilities are. As I, along with several of my colleagues, including the ranking member of this subcommittee, Senator ALEXANDER, recently expressed in a letter to the President, I am deeply troubled because these czars fail to provide the accountability, transparency, and oversight necessary for our constitutional democracy.

The creation of czars within the Executive Office of the President and elsewhere in the executive branch circumvents the constitutionally mandated advise and consent role our Founding Fathers assigned to the Senate. They greatly diminish the ability of Congress to conduct meaningful oversight to hold officials accountable for their actions, and it creates confusion about which officials are responsible for the government's policy decisions.

For example, Nancy-Ann DeParle, an individual for whom I have great respect, is the health policy czar within the White House. Kathleen Sebelius is the Secretary of Health and Human Services. So who is making policy when it comes to health care? Who do we hold accountable? Well, we know we can call the Secretary of Health and Human Services before us to testify in open session at public hearings, but most likely we cannot call Ms. DeParle before us to testify, even though she has been great about coming up for private meetings.

Senators ALEXANDER, BOND, CRAPO, ROBERTS, and BENNETT joined me in writing to the President to raise these important issues. We have identified at least 18 czar positions where reported responsibilities may be undermining the constitutional oversight responsibilities of Congress or the express statutory assignments of responsibility to other executive branch officials.

Again, to be clear, I do not consider every position identified in various media reports to be problematic. Positions that are established by law or are subject to Senate confirmation, such as the Director of National Intelligence, the Homeland Security Advisor, and the Chairman of the Recovery Accountability and Transparency Board do not raise the same concerns about accountability, transparency, and oversight.

Furthermore, we all recognize that Presidents are entitled to rely on experts to serve as senior advisers. But those czar positions within the Executive Office of the President and in some executive agencies are largely insulated from effective congressional oversight. Many of the czars appointed by this administration seem either to duplicate or dilute the statutory authority and responsibilities that Congress already has conferred upon Cabinet level officers and other senior executive branch officials.

Indeed, many of these new czars appear to occupy positions of greater responsibility and authority than some of the officials who come before us for Senate confirmation. Whether in the White House or elsewhere, these czar appointments are not subject to the Senate's constitutional advise and consent role. Little information is available concerning their responsibilities and authority. There is no careful Senate examination of their character and qualifications. We are speaking here of some of the most senior important positions within our government.

The appointment of so many czars has muddied the waters, causing confusion and risking miscommunication going forward. We need to know, with clarity: Who is responsible for what? Who is in charge—the czar or the Cabinet official? Who can the Congress and the American people hold accountable for government policies that affect their lives?

For these reasons, I offer an amendment that would prevent any more Federal funds from being made available for the administrative expenses of czars until two key conditions are met. I don't think these conditions are unreasonable. I don't think they are difficult for the President to meet, but they would make a real difference.

First, the amendment I am proposing would require the President to certify to Congress that every one of these positions will respond to reasonable requests to testify before or provide information to any congressional committee with jurisdiction over the matters the President has assigned to that individual.

Second, our amendment would require every czar to issue a public written report twice a year to these same congressional committees. This report would include a description of the activities of the official and the office, any rule, regulation, or policy that the official participated in the development of, or any rule, regulation, or policy that the official directed be developed by the department or agency with statutory responsibility for the matter.

This amendment would represent a significant step toward establishing an oversight regime for these positions that would provide the transparency and accountability our Nation expects from its leaders.

Beyond the specific requirements of this amendment, in the letter we sent to the President we implored the President to consult carefully with Congress prior to establishing any additional czars or filling any existing vacancies for these positions.

We stand ready to work with the President to address the challenges facing our Nation and to provide our country's senior leaders with the authority, accountability, and legitimacy necessary to do their jobs. If there are problems, then the administration should come to us. We can work on revamping organizational structures to help eliminate those problems, but we must eliminate the serious problems with oversight, accountability, transparency, and vetting that are associated with the proliferation of these czars.

I urge my colleagues to support what I think is a very reasonable approach to this difficult issue.

Mr. President, I thank the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I wish to congratulate the Senator from Maine for her leadership on this issue. She has shown great respect for the President's authority under the Constitution. We all respect that. He has the right to appoint his own advisers, period, and to take their advice and, as

a result, assert some executive privilege. And we don't inquire into that. He is entitled to that.

But under the Constitution, article II, section 2, states that the Cabinet officers and other appointments of significant policy positions should be appointed by the advice and consent of the Senate.

It is true a number of Republican Senators have raised a question about the 18 new czars appointed by President Obama who are not confirmed by the Senate, all of whom are new. They didn't exist before. This large number of new senior positions is of great concern.

Senator COLLINS, in her letter of September 14 to the President—written with great respect, signed by Senator BOND, Senator CRAPO, Senator ROBERTS, Senator BENNETT, and myself—basically made the argument she just made. She acknowledged the President's authority under article II to appoint his advisers and to be the leader of the country. But in terms of these specific responsibilities, the letter asks for information about the responsibilities of these 18 new czars; of how they were picked and how they were examined and whether they would be willing to testify before us.

In her remarks, Senator COLLINS pointed out if we have a Health Secretary and a health czar, who is in charge? If we have an Energy Secretary and an energy czar, who is in charge? Those are the big issues before us. Health care is nearly 20 percent of the economy. We have town meetings all over the country about it. Right after that comes energy and climate change, and those are going to be a massive issues for our country. So it is important for us to know who is in charge so they can testify before the Congress and so we can effect their appropriations if we should choose to do so.

The main point I want to underscore is the fact that this is not just a concern on the Republican side of the aisle. The senior Senator in the Senate, and the senior Democrat—the President pro tempore—is Robert C. Byrd. Sometimes we call him the constitutional conscience of the Senate. Senator BYRD was the first Member of this body to raise questions about the czars. I am sure he would have done it if there had been a Republican President—he probably has many times before—but he also did it even though there is now a Democratic President.

I think it is important to reflect upon what he said in his February 23 letter to President Obama. Senator BYRD said:

> As presidential assistants and advisers, these White House staffers are not accountable for their actions to the Congress, to cabinet officials, and to virtually anyone but the President. They rarely testify before congressional committees, and often shield the information and decision-making process behind the assertion of executive privilege. In too many instances, White House staff have been allowed to inhibit openness and transparency, and reduce accountability.

In speaking about the lines of authority between these new White House positions—these czars—and their executive branch counterparts, the Secretaries, Senator BYRD said this to the President:

> Too often, I have seen these lines of authority and responsibility become tangled and blurred, sometimes purposely, to shield information and to obscure the decision-making process.

Senator BYRD went on to say:

> As you develop your White House organization, I hope you will favorably consider the following: that assertions of executive privilege will be made only by the President, or with the President's specific approval; that senior White House personnel will be limited from exercising authority over any person, any program, and any funding within the statutory responsibility of a Senate-confirmed department or agency head; that the President will be responsible for resolving any disagreement between a Senate-confirmed agency or department head and the White House staff; and that the lines of authority and responsibility in the administration will be transparent and open to the American public.

Not only Senator BYRD, but Senator LIEBERMAN, who is the chairman of the committee on which Senator COLLINS is the ranking Republican, has expressed his willingness to hold hearings on this issue. Senator FEINGOLD of Wisconsin, a Democratic chairman of the Subcommittee on the Constitution, has written to the President expressing his concern. Senator FEINGOLD says:

> The Constitution gives the Senate the duty to oversee the appointment of Executive officers through the Appointments Clause in Article II, section 2. The Appointments Clause states that the President: ''shall nominate and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law.

Senator FEINGOLD goes on to say:

> This clause is an important part of the constitutional scheme of separation of powers, empowering the Senate to weigh in on the appropriateness of significant appointments and assisting in its oversight of the Executive branch.

Senator FEINGOLD and Senator BYRD and Senator COLLINS, and several of us who signed Senator COLLINS' letter, and Senator VITTER of Louisiana—we all respect the President's authority to be the President and to appoint his Cabinet members and other executive branch officers. But we expect that those officers, the people who are actually setting the policy and running the departments, should be accountable to those of us in the Senate because the Constitution says so.

As a practical matter, we all know in Washington most people in the executive branch measure their power by the number of inches they are from the President of the United States. In the White House, most of the scurrying around at the beginning of an administration is to see who can get the office closest to the Oval Office. So it is always an issue about the amount of power that begins to accumulate in the White House. When it begins to take away accountability and authority and responsibility and create confusion about whether the Cabinet Secretaries have the authority, that is the time that we begin to cross the constitutional line.

That is what Senator BYRD talked about in February, what Senator FEINGOLD talked about last week, and what Senator COLLINS is talking about today. I congratulate her on her amendment. I think it is constructive. I think it is respectful to the President. It acknowledges his role in the Constitution, but it reiterates the importance of the role of the Senate in accountability and in transparency. I look forward to supporting her amendment.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I listened to the comments of the ranking member, the Republican manager of the bill. I agree with everything he said. I have great respect for the Senator from Maine. I find this amendment reasonable and our side is prepared to accept it.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. ISAKSON addressed the Chair.

Mrs. FEINSTEIN. Mr. President, we have one issue up right now, and then we will be happy to call on the Senator from Georgia. I know he has an amendment. I will ask unanimous consent that directly following disposal of the amendment of the Senator from Maine we turn to the Senator from Georgia.

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

The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I suggest the absence of a quorum for just one moment.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senator from Georgia, Mr. ISAKSON, and the Senator from Louisiana, Mr. VITTER, be added as cosponsors of the amendment.

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

Ms. COLLINS. Mr. President, I thank the chairman of the subcommittee, the Senator from California, and the Senator from Tennessee for their kind comments.

I urge adoption of the amendment.

Mrs. FEINSTEIN. To understand this correctly, the intention is to take this by unanimous support. However, there is one thing that needs to be checked

on. The clerks will do that, if the Senator from Maine is agreeable. In the meantime, we will proceed with the Senator from Georgia? Hearing no objection, I yield to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

AMENDMENT NO. 2504

Mr. ISAKSON. I ask unanimous consent we set aside the pending amendment and call up amendment No. 2504.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Georgia [Mr. ISAKSON] proposes an amendment numbered 2504.

Mr. ISAKSON. I ask further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To encourage the participation of the Smithsonian Institution in activities preserving the papers and teachings of Dr. Martin Luther King, Jr., under the Civil Rights History Project Act of 2009)

On page 219, line 5, before ''and including'', insert the following: ''of which $5,000,000 may be made available to the Secretary of the Interior to develop, in conjunction with Morehouse College, a program to catalogue, preserve, provide public access to and research on, develop curriculum and courses based on, provide public access to, and conduct scholarly forums on the important works and papers of Dr. Martin Luther King, Jr. to provide a better understanding of the message and teachings of Dr. Martin Luther King, Jr.;''.

Mr. ISAKSON. First, I thank the chairman for the courtesy of allowing me to call up the amendment at this time and appreciate the courtesy of the Senator from Maine. I have requested in appropriations the designation which is included in this amendment which says the Secretary may—underline the word ''may''—appropriate $5 million to Morehouse College for the purpose of the curation and the care of the Martin Luther King, Jr., papers in Atlanta, GA, for the civil rights museum of history.

Briefly, not to belabor the point, a number of years ago, as you may know, the family of Martin Luther King put up the King papers for auction to the highest bidder. A number of people in the State of Georgia and the city of Atlanta determined that those papers belonged to the world and raised $32 million amongst themselves to buy the papers to protect them forever for posterity. An issue came up in the U.S. House of Representatives to appropriate that money, and it didn't happen. Without those bidders, those papers would have gone to the highest bidder. Whether or not it would have remained in the public purview for posterity no one knows. But we do know because of the people and the mayor of Atlanta, Shirley Franklin, the distinguished Representative of our State, had the courage and fortitude and foresight to raise the money, and those papers are now under protection for the people of the world.

The money is being raised to build the civil rights museum, and it will start in the not too distant future at Centennial Park in Atlanta. It will house the papers of Martin Luther King, but there are 10,000 exhibits within the papers of Dr. King. Therefore, Morehouse College has been designated to be the curator and protector of those papers, much as our archivists in the country do for the great historical documents of the United States. This money would go to assist Morehouse College as the curator to protect those papers, which will be in the public domain forever.

I appreciate very much the distinguished chairman allowing me to offer the amendment. I hope at the appropriate time it will be adopted. I think it is an important contribution to the history of our country and future of civil rights and the world.

I yield the remainder of my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. 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. 2504, AS MODIFIED

Mrs. FEINSTEIN. I ask unanimous consent that Isakson amendment No. 2504 be modified with the changes that are at the desk, which are technical amendments.

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

The amendment as modified is as follows:

On page 219, line 5, before ''and including'', insert the following: ''of which $5,000,000 may be made available to the Secretary of the Interior to develop, in conjunction with Morehouse College, a program to catalogue,preserve, provide public access to and research on, develop curriculum and courses based on, provide public access to, and conduct scholarly forums on the important works and papers of Dr. Martin Luther King, Jr. to provide a better understanding of the message and teachings of Dr. Martin Luther King, Jr.;''.

Mrs. FEINSTEIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. 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. Mr. President, I ask unanimous consent that at 5:45 p.m. today, the Senate proceed to vote in relation to the following amendments and motion; that prior to each vote there be 2 minutes of debate, equally divided and controlled in the usual form; that no amendments be in order to the amendments or motion prior to the vote; that after the first vote in the sequence, the succeeding votes be limited to 10 minutes each: McCain amendment No. 2461, DeMint motion to recommit, and Reid amendment No. 2494.

The PRESIDING OFFICER. Is there objection?

Mr. ALEXANDER. Mr. President, reserving the right to object, that would be the Reid amendment as modified?

Mrs. FEINSTEIN. Right.

Mr. ALEXANDER. No objection.

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

Mrs. FEINSTEIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 2494, AS MODIFIED

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Reid amendment No. 2494 be modified with the change at the desk and that once the amendment is modified, it be agreed to, as modified, and the motion to reconsider be made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is agreed to, as modified.

The amendment (No. 2494), as modified, was agreed to, as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. JUNGO DISPOSAL SITE EVALUATION.

Using funds made available under this Act, the Director of the United States Geological Survey may conduct an evaluation of the aquifers in the area of the Jungo Disposal Site in Humboldt County, Nevada (referred to in this section as the ''site''), to evaluate—

(1) how long it would take waste seepage (including asbestos, discarded tires, and sludge from water treatment plants) from the site to contaminate local underground water resources;

(2) the distance that contamination from the site would travel in each of—

(A) 95 years; and

(B) 190 years;

(3) the potential impact of expected waste seepage from the site on nearby surface water resources, including Rye Patch Reservoir and the Humboldt River;

(4) the size and elevation of the aquifers; and

(5) any impact that the waste seepage from the site would have on the municipal water resources of Winnemucca, Nevada.

Mrs. FEINSTEIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCAIN. 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. 2461

Mr. MCCAIN. Mr. President, I ask that we proceed to the regular order.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I believe the regular order is that I am allowed 1 minute. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. Thank you, Mr. President.

This amendment strikes an earmark of $200,000 for the Des Moines Art Center in Iowa. The center just began a $7.5 million capital improvement project. It is time we got serious.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I join Senator HARKIN in urging a ''no'' vote. I think he argued quite eloquently on the floor.

I yield my time, and we can go straight to the vote.

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

The yeas and nays have been previously ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

I also announce that the Senator from Arkansas (Mrs. LINCOLN) is absent due to a death in the family.

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

The result was announced—yeas 27, nays 70, as follows:

[Rollcall Vote No. 291 Leg.]

YEAS—27

Barrasso	Ensign	Kyl
Bunning	Enzi	LeMieux
Burr	Feingold	Lugar
Chambliss	Graham	McCain
Coburn	Gregg	McConnell
Corker	Hutchison	Risch
Cornyn	Inhofe	Sessions
Crapo	Isakson	Thune
DeMint	Johanns	Vitter

NAYS—70

Akaka	Franken	Nelson (FL)
Alexander	Gillibrand	Pryor
Baucus	Grassley	Reed
Bayh	Hagan	Reid
Begich	Harkin	Roberts
Bennet	Hatch	Rockefeller
Bennett	Inouye	Sanders
Bingaman	Johnson	Schumer
Bond	Kaufman	Shaheen
Boxer	Kerry	Shelby
Brown	Klobuchar	Snowe
Brownback	Kohl	Specter
Burris	Landrieu	Stabenow
Cantwell	Lautenberg	Tester
Cardin	Leahy	Udall (CO)
Carper	Levin	Udall (NM)
Casey	Lieberman	Voinovich
Cochran	McCaskill	Warner
Collins	Menendez	Webb
Conrad	Merkley	Whitehouse
Dodd	Mikulski	Wicker
Dorgan	Murkowski	Wyden
Durbin	Murray	
Feinstein	Nelson (NE)	

NOT VOTING—2

Byrd	Lincoln

The amendment (No. 2461) was rejected.

MOTION TO RECOMMIT

The PRESIDING OFFICER. There is now 2 minutes of debate prior to a vote in relation to the DeMint motion to recommit.

The Senator from California.

Mrs. FEINSTEIN. Madam President, both Senators from California, as well as the managers of this bill, urge a ''no'' vote on the DeMint amendment.

What this amendment would do is essentially prohibit the Secretary of the Interior from expending appropriated funds to restrict, reduce or reallocate water supplies from the Central Valley Project and the California State Water Project. In essence, South Carolina is telling California how to handle its water issues.

To handcuff the Secretary of the Interior will essentially prohibit transfers between the State and the Federal water projects, which transfers are being done to facilitate additional water to go to a very needy farm belt in the great Central Valley of California. To put a prohibition on the Secretary to use any of the funds in this budget to reallocate or transfer this water is a mistake.

I urge a ''no'' vote, and I move to table.

The PRESIDING OFFICER. There is still time remaining. The Senator from South Carolina.

Mr. DEMINT. Madam President, this issue shines a spotlight on the utter stupidity of what this body does so often. Lawsuits cut off water to one of the most fertile farming communities in our country that supplies 13 percent of our food supply. About 40,000 people are now out of work because of this arbitrary lawsuit. Now President Obama has declared it a disaster area so we can spend more taxpayer money to bail out the small businesses we are putting out of business.

All this amendment does is restrict the use of funds to cut off water to the farmers in California that affect this whole Nation. It is not a California issue, it is an American issue. It makes no sense in a recession to put people out of work and to arbitrarily, with no good science involved here, cut off water from the farmers of America.

I have a list of farm bureaus throughout California, the National Cotton Council, and people all over this country who are saying enough is enough. Let us use some common sense. Please support this motion.

The PRESIDING OFFICER. Time has expired.

The majority leader.

Mr. REID. Madam President, this will be the last vote of the evening. I will file cloture tonight on this bill and, hopefully, we can move immediately to the Defense appropriations bill.

Mrs. FEINSTEIN. Madam President, I move to table this motion to recommit, and I ask for the yeas and nays.

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

The clerk will call the roll.

The legislative clerk called the roll.

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

I also announce that the Senator from Arkansas (Mrs. LINCOLN) is absent due to a death in the family.

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

The result was announced—yeas 61, nays 36, as follows:

[Rollcall Vote No. 292 Leg.]

YEAS—61

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

NAYS—36

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

NOT VOTING—2

Byrd	Lincoln

The motion to table was agreed to.

Mrs. FEINSTEIN. I move to reconsider the vote.

Mr. ALEXANDER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I ask unanimous consent to set aside the pending amendment and call up amendment No. 2454.

Mrs. FEINSTEIN. Madam President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Louisiana.

MOTION TO RECOMMIT WITH AMENDMENT NO. 2508

Mr. VITTER. Madam President, I find this very frustrating. As I understand it, the Chair who is handling the bill on the floor is not objecting personally but on behalf of Senator NELSON of Florida. I find it frustrating because this is a completely germane amendment to the bill. It is a limitation amendment which is completely germane to the bill. I don't think there is any reasonable argument that something so directly pertinent and germane should not be open for discussion and vote on the Senate floor.

I think, quite frankly, it is unreasonable for Senator NELSON to block an amendment in this way. Having been

forced to do this, I now send to the desk a motion to recommit with instructions so that this amendment can be considered and heard in that manner.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. VITTER] moves to recommit the bill, H.R. 2996, to the Committee on Appropriations of the Senate with instructions to report back the same to the Senate forthwith with the following amendment No. 2508.

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

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

The amendment is as follows:

(Purpose: To prohibit the use of funds to delay the implementation of the Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program 2010–2015)

On page 240, between lines 13 and 14, insert the following:

SEC. 423. PROHIBITION ON USE OF FUND TO DELAY DRAFT PROPOSED OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM 2010–2015.

None of the funds made available by this Act shall be used to delay the Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program 2010–2015 issued by the Secretary of the Interior under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344).

Mr. VITTER. Madam President, I will be happy to explain the substance of this amendment. Again, I am forced to file this motion to recommit simply to have this germane, relevant amendment heard and voted on with regard to the bill.

What does the amendment do? The amendment is very straightforward. It simply says:

None of the funds made available by this Act shall be used to delay the Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program from 2010–2015 issued by the Secretary of the Interior under section 18 of the Outer Continental Shelf Lands Act.

We all know we face enormous energy needs in this country. That became particularly acute and particularly obvious last summer when the price at the pump went through the roof and rose to $4 a gallon for gasoline. At that time, people rightly became enraged that we were not doing more to control our own destiny and our own energy future. People started demanding that Congress act, that Congress do something with regard to oil and gas and other energy resources we have right here at home.

That is when the petition began: Drill here, drill now. That is when every Member of this Congress was deluged with calls and e-mails and letters saying: Let's get ahold of our own destiny and produce that energy which we have right here at home.

In that time period last year, Congress heard that message loudly and clearly. So for the first time in years, the moratorium on offshore oil and gas production was lifted by Congress, and President Bush similarly lifted a more limited executive moratorium on offshore production. So those barriers and those hurdles were finally lifted because of the demands of the American people, when the American people said very loudly, very clearly: This is ridiculous. We have resources here at home. We have domestic energy. Let's use that domestic energy rather than being held hostage by foreign powers. That was real progress. That was moving, certainly, in the right direction.

The problem is, the new administration and the new Secretary of the Interior have made it clear that—despite all of those actions, despite all of that clear communication by the American people, despite Congress taking that historic action of lifting the moratorium, despite the previous administration lifting the executive moratorium—they are not in any hurry and they are not going to take any action in the near future to move forward with the 2010 to 2015 offshore planning area and lease sales.

So what, unfortunately, Secretary Salazar has said pretty clearly is he is not going to take action in the foreseeable future to actually move forward with that going after domestic production and domestic resources. That is really a shame because, while the price at the pump has stabilized somewhat from last summer, and that is a good thing, the need—particularly the medium- and long-term need—is still there. Over the next 20 years, U.S. demand for energy is only going to grow. It is particularly going to grow as we get out of this recession and come back into a more normal economy. Overall, it is expected to grow at an annual rate of 1.4 percent. That is going to demand more energy. We need to conserve. We need to develop new technology. We need to develop new energy sources. But that need is still going to grow, so that short term we will have increased demand for the types of energy we use.

We have enormous potential right here at home. The question which this amendment poses is, are we going to tap that potential or are we going to use the resources we have so that we cannot be held hostage any longer by hostile foreign powers.

According to conservative estimates from MMS, there are about 288 trillion cubic feet of natural gas and 52 billion barrels of oil in the OFC, off the lower 48 States. That is an enormous amount of energy as yet untapped. That is enough oil to maintain current production for 105 years. That is enough natural gas to maintain production for 71 years. That is enough oil to produce gasoline for 132 million cars and heating oil for 54 million homes for 15 years. It is enough natural gas to heat 72 million homes for 60 years or to supply current industrial and commercial needs for 28 years or to supply current electricity generating needs for 53 years. Further, the MMS reports that the waters off Alaska's coast hold about 27 billion barrels of oil and 132 trillion cubic feet of natural gas. That is in addition to all of the potential, all of the resources I was just talking about.

Make no mistake about it, we need to move to a new energy future. We need to develop new technology. We need to develop new sources of energy. But we need a bridge to get to that future, and certainly current fuels—oil and natural gas, particularly natural gas, which is a relatively clean-burning fuel—are an absolutely vital bridge to get to that future.

The American people are scratching their heads. We have enormous needs, particularly the need to build an energy bridge to a new, exciting energy future. The good news is we have enormous domestic resources that can help get us there, particularly natural gas. So why are we not matching those two things that should match up so well? The American people demanded that last summer. Because of their loud and clear voice, they got dramatic action out of Congress, lifting the moratoria. The problem is, the new administration and the new Secretary of the Interior are simply saying: We are not in any hurry to get there. We are not going to lift a finger to actually move forward with the concrete work that needs to be done.

That is really inappropriate. That is ignoring the clear clarion call of the American people. So, again, that brings us to my amendment, amendment No. 2454, which my motion to recommit would add to the bill. It simply says:

None of the funds made available by this Act shall be used to delay the draft proposed Outer Continental Shelf Oil and Gas Leasing Program for 2010–2015 issued by the Secretary of the Interior under section 18 of the Outer Continental Shelf Lands Act.

The American people have spoken: Drill here, drill now; build an important bridge to the future. No, it is not the future, but it is a necessary bridge to get us there. Let's adopt that common sense of the American people. Let's respond to that clear call of the American people dating back to last summer. Let's pass this clear limitation amendment, perfectly germane to this bill, so we can move forward with developing our domestic energy resources right here at home to build a more stable energy future.

I yield my time.

Mr. THUNE. Madam President, last summer President Bush signed into law a $50 billion foreign aid—HIV/AIDS—bill. Included as part of the PEPFAR bill was a $2 billion authorization that I, and a bipartisan group of Senators, worked to include that focused on the critical public safety, health care, and water needs in Indian country. All of the Senators who worked to include this provision in the final package, including now Vice President BIDEN and Secretary of State Clinton, recognized that there are great needs internationally, but that we have equal or maybe even greater needs here at home on our Nation's reservations.

The final PEPFAR bill created a $2 billion 5-year authorization, beginning

in fiscal year 2009, for the emergency fund for Indian safety and health. Over the 5-year authorization, $750 million could be spent on public safety, $250 million on health care, and $1 billion for water settlements. The need for increased funding in these three areas cannot be underestimated.

Nationwide, 1 percent of the U.S. population does not have safe and adequate water for drinking and sanitation needs. On our Nation's reservations this number climbs to an average of 11 percent and in the worst parts of Indian country to 35 percent. The Indian Health Service estimates that in order to provide all Native Americans with safe drinking water and sewage systems in their home they would need over $2.3 billion.

The heath care statistics are just as startling. Nationally, Native Americans are three times as likely to die from diabetes compared to the rest of the population. In South Dakota, 13 percent of Native Americans suffer from diabetes. This is more than twice the rate of the general population, where only 6 percent suffer from diabetes. On the Oglala Sioux Reservation in my home State of South Dakota, the average life expectancy for males is 56 years old. In Iraq it is 58, in Haiti it is 59, and in Ghana it is 60—all higher than right here in America. In South Dakota, from 2000 to 2005, Native American infants were more than twice as likely to die as non-Native infants.

Tragically, there are also great needs in the area of public safety and justice. One out of every three Native American women will be raped in their lifetime. According to a recent Department of Interior report, tribal jails are so grossly insufficient when it comes to cell space, only half of the offenders who should be incarcerated are being put in jail. That same report found that constructing or rehabilitating only those detention centers that are most in need will cost $8.4 billion.

The South Dakota attorney general released a study last year on tribal criminal justice statistics and found homicide rates on South Dakota reservations are almost 10 times higher than those found in the rest of South Dakota. Also, forcible rapes on South Dakota's reservations are seven times higher than those found in the rest of South Dakota.

There is no better example of these public safety issues as Standing Rock Sioux Tribe, which is located on the North and South Dakota border. In early 2008, the Standing Rock Sioux Reservation had six police officers to patrol a reservation the size of Connecticut. This meant that during any given shift there was only one officer on duty. One day, the only dispatcher on the reservation was out sick. This left only one police officer to act both as a first responder and also as the dispatcher. This directly impacted the officer's ability to patrol and respond to emergencies, and prevented him from appearing in tribal court to testify at a criminal trial.

Later in the year, I was able to work with my Senate colleagues and the Bureau of Indian Affairs to bring additional police officers to the Standing Rock Sioux Reservation through Operation Dakota Peacekeeper. This effort increased the number of officers working on the reservation from 12 to 37. This operation, which was a success, was only possible because the Bureau of Indian Affairs was able to dramatically increase the number of law enforcement officials on the reservation during the surge. And this dramatic increase in officers was only possible because the Bureau had been given additional public safety and justice funds in 2008.

Since its enactment last year, I have been working with my colleagues to ensure that the emergency fund for Indian safety and health is funded as quickly as possible. Earlier this spring, 13 of us sent a letter to the chairman and vice chairman of the Appropriations Committee asking that the committee increase the allocations in three different bills, including the Interior appropriations bill that we are debating today. As a result of that letter, the allocations in both the Energy and Water Development and Interior appropriations bills were increased by $50 million each, for a total of $100 million.

While this funding increase is a positive sign, neither subcommittee directed this additional funding into the emergency fund as requested. Instead, the Energy and Water Development Subcommittee divided the additional funding up between a variety of water settlement projects, and the Interior Subcommittee provided $25 million for public safety construction and $25 million for ''public safety and justice programs as authorized by the PEPFAR Emergency Fund.''

While I am pleased to see that there has been a $100 million increase in funding for Native American public safety and water projects, I think more could be done if we deposited funds directly into the emergency fund, which would be allocated to the areas of greatest need. The emergency fund, unlike general appropriations, is needed because the fund allows the relevant Federal agencies to spend the additional resources in those places where there are actual emergencies. It would allow agencies, like the Bureau of Indian Affairs, to begin additional operations, like Operation Dakota Peacekeeper, and bring immediate solutions to parts of our nation that are most in need.

That is why I filed my amendment, amendment No. 2503, today. I have filed an amendment that would simply transfer the $50 million increase in public safety and public safety construction funding into the emergency fund. While I do not intend to seek a vote on this amendment today, I am committed to continuing to work in a bipartisan manner for the much needed funding for the emergency fund. Toward that end, I am encouraged by the discussions I have had with several of my colleagues who are willing to continue this effort.

Mr. CONRAD. Mr. President, I rise to offer for the RECORD the Budget Committee's official scoring of H.R. 2996, the Department of the Interior, Environment, and Related Agencies Appropriations Act for fiscal year 2010.

The bill, as reported by the Senate Committee on Appropriations, provides $32.1 billion in discretionary budget authority for fiscal year 2010, which will result in new outlays of $19.7 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the bill will total $34.3 billion.

The Senate-reported bill matches its section 302(b) allocation for budget authority and is $5 million below its allocation for outlays. No points of order lie against the committee-reported bill.

I ask unanimous consent to have printed in the RECORD a table displaying the Budget Committee scoring of the bill.

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

H.R. 2996, DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

[Spending comparisons—Senate-reported bill (in millions of dollars)]

	General purpose
Senate-Reported Bill:	
Budget Authority	32,100
Outlays	34,273
Senate-Reported Bill Compared To:	
Senate 302(b) allocation:	
Budget Authority	0
Outlays	−5
House-Passed Bill:	
Budget Authority	−200
Outlays	85
President's Request:	
Budget Authority	−225
Outlays	35

NOTE: Table does not include 2010 outlays stemming from emergency budget authority provided in the 2009 Supplemental Appropriations Act (P.L. 111–32).

The PRESIDING OFFICER. The Senator from California is recognized.

MORNING BUSINESS

Mrs. FEINSTEIN. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak up to 10 minutes each. I ask unanimous consent for the Senator from Oklahoma to proceed.

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

CLIMATE CHANGE

Mr. INHOFE. Madam President, let me thank the Senator from California for allowing me to go first in this group that I am sure will appear down here to talk in morning business.

As the cap and trade continues to languish in the Senate, President Obama is trying to salvage international climate change talks that are on the brink of collapse. So he gave a

climate change speech at the United Nations, hoping to inspire hope in the process marred by failure. His speech, however, fell short of expectations, offering only to talk of rising sea levels and climate refugees, sort of resurrecting things that have been refuted in the old Gore speeches.

President Obama's speeches have been delivered against a backdrop of confusion and disagreement in the international community over climate change. The European Union is angry that the Senate is stalling cap and trade. China and India refuse to accept binding emissions cuts. The New York Times admits that global temperatures ''have been stable for a decade and may even drop in the next few years.'' In other words, we are actually in a cooling period right now, maybe not as dramatic as the one I recall back so well in 1975, when they said another ice age is coming, nonetheless it is cooler. We are not involved in global warming right now.

He was addressing the global economic recession that has taken precedence over climate change in countries throughout the world. This global economic recession is one that has captured the interest of the people all over the world and has them looking to see: Is this science really there that they were talking about, going all the way back to the late 1990s and the Kyoto treaty? This is deja vu all over again. These are some of the same issues that have stymied climate talks ever since Kyoto.

We were told all rancor and disagreement would evaporate once the new administration assumed power in the United States. After all, the failure to achieve an international climate pact was simply George Bush's fault. President Obama would bring change and the ability to persuade the likes of China and India to transcend their national self-interest for the global good. That has not happened and is not going to happen.

I was surprised President Obama failed to define what success will mean in Copenhagen, so I will have to do it for him. From the standpoint of the Senate, success will not mean a vague, open-ended commitment on the emissions from India or China, the world's leading emitter. Success can only mean that China and other developing countries agree to mandatory emission cuts comparable to those required in America and that any treaty or agreement that did not avoid causing harm to our economy would not be acceptable. Unless those conditions are met, no such treaty or agreement will be approved by the Senate.

I remember the Senate resoundingly rejected exempting developing nations such as China way back in 1997. That is still alive today. It passed 94 to 0. It said we will not agree to any treaty. At that time, Vice President Gore had signed the Kyoto treaty. They were trying to encourage us to ratify that treaty. President Clinton never brought it to the floor. It is because we had spoken loudly and clearly with a unanimous vote in the Senate that said we are not going to ratify anything that either doesn't force the developing countries such as India and China to have the same requirements as we have or that hurts us economically. That is the position—it was then and is today—of the U.S. Senate. I think that still commands support in the Senate. Any treaty the Obama administration submits must meet that resolution.

We hear that China is making progress in reducing emissions and that the administration will persuade China to agree to more aggressive steps in Copenhagen.

By the way, that is where they have the annual meeting, the big bash the United Nations puts on. I went to one of those back in about 2003, I guess it was, in Milan, Italy.

The administrations's climate change envoy, Todd Stern, is saying something different. On September 2—he is the person from the Obama administration—on September 2, he said: ''It is not possible to ask China for an absolute reduction below where they are right now'' because, as he said, ''they are not quite at that point to be able to do that. And, in that respect, developing countries are different''—totally violating the intent of the 1997 agreement that this Senate had.

This is the first time someone from the administration has said let's treat developing countries different from developed countries.

Let me restate a bit. Stern is saying China simply can't make reductions that would be comparable to anything the United States accepts domestically. This is not a surprise considering China is now the world's largest emitter of carbon dioxide while U.S. emissions have remained relatively stagnant. Make no mistake here, China is unapologetic for its refusal to accept binding emissions cuts, and it will pursue an all-of-the-above strategy, including burning coal as it deems necessary; all of the above: oil, gas, coal, nuclear; they are very big in nuclear over there.

China also stated that before it accepts absolute, binding emissions reductions, developing countries must reduce their emissions by at least 40 percent by 2020.

Let me say that again. China won't accept absolute reductions until developing countries—that is, the United States, including the United States—reduce their emissions 40 percent below 1990 levels by 2020. This is really astounding considering that the Waxman-Markey bill only calls for a 14-percent reduction and they are saying they expect us to have a 40-percent reduction.

Accepting the Chinese position would mean certain economic disaster for the United States, for jobs and businesses—not to mention emissions—going to China.

Over the coming days and weeks, we will hear much about China's national mitigation plan, its 5-year plan to reduce emissions. We will hear stern warnings that China is outpacing the United States on clean energy. But this is a smokescreen to hide the chaos and failure of international climate change negotiations.

In the coming weeks, President Obama will reach some sort of bilateral agreement with China on climate change, but it won't require China to do anything other than business as usual. We have gone through this before. I can understand China's position. If I were in China, in that government, I would say the same thing. I would say: Let's go ahead and let's get the developed nations to have some kind of reductions so that will move manufacturing jobs to us, to China. I have to say this about the new Administrator of the Environmental Protection Agency, Lisa Jackson, in her honesty the other day in a public hearing—I asked her the question: If we were to pass one of these bills where we unilaterally pass something in the United States, like Waxman-Markey, if we did that, would that have any reduction in worldwide reductions in CO_2? She said no, it would not have any effect. Obviously, it wouldn't.

Anyway, you could argue that if we were to pass Waxman-Markey, it would have the effect of increasing worldwide emissions because our manufacturing base would go to countries where they didn't have any emission requirements.

So, in the final analysis, President Obama's speech to the United Nations was a failure to define success, a failure to provide real solutions for international energy security, and a failure to sketch the outlines of a meaningful international climate change agreement that will pass the Byrd-Hagel test of 1997.

I think surely after the August recess, after so many people were beaten up on the fact that they did not want to have any type of a government-run health system, they certainly did not want to pass something that would be a cap and trade that would have the effect of providing the largest single tax increase in the history of America, a tax increase in the range of $300 to $366 billion a year.

I can remember back when we passed that very large tax increase in 1993. It was called the Clinton-Gore tax increase. It increased the marginal rates, increased capital gains, it increased the death tax, all of the other taxes. I was pretty upset about it at that time. I talked on the Senate floor. I said that was a $32 billion tax increase. This would be 10 times that size. So I do not think it is going to happen. This commission will listen to the speeches between now and Copenhagen. I plan to make a few myself.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado.) The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ANGRY AMERICANS

Mr. SANDERS. Mr. President, my impression is that the American people are angry. In my view, they have every right in the world to be angry because what we are seeing in our country today is the kind of economic suffering and pain that we have not seen in this country since the Great Depression.

Recently, last week, Ben Bernanke, who is the Chairman of the Federal Reserve, said he thought it ''very likely that the recession had ended.''

I would suggest to Mr. Bernanke that before he makes statements like that, he might want to talk to the tens and tens of millions of people in this country who are suffering economically and who, in many respects, are not going to see a better day soon unless we as a Congress get our act together.

When you ask why the American people are angry, let me suggest to you why that is so. We went through 8 years which, in my view, were led by the worst administration in the modern history of the country. This is what happened during those 8 years before the financial crisis of last year. During the Bush-Cheney administration over 8 million Americans slipped out of the middle class and into poverty; median household income declined by over $2,100; over 6.5 million Americans lost their health insurance; 5.4 million manufacturing jobs disappeared; and 4 million American workers lost their pensions. That is between 2000 and 2008.

Colleagues may have seen the other day in USA Today on their front pages unbelievable statistics which were geared toward age groups of young American workers seeing, during that 8-year period, huge declines in their median family income. That was before the financial crisis.

As we all know, about a year ago, Secretary of the Treasury Paulson came before the Congress and essentially said: I know that for 7 years we were telling you how robust and great the American economy was, but it seems we may have made a little bit of a mistake. If you don't give us $700 billion in the next few days, it appears that the entire world's financial system might collapse. It seems we may have made a mistake.

Thank God the financial system of the country and the world did not collapse. But on Wall Street, because of the greed, the irresponsibility, and the illegal actions of a handful of CEOs at the head of huge financial institutions, we have seen the most significant economic decline in this country since the 1930s. Since the beginning of the recession in December of 2007, 7.4 million Americans have lost their jobs. The official unemployment rate is 9.7 percent. Let me give a statistic which I think is enormously powerful and extremely frightening. If we count people who are officially declared as unemployed and if we add to that number those people who have given up looking for work, who are no longer counted as unemployed, and if we add to that number those people who want to work in full-time jobs but are now working part-time jobs, what we are looking at is 26 million Americans who are unemployed or underemployed. That is 17 percent of working-age Americans. As bad as the official statistic of 9.7 percent is, the reality is a lot worse than that. When we wonder why people are angry, I think when 26 million Americans are unemployed or underemployed, when millions more have lost their homes, when they have lost their pensions, when they have lost their health insurance, those people have a right to be angry.

In my view, we have been far too easy in terms of our response to what the people on Wall Street have done. It is beyond my comprehension that we did not begin an investigation weeks or at least months after the financial meltdown and ask what the cause of that meltdown was, who was responsible, hold them accountable, and if they broke the law, they deserved to find out what the American penal system is all about.

What we have to do right now—and I know there is an investigation beginning—is a thorough investigation—it is already very late in the process, and we should have done it earlier—to start holding those people who have caused so much suffering accountable, to understand that they just can't get away with it. What amazes me is that we have a handful of people whose greed and recklessness have caused this crisis. And have you heard one of them come before the American people to say: I am sorry. My greed, my recklessness, my illegal behavior has caused so much suffering in this country and around the world. I want to apologize.

On the contrary, what I have heard is lobbyists all over this place and the financial institutions spending millions and millions of dollars trying to make sure we do nothing and that they are able to continue doing what they did, the same old ballgame which caused the crisis in the first place.

The first thing I think we need to do is a real investigation of this financial crisis. If there are CEOs, who made hundreds of millions of dollars, responsible for this disaster, this financial crisis, they have to be accountable. If they broke the law, they have to go to jail.

Second, in terms of real financial reform, I am more than aware that Congress passed legislation trying to bring more transparency and integrity to the credit card industry. All of us have received prospectuses from credit card companies telling us if we sign on the bottom line, we will have zero-interest-rate credit. They have sent out billions of these prospectuses every single year. Meanwhile, in tiny print on page 4, it appears they could raise their rates to any level they want for any reason. We have begun to deal with that, but we have not gone far enough.

When major financial institutions are charging the American people 29 percent interest rates on their credit cards, 30 percent interest rates in terms of payday lending, 40, 50 percent interest rates, we have to call it what it is. That is loan sharking. In the old days, a loan shark was somebody who lent you money and if you didn't pay it back on time, they broke your kneecaps. Now we have these guys on Wall Street who are doing exactly the same thing, and we call that providing credit. But it is not. It is loan sharking. It is usury. We need to bring back usury legislation, which we used to have but was done away with by a Supreme Court decision which allowed companies to go to States that don't have usury laws to be protected in terms of being able to charge high interest rates all over the country.

I have introduced legislation which imposes a maximum of 15 percent interest on credit cards. The reason I have done that is, in fact, credit unions for many decades now have been operating under that law. It is not the credit unions that are coming here for massive bailouts. It is our friends on Wall Street. I think if it has worked for the credit unions, it can work for private banks as well. We have passed credit card legislation which was a step forward, but I think we have to take another big step. We have to say that there has to be a maximum, a cap on interest rates. I believe an appropriate one is 15 percent.

Another issue we have to deal with is the phenomenon of too big to fail. The reason we provided hundreds of billions of dollars in a bailout to Wall Street is that the experts believed—the Secretary of the Treasury and the head of the Fed—that if we allowed these huge financial institutions to fail, they would bring down the entire system. That was a year ago. Maybe you know more than I do, but I am not aware that we have taken any steps to begin breaking up these large financial institutions. If they were too big to fail a year ago, they are too big to fail right now.

What we have seen—and there have been a number of articles on this—is that these huge financial institutions have become even larger. What sense is that? We have to begin to learn what Teddy Roosevelt did 100 years ago. We have to start breaking up these guys. Because if we don't, we will be back here again, except next time the bailout will be even larger, because the financial crisis will be that much more severe.

Furthermore, it goes without saying that for years Alan Greenspan and Bob Rubin and all of those people who told us that the secret to financial success in America was to deregulate Wall Street, that what we really had to do

was to get the government off of the backs of all of these big Wall Street companies, we had to do away with Glass-Steagall legislation, we had to allow investment houses to merge with commercial banks, to merge with insurance companies—all of that was going to be wonderful in terms of creating wealth and prosperity for the American people.

Our friends on Wall Street spent billions of dollars on lobbying to get that through. I was one of those in the House vigorously opposed to that approach. Needless to say, it is time to rethink that and, in a sensible way, to start the reregulation of Wall Street.

The bottom line is, these people on Wall Street are by and large concerned about one thing, and that is making as much money as they possibly can for themselves. And they have done phenomenally well. Some years ago 25 percent of all profits in America went to Wall Street, which has relatively few people. Obviously, as I think everybody knows, you had hedge fund guys making a billion dollars a year, CEOs making hundreds of millions of dollars a year. They have done very well. They don't care that manufacturing is disintegrating in America, that millions of workers have lost their jobs. They don't care that small businesses can't get credit. They don't care about trying to build a productive economy where working people are producing real products that people can consume. That is not where these guys are at. They are at it for short-term gains. If anybody believes otherwise, they don't understand history.

We have to set out a number of rules by which they have to play or else we are looking to bring back exactly what we just went through.

Another issue we have to deal with, as we get to financial reform, is the Fed. I am a member of the Budget Committee. Last year, when Mr. Bernanke came before the committee, I asked him very simply if he could tell me which financial institutions were the recipients of some $2 trillion in zero interest loans. During the financial crisis, Mr. Bernanke and the Fed provided $2 trillion to large financial institutions. I asked him a pretty simple question: Can you please tell me which financial institutions received that money? I don't think that is a terribly radical question, putting $2 trillion of taxpayer money at risk. And he said: No, I can't tell you.

On that particular day, I introduced legislation that would make him tell us. It is beyond comprehension that we are putting at risk trillions of dollars going to institutions, and we don't know who they are, what kind of conflicts of interest exist. We don't know what the terms of payment are. It is beyond comprehension.

On this issue, I must confess, I am working with somebody whose politics and ideology are very different than mine, my old friend RON PAUL, who is a very conservative Republican in the House. RON and I worked on some issues when I was there. He and I are working together on two pieces of legislation on the Fed. But one of them is going to tell the Fed they can't give away trillions of dollars with the American people not knowing what it is. We need an order to the Fed. We need transparency in the Fed, and we need accountability in the Fed.

There is another issue we want to deal with, and that is oil speculation. I come from a cold weather State. Many people heat with oil. Obviously, all over the country people are filling up their gas tanks to get to work. We have reason to believe that one of the causes of the volatility in oil prices has to do with speculation coming from Wall Street where our friends there are investing in oil futures. We have to begin to control that speculation so that people are not paying outrageous prices, heating their homes in winter or filling up their gas tanks.

Lastly, the issue of Wall Street in one sense is not radically different from the issue of health care or many other important issues, the incredible power these special interests have. The banking and insurance industries have spent over $5 billion on campaign contributions and lobbying activities over the past decade in support of deregulation, and they are spending even more to try to prevent Congress from seriously regulating their industries. The American people want change. They want Congress to reform Wall Street. They want those people who caused this economic crisis to be held accountable. They want to make sure we prevent the country from ever going into a situation such as we were in last year. Whether we can do it remains to be seen, given the power of Wall Street and the incredible amounts of money they spend on campaign contributions and on lobbying.

Which brings me to the issue of campaign finance reform and my strong view that we need public funding of elections.

So, Mr. President, I just did want to say a word as to my perception of why the American people are angry, the fact that they have every reason in the world to be angry because in our great country what we are seeing, for the first time in our lifetimes, is the real likelihood that our kids will have a lower standard of living than our generation, and that is not something we should be happy about.

We have to ask the question why. We have to ask what policies contributed to that decline of the middle class, that increase in poverty. We have to ask why we are the only country in the world that does not have a national health care program guaranteeing health care to all people, why we have the highest rate of childhood poverty of any major country on Earth, why we have the greatest gap between the rich and everybody else of any major country on Earth.

We have to ask those questions, and we need to stand up to powerful special interests in bringing about the kinds of reforms we need.

Mr. President, I yield the floor.

REMEMBERING SENATOR EDWARD M. KENNEDY

Mr. UDALL of Colorado. Mr. President, I rise today to give tribute to Senator Edward Kennedy.

It is impossible to sum up Senator Ted Kennedy in words or a speech. His life and work touched so many diverse interests and issues. Senator Kennedy was larger than life. He was a champion for the underdog—those in our society who just needed a hand up. For close to five decades, Senator Kennedy championed policies for American workers, minorities, parents, immigrants, gays and lesbians, people with disabilities and illnesses, among others. And I think I can safely say he was the greatest legislator in the history of the Senate.

In the words of Senator JOHN MCCAIN during his presidential bid, ''I have described Ted Kennedy as the last lion in the Senate . . . because he remains the single most effective member . . . if you want to get results.''

While he was known as a champion for liberal causes, Senator Kennedy's hallmark was to reach across the aisle, passing legislation with his Republican friends, such as ORRIN HATCH and JOHN MCCAIN. He never let partisanship stop him from doing what is right for the American people.

But his most important role was that of the patriarch of the Kennedy family a family that faced tragedy that most of us never will experience and can never fathom. Despite the loss of three brothers, taken long before their time, and the loss of a nephew a rising star, Ted Kennedy rose above the burdens of life and became the rudder of the Kennedy ship, the driving force of the family a family dedicated to public service. Fortunately for all of us, that dedication has been passed on to the next generation and it has influenced families across our Nation, including mine.

The Kennedy family and my own family first crossed paths decades ago, and our family stories continue to be intertwined. My dad, Mo Udall, and uncle, Stewart Udall, supported John Kennedy in his race for President. Ted Kennedy was JFK's man on the ground in the southwest states.

In fact, the Udalls have been called the ''Kennedys of the West.'' And as my Aunt Elma says, ''we are flattered'' by that comparison.

In many ways we are as different as they come. Kennedys are the East. Kennedys are the ocean. Kennedys are Catholic immigrants. Udalls are the West. Udalls are the desert. Udalls are Mormon dirt farmers.

But it is true that my family was drawn to the Kennedys' deep commitment to religious freedom and dedication to public service. My family also shares a commitment to public service. My Uncle Stewart served as President

Kennedy's Secretary of the Interior. And my father ran for and won in a special election in 1960 Uncle Stewart's congressional seat. Some claim that his race was a referendum on the fledgling Kennedy administration, and that his victory was an affirmation of America's support for the goals of his presidency.

Whether that is true, it has proved to be a connection that would keep our families close for decades. And what binds the two families are the friendships that have been fostered over decades since friendships that cross generations and hopefully will continue into the next.

In 1971, my father ran for majority leader of the House of Representatives and lost. The same year, Senator Kennedy lost his bid for Senate whip. Soon after came a note to my father from Senator Kennedy which said, ''Mo, as soon as I pull the liberal knives out of my back, I'll help you dig out the liberal buckshot from your backside.''

My dad supported Ted Kennedy in his primary bid to become President in 1980.

He and Ted were friends for many decades, and in many ways, they were kindred spirits. They loved the outdoors, national parks, skiing in Colorado, and family touch football. We all will remember the photographs of Ted on his sailboat with his family his love of the ocean and boating and sharing it with generations of Kennedy children.

A few years after my dad lost his battle with Parkinson's disease, Senator Dennis DeConcini of Arizona sponsored legislation to establish the Morris K. Udall Foundation. Senator Kennedy joined in sponsoring the measure. In speaking about my dad, he noted: ''He will rank as one of the greatest Members of the House of Representatives of all time, and also as one of the most beloved . . . Somehow, for 30 years, whenever you probed to the heart of the great concerns of the day, you found Mo Udall in the thick of the battle, championing the rights of average citizens against special interest pressures, defending the highest ideals of America, and always doing it with the special grace and wit that were his trademark and that endeared him to Democrats and Republicans alike.''

If my dad were alive today, I think he would use the same words to describe Senator Kennedy. They both brought people together to do what is right for our country.

Recently, as I have thought about Senator Kennedy's legacy, I have remembered my dad's 1980 speech at the Democratic National Convention. After a tough primary battle, the Democrats were digging in and fighting among themselves. They needed to set aside their differences and join together to win the election. My dad rose to give the keynote address to remind Democrats that they were in this fight together. ''We do fight and we kick and yell and scream and maybe even scratch a bit, but we fight because we are a diverse party and because we've always tried to listen up to new ideas.''

He concluded the speech with these comments: ''This nation that we love will only survive, if each generation of caring Americans can blend two elements: change and the ability to adjust things to the special needs of our times; and second, stability, the good sense to carry forward the old values which are just as good now as they were 200 years ago.''

These elements epitomize Ted Kennedy's legacy. He knew when a person or group of people needed a change in their circumstances.

His strong Catholic faith was the compass that guided his life. It was the driving force that led him to fight to make a difference in other people's lives, particularly those who were less fortunate.

Ted Kennedy's legislative successes are numerous and unquestionably have changed lives for the better. He fought to pass the Civil Rights Act of 1964 and Voting Rights Act of 1965. In the 1990s, he labored to pass the Family and Medical Leave Act. And he and Senator HATCH worked across the aisle to pass the Ryan White CARE Act. And it is his lifelong battle for universal health care coverage for Americans that he is best known for today.

The Kennedy and Udall ideals can live on through the younger generation. My cousin TOM and I served in the House of Representatives with PATRICK KENNEDY. Not only were we colleagues, but we are friends. We grew up in political families and from an early age, public service was a way of life. I was a proud supporter of PATRICK's crusade to pass mental health parity legislation in the House. Fortunately, Senator Kennedy lived to see his son's work come to fruition, keeping faith with the special Kennedy credo: aid those who need a helping hand.

TOM, PATRICK and I, as well as the rest of the Kennedy and Udall family members, have big shoes to fill. Whether we can actually fill them remains to be seen, but we must certainly push the trail blazed by our aunts and uncles, fathers and mothers as far as our endurance allows.

Senator Ted Kennedy surely will be missed not only on the Senate floor, but in our lives. I deeply regret I will not serve with him in the Senate. He was a champion, a fighter, and a friend. I want to say ''goodbye'' not only for me, but for my dad his friend. And I send my thoughts and prayers to Vicki, PATRICK, and the rest of the Kennedy family.

ADDITIONAL STATEMENTS

TRIBUTE TO JIMMY MEANS

• Mr. KERRY. Mr. President, today I congratulate Mr. Jimmy Means of Massachusetts for the quality of his service with the Massachusetts Highway Department and his contributions to the beautification of the Commonwealth.

Mr. Means began his career with the department as a toll collector on the Massachusetts Turnpike. And for the past 10 years, he has overseen the department's programs for collecting litter and beautifying the roadways in his native Worcester County.

This kind of public service is vital, because we know all too well that roadway litter remains a problem despite decades of antilitter efforts. Last year, more than 582 tons of litter were collected from along State roadways—an expense in the millions of dollars to Massachusetts taxpayers.

Massachusetts, like most States, encourages volunteer efforts to keep State roads and highways litter-free. At least once a month, from April 15 to November 15, volunteers ''adopt'' a 2-mile section of highway and remove litter.

But as important as the volunteers are, the beautification of Massachusetts highways depends largely on the work of people like Mr. Means. And in Worcester County, Mr. Means' friends and colleagues report that he in particular has built a reputation for responding quickly and efficiently to any highway blights, receiving praise from the local officials and the office of the Governor.

I congratulate Mr. Means for his work on behalf of the Commonwealth of Massachusetts—work that all of us can take pride in and appreciate even more this time of year as tourists flock to New England to view our beautiful fall foliage. I applaud his efforts and his dedication in keeping Massachusetts roadways clean and safe—and wish him many more years of contributing to Massachusetts.•

MESSAGE FROM THE HOUSE

At 7:23 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has agreed to the following bill, in which it requests the concurrence of the Senate:

H.R. 3548. An act to amend the Supplemental Appropriations Act, 2008 to provide for the temporary availability of certain additional emergency unemployment compensation, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 3221. An act to amend the Higher Education Act of 1965, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

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–3092. A communication from the Assistant Secretary of Defense (Reserve Affairs),

transmitting, pursuant to law, a report relative to procurement priorities provided by the Chiefs of the Reserve and National Guard components; to the Committee on Armed Services.

EC–3093. A communication from the Secretary of Defense, transmitting a report on the approved retirement of Lieutenant General Scott C. Black, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–3094. A communication from the Acting Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Updated Statements of Legal Authority for the Export Administration Regulations'' (RIN0694–AE72) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–3095. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Neligh, Nebraska'' ((RIN2120–AA66) (9–3/9–8/0191/ACE–4)) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3096. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Ooogurak, Alaska'' ((RIN2120–AA66) (9–3/9–3/0196/AAL–3)) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3097. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Lake Havasu, Arizona'' ((RIN2120–AA66) (8–24/8–26/1099/AWP–10)) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3098. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 767 Airplanes'' ((RIN2120–AA64) (8–27/8–27/28035/NM–293)) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Commerce, Science, and Transportation.

EC–3099. A communication from the Senior Advisor for Regulations, Office of Regulations, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Authorization of Representative Fees'' (RIN0960–AG82) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Finance.

EC–3100. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Reasonably Foreseeable Default Standard for Commercial Mortgages Held by a REMIC/Investment Trust'' (Rev. Proc. 2009–45) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Finance.

EC–3101. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Modifications of Commercial Mortgage Loans Held by an Investment Trust'' (Notice 2009–79) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Finance.

EC–3102. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit'' (RIN1545–BG77) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Finance.

EC–3103. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 7874: Treatment of Certain Stock of the Foreign Acquiring Corporation'' (Notice 2009–78) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Finance.

EC–3104. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update of Weighted Average Interest Rates, Yield Curves, and Segment Rates'' (Notice 2009–77) received in the Office of the President of the Senate on September 15, 2009; to the Committee on Finance.

EC–3105. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Information Reporting for Discharge of Indebtedness'' (RIN1545–BH99) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Finance.

EC–3106. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Declaratory Judgments—Gift Tax Determinations Regulation'' (RIN1545–DB67) received in the Office of the President of the Senate on September 17, 2009; to the Committee on Finance.

EC–3107. A communication from the Inspector General, Railroad Retirement Board, transmitting, pursuant to law, a report relative to the Office of Inspector General's budget request for the fiscal year 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–3108. A communication from the Board Members, Railroad Retirement Board, transmitting, pursuant to law, a report relative to the Board's budget request for the fiscal year 2011; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment in the nature of a substitute:

S. 806. A bill to provide for the establishment, administration, and funding of Federal Executive Boards, and for other purposes (Rept. No. 111–77).

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. REED:

S. 1691. A bill to comprehensively regulate derivatives markets to increase transparency and reduce risks in the financial system; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEAHY (for himself, Mr. CARDIN, and Mr. KAUFMAN):

S. 1692. A bill to extend the sunset of certain provisions of the USA PATRIOT Act and the authority to issue national security letters, and for other purposes; to the Committee on the Judiciary.

By Mrs. GILLIBRAND:

S. 1693. A bill to amend the Richard B. Russell National School Lunch Act to require the Secretary of Agriculture to ensure the safety of school meals by enhancing coordination with States and schools operating school meal programs in the case of a recall of contaminated food; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. ROCKEFELLER (for himself and Mrs. HUTCHISON):

S. 1694. A bill to allow the funding for the interoperable emergency communications grant program established under the Digital Television Transition and Public Safety Act of 2005 to remain available until expended through fiscal year 2012, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MCCONNELL:

S. Res. 279. A resolution making minority party appointments for certain committees for the 111th Congress; considered and agreed to.

By Mr. SPECTER:

S. Res. 280. A resolution celebrating the 10th anniversary of the rule of law program of Temple University Beasley School of Law; to the Committee on the Judiciary.

By Mr. SPECTER (for himself, Mr. CASEY, Mr. NELSON of Florida, Ms. KLOBUCHAR, Mr. FRANKEN, and Mrs. BOXER):

S. Con. Res. 40. A concurrent resolution encouraging the Government of Iran to grant consular access by the Government of Switzerland to Joshua Fattal, Shane Bauer, and Sarah Shourd, and to allow the 3 young people to reunite with their families in the United States as soon as possible; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 451

At the request of Ms. COLLINS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 451, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of the Girl Scouts of the United States of America.

S. 546

At the request of Mr. REID, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 546, a bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service—connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of

military service or Combat—Related Special Compensation.

S. 604

At the request of Mr. THUNE, his name was added as a cosponsor of S. 604, a bill to amend title 31, United States Code, to reform the manner in which the Board of Governors of the Federal Reserve System is audited by the Comptroller General of the United States and the manner in which such audits are reported, and for other purposes.

S. 642

At the request of Mr. BAYH, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 642, a bill to require the Secretary of Defense to establish registries of members and former members of the Armed Forces exposed in the line of duty to occupational and environmental health chemical hazards, to amend title 38, United States Code, to provide health care to veterans exposed to such hazards, and for other purposes.

S. 653

At the request of Mr. CARDIN, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 653, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the writing of the Star-Spangled Banner, and for other purposes.

S. 663

At the request of Mr. NELSON of Nebraska, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 663, a bill to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to establish the Merchant Mariner Equity Compensation Fund to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 725

At the request of Mr. BINGAMAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 725, a bill to amend the Internal Revenue Code of 1986 to allow self-employed individuals to deduct health insurance costs in computing self-employment taxes.

S. 731

At the request of Mr. NELSON of Nebraska, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 731, a bill to amend title 10, United States Code, to provide for continuity of TRICARE Standard coverage for certain members of the Retired Reserve.

S. 795

At the request of Mr. HATCH, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 795, a bill to amend the Social Security Act to enhance the social security of the Nation by ensuring adequate public-private infrastructure and to resolve to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation, and for other purposes.

S. 831

At the request of Mr. KERRY, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 831, a bill to amend title 10, United States Code, to include service after September 11, 2001, as service qualifying for the determination of a reduced eligibility age for receipt of nonregular service retired pay.

S. 994

At the request of Ms. KLOBUCHAR, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 994, a bill to amend the Public Health Service Act to increase awareness of the risks of breast cancer in young women and provide support for young women diagnosed with breast cancer.

S. 1132

At the request of Mr. LEAHY, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1132, a bill 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.

S. 1158

At the request of Ms. STABENOW, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1158, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 1171

At the request of Mr. PRYOR, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 1171, a bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35-mile rule for designating critical access hospitals under the Medicare Program.

S. 1215

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1215, a bill to amend the Safe Drinking Water Act to repeal a certain exemption for hydraulic fracturing, and for other purposes.

S. 1301

At the request of Mr. MENENDEZ, the names of the Senator from South Dakota (Mr. THUNE) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of S. 1301, a bill to direct the Attorney General to make an annual grant to the A Child Is Missing Alert and Recovery Center to assist law enforcement agencies in the rapid recovery of missing children, and for other purposes.

S. 1396

At the request of Mr. DURBIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1396, a bill to direct the Administrator of the United States Agency for International Development to carry out a pilot program to promote the production and use of fuel-efficient stoves engineered to produce significantly less black carbon than traditional stoves, and for other purposes.

S. 1422

At the request of Mrs. MURRAY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1422, a bill to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

S. 1483

At the request of Ms. KLOBUCHAR, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 1483, a bill to designate the Department of Veterans Affairs outpatient clinic in Alexandria, Minnesota, as the ''Max J. Beilke Department of Veterans Affairs Outpatient Clinic''.

S. 1649

At the request of Mr. LIEBERMAN, the names of the Senator from Missouri (Mrs. MCCASKILL) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 1649, a bill to prevent the proliferation of weapons of mass destruction, to prepare for attacks using weapons of mass destruction, and for other purposes.

S. 1653

At the request of Mr. LEAHY, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1653, a bill to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

S. 1659

At the request of Mr. CASEY, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 1659, a bill to enhance penalties for violations of securities protections that involve targeting seniors.

S. 1668

At the request of Mr. BENNET, the names of the Senator from Colorado (Mr. UDALL) and the Senator from West Virginia (Mr. BYRD) were added as cosponsors of S. 1668, a bill to amend title 38, United States Code, to provide for the inclusion of certain active duty service in the reserve components as qualifying service for purposes of Post-9/11 Educational Assistance Programs, and for other purposes.

S. 1672

At the request of Mr. REED, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1672, a bill to reauthorize the National Oilheat Research Alliance Act of 2000.

S.J. RES. 1

At the request of Mr. VITTER, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States relative to limiting the number of terms that a Member of Congress may serve.

S. RES. 268

At the request of Mr. MENENDEZ, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. Res. 268, a resolution recognizing Hispanic Heritage Month and celebrating the heritage and culture of Latinos in the United States and their immense contributions to the Nation.

S. RES. 276

At the request of Mr. BURRIS, his name was added as a cosponsor of S. Res. 276, a resolution designating September 22, 2009, as ''National Falls Prevention Awareness Day''.

AMENDMENT NO. 2447

At the request of Mrs. HUTCHISON, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of amendment No. 2447 intended to be proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2454

At the request of Mr. VITTER, the names of the Senator from Alabama (Mr. SHELBY), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Nebraska (Mr. JOHANNS) were added as cosponsors of amendment No. 2454 intended to be proposed to H. R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2455

At the request of Mr. VITTER, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 2455 intended to be proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2456

At the request of Mr. CARPER, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of amendment No. 2456 proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2460

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2460 proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED:

S. 1691. A bill to comprehensively regulate derivatives markets to increase transparency and reduce risks in the financial system; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, today I introduce the Comprehensive Derivatives Regulation Act of 2009, or the CDRA, which establishes for the first time a comprehensive regulatory framework to prevent derivatives trading activities from ever again contributing to catastrophic failures in our financial system. One year ago this month our nation found itself on the verge of a total financial meltdown with decades-old financial institutions collapsing overnight and credit markets freezing up in large part because companies like AIG took huge and risky bets selling totally unregulated credit default swaps, bets that backfired when the housing bubble burst.

Derivatives are financial contracts that investors use to manage their risks or grow their portfolios. They are called derivatives because they derive their value from other things such as the price of corn at a future date, or whether a company fails to make good on its debts. While most derivatives offer companies the ability to better manage their risks, some irresponsible financial firms took huge risks in recent years using new, untested, and unregulated derivatives products. When these firms faltered, it sent shockwaves through our financial system and landed us in a recession. As a result, today families in Rhode Island and throughout the country struggle to keep their jobs and stay in their homes.

I have been working over the past year with my Senate colleagues to develop a series of critical reforms to the financial sector to ensure that we never face such a perilous situation again. As the Chairman of the Securities, Insurance, and Investment Subcommittee of the Senate Banking Committee, I have introduced bills to greatly strengthen oversight of credit rating agencies and hedge funds, which until now have been subject to relatively little regulation.

Introducing the CDRA is another key step in filling the huge regulatory gaps in our financial system. This bill would put in place a truly comprehensive framework for regulating all such products. Derivatives have been overseen by two market regulators, the Securities and Exchange Commission, SEC, which has broad responsibility for protecting investors and ensuring the integrity of securities markets, and the Commodity Futures Trading Commission, CFTC, which regulates commodity futures and the exchanges on which those products are traded.

In part because of this shared jurisdiction, large segments of the derivatives markets, such as credit default swaps, have gone entirely unsupervised by either agency. This bill will fill these regulatory gaps.

First, the bill would require standardized credit default swaps and other unregulated derivatives to be traded through a clearinghouse. This would protect the companies and the financial system from the risks posed by these instruments. Importantly, the bill also grants regulators the ability to oversee any new derivative product in the future, so dealers can no longer create products that fall into holes in the law.

Second, the bill establishes robust capital and margin requirements for derivatives dealers and other major market participants, and subjects them to higher standards for products that are not traded on clearinghouses.

Third, the bill subjects firms to new conduct requirements to protect investors from abusive practices in the market. It also includes new recordkeeping and reporting requirements to ensure that regulators and investors have broad information about derivatives transactions and positions throughout the financial sector.

Fourth, the bill combats fraud and manipulation in derivatives markets by giving regulators new authority to set position limits and oversee the marketing of products to certain investors. The bill strengthens thresholds in place to ensure only sophisticated investors are engaging in certain types of trading.

Finally, the bill rationalizes the sharing of jurisdiction between the SEC and CFTC, and establishes a process for quickly assigning responsibility for new products so they do not fall through the cracks. Specifically, the bill provides the SEC with jurisdiction over all derivatives that are securities or can be used as synthetic substitutes for securities, because without such authority over products that can affect securities markets, the SEC cannot accomplish its mission to protect investors and ensure the integrity and fairness of markets. The bill provides the CFTC with jurisdiction over all other derivatives. The bill also provides a fast and efficient process for the U.S. Court of Appeals for the District of Columbia Circuit to resolve any differences in views between the agencies that might arise.

I hope my colleagues will join me in improving the oversight of credit default swaps and other derivatives products by cosponsoring this legislation and supporting its passage.

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. 1691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Comprehensive Derivatives Regulation Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS.

Congress finds that—

(1) in recent years, the over-the-counter derivatives market has grown rapidly, but regulators have lacked key information and adequate authority to address systemic and other risks posed by unregulated derivatives trading;

(2) excessive risk taking among market participants, combined with limited regulatory oversight of such products, was a significant cause of the recent financial crisis;

(3) lack of transparency in the markets has contributed to market instability and uncertainty, and has resulted in a less efficient marketplace;

(4) customized derivative products provide key benefits to certain market participants and should be permitted under comprehensive regulation, but all derivatives activities should be accompanied by appropriate risk management and prudential standards; and

(5) the trading of derivatives on regulated exchanges should be encouraged because of the significant associated market efficiencies.

TITLE I—REGULATION OF SECURITY-BASED DERIVATIVES

SEC. 101. DEFINITIONS.

(a) DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (10), by inserting ''security-based swap,'' after ''security future,'';

(2) in paragraph (13), by adding at the end the following: ''For any security-based swap, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(3) in paragraph (14), by adding at the end the following: ''For any security-based swap, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''; and

(4) by adding at the end the following:

''(65) DERIVATIVE.—The term 'derivative' means—

''(A) any future, forward, swap, warrant, put, call, straddle, option, or privilege on or related to—

''(i) any security, or group or index of securities (including any interest therein or based on the value thereof); or

''(ii) any issuer of securities or group or index of issuers of securities (including any interest therein or based on the value thereof); and

''(B) any contract of sale for future delivery of any commodity (or option on such contract).

''(66) SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

''(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 1 or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

''(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

''(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

''(B) EXCLUSIONS.—The term 'swap' does not include—

''(i) any contract of sale for future delivery traded on or subject to the rules of any board of trade designated as a contract market under section 5 of the Commodity Exchange Act (7 U.S.C. 7)—

''(I) on a commodity other than a security; or

''(II) that is not based on or subject to the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to such contract;

''(ii) any sale of any cash commodity or security for deferred or delayed shipment or delivery;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based, in whole or in part, on the value thereof, whether physically or cash settled;

''(iv) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) relating to foreign currency;

''(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis, whether physically or cash settled;

''(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security (as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or paragraph (10) of this subsection);

''(viii) any agreement, contract, or transaction that is—

''(I) based on, or references, a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11))) by the issuer of such security;

''(ix) any security future product (as defined in paragraph (56));

''(x) any hybrid instrument that is predominantly a banking product, as provided in section 405 of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455), or any hybrid instrument that is predominantly a security, as provided in section 2(f) of the Commodity Exchange Act (as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009);

''(xi) any agreement, contract, or transaction that is an insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation that is subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State; or

''(xii) any identified banking product specified in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act (15

U.S.C. 78c note), mortgage or mortgage purchase commitment, or any sale of installment loan contracts or receivables, if any such product or instrument is not marketed or sold as an alternative to a swap.

''(67) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' means—

''(A) acting for its own account—

''(i) a financial institution (as defined in section 1a(15) of the Commodity Exchange Act (7 U.S.C. 1(a)(15)), as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009);

''(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation, as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

''(iii) an investment company that is subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

''(iv) a commodity pool that—

''(I) has total net assets exceeding $5,000,000; and

''(II) is formed and operated by a person that is subject to regulation under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

''(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

''(I) that has total net assets exceeding $10,000,000; or

''(II) that—

''(aa) has total net assets exceeding $5,000,000; and

''(bb) enters into an agreement, contract, or transaction in connection with the conduct of the business of the entity or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the business of the entity;

''(vi) an employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function that is subject as such to foreign regulation—

''(I) that has total assets exceeding $5,000,000; or

''(II) the investment decisions of which are made by—

''(aa) an investment adviser or commodity trading advisor that is subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or the Commodity Exchange Act (7 U.S.C. 1 et seq.);

''(bb) a foreign person performing a similar role or function that is subject as such to foreign regulation;

''(cc) a financial institution (as defined in section 1a(15) of the Commodity Exchange Act (7 U.S.C. 1(a)(15)), as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009); or

''(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

''(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

''(II) a multinational or supranational government entity; or

''(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II),

except that such term does not include an entity, political subdivision, instrumentality, agency, or department referred to in subclause (I) or (III), unless the entity, political subdivision, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments, provided that, with respect to any State or entity, political subdivision, agency, or department of a State, such amount is exclusive of any proceeds from any offering of municipal securities;

''(viii)(I) a broker or dealer that is subject to regulation under this title or a foreign person performing a similar role or function that is subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant, unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

''(II) an associated person of a registered broker or dealer concerning the financial or securities activities, of which, the registered person makes and keeps records under section 15C(b) or 17(h); and

''(III) an investment bank holding company (as defined in section 17(i));

''(ix) a futures commission merchant that is subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function that is subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant, unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

''(x) a floor broker or floor trader that is subject to regulation under the Commodity Exchange Act in connection with any transaction that takes place on or through the facilities of a registered entity (as defined in section 1a(29) of the Commodity Exchange Act (7 U.S.C. 1(a)(29)), as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009, other than an electronic trading facility with respect to a significant price discovery contract), or an exempt board of trade operating under section 5d of the Commodity Exchange Act (7 U.S.C. 7a–3), or any affiliate thereof, on which such person regularly trades; or

''(xi) a natural person who—

''(I) owns and invests on a discretionary basis not less than $10,000,000;

''(II) owns and invests on a discretionary basis not less than $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual; or

''(III) is an officer or director of an entity (or a person performing similar functions) and who enters into the agreement, contract, or transaction in order to manage the risk associated with the securities of such entity owned by the individual at the time of entering into the agreement, contract, or transaction;

''(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

''(ii) an investment adviser that is subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), a commodity trading advisor that is subject to regulation under the Commodity Exchange Act (7 U.S.C. 1 et seq.), a foreign person performing a similar role or function that is subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

''(C) any other person that the Commission determines by rule, jointly with the Commodity Futures Trading Commission, to be an eligible contract participant, in light of the financial or other qualifications of the person.

''(68) PERSON ASSOCIATED WITH A SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANT.—

''(A) IN GENERAL.—The term 'person associated with a significant security-based derivatives market participant' or 'associated person of a significant security-based derivatives market participant' means—

''(i) any partner, officer, director, or branch manager of a significant security-based derivatives market participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a significant security-based derivatives market participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with a significant security-based derivatives market participant; and

''(iii) any employee of a significant security-based derivatives market participant.

''(B) EXCLUSION.—Other than for purposes of section 15F(e)(2), the term 'person associated with a significant commodity-based derivatives market participant' or 'associated person of a significant security-based derivatives market participant' does not include any person associated with a significant security-based derivatives market participant, the functions of which are solely clerical or ministerial.

''(69) SECURITY DERIVATIVE.—The term 'security derivative' means—

''(A) any derivative, other than a derivative instrument swap, on or related to—

''(i) any security, or group or index of securities (including any interest therein or based on the value thereof); or

''(ii) any issuer of securities or group or index of issuers of securities (including any interest therein or based on the value thereof); and

''(B) any security that the Commission by rule, regulation, or order determines is a security derivative.

''(70) SECURITY-BASED SWAP.—The term 'security-based swap' means a swap, of which a material term—

''(A) is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein, other than interest rate or currency;

''(B) is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing;

''(C) provides for the purchase or sale of 1 or more securities on a contingent basis, whether physically or cash settled, if such

agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction; or

''(D) allows for settlement of the swap by delivery of, or by reference to, any security.

''(71) SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANT.—The term 'significant security-based derivatives market participant' means—

''(A) any person (other than an investment company registered under the Investment Company Act of 1940) that is engaged in the business of purchasing or selling one or more security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) for such person's own account or for others, or making a market in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order), the purchases or sales of which are not solely for the purpose of managing the risk associated with—

''(i) an asset that is or is anticipated to be owned, produced, manufactured, processed, or merchandised;

''(ii) potential changes in the value of services to be purchased or provided, or anticipated to be purchased or provided; or

''(iii) a liability incurred or anticipated to be incurred by such person that is not, or is not related to, a security-based swap; or

''(B) any other person designated by the Commission, by rule, regulation, or order, after consultation with the Commodity Futures Trading Commission, as necessary or appropriate in the public interest, the protection of investors, or in furtherance of the purposes of this title.

''(72) TRADE REPOSITORY.—The term 'trade repository' means any person that collects, calculates, processes, or prepares information with respect to transactions or positions in security-based swaps or security derivatives by the Commission under section 17C(d)(1)(A)(ii).''.

(b) DEFINITIONS UNDER THE SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting ''security-based swap,'' after ''security future,'';

(2) in paragraph (3), by adding at the end the following: ''Any offer or sale of a security-based swap (or other security derivative as the Commission determines by rule or regulation) by or on behalf of the issuer of the securities upon which such security-based swap or security derivative is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.''; and

(3) by adding at the end the following:

''(17) The terms 'derivative', 'swap', 'security derivative' and 'security-based swap' have the same meanings as in paragraphs (65), (66), (69), and (70), respectively, of section 3(a) of the Securities Exchange Act of 1934.

''(18) The terms 'purchase' or 'sale' of a security-based swap, shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''.

SEC. 102. RATIONALIZATION OF FINANCIAL PRODUCT OVERSIGHT.

(a) REPEAL OF SWAP AGREEMENT EXCLUSION.—

(1) REPEAL OF LAWS.—The following provisions of law are repealed:

(A) Sections 206A, 206B, and 206C of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

(B) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b–1).

(C) Section 17(d) of the Securities Act of 1933 (15 U.S.C. 77q(d)).

(D) Section 3A of the Securities Exchange Act of 1934 (15 U.S.C. 78c–1).

(E) Section 9(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(i)).

(F) Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455).

(G) Section 16(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(g)).

(H) Section 20(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(f)).

(I) Section 21A(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(g)).

(2) CONFORMING AMENDMENT TO THE SECURITIES ACT OF 1933.—Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) is amended by striking ''or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''.

(3) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 9(a) (15 U.S.C. 78i(a))—

(i) in paragraph (1)—

(I) by striking ''For the'' and inserting ''for the''; and

(II) by striking the period at the end an inserting a semicolon; and

(ii) by striking paragraphs (2) through (5) and inserting the following:

''(2) to effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

''(3) if a broker or dealer, or other person selling or offering for sale or purchasing or offering to purchase the security to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security;

''(4) if a broker or dealer, or the person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange or any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which the broker, dealer, or such person knew or had reasonable grounds to believe was false or misleading;

''(5) for a consideration, received directly or indirectly from a broker or dealer, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase of any security registered on a national securities exchange or any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security; or'';

(B) in section 10(b) (15 U.S.C. 78j(b))—

(i) by striking ''or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(ii) by striking ''Rules promulgated under subsection (b)'' and all that follows through ''as they apply to securities'';

(C) in section 15(c)(1) (15 U.S.C. 78o(c)(1))—

(i) in subparagraph (A) by striking '', or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(ii) in each of subparagraphs (B) and (C), by striking ''swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears and inserting ''swap'';

(D) in section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), by striking ''swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act)'' and inserting ''swap (or security derivative, as the Commission determines by rule, regulation, or order)'';

(E) in section 16(a)(3)(B) (15 U.S.C. 78p(a)(3)(B)), by striking ''security-based swap agreement'' and inserting ''swap (or security derivative, as the Commission determines by rule, regulation, or order)'';

(F) in section 16(b) (15 U.S.C. 78p(b))—

(i) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears and inserting ''; (or security derivative, as the Commission determines by rule, regulation, or order)''; and

(ii) by striking ''swap agreement'' each place that term appears and inserting ''swap (or security derivative, as the Commission determines by rule, regulation, or order)'';

(G) in section 20(d) (15 U.S.C. 78t(d)), by striking ''or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security'' and inserting '', security futures product or swap''; and

(H) in section 21A(a)(1) (15 U.S.C. 78u–1(a)(1)), by striking ''or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''.

(b) RATIONALIZATION OF SECURITY FUTURES OVERSIGHT.—

(1) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 3(a) of (15 U.S.C. 78c(a)), by striking paragraph (55) and inserting the following:

''(55) The term 'security future'—

''(A) means a contract of sale for future delivery of a security or an index of securities, including any interest therein or based on the value thereof, or based on any financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing, other than an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than a municipal security, under paragraph (29), as in effect on the date of enactment of the Futures Trading Act of 1982); and

''(B) does not include any security-based swap.'';

(B) in section 6 (15 U.S.C. 78f)—

(i) by striking subsections (g), (i), and (k);

(ii) by redesignating subsections (h) and (j) as subsections (g) and (h), respectively; and

(iii) in subsection (g), as so redesignated—

(I) in paragraph (2)—

(aa) by striking ''(A)''; and

(bb) by striking ''and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act'';

(II) in paragraph (3)(A), by striking ''security of a narrow-based security'' and inserting ''of an'';

(III) in paragraph (3)(D), by striking ''and the Commodity Futures Trading Commission jointly determine'' and inserting ''determines'';

(IV) in paragraph (3)(G), by striking ''the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or'';

(V) in paragraph (4)(A), by striking ''and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly'' and inserting ''may, by rule, regulation, or order,'';

(VI) in paragraph (4)(B), by striking ''and the Commodity Futures Trading Commission, by order, may jointly'' and inserting ''may, by order,'';

(VII) in paragraph (6)—

(aa) by striking ''and the Commodity Futures Trading Commission'';

(bb) by striking ''jointly''; and

(cc) by striking ''and the Commodity Exchange Act''; and

(VIII) in paragraph (7)—

(aa) by striking subparagraph (A) and inserting the following:

''(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association that is registered pursuant to section 15A(a) may trade a security futures product that does not conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3).''; and

(bb) by subparagraph (B), by striking ''and the Commodity Futures Trading Commission shall jointly'' and inserting ''shall'';

(C) in section 7 (15 U.S.C. 78g)—

(i) in subsection (c)(2)(A)(ii), by striking ''and the Commodity Futures Trading Commission shall jointly'' and inserting ''shall'';

(ii) in subsection (c)(2)(A), by striking ''and the Commodity Futures Trading Commission have not jointly'' and inserting ''has not''; and

(iii) in subsection (c)(2)(B)—

(I) by striking ''and the Commodity Futures Trading Commission shall jointly'' and inserting ''shall''; and

(II) by striking ''and the Commodity Futures Trading Commission jointly deem'' and inserting ''deems'';

(D) in section 11A (15 U.S.C. 78k–1), by striking subsection (e);

(E) in section 12(k) (15 U.S.C. 78l(k))—

(i) in paragraph (1), by striking ''If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.''; and

(ii) in paragraph (2)(B), by striking ''If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.'';

(F) in section 15 (15 U.S.C. 78o)—

(i) in subsection (b), by striking paragraphs (11) and (12); and

(ii) in subsection (c)(3)—

(I) by striking ''(A) No'' and inserting ''No''; and

(II) by striking subparagraph (B);

(G) in section 15A (15 U.S.C. 78o–3), by striking subsections (k), (l), and (m);

(H) in section 17(b) (15 U.S.C. 78q(b))—

(i) in paragraph (1)—

(I) by striking ''(1)'' and all that follows through ''All records'' and inserting ''All records'';

(II) by striking ''of a—'' and all that follows through ''(A) registered'' and inserting ''of a registered''; and

(III) by striking ''; or'' and all that follows through the end of subparagraph (B) and inserting a period; and

(ii) by striking paragraphs (2) through (4);

(I) in section 17A(b) (15 U.S.C. 78q–1(b))—

(i) by striking paragraph (7); and

(ii) by redesignating paragraph (8) as paragraph (7);

(J) in section 19 (15 U.S.C. 78s)—

(i) in subsection (b)—

(I) by striking paragraphs (7) and (9); and

(II) by redesignating paragraph (8) as paragraph (7); and

(ii) in subsection (d), by striking paragraph (3);

(K) in section 21 (15 U.S.C. 78u), by striking subsection (i); and

(L) in section 28(e) (15 U.S.C. 78bb(e)), by striking paragraph (4).

(2) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77 et seq.) is amended—

(A) in section 2(a) (15 U.S.C. 77b(a)), by striking paragraph (16) and inserting the following:

''(16) The terms 'security future' and 'security futures product' have the same meanings as in sections 3(a)(55) and 3(a)(56), respectively, of the Securities Exchange Act of 1934.''; and

(B) in section 3(a)(14)(A) (15 U.S.C. 77c(a)(14)(A)), by striking ''or exempt from registration under subsection (b)(7) of such section 17A''.

(3) CONFORMING AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 2(a)(52) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(52)) is amended to read as follows:

''(52) The term 'security future' has the same meaning as in section 3(a)(55) of the Securities Exchange Act of 1934.''.

(4) CONFORMING AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(27) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(27)) is amended to read as follows:

''(27) The term 'security future' has the same meaning as in section 3(a)(55) of the Securities Exchange Act of 1934.''.

(5) CONFORMING AMENDMENTS TO THE SECURITIES INVESTOR PROTECTION ACT OF 1970.—The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) is amended—

(A) in section 3(a)(2)(A) (15 U.S.C. 78ccc(a)(2)(A))—

(i) in clause (i), by inserting ''and'' after the semicolon at the end;

(ii) in clause (ii), by striking ''; and'' and inserting a period; and

(iii) by striking clause (iii); and

(B) in section 16(14) (15 U.S.C. 78lll(14)), by striking ''section 3(a)(55)(A)'' and inserting ''section 3(a)(55)''.

(c) CLARIFICATION OF THE STATUS OF EVENT CONTRACTS.—

(1) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section (3)(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10) is amended—

(A) by striking ''term 'security' means any note'' and inserting the following: ''term 'security'—

''(A) means—

''(i) any note'';

(B) by striking ''or any certificate'' and inserting the following: ''; or

''(ii) any certificate''; and

(C) by striking ''any of the foregoing, but shall not'' and inserting the following: ''any security described in clause (i); or

''(iii) any agreement, contract, or transaction that is associated with a financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing or any security described in clause (i) or (ii); and

''(B) does not''.

(2) AMENDMENTS TO THE SECURITIES ACT OF 1933.—Section (2)(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) is amended—

(A) by striking ''means any note'' and inserting the following: ''means—

''(A) any note'';

(B) by striking '', or any certificate'' and inserting the following: ''; or

''(B) any certificate''; and

(C) by striking ''any of the foregoing.'' and inserting the following: ''any security described in subparagraph (A); or

''(C) any agreement, contract, or transaction that is associated with a financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing or any security described in subparagraph (A) or (B).''.

SEC. 103. REQUIRED CLEARING OF STANDARDIZED DERIVATIVES THROUGH CENTRAL COUNTERPARTIES AND THE USE OF TRADE REPOSITORIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 17B (15 U.S.C. 78q–2) the following new section:

''SEC. 17C. USE OF CLEARING AGENCIES AND TRADE REPOSITORIES FOR DERIVATIVES TRANSACTIONS.

''(a) FINDINGS.—Congress finds that—

''(1) the proliferation of over-the-counter security-based swaps poses unacceptable risks to the financial system;

''(2) clearing standardized security-based swaps through well-regulated central counterparties would reduce systemic risk in the financial system;

''(3) the markets for standardized security-based swaps suffer from a lack of reliable and accurate transaction information that is available to the public, investors, and regulators; and

''(4) weaknesses in the regulation of markets for standardized security-based swaps have detracted from the efficiency and transparency of trading in such markets and hampered the surveillance and oversight of such markets.

''(b) PURPOSES.—The purposes of this section are—

''(1) to establish well-regulated markets for standardized security-based swaps to promote efficiency and transparency of trading and enhance the surveillance and oversight of such markets; and

''(2) to promote the public interest, the protection of investors, and the maintenance of fair and orderly markets to assure—

''(A) the prompt and accurate clearance and settlement of transactions in standardized security-based swaps;

''(B) the prompt and accurate reporting of transactions in security-based swaps to a trade repository or a registered clearing agency;

''(C) the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, commodity options, and derivatives;

''(D) availability to the public, investors, and regulators of reliable and accurate quotation and transaction information in security-based swaps;

''(E) economically efficient execution of transactions in security-based swaps; and

''(F) fair competition among markets in the trading of security-based swaps.

''(c) USE OF DERIVATIVES CLEARING AGENCIES.—

''(1) IN GENERAL.—Any person that is a party to a security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) that the Commission determines is 'standardized' shall submit such instrument for clearing to a registered clearing agency within the period specified by rule of the Commission.

''(2) DEFINITION OF 'STANDARDIZED'.—

''(A) IN GENERAL.—The Commission shall, by rule, define the term 'standardized' for purposes of this section.

''(B) FACTORS.—In defining the term 'standardized', the Commission shall—

''(i) be consistent with the public interest, the protection of investors, the safeguarding of securities and funds, the maintenance of fair competition among market participants and among clearing agencies, and the purposes of this section;

''(ii)(I) consult with, and consider the views of, the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System; and

''(II) seek to maintain comparability, to the maximum extent practicable, with the definition of the Commodity Futures Trading Commission of the term 'standardized' for purposes of section 4r of the Commodity Exchange Act; and

''(iii) to the extent applicable to a particular security-based swap or security derivative or class of security-based swaps or security derivatives, consider—

''(I) whether a clearing agency is prepared to clear the security-based swap or security derivative, and such clearing agency has in place effective risk management systems;

''(II) the availability or ability to facilitate standard documentation of terms of the security-based swap or security derivative;

''(III) the liquidity of the security-based swap or security derivative and its underlying security, security of a reference entity, or group or index thereof;

''(IV) the ability to value the security-based swap or security derivative, underlying security, or security of a reference entity, or group or index thereof consistently with an accepted pricing methodology, including the availability of intraday prices; and

''(V) such other factors as are consistent with the purposes of this section.

''(3) EXEMPTION AUTHORITY.—

''(A) IN GENERAL.—The Commission by rule or order, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, may conditionally or unconditionally exempt from the requirements of this subsection and the rules issued under this subsection, any person, transaction, or security.

''(B) PRIOR CONSULTATION WITH THE COMMODITY FUTURES TRADING COMMISSION AND THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

''(i) CONSULTATION.—Before acting by rule or order to exempt any person, transaction, or security from the requirements of this subsection or the rules issued under this subsection, the Commission shall consult with, and consider the views of, the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System concerning whether such exemption is necessary and appropriate for the reduction of risk and in the public interest.

''(ii) PROHIBITION ON ISSUANCE.—Not later than 45 days prior to issuing any exemption under this subparagraph, the Commission shall send a notice to the Commodity Futures Trading Commission and the Board of Governors describing such exemption. If either the Commodity Futures Trading Commission or the Board of Governors issues a finding under clause (i) that such an exemption does not meet the standard described in clause (i), the Commission may not issue such exemption.

''(iii) DEADLINE.—Any finding by the Commodity Futures Trading Commission or the Board of Governors of the Federal Reserve System shall be made and provided in writing to the Commission not later than 30 days after the date of receipt of notice of a proposed exemption by the Commission.

''(iv) NONDELEGATION.—Action by the Commodity Futures Trading Commission or the Board of Governors under this subparagraph may not be delegated.

''(d) TRADE REPOSITORIES.—

''(1) USE OF TRADE REPOSITORIES.—

''(A) IN GENERAL.—Any person that enters into or effects a transaction in a security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) shall submit such transaction for clearing to a registered clearing agency or report such transaction to a trade repository registered in accordance with this subsection within the period specified by rule of the Commission.

''(B) REQUIRED REPORTING AUTHORIZED.—The Commission may, by rule, require any person to report to any registered clearing agency and registered trade repository such transaction information as the Commission deems necessary or appropriate, to permit such clearing agency or trade repository to meet the purposes of this section.

''(C) EXEMPTION AUTHORITY.—The Commission by rule, regulation, or order, as the Commission deems consistent with the public interest or the protection of investors, may conditionally or unconditionally exempt from the requirements of this paragraph and the rules issued under this paragraph any person, transaction, or security that enters into or effects a transaction in a security or class of securities.

''(2) REGISTRATION.—A trade repository may register for purposes of this subsection by filing with the Commission an application in such form as the Commission, by rule, may prescribe, containing the rules of the trade repository and such other information and documentation as the Commission, by rule, may prescribe as necessary or appropriate in the public interest, for the protection of investors, or for the prompt and accurate collection, calculation, processing, and preparation of information regarding security-based swaps or security derivatives.

''(3) COMMISSION PROCEDURES FOR APPLICATIONS.—

''(A) NOTICE.—On the filing of an application for registration pursuant to paragraph (2), the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application.

''(B) ACTIONS.—Not later than 90 days after the date of publication of a notice under subparagraph (A) (or within such longer period as to which the applicant consents), the Commission shall—

''(i) by order, grant such registration; or

''(ii) institute proceedings to determine whether registration should be denied.

''(C) PROCEDURE FOR DENIALS.—

''(i) IN GENERAL.—Proceedings instituted under subparagraph (B)(ii) shall—

''(I) include notice of the grounds for denial under consideration and provide an opportunity for a hearing; and

''(II) be concluded not later than 180 days after the date of publication of notice of the filing of the application for registration under subparagraph (A).

''(ii) ACTIONS.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny the subject registration.

''(iii) EXTENSIONS.—The Commission may extend the time for conclusion of the proceedings under subparagraph (C) for—

''(I) not longer than an additional 60 days, if the Commission finds good cause for such extension and publishes its reasons for so finding; or

''(II) for such longer period as to which the applicant consents.

''(D) STANDARDS FOR GRANTING REGISTRATION.—The Commission shall grant the registration of a trade repository for purposes of this section if the Commission finds that the trade repository is so organized, and has the capacity to be able—

''(i) to assure the prompt, accurate, and reliable performance of its functions as a trade repository;

''(ii) to comply with the provisions of this title (including rules and regulations issued under this title); and

''(iii) to carry out the functions of a trade repository in a manner consistent with the purposes of this section.

''(E) STANDARDS FOR DENIAL.—The Commission shall deny the registration of a trade repository if the Commission does not make the findings described in subparagraph (D).

''(4) WITHDRAWAL OF REGISTRATION.—

''(A) IN GENERAL.—A registered trade repository may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration under this section by filing a written notice of withdrawal with the Commission.

''(B) CANCELLATION.—If the Commission finds that any trade repository is no longer in existence or has ceased to do business in the capacity specified in its application for registration under this section, the Commission, by order, shall cancel the registration.

''(5) ACCESS TO TRADE REPOSITORY SERVICES.—

''(A) NOTICE OF PROHIBITION OR LIMITATION.—

''(i) IN GENERAL.—If any registered trade repository prohibits or limits any person in respect of access to services offered, directly or indirectly, by the trade repository, the registered trade repository shall promptly file notice of the prohibition with the Commission, in such form and containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(ii) REVIEW BY COMMISSION.—Any prohibition or limitation on access to services with respect to which a registered trade repository is required by this subparagraph to file notice shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby, filed not later than 30 days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine.

''(iii) STAYS.—Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of a prohibition or limitation described in clause (i), unless the

Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

''(iv) EXPEDITED PROCEDURE.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

''(B) STANDARDS OF REVIEW.—In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered trade repository—

''(i) if the Commission finds after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this title and the rules and regulations thereunder, and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding; and

''(ii) if the Commission does not make any such finding, or if it finds that such prohibition or limitation imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of this title, the Commission, by order, shall set aside the prohibition or limitation and require the registered trade repository to permit such person access to the services offered by the registered trade repository to which the prohibition or limitation applied.

''(6) ADMINISTRATIVE PROCEEDING AUTHORITY.—If the Commission finds, on the record after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title and that a registered trade repository has violated or is unable to comply with any provision of this title or the rules or regulations thereunder, the Commission, by order, may—

''(A) censure or place limitations upon the activities, functions, or operations of any registered trade repository; or

''(B) suspend for a period of not longer than 12 months or revoke the registration of any such trade repository.

''(7) RULEMAKING AUTHORITY.—No registered trade repository shall, directly or indirectly, engage in any activity as a trade repository in contravention of such rules and regulations as the Commission may prescribe as appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, including to assure that all persons may obtain on terms that are fair and reasonable and not unreasonably discriminatory such transaction and position information for security-based swaps and security derivatives as is disseminated by any clearing agency or trade repository.

''(8) CONSULTATION.—

''(A) IN GENERAL.—Prior to adopting any rules applicable to trade repositories pursuant to section 17(a), the Commission shall consult with, and shall consider the views of, the Commodity Futures Trading Commission.

''(B) COMPARABILITY.—The Commission and the Commodity Futures Trading Commission shall seek to maintain comparability, to the maximum extent practicable, of their respective recordkeeping and reporting requirements for trade repositories.

''(e) TIMING.—The Commission may, by rule, specify the date by which persons are required—

''(1) to submit transactions in standardized security-based swaps and security derivatives for clearing to a clearing agency pursuant to subsection (c); and

''(2) to submit transactions in security-based swaps and security derivatives for clearing to a clearing agency or report transactions in such instruments to a registered trade repository pursuant to subsection (d).

''(f) COLLECTION, CONSOLIDATION, AND DISSEMINATION OF INFORMATION ON TRANSACTIONS AND POSITIONS IN SECURITY-BASED SWAPS AND SECURITY DERIVATIVES.—

''(1) COMMISSION ACTION REQUIRED.—The Commission shall, consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the purposes of this section, use the authority of the Commission under this title to facilitate—

''(A) the collection, consolidation, and dissemination of information on transactions and positions in security-based swaps and security derivatives; and

''(B) the establishment of coordinated facilities for the consolidation of information on transactions and positions in security-based swaps and security derivatives.

''(2) ACTIONS REQUIRED OF REGISTERED ENTITIES.—The Commission, by rule, regulation, or order is authorized to require each clearing agency that clears or proposes to clear transactions in security-based swaps and security derivatives, and each trade repository registered or applying to become registered under this section, in such form and frequency as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title—

''(A) to disseminate certain transaction or position information in security-based swaps and security derivatives; and

''(B) to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to transactions and positions, as appropriate, cleared by such clearing agency or reported to such registered trade repository.''.

SEC. 104. PRUDENTIAL SUPERVISION AND REGULATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS AND INCENTIVES FOR TRADING ON REGULATED EXCHANGES.

(a) REGULATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15E (15 U.S.C. 78o–7) the following:

''SEC. 15F. REGULATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.

''(a) REGISTRATION BY SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—It shall be unlawful for any significant security-based derivatives market participant to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), unless such significant security-based derivatives market participant has registered in accordance with subsection (b).

''(b) MANNER OF REGISTRATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—A significant security-based derivatives market participant may register for purposes of this section by filing with the Commission an application for registration, in such form and containing such information and documentation concerning such significant security-based derivatives market participant and any persons associated with such significant security-based derivatives market participant as the Commission, by rule, regulation, or order may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(2) COMMISSION ACTION.—

''(A) TIMING.—Not later than 45 days after the date of filing of an application under paragraph (1) (or within such longer period as to which the applicant consents), the Commission shall—

''(i) by order, grant registration; or

''(ii) institute proceedings to determine whether registration should be denied.

''(B) COMMISSION PROCEEDINGS.—Proceedings described in subparagraph (A)(ii) shall—

''(i) include notice of the grounds for denial under consideration and opportunity for hearing; and

''(ii) be concluded within 120 days of the date of the filing of the application for registration.

''(C) GRANT OR DENIAL.—At the conclusion of proceedings under this paragraph, the Commission, by order, shall grant or deny any application for registration.

''(D) EXTENSION AUTHORIZED.—The Commission may extend the time for the conclusion of proceedings under this paragraph for not longer than an additional 90 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

''(E) CONDITIONS OF GRANT OR DENIAL OF APPLICATIONS.—The Commission shall—

''(i) grant an application for registration of a significant security-based derivatives market participant, if the Commission finds that the requirements of this section are satisfied; and

''(ii) deny such registration, if the Commission does not make a finding described in clause (i), or finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e).

''(3) WITHDRAWAL AUTHORIZED.—Any person that has filed an application pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, withdraw such application by filing a written withdrawal with the Commission.

''(c) BUSINESS CONDUCT REQUIREMENTS.—

''(1) PROHIBITION.—It shall be unlawful for any significant security-based derivatives market participant and such other persons as the Commission may determine, by rule, regulation, or order, to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), unless such person complies with such business conduct requirements as the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate regulatory authorities, may jointly prescribe, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of this title.

''(2) CONTENT.—Business conduct requirements under paragraph (1) shall—

''(A) establish the standard of care required for a significant security-based derivatives market participant and such other persons to verify that any counterparty meets the eligibility standards for an eligible contract participant or qualified institutional buyer;

''(B) require disclosure by the significant security-based derivatives market participant and such other persons to any counterparty to the transaction of—

''(i) material product-specific information about the risks and characteristics of the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order);

''(ii) the source and amount of any fees or other material remuneration that the significant security-based derivatives market participant and such other persons would directly or indirectly expect to receive in connection with the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order); and

''(iii) any other material incentives or conflicts of interest that the significant security-based derivatives market participant and such other persons may have in connection with the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order);

''(C) establish a minimum standard of conduct for a significant security-based derivatives market participant and such other persons with respect to any counterparty, other than a qualified institutional buyer, for—

''(i) providing disclosure of the general risks and characteristics of any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order);

''(ii) communicating in a fair and balanced manner based on principles of fair dealing and good faith;

''(iii) assessing the appropriateness of any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) for the counterparty, except that, if the counterparty is an eligible contract participant, the significant security-based derivatives market participant may rely on a representation described in clause (iv)(VI) that the transaction is appropriate for such counterparty; and

''(iv) with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of section 3(a)(67)(A)(vii), having a reasonable basis to believe that the counterparty has an independent representative that—

''(I) has sufficient knowledge to evaluate the transaction and risks;

''(II) is not subject to a statutory disqualification;

''(III) is independent of the significant security-based derivatives market participant;

''(IV) undertakes a duty to act in the best interests of the counterparty it represents;

''(V) makes appropriate disclosures; and

''(VI) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction;

''(D) require the availability of information about any security or the issuer of any security referenced in a security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), or upon which such security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) is based; and

''(E) establish such other standards and requirements as the Commission, acting jointly with the Commodity Futures Trading Commission and in consultation with the appropriate regulatory authorities, may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(d) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a significant derivatives market participant to permit any associated person of such significant derivatives market participant who is subject to a statutory disqualification to effect or be involved in effecting transactions in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) on behalf of such significant derivatives market participant, if such significant derivatives market participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

''(e) ADMINISTRATIVE PROCEEDING AUTHORITY.—

''(1) IN GENERAL.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing of any significant security-based derivatives market participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such action is in the public interest and that such significant security-based derivatives market participant, or any person associated with such significant security-based derivatives market participant effecting or involved in effecting transactions in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) on behalf of such significant security-based derivatives market participant, whether prior or subsequent to becoming so associated—

''(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of section 15(b)(4);

''(B) has been convicted of any offense specified in subparagraph (B) of section 15(b)(4) during the 10-year period preceding the date of commencement of the proceedings under this paragraph;

''(C) is enjoined from any action, conduct, or practice specified in section 15(b)(4)(C);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of section 15(b)(4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in section 15(b)(4)(G).

''(2) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or at the time of the alleged misconduct, who was associated or was seeking to become associated, with a significant security-based derivatives market participant for the purpose of effecting or being involved in effecting any security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) on behalf of such significant security-based derivatives market participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period of not longer than 12 months, or bar such person from being associated with a significant security-based derivatives market participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such action is in the public interest, and that such person—

''(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of section 15(b)(4);

''(B) has been convicted of any offense specified in section 15(b)(4)(B) during the 10-year period preceding the date of commencement of the proceedings under this paragraph;

''(C) is enjoined from any action, conduct, or practice specified in section 15(b)(4)(C);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of section 15(b)(4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in section 15(b)(4)(G).

''(3) ADDITIONAL PROHIBITIONS.—It shall be unlawful—

''(A) for any person as to whom an order under paragraph (2) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a significant security-based derivatives market participant in contravention of such order; or

''(B) for any significant security-based derivatives market participant to permit such a person, without the consent of the Commission, to become or remain, a person associated with the significant security-based derivatives market participant in contravention of an order under paragraph (2), if such significant security-based derivatives market participant knew, or in the exercise of reasonable care should have known, of the order.

''(f) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to conduct business as a significant security-based derivatives market participant, unless such person meets at all times such minimum capital and margin requirements as the appropriate regulatory authorities shall jointly 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 to provide safeguards with respect to the financial responsibility and related practices of the significant security-based derivatives market participant.

''(2) CAPITAL CONSIDERATIONS.—In setting capital requirements for significant security-based derivatives market participants, the appropriate regulatory authorities shall consider, among other things—

''(A) the liquidity of each security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), including whether such instrument is traded on a liquid market, and whether it is centrally cleared; and

''(B) whether the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) is used to offset or hedge another instrument or asset owned by such significant security-based derivative market participant.

''(3) MARGIN REQUIREMENTS.—The appropriate regulatory authorities shall jointly prescribe margin requirements, which may permit the use of non-cash collateral, that apply to security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) entered into by a significant security-based derivatives market participant, as the appropriate regulatory authorities jointly deem necessary or appropriate for the purpose of, among other things—

''(A) preserving the financial integrity of markets trading security-based swaps (or security derivatives); and

''(B) preventing systemic risk.

''(4) COMMISSION RULES.—Nothing in this section prevents the Commission from prescribing capital and margin requirements that are higher or more restrictive than the joint rules adopted under this subsection for significant security-based derivatives market participants for which it is the appropriate regulatory authority.

''(g) APPROPRIATE REGULATORY AUTHORITY DEFINED.—For purposes of this section, the term 'appropriate regulatory authority' means—

''(1) the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) with respect to a significant security-based derivatives market participant that is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), other than an affiliate of an insured depository institution;

''(2) the Federal Housing Finance Agency, with respect to a significant security-based derivatives market participant that is a regulated entity (as defined in section 1301 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502));

''(3) the Commodity Futures Trading Commission, with respect to a significant security-based derivatives market participant that is—

''(A) a futures commission merchant or an introducing broker (as defined in paragraphs (20) and (23) of section 1a of the Commodity Exchange Act, respectively), other than a broker or dealer registered pursuant to section 15(b) of this title (other than paragraph (11) thereof) or an affiliate of an insured depository institution; or

''(B) a commodity pool operator or commodity trading advisor (as defined in paragraphs (5) and (6) of section 1a of the Commodity Exchange Act, respectively), other than an affiliate of an insured depository institution; and

''(4) the Commission, with respect to any other significant security-based derivatives market participant for which there is not another appropriate regulatory authority otherwise specified in this subsection.

''(h) ENFORCEMENT AUTHORITY.—Each appropriate regulatory authority shall have sole authority to enforce compliance with the rules adopted under subsection (f) in the case of each significant security-based derivatives market participant for which it is the appropriate regulatory authority, as defined in subsection (g).''.

(b) EXEMPTION FROM BROKER OR DEALER REGISTRATION.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(13) EXEMPTION FOR SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—A person shall be exempt from the registration requirements of this section, to the extent that such person engages in transactions in security-based swaps, if such person would otherwise be required to register under this section only because such person effects transactions in security-based swaps with eligible contract participants and is a significant security-based derivatives market participant that has registered in accordance with section 15F(b).''.

SEC. 105. RECORDKEEPING AND REPORTING REQUIREMENTS FOR DERIVATIVES MARKET PARTICIPANTS.

(a) RECORDKEEPING AND EXAMINATION REQUIREMENTS FOR SECURITY-BASED DERIVATIVE MARKET PARTICIPANTS.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following:

''(l) RECORDKEEPING BY MARKET PARTICIPANTS IN SECURITY-BASED SWAPS OR SECURITY DERIVATIVES; EXAMINATIONS.—

''(1) RECORDKEEPING.—

''(A) IN GENERAL.—Effective not later than 180 days after the date of enactment of this subsection, the Commission shall, by rule, regulation, or order, require each significant security-based derivatives market participant, and such other persons as the Commission, by rule, regulation, or order, determines, to create, keep current, and maintain for prescribed periods such records, furnish such copies thereof (and make and disseminate such reports) relating to security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) to the Commission, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(B) MINIMUM REQUIREMENTS.—At a minimum, the actions of the Commission under subparagraph (A) shall require, as applicable, the creation and maintenance of client information records, agreements, client ledger information, trade blotters, memoranda of agreements to enter into confirmations, position records, and communications relating to transactions in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) and the reporting of transactions and position data.

''(2) EXAMINATIONS.—All records of significant security-based derivatives market participants and such other persons described in paragraph (1) are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.''.

(b) REPORTING BY SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following new subsection:

''(m) REPORTING BY SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—For the purpose of monitoring the impact of transactions in security-based swaps and, as appropriate, security derivatives, and for the purpose of otherwise assisting the Commission in the enforcement of this title, any significant security-based derivatives market participant that purchases or sells security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) shall report such information as the Commission may, by rule, regulation, or order, prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(2) CONSIDERATIONS.—In exercising its authority under this subsection, the Commission shall take into account—

''(A) existing reporting systems;

''(B) the costs associated with reporting such information; and

''(C) the relationship between the United States and international securities and derivatives markets.

''(3) LIMITATION ON DISCLOSURE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any information required by Commission rule, regulation, or order to be reported to the Commission under this subsection.

''(B) EXCEPTION.—Nothing in this subsection shall—

''(i) authorize the Commission to withhold information from Congress; or

''(ii) prevent the Commission from complying with—

''(I) a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction; or

''(II) an order of a court of the United States in an action brought by the United States or the Commission.

''(C) TREATMENT FOR TITLE 5 PURPOSES.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.''.

(c) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1), by inserting after ''Alaska Native Claims Settlement Act,'' the following: ''or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing, upon the purchase or sale of a security-based swap or security derivative that the Commission may define, by rule, and'';

(2) in subsection (g)(1), by inserting after ''subsection (d)(1) of this section'' the following: ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or security derivative that the Commission may define, by rule''; and

(3) in subsection (f)(1), by inserting after ''section (13)(d)(1) of this title'' the following: '', or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or security derivative that the Commission may define, by rule,''.

(d) INSTITUTIONAL INVESTMENT MANAGER REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (f)(1), by inserting before ''shall file reports'' the following: ''or security-based swaps or security derivatives that the Commission may define by rule, having such values as the Commission may determine, by rule''; and

(2) in subsection (f)(3), by inserting before ''updated as'' the following: ''and security-based swaps or security derivatives that the Commission may define, by rule''.

(e) REPORTING BY CORPORATE INSIDERS.—Section 16(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(f)) is amended by inserting ''or security-based swaps'' after ''security futures products''.

(f) RECORDKEEPING BY TRADE REPOSITORIES.—Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)) is amended by inserting ''registered trade repository,'' after ''registered securities information processor,''.

SEC. 106. PROHIBITION OF MARKET MANIPULATION, FRAUD, AND OTHER MARKET ABUSES.

(a) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY DERIVATIVES.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i), as amended by this Act, is amended by adding at the end the following:

''(j) DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY DERIVATIVES.—

''(1) IN GENERAL.—It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap or security derivative, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person.

''(2) RULEMAKING REQUIRED.—The Commission shall, for purposes of this subsection, by rule, regulation, or order, define and prescribe means reasonably designed to prevent transactions, acts, practices, and courses of business that are fraudulent, deceptive, or manipulative, and fictitious quotations.

''(3) CONSULTATION.—In adopting rules under this subsection, the Commission shall

consult with the Commodity Futures Trading Commission and seek to maintain comparability of such rules with similar rules of the Commodity Futures Trading Commission.''.

(b) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ANTIMANIPULATION PROVISIONS.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) any transaction in connection with any security whereby any party to such transaction acquires—

''(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

''(B) any security futures product on or related to the security; or

''(C) any security-based swap involving the security or the issuer of the security;

''(2) any transaction in connection with any security with relation to which that person has, directly or indirectly, any interest in any—

''(A) put, call, straddle, option, or privilege described in paragraph (1);

''(B) security futures product described in paragraph (1); or

''(C) security-based swap described in paragraph (1); or

''(3) any transaction in any security for the account of any person who that person has reason to believe has, and who actually has, directly or indirectly, any interest in any—

''(A) put, call, straddle, option, or privilege described in paragraph (1);

''(B) security futures product with relation to such security described in paragraph (1); or

''(C) any security-based swap involving such security or the issuer of such security.''.

(c) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS OR SECURITY DERIVATIVES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

''SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS OR SECURITY DERIVATIVES.

''(a) RULEMAKING AUTHORITY.—

''(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may—

''(A) prescribe requirements regarding the size of positions that may be held by or on behalf of any person or persons in any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) and any security on which such security-based swap (or security derivative) is based or referenced, or as to which the issuer of such security is referenced; and

''(B) require any person that effects transactions for his own account or the account of others in any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) and any security on which such security-based swap (or security derivative) is based or referenced, or the issuer of such security is referenced, to report such information as the Commission may prescribe regarding any position or positions in security-based swaps (or security derivatives) and any security on which such security-based swap (or security derivative) is based or referenced, or as to which the issuer of such security is referenced.

''(2) EXEMPTIONS AUTHORIZED.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap (or security derivative) or class of security-based swaps (or security derivatives), or any transaction or class of transactions from any requirement that the Commission may establish under this subsection.

''(b) SELF-REGULATORY ORGANIZATIONS.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

''(1) to adopt rules regarding the size of positions in any security-based swap (or security derivative) and any security on which such security-based swap (or security derivative) is based or referenced, or as to which the issuer of such security is referenced that may be held by—

''(A) any member of such self-regulatory organization; or

''(B) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap, security derivative, or other security; and

''(2) to adopt rules reasonably designed to assure compliance with requirements prescribed by the Commission under subsection (a).''.

(d) STATE GAMING AND BUCKET SHOP LAWS.—Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

''(a) STATE GAMING AND BUCKET SHOP LAWS.—

''(1) IN GENERAL.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity, but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages of that person due to the act that is the subject of the action.

''(2) RULE OF CONSTRUCTION.—Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person, to the extent that the exercise thereof does not conflict with the provisions of this title or the rules and regulations thereunder.

''(3) GAMING LAWS.—No provision of State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate—

''(A) any put, call, straddle, option, privilege, or other security that is subject to regulation under this title (except a security-based swap and any security that has a pari-mutual payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

''(B) any security-based swap between eligible contract participants; or

''(C) any security-based swap effected on a national securities exchange that is registered pursuant to section 6(b).

''(4) SECURITY FUTURES PRODUCT.—No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability.''.

SEC. 107. PROTECTIONS FOR MARKETING SECURITY-BASED SWAPS TO CERTAIN PERSONS.

(a) TRADING IN SECURITY-BASED SWAPS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended by this Act, is amended by adding at the end the following:

''(i) ELIGIBLE CONTRACT PARTICIPANTS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).''.

(b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

''(d) REGISTRATION OF SECURITY-BASED SWAPS.—Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect with respect to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy, or purchase, sell, or buy a security-based swap to any person who is not an eligible contract participant, as defined in section 3(a)(66) of the Securities Exchange Act of 1934.''.

SEC. 108. ENFORCEMENT.

Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following:

''(j) ENFORCEMENT OF PROVISIONS APPLICABLE TO DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—In addition to enforcement by the Commission under the securities laws of compliance with sections 6(l), 13(m), 15F(a), 15F(c), 15F(d), 17(l), 17C(b)(1), and 17C(c)(1), compliance with such sections shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, in the case of an insured depository institution, as those terms are defined in section 3 of that Act (12 U.S.C. 1813), other than an affiliate of an insured depository institution, as defined in section 3 of that Act (12 U.S.C. 1813);

''(B) the Commodity Exchange Act (7 U.S.C. 1 et seq.), by the Commodity Futures Trading Commission, in the case of a futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor, as those terms are defined in sections 1a of the Commodity Exchange Act, other than an affiliate of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

''(C) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), by the Federal Housing Finance Agency, in the case of a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

''(2) VIOLATIONS TREATED AS VIOLATIONS OF OTHER LAWS.—For purposes of the exercise by any agency referred to in paragraph (1), a violation of sections 6(l), 13(m), 15F(a), 15F(c), 15F(d), 17(l), 17C(b)(1), and 17C(c)(1) of this title shall be deemed to be a violation of a requirement imposed under that provision of law. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with sections 6(l), 13(m), 15F(a), 15F(c), 15F(d), 17(l), 17C(b)(1), and 17C(c)(1) of this title, any other authority conferred on such agency by law.''.

SEC. 109. ENFORCEABILITY OF SECURITY-BASED SWAPS.

Section 29(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(b)(2)) is amended by striking ''and (B)'' and inserting the following: '', (B) that no agreement, contract, or transaction that is a security-based swap shall be void, voidable, or unenforceable by either party to such security-based swap, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such security-based swap under this section or any other provision of securities laws based solely on the failure of either party to the agreement, contract, or transaction to satisfy its respective obligations under sections 6(l), 10B, 13, 15(b), 15F, 17, and 17C of this title with respect to such security-based swap, and (C)''.

SEC. 110. TRANSFER AND RIGHTS OF CERTAIN CFTC EMPLOYEES.

(a) TRANSFER.—Each employee of the Commodity Futures Trading Commission (in this section referred to as the ''CFTC'') whose position and responsibilities would be more effectively utilized at the Securities and Exchange Commission (in this section referred to as the ''SEC''), based on this Act and the amendments made by this Act, as determined by the Secretary of the Treasury, shall be transferred to the SEC for employment, not later than 60 days after the date of enactment of this Act. Such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with equivalent status, tenure, pay and benefits as that held on the day immediately preceding the transfer, subject to paragraph (2).

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee of the CFTC occupying a position in the excepted service or the Senior Executive Service, such employee shall, on and after the date of transfer to the SEC, be deemed to be appointed under the appointment authority of the SEC for filling an equivalent position at the SEC, subject to paragraph (2).

(2) DECLINING APPLICATION OF EQUIVALENT APPOINTMENT AUTHORITY.—The Chairman of the SEC may decline the application of the equivalent appointment authority of the SEC to an employee of the CFTC occupying a position in the excepted service or the Senior Executive Service under paragraph (1) to the extent that the authority by which the employee was appointed by the CFTC relates to—

(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Chairman of the SEC determines, after the end of the 1-year period beginning on the date of enactment of this Act, that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

TITLE II—REGULATION OF COMMODITY-BASED DERIVATIVES

SEC. 201. DEFINITIONS.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by striking paragraphs (1), (25), (31), and (32);

(2) by redesignating paragraphs (2) through (4), (5) through (8), (9) through (24), (26) through (28), (29), (30), (33), and (34) as paragraphs (1) through (3), (7) through (10), (12) through (27), (28) through (30), (32), (33), (35), and (37), respectively;

(3) by inserting after paragraph (3) (as redesignated by paragraph (2) of this section) the following:

''(4) COMMODITY-BASED SWAP.—The term 'commodity-based swap' means a swap that is not a security-based swap, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

''(5) COMMODITY-BASED SWAP EXECUTION FACILITY.—The term 'commodity-based swap execution facility' means a trading facility registered under section 5h.

''(6) COMMODITY DERIVATIVE.—The term 'commodity derivative' means any derivative that is a contract of sale for future delivery of any commodity (or option on a contract of sale for future delivery of any commodity) subject to the exclusive jurisdiction of the Commission under this Act, other than a swap.'';

(4) by inserting after paragraph (10) (as redesignated by paragraph (2) of this section) the following:

''(11) DERIVATIVE.—The term 'derivative' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).'';

(5) by inserting after paragraph (30) (as redesignated by paragraph (2) of this section) the following:

''(31) PERSON ASSOCIATED WITH A SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANT.—

''(A) IN GENERAL.—The term 'person associated with a significant commodity-based derivatives market participant' means—

''(i) any partner, officer, director, or branch manager of a significant commodity-based derivatives market participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a significant commodity-based derivatives market participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with a significant commodity-based derivatives market participant; and

''(iii) any employee of a significant commodity-based derivatives market participant.

''(B) EXCLUSION.—Other than for purposes of section 4s, the term 'person associated with a significant commodity-based derivatives market participant' does not include any person associated with a significant commodity-based derivatives market participant the functions of which are solely clerical or ministerial.'';

(6) in paragraph (32) (as redesignated by paragraph (2) of this section)—

(A) by striking subparagraph (D) and inserting the following:

''(D) a commodity-based swap execution facility registered under section 5h;'';

(B) in subparagraph (E), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(F) a significant commodity-based derivatives market participant; and

''(G) a trade repository under section 4r.'';

(7) by inserting after paragraph (33) (as redesignated by paragraph (2) of this section) the following:

''(34) SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANT.—

''(A) IN GENERAL.—The term 'significant commodity-based derivatives market participant' means—

''(i) any person that is engaged in the business of purchasing or selling 1 or more commodity-based swaps for the account of the person or for any other individual or entity, or making a market in commodity-based swaps, and the 1 or more purchases or sales of which are not solely for the purpose of managing the risk associated with—

''(I) an asset that is, or is anticipated to be, owned, produced, manufactured, processed, or merchandised;

''(II) potential changes in the value of services to be purchased or provided, or anticipated to be purchased or provided; or

''(III) a liability incurred or anticipated to be incurred by a person that is not, or is not related to, a commodity-based swap; or

''(ii) any other person designated by the Commission, after consultation with the Securities and Exchange Commission, by rule, regulation, or order as is appropriate to further—

''(I) the interests of the public;

''(II) the protection of market participants; or

''(III) the purposes of this Act.

''(B) EXCLUSION.—The term 'significant commodity-based derivatives market participant' does not include an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).'';

(8) by inserting after paragraph (35) (as redesignated by paragraph (2) of this section) the following:

''(36) SWAP.—The term 'swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).''; and

(9) by adding at the end the following:

''(38) TRADE REPOSITORY.—The term 'trade repository' means any person that collects, calculates, processes, or prepares information with respect to 1 or more transactions or positions in 1 or more commodity-based swaps.''.

SEC. 202. RATIONALIZATION OF FINANCIAL PRODUCT OVERSIGHT.

(a) CFTC AUTHORITY OVER COMMODITY-BASED SWAPS.—

(1) AMENDMENTS TO COMMODITY FUTURES MODERNIZATION ACT OF 2000.—

(A) DEFINITIONS.—Section 402 of the Commodity Futures Modernization Act of 2000 (7 U.S.C. 27) is amended by striking subsection (d).

(B) EXCLUSION OF COVERED SWAP AGREEMENTS.—Section 407 of the Commodity Futures Modernization Act of 2000 (7 U.S.C. 27e) is repealed.

(C) CONTRACT ENFORCEMENT.—Section 408 of the Commodity Futures Modernization Act of 2000 (7 U.S.C. 27f) is amended by striking subsections (b) and (c) and inserting the following:

''(b) PREEMPTION.—This title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of a hybrid instrument that is predominantly a banking product.''.

(2) AMENDMENTS TO COMMODITY EXCHANGE ACT.—

(A) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(i) in subsection (a)(1)—

(I) in the first sentence of subparagraph (A), by striking ''subparagraphs (C) and (D)

of this paragraph and subsections (c) through (i) of this section'' and inserting ''subparagraph (C) and subsections (c) through (e)'';

(II) in subparagraph (C), by striking clauses (ii) through (v) and inserting the following:

''(ii) CONTRACTS OF SALE FOR FUTURE DELIVERY.—This Act shall not apply to, and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any contract of sale (or option on such contract) for future delivery—

''(I) of any security, or interest in a security or based on the value of a security (other than an exempted security under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in that section 3(a), as in effect on the date of enactment of the Futures Trading Act of 1982), or any group or index of such securities or any interest in a security or based on the value of a security; or

''(II) based on any financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, or an issuer of a security, or based on the value of any of the foregoing (other than an exempted security under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in that section 3(a), as in effect on the date of enactment of the Futures Trading Act of 1982), or any group or index of such securities, or interests in such securities or issuers of such securities, or based on the value of any of the foregoing.''; and

(III) by striking subparagraphs (D), (E), and (F);

(ii) by striking subsections (d), (e), (g), (h), and (i);

(iii) by inserting after subsection (c) the following:

''(d) COMMODITY-BASED SWAPS.—Nothing in this Act (other than subsections (a)(1)(B), (a)(1)(C), (e) and (f), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by the terms of the provisions to registered entities and Commission registrants) governs or applies to a commodity-based swap.''; and

(iv) by redesignating subsection (f) as subsection (e).

(B) CONFORMING AMENDMENTS.—

(i) Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by section 201(2)) is amended in paragraph (35) by inserting before the period at the end the following: ''(as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009)''.

(ii) Section 5c(a)(1) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)(1)) is amended by striking '', and section 2(h)(7) with respect to significant price discovery contracts,''.

(iii) Section 5d(a) of the Commodity Exchange Act (7 U.S.C. 7a–3(a)) is amended in the second sentence by striking ''subparagraphs (C) and (D) of section 2(a)(1)'' and inserting ''section 2(a)(1)(C)''.

(iv) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking '', or revocation of the right'' and all that follows through ''significant price discovery contract,''.

(v) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking '', or to revoke the right'' and all that follows through ''significant price discovery contract,''.

(vi) Section 22(b)(1)(A) of the Commodity Exchange Act (7 U.S.C. 25(b)(1)(A)) is amended by striking ''section 2(h)(7) or''.

(vii) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(I) by striking '', 2(d), 2(f), or 2(g)''; and

(II) by striking ''2(h) or''.

(3) AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.—Section 206 of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended—

(A) in subsection (a)—

(i) in paragraph (4), by inserting ''or'' after the semicolon at the end;

(ii) in paragraph (5) by striking ''; or'' at the end and inserting a period; and

(iii) by striking paragraph (6);

(B) by striking subsection (b); and

(C) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(b) RATIONALIZATION OF SECURITY FUTURES OVERSIGHT.—

(1) IN GENERAL.—

(A) RULEMAKING AUTHORITY TO ADDRESS DUPLICATIVE REGULATIONS OF DUAL REGISTRANTS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by striking subsection (c).

(B) REGISTRATION OF FUTURES COMMISSION MERCHANTS, INTRODUCING BROKERS, AND FLOOR BROKERS.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended—

(i) in paragraph (1), by striking ''(1)''; and

(ii) by striking paragraphs (2) through (4).

(C) DUAL TRADING.—Section 4j of the Commodity Exchange Act (7 U.S.C. 6j) is repealed.

(D) EXEMPTIONS FOR ASSOCIATED PERSONS OR SECURITIES BROKER-DEALERS.—Section 4k of the Commodity Exchange Act (7 U.S.C. 6k) is amended by striking paragraph (5) (as added by section 252(d) of the Commodity Futures Modernization Act of 2000 (114 Stat. 2763A–448)).

(E) ELECTION TO TRADE EXCLUDED AND EXEMPT COMMODITIES.—Section 5a of the Commodity Exchange Act (7 U.S.C. 7a) is amended by striking subsection (g).

(F) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended by striking subsection (f).

(G) DESIGNATION OF SECURITIES EXCHANGES AND ASSOCIATIONS AS CONTRACT MARKETS.—Section 5f of the Commodity Exchange Act (7 U.S.C. 7b–1) is repealed.

(H) NOTIFICATION OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.—Section 6 of the Commodity Exchange Act is amended by striking subsection (g) (7 U.S.C. 9c).

(I) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—Section 6c of the Commodity Exchange Act (7 U.S.C. 13a–1) is amended by striking subsection (h).

(J) PUBLIC DISCLOSURE.—Section 8(a) of the Commodity Exchange Act (7 U.S.C. 12(a)) is amended by striking paragraph (3).

(K) MARKET REPORTS.—Section 16 of the Commodity Exchange Act (7 U.S.C. 20) is amended by striking subsection (e).

(L) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended—

(i) by striking subsection (r); and

(ii) by redesignating subsection (q) (as added by section 233(5) of Public Law 97–444 (96 Stat. 2320)) as subsection (r).

(2) CONFORMING AMENDMENTS TO THE COMMODITY EXCHANGE ACT.—

(A) Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by section 201(2)) is amended in paragraph (28), by striking the second sentence.

(B) Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking ''(except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D))''.

(C) Section 5a of the Commodity Exchange Act (7 U.S.C. 7a) is amended—

(i) in subsection (b)—

(I) in paragraph (2)—

(aa) by striking subparagraph (D); and

(bb) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively; and

(II) in paragraph (3)(B)(ii), by striking ''or, if the person trades only security futures products on the facility, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934''; and

(ii) in subsection (e)(1), by striking ''With respect to transactions other than transactions in security futures products, a'' and inserting ''A''.

(D) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking ''or section 5f''.

(E) Section 12(e)(2) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)) is amended—

(i) in subparagraph (A), by striking ''an electronic trading facility excluded under section 2(e) of this Act'' and inserting ''a commodity-based swap execution facility'';

(ii) in subparagraph (B)—

(I) by striking '', 2(d), 2(f), or 2(g)'' and inserting ''or 2(e)'';

(II) by striking ''2(h) or''; and

(III) by striking the period at the end and inserting ''; and''; and

(iii) by inserting after subparagraph (B) the following:

''(C) a commodity-based swap.''.

SEC. 203. REQUIRED CLEARING OF STANDARDIZED DERIVATIVES THROUGH CENTRAL COUNTERPARTIES AND USE OF TRADE REPOSITORIES.

(a) IN GENERAL.—The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o–1) the following:

''SEC. 4r. REQUIRED CLEARING OF STANDARDIZED DERIVATIVES THROUGH CENTRAL COUNTERPARTIES AND USE OF TRADE REPOSITORIES.

''(a) FINDINGS.—Congress finds that—

''(1) the proliferation of over-the-counter commodity-based swaps poses unacceptable risks to the financial system;

''(2) clearing standardized commodity-based swaps through well-regulated central counterparties would reduce systemic risk in the financial system;

''(3) the markets for standardized commodity-based swaps suffer from a lack of reliable and accurate transaction information that is available to the public, market participants, producers, and regulators; and

''(4) weaknesses in the regulation of markets for standardized commodity-based swaps have detracted from the efficiency and transparency of trading in the markets and hampered the surveillance and oversight of the markets.

''(b) PURPOSES.—The purposes of this section are—

''(1) to establish well-regulated markets for standardized commodity-based swaps that promote efficiency and transparency of trading and enhance the surveillance and oversight of the markets; and

''(2) to promote the public interest, the protection of market participants, and the maintenance of fair and orderly markets by ensuring—

''(A) the prompt and accurate clearance and settlement of transactions in standardized commodity-based swaps;

''(B) the prompt and accurate reporting of transactions in commodity-based derivative

instruments to a trade repository or a derivatives clearing organization;

''(C) the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options on the contracts, commodity options, and derivatives;

''(D) the availability to the public, market participants, producers, and regulators of reliable and accurate quotation and transaction information in commodity-based swaps;

''(E) economically efficient execution of transactions in commodity-based swaps; and

''(F) fair competition among markets in the trading of commodity-based swaps.

''(c) USE OF DERIVATIVES CLEARING ORGANIZATIONS.—

''(1) IN GENERAL.—Any person that is a party to a commodity-based swap that the Commission determines is 'standardized' shall submit such instrument for clearing to a derivatives clearing organization within the period specified by the rules of the Commission.

''(2) DEFINITION OF 'STANDARDIZED'.—

''(A) IN GENERAL.—The Commission shall by rule, define the term 'standardized' for purposes of this section.

''(B) FACTORS.—In defining the term 'standardized', the Commission shall—

''(i) be consistent with—

''(I) the public interest;

''(II) the protection of market participants;

''(III) the safeguarding of commodity-based swap transactions and funds;

''(IV) the maintenance of fair competition among market participants and among derivatives clearing organizations; and

''(V) the purposes of this section;

''(ii)(I) consult with, and consider the views of, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System; and

''(II) seek to maintain comparability, to the maximum extent practicable, with the Securities and Exchange Commission definition of 'standardized' for purposes of section 17C of the Securities Exchange Act of 1934; and

''(iii) to the extent it is applicable to a particular commodity-based swap or class of commodity-based derivative swaps, consider—

''(I) whether a derivatives clearing organization is prepared to clear the commodity-based swap and the derivatives clearing organization has effective risk management systems;

''(II) the availability or ability to facilitate standard documentation of the terms of the commodity-based swap;

''(III) the liquidity of the commodity-based swap and the underlying commodity or group or index of the commodity-based swap;

''(IV) the ability to value the commodity-based swap, or underlying commodity, consistently with an accepted pricing methodology, including the availability of intraday prices; and

''(V) such other factors as are consistent with the purposes of this section.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Commission, by rule or order, as the Commission considers appropriate in the public interest or the protection of market participants, may conditionally or unconditionally exempt from the requirements of this subsection and the rules issued under this subsection any person, transaction, or standardized commodity-based swap.

''(B) PRIOR CONSULTATION WITH SECURITIES AND EXCHANGE COMMISSION AND BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

''(i) CONSULTATION.—Before acting by rule or order to exempt any person, transaction, or standardized commodity-based swap from this subsection, the Commission shall consult with, and consider the views of, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System concerning whether the exemption is appropriate for the reduction of risk and in the public interest.

''(ii) NOTICE REQUIRED.—Forty-five days prior to issuing any exemption, the Commission shall send a notice to the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System describing such exemption.

''(iii) PROHIBITION ON ISSUANCE.—If either the Securities and Exchange Commission or the Board of Governors of the Federal Reserve System issues a finding that such an exemption does not meet the standard in clause (i), the Commission shall not grant the exemption.

''(iv) DEADLINE.—Any finding by the Securities and Exchange Commission or the Board of Governors of the Federal Reserve System shall be made and received in writing by the Commission not later than 30 days after the date of receipt of a notice of a proposed exemption by the Commission.

''(v) NONDELEGATION.—Action by the Securities and Exchange Commission or the Board of Governors under this subparagraph may not be delegated.

''(d) TRADE REPOSITORIES.—

''(1) USE OF TRADE REPOSITORIES.—

''(A) IN GENERAL.—Any person that enters into or effects a transaction in a commodity-based swap shall submit the transaction for clearing to a derivatives clearing organization or report the transaction to a trade repository registered in accordance with this subsection within the period specified by any rule adopted under subsection (e).

''(B) INFORMATION.—The Commission may, by rule, require any person to report to derivatives clearing organizations and registered trade repositories such transaction information as the Commission considers appropriate to permit the derivatives clearing organizations and trade repositories to meet the purposes of this section.

''(2) REGISTRATION.—A trade repository may register for purposes of this subsection by filing with the Commission an application in such form as the Commission, by rule, may prescribe containing the rules of the trade repository and such other information and documents as the Commission, by rule, may prescribe as appropriate in the public interest, for the protection of market participants, or for the prompt and accurate collection, calculation, processing, and preparation of information regarding transactions and positions in commodity-based swap.

''(3) COMMISSION PROCEDURES FOR APPLICATIONS.—

''(A) IN GENERAL.—On the filing of an application for registration pursuant to paragraph (2), the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning the application.

''(B) ACTIONS.—Not later than 90 days after the date of the publication of the notice (or, with the consent of the applicant, a longer period), the Commission shall—

''(i) by order grant the registration; or

''(ii) institute proceedings to determine whether the registration should be denied.

''(C) PROCEDURE FOR DENIALS.—

''(i) IN GENERAL.—The proceedings described in subparagraph (B)(ii) shall—

''(I) include notice of the grounds for denial under consideration and an opportunity for a hearing; and

''(II) be concluded not later than 180 days after the date of publication of notice of the filing of the application for registration.

''(ii) ACTIONS.—At the conclusion of the proceedings the Commission, by order, shall grant or deny the registration.

''(iii) EXTENSIONS.—The Commission may extend the time for the conclusion of the proceedings for—

''(I) not more than 60 days if the Commission—

''(aa) finds good cause for the extension; and

''(bb) publishes a description of the reasons of the Commission for the finding; or

''(II) with the consent of the applicant, a longer period.

''(D) STANDARDS FOR GRANTING REGISTRATION.—The Commission shall grant the registration of a trade repository for purposes of this section if the Commission finds that the trade repository is so organized, and has the capacity—

''(i) to assure the prompt, accurate, and reliable performance of the functions of a trade repository;

''(ii) to comply with this Act (including rules and regulations issued under this Act); and

''(iii) to carry out the functions of a trade repository in a manner consistent with the purposes of this section.

''(E) STANDARD FOR DENIAL OF REGISTRATION.—The Commission shall deny the registration of a trade repository if the Commission does not make a finding described in subparagraph (D).

''(4) WITHDRAWAL OF REGISTRATION.—

''(A) IN GENERAL.—A registered trade repository may, on such terms and conditions as the Commission considers appropriate in the public interest or for the protection of market participants, withdraw from registration by filing a written notice of withdrawal with the Commission.

''(B) CANCELLATION.—If the Commission finds that any trade repository is no longer in existence or has ceased to do business in the capacity specified in the application of the trade repository for registration, the Commission, by order, shall cancel the registration.

''(5) ACCESS TO TRADE REPOSITORY SERVICES.—

''(A) NOTICE OF PROHIBITION OR LIMITATION ON ACCESS.—

''(i) IN GENERAL.—If any registered trade repository prohibits or limits any person access to services offered, directly or indirectly, by the trade repository, the registered trade repository shall promptly file notice of the prohibition or limitation with the Commission.

''(ii) CONTENT.—A notice under clause (i) shall be in such form and contain such information as the Commission, by rule, may prescribe as appropriate in the public interest or for the protection of investors.

''(B) REVIEW BY COMMISSION.—Any prohibition or limitation on access to services with respect to which a registered trade repository is required by subparagraph (A) to file notice shall be subject to review by the Commission on—

''(i) the motion of the Commission; or

''(ii) application by any person aggrieved by the prohibition or limitation filed—

''(I) not later than 30 days after the date on which the notice described in subparagraph (A) has been filed with the Commission and received by the aggrieved person; or

''(II) within such longer period as the Commission may determine.

''(C) STAYS.—

''(i) IN GENERAL.—Application to the Commission for review, or the institution of review by the Commission on the motion of the Commission, shall not operate as a stay

of the prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay.

''(ii) HEARING.—A hearing under clause (i) may consist solely of the submission of affidavits or presentation of oral arguments.

''(iii) EXPEDITED PROCEDURE.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

''(D) STANDARDS OF REVIEW.—

''(i) DISMISSAL OF PROCEEDINGS.—In any proceeding to review the prohibition or limitation of any person to access to services offered by a registered trade repository, the Commission, by order, shall dismiss the proceeding if the Commission finds, after notice and opportunity for hearing, that—

''(I) the prohibition or limitation is consistent with this Act (including rules and regulations); and

''(II) the person has not been discriminated against unfairly.

''(ii) ACCESS TO SERVICES.—If the Commission does not make a finding described in clause (i) or the Commission finds that the prohibition or limitation imposes any burden on competition that is not appropriate in furtherance of the purposes of this Act, the Commission, by order, shall—

''(I) set aside the prohibition or limitation; and

''(II) require the registered trade repository to permit the person access to the services offered by the registered trade repository to which the prohibition or limitation applied.

''(6) ADMINISTRATIVE PROCEEDING AUTHORITY.—The Commission, by order, may censure or place limitations on the activities, functions, or operations of any registered trade repository or suspend for a period not exceeding 12 months or revoke the registration of any trade repository, if the Commission finds, on the record after notice and opportunity for hearing, that—

''(A) the censure, placing of limitations, suspension, or revocation is appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act; and

''(B) the trade repository has violated or is unable to comply with any provision of this Act (including rules or regulations).

''(7) RULEMAKING AUTHORITY.—No registered trade repository shall, directly or indirectly, engage in any activity as a trade repository in contravention of such rules and regulations as the Commission may prescribe—

''(A) as appropriate in the public interest;

''(B) for the protection of market participants; or

''(C) otherwise in furtherance of the purposes of this Act, including to ensure that all persons may obtain on terms that are fair and reasonable and not unreasonably discriminatory such transaction and position information for commodity-based swaps as is disseminated by any derivatives clearing organization or trade repository.

''(8) CONSULTATION.—

''(A) IN GENERAL.—Prior to adopting any rules applicable to trade repositories pursuant to subsection (g), the Commission shall consult with and consider the views of the Securities and Exchange Commission.

''(B) COMPARABILITY.—The Commission and the Securities and Exchange Commission shall seek to maintain comparability, to the maximum extent practicable, of applicable respective recordkeeping and reporting requirements for trade repositories.

''(e) TIMING.—The Commission may by rule specify the date by which persons are required—

''(1) to submit transactions in standardized commodity-based swaps for clearing to a derivatives clearing organization pursuant to subsection (c); and

''(2)(A) to submit transactions in commodity-based swaps for clearing to a derivatives clearing organization; or

''(B) to report transactions in the commodity-based derivative instruments to a registered trade repository pursuant to subsection (d).

''(f) COLLECTION, CONSOLIDATION, AND DISSEMINATION OF INFORMATION ON TRANSACTIONS AND POSITIONS IN COMMODITY-BASED SWAPS.—

''(1) COMMISSION ACTION REQUIRED.—The Commission shall, consistent with the public interest, the protection of market participants, the maintenance of fair and orderly markets, and the purposes of this section, use the authority of the Commission under this Act to facilitate—

''(A) the collection, consolidation, and dissemination of information on transactions and positions in commodity-based swaps; and

''(B) the establishment of coordinated facilities for the consolidation of information on transactions and positions in commodity-based swaps.

''(2) ACTIONS REQUIRED BY REGISTERED ENTITIES.—The Commission, by rule, regulation, or order, may require each derivatives clearing organization that clears transactions in commodity-based swaps, and each registered trade repository registered or applying to become registered, in such form and frequency as the Commission shall prescribe as appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act—

''(A) to disseminate certain transaction or position information concerning commodity-based swaps; and

''(B) to ensure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to transactions and positions, as appropriate, cleared by or reported to the derivatives clearing organization or the registered trade repository.

''(g) RECORDS, REPORTS, AND EXAMINATIONS.—

''(1) IN GENERAL.—Each registered trade repository shall make and keep for prescribed periods such records, furnish such copies of the records, and make and disseminate such reports as the Commission, by rule, prescribes as appropriate in the public interest, or otherwise in furtherance of the purposes of this Act.

''(2) EXAMINATIONS.—All records with regard to commodity-based swaps of a registered trade repository shall be subject at any time to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission considers appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act.''.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, or a commodity-based swap, in each case unless the contract, option, or commodity-based swap is not required to be cleared under this Act.

''(b) VOLUNTARY REGISTRATION.—A derivatives clearing organization that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.'';

(2) in subsection (c)—

(A) by striking paragraph (1) and inserting the following:

''(1) APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing the rules of the derivatives clearing organization and such other information and documents as the Commission, by rule, may prescribe as appropriate in the public interest or for the purpose of making the determinations required for approval under this section.'';

(B) in paragraph (2)—

(i) by striking subparagraph (B) and inserting the following:

''(B) FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization and to manage all associated risks.''; and

(ii) by adding at the end the following:

''(O) MARKET PARTICIPANT ACCESS.—The applicant shall establish appropriate standards to ensure open and fair access to all persons that meet the ongoing and continuing participant eligibility standards of the organization with respect to commodity-based swaps and to accept for clearing from the participants all commodity-based swaps that meet the product eligibility standards of the organization, regardless of where the transactions are executed.''; and

(C) by adding at the end the following:

''(4) COMMISSION PROCEDURES FOR GRANTING REGISTRATION TO DERIVATIVES CLEARING ORGANIZATIONS FOR CLEARING COMMODITY-BASED SWAPS.—

''(A) IN GENERAL.—The Commission shall, on the filing of an application for registration pursuant to paragraph (2) for purposes of clearing commodity-based swaps, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning the application.

''(B) ACTIONS.—Not later than 90 days after the date of the publication of the notice (or, with the consent of the applicant, a longer period), the Commission shall—

''(i) by order grant the registration; or

''(ii) institute proceedings to determine whether registration should be denied.

''(C) PROCEEDINGS.—

''(i) IN GENERAL.—The proceedings described in subparagraph (B)(ii) shall—

''(I) include notice of the grounds for denial under consideration and opportunity for hearing; and

''(II) be concluded not later than 180 days after the date of publication of notice of the filing of the application for registration.

''(ii) ACTIONS.—At the conclusion of the proceedings the Commission, by order, shall grant or deny the registration.

''(iii) EXTENSIONS.—The Commission may extend the time for the conclusion of the proceedings for—

''(I) not more than 60 days if the Commission—

''(aa) finds good cause for the extension; and

''(bb) publishes the reasons of the Commission for the finding; or

''(II) with the consent of the applicant, a longer period.

''(iv) STANDARD FOR REGISTRATION.—

''(I) IN GENERAL.—The Commission shall grant the registration of a derivatives clearing organization if the Commission finds that the derivatives clearing organization is so organized, and has the capacity, to be able—

''(aa) to ensure the prompt, accurate, and reliable performance of the functions of a derivatives clearing organization;

''(bb) to comply with this Act (including rules and regulations); and

''(cc) to carry out the functions of a derivatives clearing organization in a manner consistent with the purposes and core principles of this section.

''(II) DENIAL.—The Commission shall deny the registration of a derivatives clearing organization if the Commission does not make a finding described in subclause (I).

''(5) WITHDRAWAL OF REGISTRATION.—For purposes of clearing commodity-based swaps, a derivatives clearing organization may, on such terms and conditions as the Commission considers appropriate in the public interest or for the protection of market participants, withdraw from registration by filing a written notice of withdrawal with the Commission.

''(6) ACCESS TO DERIVATIVES CLEARING ORGANIZATION TO CLEAR COMMODITY-BASED SWAPS.—

''(A) NOTICE OF PROHIBITION OR LIMITATION.—

''(i) IN GENERAL.—For purposes of clearing commodity-based swaps, if any derivatives clearing organization prohibits or limits any person access to services offered, directly or indirectly, by the derivatives clearing organization, the derivatives clearing organization shall promptly file notice of the prohibition or denial with the Commission.

''(ii) CONTENTS.—The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as appropriate in the public interest.

''(B) REVIEW BY COMMISSION.—Any prohibition or limitation on access to services with respect to which a derivatives clearing organization is required by subparagraph (A) to file notice shall be subject to review by the Commission on—

''(i) the motion of the Commission; or

''(ii) application by any person aggrieved by the prohibition or limitation filed—

''(I) not later than 30 days after the date the notice described in subparagraph (A) has been filed with the Commission and received by the aggrieved person; or

''(II) within such longer period as the Commission may determine.

''(C) STAYS.—

''(i) IN GENERAL.—Application to the Commission for review, or the institution of review by the Commission on the motion of the Commission, shall not operate as a stay of the prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay.

''(ii) HEARING.—A hearing under clause (i) may consist solely of the submission of affidavits or presentation of oral arguments.

''(iii) EXPEDITED PROCEDURE.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

''(D) ACTIONS.—

''(i) DISMISSAL OF PROCEEDINGS.—For purposes of clearing commodity-based swaps, in any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a derivatives clearing organization, the Commission, by order, shall dismiss the proceeding if the Commission finds, after notice and opportunity for hearing, that—

''(I) the prohibition or limitation is consistent with this Act (including rules and regulations); and

''(II) the person has not been discriminated against unfairly.

''(ii) ACCESS TO SERVICES.—If the Commission does not make a finding described in clause (i), or if the Commission finds that the prohibition or limitation imposes any burden on competition not appropriate in furtherance of the purposes of this Act, the Commission, by order, shall—

''(I) set aside the prohibition or limitation; and

''(II) require the registered trade repository to permit the person access to the services offered by the derivatives clearing organization to which the prohibition or limitation applied.

''(7) ADMINISTRATIVE PROCEEDING AUTHORITY.—The Commission, by order, may censure or place limitations on the activities, functions, or operations of any derivatives clearing organization that is clearing commodity-based swaps, or suspend for a period not exceeding 12 months or revoke the registration of any derivatives clearing organization, if the Commission finds, on the record after notice and opportunity for hearing, that—

''(A) the censure, placing of limitations, suspension, or revocation is appropriate in the public interest and for the protection of market participants or otherwise in furtherance of the purposes of this Act; and

''(B) the derivatives clearing organization has violated or is unable to comply with any provision of this Act (including rules or regulations).

''(8) RULEMAKING AUTHORIZATION.—For purposes of clearing commodity-based swaps, no derivatives clearing organization shall, directly or indirectly, engage in any activity as a derivatives clearing organization in contravention of such rules and regulations as the Commission may prescribe—

''(A) as appropriate in the public interest;

''(B) for the protection of market participants; or

''(C) otherwise in furtherance of the purposes of this Act.

''(9) RECORDS, REPORTS, AND EXAMINATIONS.—

''(A) IN GENERAL.—Each derivatives clearing organization shall, for purposes of clearing commodity-based swaps, make and keep for prescribed periods such records, furnish such copies of the records, and make and disseminate such reports as the Commission, by rule, prescribes as appropriate in the public interest, or otherwise in furtherance of the purposes of this Act.

''(B) EXAMINATIONS.—For purposes of clearing commodity-based derivative instruments, all records of a derivatives clearing organization shall be subject at any time to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission considers appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act.''.

SEC. 204. PRUDENTIAL SUPERVISION AND REGULATION OF SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS AND INCENTIVES FOR TRADING ON REGULATED EXCHANGES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 203(a)) the following:

''SEC. 4s. REGULATION OF SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.

''(a) DEFINITION OF APPROPRIATE REGULATORY AUTHORITY.—In this section, the term 'appropriate regulatory authority' means—

''(1) the appropriate Federal banking agency (as defined in section 1813(q) of title 12, United States Code), with respect to a significant commodity-based derivatives market participant that is an insured depository institution (as defined in section 1813(c) of title 12, United States Code), but not an affiliate of an insured depository institution;

''(2) the Federal Housing Finance Agency, with respect to a significant commodity-based derivatives market participant that is a regulated entity (as defined in section 4502 of title 12, United States Code);

''(3) the Commission, with respect to a significant commodity-based derivatives market participant that is—

''(A) a futures commission merchant or an introducing broker, other than a futures commission merchant or an introducing broker registered pursuant to section 4f(a) or an affiliate of an insured depository institution; or

''(B) a commodity pool operator or commodity trading advisor, other than an affiliate of an insured depository institution; and

''(4) the Securities and Exchange Commission, with respect to a significant commodity-based derivatives market participant—

''(A) that is a broker or dealer, as those terms are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (other than a broker or dealer registered under section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) that is not an affiliate of an insured depository institution); or

''(B) for which there is not another appropriate regulatory authority otherwise specified in this subsection.

''(b) REGISTRATION BY SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.—It shall be unlawful for any significant commodity-based derivatives market participant to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce a transaction in, any commodity-based swap unless the significant commodity-based derivatives market participant has registered in accordance with subsection (c).

''(c) MANNER OF REGISTRATION OF SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—A significant commodity-based derivatives market participant subject to the registration requirement of subsection (b) may register by filing with the Commission an application for registration in such form and containing such information and documents concerning the significant commodity-based derivatives market participant and any persons associated with the significant commodity-based derivatives market participant as the Commission, by rule, regulation, or order, may prescribe as appropriate in the public interest or for the protection of market participants.

''(2) ACTION BY THE COMMISSION.—

''(A) IN GENERAL.—Not later than 45 days after the date of filing of an application under paragraph (1) (or, with the consent of the applicant, a longer period), the Commission shall—

''(i) by order grant registration; or

''(ii) institute proceedings in accordance with subparagraph (B) to determine whether the registration should be denied.

''(B) PROCEEDINGS.—

''(i) IN GENERAL.—Proceedings initiated under subparagraph (B)(ii) shall include notice of the grounds for denial under consideration and opportunity for hearing.

''(ii) CONCLUSION.—Not later than 120 days after the date of the filing of the application for registration, the Commission shall conclude the proceedings and, by order, grant or deny the registration.

''(iii) EXTENSION.—The Commission may extend the time for the conclusion of a proceedings for up to 90 days (or, with the consent of the applicant, a longer period) if the Commission finds good cause for the extension and publishes the reasons for the extension.

''(C) BASIS FOR DETERMINATION.—

''(i) IN GENERAL.—The Commission shall grant the registration of a significant commodity-based derivatives market participant if the Commission finds that the requirements of this section are satisfied.

''(ii) DENIAL.—The Commission shall deny the registration if the Commission does not make a finding under clause (i) or if the Commission finds that if the applicant were registered, the registration of the applicant would be subject to suspension or revocation under subsection (f).

''(3) WITHDRAWAL.—Any person that has filed an application pursuant to paragraph (1) may, on such terms and conditions as the Commission determines appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act, withdraw the application by filing a written withdrawal with the Commission.

''(d) BUSINESS CONDUCT REQUIREMENTS.—

''(1) DEFINITION OF REGULATED PERSON.—In this subsection, the term 'regulated person' means—

''(A) a significant commodity-based derivatives market participant; and

''(B) any other class of persons that the Commission may determine by rule, regulation, or order to be subject to this subsection.

''(2) PROHIBITION.—It shall be unlawful for any regulated person to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce a transaction in, any commodity-based swap, unless the regulated person complies with such business conduct requirements as the Commission and the Securities and Exchange Commission, in consultation with the appropriate regulatory authorities, may jointly prescribe by rule, regulation, or order, as appropriate in the public interest, for the protection of market participants, and otherwise in furtherance of the purposes of this Act.

''(3) REQUIREMENTS.—Business conduct requirements prescribed under this subsection shall—

''(A) establish the standard of care required for a regulated person to verify that any counterparty meets the eligibility standards for an eligible contract participant or qualified institutional buyer (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)));

''(B) require disclosure by the regulated person to any counterparty to the transaction of—

''(i) material product-specific information about the risks and characteristics of the commodity-based swap;

''(ii) the source and amount of any fees or other material remuneration that the regulated person would directly or indirectly expect to receive in connection with the commodity-based swap; and

''(iii) any other material incentives or conflicts of interest that the regulated person may have in connection with the commodity-based swap;

''(C) establish a minimum standard of conduct for a regulated person with respect to any counterparty, other than a qualified institutional buyer (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))), for—

''(i) providing disclosure of the general risks and characteristics of any commodity-based swap;

''(ii) communicating in a fair and balanced manner based on principles of fair dealing and good faith;

''(iii) assessing the appropriateness of any commodity-based swap for the counterparty, except that in the case of a counterparty that is an eligible contract participant specified in clause (iv), the regulated person may rely on the representations described in clause (iv)(VI) that the transaction is appropriate for the counterparty; and

''(iv) with respect to a counterparty that is an eligible contract participant (within the meaning of subclause (I) or (II) of section 1a(15)(A)(vii)), having a reasonable basis to believe that the counterparty has an independent representative that—

''(I) has sufficient knowledge to evaluate the transaction and risks;

''(II) is not subject to a statutory disqualification;

''(III) is independent of the regulated person;

''(IV) undertakes a duty to act in the best interests of the counterparty that the independent representative represents;

''(V) makes appropriate disclosures; and

''(VI) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction;

''(D) require the availability of information about any commodity referenced in a commodity-based swap or on which the commodity-based swap is based; and

''(E) establish such other standards and requirements as the Commission, acting jointly with the Securities and Exchange Commission and in consultation with the appropriate regulatory authorities, may determine are appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act.

''(e) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a significant commodity-based derivatives market participant to permit any associated person of the significant commodity-based derivatives market participant who is subject to a statutory disqualification to effect or be involved in effecting transactions in commodity-based swaps on behalf of the significant commodity-based derivatives market participant, if the significant commodity-based derivatives market participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

''(f) ADMINISTRATIVE PROCEEDING AUTHORITY.—

''(1) IN GENERAL.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing of any significant commodity-based derivatives market participant that has registered with the Commission pursuant to subsection (d) if the Commission finds, on the record after notice and opportunity for hearing, that—

''(A) the censure, placing of limitations, or rejection is in the public interest; and

''(B) the significant commodity-based derivatives market participant, or any person associated with the significant commodity-based derivatives market participant effecting or involved in effecting transactions in commodity-based swaps on behalf of the significant commodity-based derivatives market participant, whether prior or subsequent to becoming so associated, has committed or omitted any act, or is subject to an order or finding, described in paragraphs (2) and (3) of section 8a.

''(2) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or who, at the time of the alleged misconduct, was associated or was seeking to become associated with a significant commodity-based derivatives market participant for the purpose of effecting or being involved in effecting commodity-based swaps on behalf of the significant commodity-based derivatives market participant, the Commission, by order, shall censure, place limitations on the activities or functions of the person, or suspend for a period not exceeding 12 months, or bar the person from being associated with a significant commodity-based derivatives market participant, if the Commission finds, on the record after notice and opportunity for a hearing, that—

''(A) the censure, placing of limitations, suspension, or bar is in the public interest; and

''(B) the person has committed or omitted any act, or is subject to an order or finding, described in paragraphs (2) and (3) of section 8a.

''(3) PROHIBITION.—It shall be unlawful—

''(A) for any person with respect to whom an order under paragraph (2) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a significant commodity-based derivatives market participant in contravention of the order; or

''(B) for any significant commodity-based derivatives market participant to permit a person described in subparagraph (A), without the consent of the Commission, to become or remain, a person associated with the significant commodity-based derivatives market participant in contravention of an order under paragraph (2), if the significant commodity-based derivatives market participant knew, or in the exercise of reasonable care should have known, of the order.

''(g) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to conduct business as a significant commodity-based derivatives market participant unless the person meets at all times such minimum capital and margin requirements as the appropriate regulatory authorities shall jointly prescribe, not later than 180 days after the enactment of this section, by rule or regulation as appropriate in the public interest or for the maintenance of fair and orderly markets and consistent with the purposes of this Act to provide safeguards with respect to the financial responsibility and related practices of the significant commodity-based derivatives market participant.

''(2) CAPITAL REQUIREMENTS.—In setting capital requirements for significant commodity-based derivatives market participants, the appropriate regulatory authorities shall consider among other things—

''(A) the liquidity of each commodity-based swap, including whether the commodity-based swap—

''(i) is traded on a liquid market; and

''(ii) is centrally cleared; and

''(B) whether the commodity-based swap is used to offset or hedge another instrument or asset owned by such significant commodity-based derivatives market participant.

''(3) MARGIN REQUIREMENTS.—The appropriate regulatory authorities shall jointly prescribe margin requirements, which may permit the use of noncash collateral, that apply to commodity-based swaps entered into by a significant commodity-based derivatives market participant, as the appropriate regulatory authorities jointly determine to be appropriate for the purpose of, at a minimum—

''(A) preserving the financial integrity of markets trading commodity-based swaps; and

''(B) preventing systemic risk.

''(4) COMMISSION RULES.—Nothing in this Act prevents the Commission from prescribing capital and margin requirements that are higher or more restrictive than the joint rules adopted under this subsection for significant commodity-based derivatives market participants for which the Commission is the appropriate regulatory authority.

''(h) ENFORCEMENT AUTHORITY.—Each appropriate regulatory authority shall have sole authority to enforce compliance with the rules adopted under subsection (g) in the case of each significant derivatives market participant for which the regulatory authority is the appropriate regulatory authority, as defined in subsection (a).''.

SEC. 205. RECORDKEEPING AND REPORTING REQUIREMENTS FOR DERIVATIVES MARKET PARTICIPANTS.

(a) IN GENERAL.—Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended by striking ''SEC. 4g.'' and all that follows through the end of subsection (a) and inserting the following:

''SEC. 4g. RECORDKEEPING AND REPORTING REQUIREMENTS FOR COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.

''(a) IN GENERAL.—Each person registered under this Act as a futures commission merchant, introducing broker, floor broker, floor trader, or significant commodity-based derivatives market participant (or any other person that engages in transactions in commodity-based swaps as the Commission, by rule, regulation or order, designates) shall—

''(1) make such reports as are required by the Commission regarding the transactions and positions of the person, and the transactions and positions of the customers of the person, in commodities for future delivery on any board of trade in the United States or elsewhere, in any significant price discovery contract traded or executed on an electronic trading facility, in any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract, and in any commodity-based swap;

''(2) keep books and records pertaining to those transactions and positions in such form and manner and for such period as may be required by the Commission; and

''(3) make those books and records available for inspection by any representative of the Commission or the Department of Justice.''.

(b) DAILY TRADING RECORD.—Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended—

(1) by striking subsections (c) and (d) and inserting the following:

''(c) DAILY TRADING RECORDS.—

''(1) IN GENERAL.—Each floor broker, introducing broker, futures commission merchant, significant commodity-based derivatives market participant, and any other person designated by the Commission pursuant to subsection (a) shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (b).

''(2) FORM AND REPORTS.—

''(A) IN GENERAL.—Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission.

''(B) REPORTS.—Reports shall be made from the records maintained at such time, in such manner, and at such places as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures or commodity-based swaps.''; and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 206. PROHIBITION OF MARKET MANIPULATION, FRAUD, AND OTHER MARKET ABUSES.

(a) POSITION LIMITS.—

(1) IN GENERAL.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(A) by striking ''SEC. 4a. (a) Excessive'' and inserting the following:

''SEC. 4a. EXCESSIVE SPECULATION AS BURDEN ON INTERSTATE COMMERCE.

''(a) EXCESSIVE SPECULATION.—

''(1) IN GENERAL.—Excessive'';

(B) by designating the first through sixth sentences as paragraphs (1) through (6), respectively;

(C) in paragraph (1) (as so designated), by striking ''on electronic trading facilities with respect to a significant price discovery contract'' and inserting ''commodity-based swaps that perform or affect a significant price discovery function'';

(D) in paragraph (2) (as so designated)—

(i) by inserting '', including any group or class of traders,'' after ''held by any person''; and

(ii) by striking ''on an electronic trading facility with respect to a significant price discovery contract,'' and inserting ''commodity-based swaps that perform or affect a significant price discovery function,''; and

(E) by adding at the end the following:

''(7) AGGREGATE POSITION LIMITS AND POSITION REPORTING FOR COMMODITY-BASED SWAPS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on, or otherwise prescribe requirements regarding, the aggregate number of positions in commodity-based swaps based on the same underlying commodity that may be held by any person, including any group or class of traders, for each month across—

''(A) contracts listed by designated contract markets;

''(B) contracts traded on a foreign board of trade; and

''(C) commodity-based swaps that perform or affect a significant price discovery function.

''(8) CONSIDERATIONS.—In making a determination whether a commodity-based swap performs or affects a significant price discovery function, the Commission shall consider the extent to which the commodity-based swap has a significant price linkage, price discovery relationship, or other significant price relationship with 1 or more contracts listed by designated contract markets.

''(9) REPORTS.—The Commission may, by rule or regulation, require any person that effects transactions for the account of the person or the account of others in any commodity-based swap to report such information as the Commission may prescribe regarding any position or positions in the commodity-based swaps.

''(10) EXEMPTIONS.—The Commission, by rule or regulation, may conditionally or unconditionally exempt any person or class of persons, any commodity-based swap or class of commodity-based swaps, or any transaction or class of transactions from any requirement the Commission establishes under this section with respect to position limits for commodity-based swaps.''.

(2) CONFORMING AMENDMENTS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(A) in paragraph (1), by striking ''or electronic trading facility'' and inserting ''or 1 or more regulated electronic transparent trade execution systems''; and

(B) in paragraph (2), by striking ''or electronic trading facility'' and inserting ''or regulated electronic transparent trade execution system''.

(b) PROHIBITIONS.—Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''or'' after the semicolon at the end;

(B) in paragraph (2)(D)(ii), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(3) for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to effect any transaction in, or to induce or attempt to induce a transaction in, any commodity-based swap, in connection with which the person—

''(A) engages in any fraudulent, deceptive, or manipulative act or practice;

''(B) makes any fictitious quotation; or

''(C) engages in any transaction, practice, or course of business that operates as a fraud or deceit on any person.''; and

(2) in subsection (b)—

(A) by striking ''Subsection (a)(2) of this section'' and inserting the following:

''(1) IN GENERAL.—Subsection (a)(2)''; and

(B) by adding at the end the following:

''(2) COMMODITY-BASED SWAPS.—

''(A) IN GENERAL.—For the purposes of subsection (a)(3), the Commission shall, by rule, regulation, or order, define and prescribe means reasonably designed to prevent—

''(i) such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative; and

''(ii) such quotations as are fictitious.

''(B) REQUIREMENTS.—In adopting rules, regulations, or orders under subparagraph (A), the Commission shall—

''(i) consult with the Securities and Exchange Commission; and

''(ii) seek to maintain comparability of the rules, regulations, or orders with similar rules of the Securities and Exchange Commission.''.

SEC. 207. PROTECTIONS FOR MARKETING COMMODITY-BASED SWAPS TO CERTAIN PERSONS.

(a) DEFINITION OF ELIGIBLE CONTRACT PARTICIPANT.—Paragraph (15) of section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as redesignated by section 201(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by inserting ''(as defined in paragraph (18) as in effect on the date of enactment of the Comprehensive Derivatives Regulation Act of 2009)'' after ''financial institution'';

(B) in clause (iv)(I), by striking ''total assets'' and inserting ''total net assets'';

(C) in clause (v)—

(i) in subclause (I), by striking ''total assets exceeding $10,000,000'' and inserting ''total net assets exceeding $10,000,000; or'';

(ii) by striking subclause (II);

(iii) by redesignating subclause (III) as subclause (II); and

(iv) in item (aa) of subclause (II) (as so designated), by striking ''a net worth exceeding $1,000,000'' and inserting ''total net assets exceeding $5,000,000'';

(D) in clause (vii), by striking subclause (III) and the undesignated matter following that subclause and inserting the following:

''(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that the term does not include an entity, political subdivision, instrumentality, agency, or department described in subclause (I) or (III) unless the entity, political

subdivision, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments, except that, with respect to any State or entity, political subdivision, agency or department of a State, that amount is exclusive of any proceeds from any offering of municipal securities;''; and

(E) by striking clause (xi) and inserting the following:

''(xi) an individual who—

''(I) owns and invests on a discretionary basis not less than $10,000,000;

''(II) owns and invests on a discretionary basis not less than $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual; or

''(III) is an officer or director of an entity (or a person performing similar functions) and who enters into the agreement, contract, or transaction in order to manage the risk associated with the securities of the entity owned by the individual at the time of entering into the agreement, contract, or transaction;''; and

(2) in subparagraph (C), by inserting ''by rule, jointly with the Securities and Exchange Commission,'' after ''determines''.

(b) LIMITATION ON PARTICIPATION IN COMMODITY-BASED SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 202(a)(2)(A)) is amended by adding at the end the following:

''(f) LIMITATION ON PARTICIPATION IN COMMODITY-BASED SWAPS.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a commodity-based swap.''.

SEC. 208. COMMODITY-BASED SWAP EXECUTION FACILITIES.

The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b–2) the following:

''SEC. 5h. COMMODITY-BASED SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—No person may operate a trading facility for commodity-based swaps, unless the trading facility is registered as a commodity-based swap execution facility under this section.

''(b) CRITERIA FOR REGISTRATION.—

''(1) IN GENERAL.—To be registered as a commodity-based swap execution facility, a facility shall demonstrate to the Commission that the facility meets the criteria specified in this section.

''(2) TRADING AND PARTICIPATION RULES.—The commodity-based swap execution facility shall—

''(A) establish and enforce trading and participation rules that will deter abuses; and

''(B) have the capacity to detect, investigate, and enforce the rules, including the capacity—

''(i) to obtain information necessary to perform the functions required under this section;

''(ii) to provide market participants with impartial access to the market; and

''(iii) to obtain information that may be used in establishing whether rule violations have occurred.

''(3) TRADING PROCEDURES.—The commodity-based swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders for commodity-based swaps on the facilities of the commodity-based swap execution facility.

''(4) FINANCIAL INTEGRITY.—The commodity-based swap execution facility shall establish and enforce rules and procedures to ensure the financial integrity of commodity-based swaps entered on or through the facilities of the commodity-based swap execution facility, including the clearance and settlement of commodity-based swaps pursuant to section 2(f).

''(c) PRINCIPLES FOR COMMODITY-BASED SWAP EXECUTION FACILITIES.—

''(1) COMPLIANCE.—

''(A) IN GENERAL.—To maintain registration as a commodity-based swap execution facility, the facility shall comply with the principles specified in this subsection.

''(B) DISCRETION.—Except in cases in which the Commission adopts rules or regulations pursuant to section 8a(5), the commodity-based swap execution facility shall have reasonable discretion in establishing the manner in which the facility complies with this subsection.

''(2) RULES.—The commodity-based swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including—

''(A) the terms and conditions of the commodity-based swaps traded on or through the facility; and

''(B) any limitations on access to the facility.

''(3) PREVENTION OF MANIPULATION.—

''(A) IN GENERAL.—The commodity-based swap execution facility shall permit trading only in commodity-based swaps that are not readily susceptible to manipulation.

''(B) MONITORING.—The commodity-based swap execution facility shall monitor trading in commodity-based swaps to prevent price manipulation, price distortion through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

''(4) POSITION LIMITATIONS AND ACCOUNTABILITY.—

''(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, and to eliminate or prevent excessive speculation (as described in section 4a(a)), the commodity-based swap execution facility shall adopt for each of the contracts of the facility, as appropriate, position limitations or position accountability for speculators.

''(B) LIMITATION LEVEL.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the commodity-based derivative execution facility shall set the position limitations of the facility at a level that is not higher than the Commission limitation.

''(5) INFORMATION SHARING.—The commodity-based swap execution facility shall—

''(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

''(B) provide the information to the Commission on request; and

''(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

''(6) ACCESSIBILITY.—The commodity-based swap trade execution facility shall make public timely information on price, trading volume, and other trading data to the extent appropriate for commodity-based swaps.

''(7) MAINTENANCE OF RECORDS.—The commodity-based derivative instrument execution facility shall—

''(A) maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of at least 5 years; and

''(B) submit to the Commission such reports as the Committee may require, at such time, in such manner, and containing such information as is determined by the Commission to be necessary for the Commission to perform the responsibilities of the Commission.

''(8) EMERGENCY AUTHORITY.—The commodity-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as appropriate, including the authority to suspend or curtail trading in a commodity-based swap.

''(9) CONFLICTS OF INTEREST.—The commodity-based derivative instrument execution facility shall—

''(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the facility; and

''(B) establish a process for resolving the conflicts of interest.

''(d) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a commodity-based swap execution facility and uses the same electronic trade execution system for trading on the contract market and the commodity-based swap execution facility, identify whether the electronic trading is taking place on the contract market or the commodity-based swap execution facility.''.

SEC. 209. ENFORCEMENT.

Section 6c of the Commodity Exchange Act (7 U.S.C. 13a–1) (as amended by section 202(b)(1)(I)) is amended by adding at the end the following:

''(h) ENFORCEMENT OF PROVISIONS APPLICABLE TO DERIVATIVES MARKET PARTICIPANTS.—

''(1) DEFINITION OF APPLICABLE PROVISION.—In this subsection, the term 'applicable provision' means any of section 4a(a), subsections (a), (c), and (d) of section 4g, sections 4r and 4s, and subsections (a) through (c)(1), (2), and (4) of section 5b.

''(2) ENFORCEMENT BY OTHER AGENCIES.—In addition to enforcement by the Commission under this Act of compliance with applicable provisions, to the extent applicable to commodity-based swaps, such compliance shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, in the case of an insured depository institution, as those terms are defined in section 3 of that Act (12 U.S.C. 1813), but not an affiliate of such an insured depository institution;

''(B) the securities laws, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), by the Securities and Exchange Commission, in the case of—

''(i) a broker or dealer, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (other than a broker or dealer registered under section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) that is not an affiliate of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

''(ii) an investment adviser, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a));

''(iii) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

''(iv) any other entity for which the Securities and Exchange Commission is a primary regulator;

''(v) any affiliate of an insured depository institution; or

''(vi) any other person that is not—

''(I) a futures commission merchant or an introducing broker (except a futures commission merchant or an introducing broker registered pursuant to section 4f(a) of this Act or an affiliate of an insured depository institution);

''(II) a commodity pool operator or commodity trading advisor (except an affiliate of an insured depository institution); or

''(III) a person specified in subparagraph (A) or (C); and

''(C) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), by the Federal Housing Finance Agency, in the case of a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

''(3) VIOLATIONS TREATED AS VIOLATIONS OF OTHER LAWS.—

''(A) IN GENERAL.—For purposes of the exercise by any agency referred to in paragraph (2) of the powers of the agency under any provision of law referred to in that paragraph, a violation of any applicable provision, as the provision applies to commodity-based swaps, shall be considered to be a violation of a requirement imposed under that provision of law.

''(B) ADDITIONAL AUTHORITY.—In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with applicable provisions, as the applicable provisions apply to commodity-based swaps, any other authority conferred on the agency by law.''.

SEC. 210. ENFORCEABILITY OF COMMODITY-BASED SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction that is a commodity-based swap shall be void, voidable, or unenforceable by either party to the commodity-based swap, and no party to the commodity-based swap shall be entitled to rescind, or recover any payment made with respect to, the commodity-based swap under this section or any other provision of this Act based solely on the failure of either party to the agreement, contract, or transaction to satisfy its respective obligations under section 4a(a), subsections (a), (c), and (d) of section 4g, sections 4r and 4s, and subsections (a) through (c)(1), (2), and (4) of section 5b with respect to the commodity-based swap.''.

TITLE III—OTHER PROVISIONS

SEC. 301. MARGINING AND OTHER RISK MANAGEMENT STANDARDS FOR CENTRAL COUNTERPARTIES.

(a) AGENCY ACTIONS.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall each promulgate rules requiring each clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23))) and derivatives clearing organization (as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13))) to have robust risk management controls, including risk margin collateral requirements, to assure the ability to meet their settlement obligations.

(b) CONSULTATION REQUIRED.—To assure regulation of risk management controls, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall consult with each other and the Board of Governors of the Federal Reserve System, shall seek to maintain comparability of such rules, and shall give consideration to the recommendations of the Board of Governors of the Federal Reserve System before adopting rules under this section.

SEC. 302. DETERMINING THE STATUS OF SWAPS.

(a) PROCESS FOR DETERMINING THE STATUS OF A SWAP.—

(1) RULEMAKING.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly issue rules establishing a process for resolving any disagreement between the agencies regarding the status of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative.

(2) CONTENT.—The rules adopted under this section shall—

(A) include a method for determining the status of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative within 90 days after the date of the commencement of the determination process; and

(B) require the agencies to consider, in making such determination, the nature of the derivative, the extent to which the derivative is economically similar to instruments that are subject to regulation by the Securities and Exchange Commission or the Commodity Futures Trading Commission, the appropriateness of regulation of the derivative under either the securities laws or the Commodity Exchange Act, and such other factors as the Securities and Exchange Commission and the Commodity Futures Trading Commission may prescribe.

(b) JUDICIAL RESOLUTION.—

(1) IN GENERAL.—If the Securities and Exchange Commission and the Commodity Futures Trading Commission are unable to determine the status of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative pursuant to the process established in subsection (a), either agency may petition the United States Court of Appeals for the District of Columbia Circuit for a determination of the status of the derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative.

(2) EXPEDITED REVIEW.—The United States Court of Appeals for the District of Columbia Circuit shall complete all action on a petition filed in accordance with paragraph (1), including rendering a final determination of the status of the derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(3) STANDARD OF REVIEW.—The court shall determine the status of a new derivative instrument as either a security-based derivative, a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative, based upon the factors described in subsection (a)(2), giving deference neither to the views of the Securities and Exchange Commission nor the Commodity Futures Trading Commission.

(4) SUPREME COURT REVIEW.—Any request for certiorari to the Supreme Court of the United States of any determination of the United States Court of Appeals for the District of Columbia Circuit with respect to a petition for review under this subsection shall be filed with the Supreme Court of the United States as soon as practicable after such determination is made.

(5) JUDICIAL STAY.—The filing of a petition pursuant to paragraph (1) shall operate as a judicial stay of the identification of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative until the date on which the determination of the court is final, including any appeal of such determination.

SEC. 303. STUDY AND REPORT ON IMPLEMENTATION.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of—

(1) how the Commodity Futures Trading Commission and the Securities and Exchange Commission have implemented this Act and the amendments made by this Act;

(2) the extent to which jurisdictional disputes have created challenges in the process of implementing this Act and the amendments made by this Act; and

(3) the benefits and drawbacks of harmonizing laws implemented by the Commodity Futures Trading Commission and the Securities and Exchange Commission, and merging those agencies.

(b) REPORT REQUIRED.—Not later than 1 year after the date on which all rules are issued under section 304, the Comptroller General shall submit a report on the results of the study required by this section to Congress, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

SEC. 304. RULEMAKING.

The Securities and Exchange Commission, the Commodity Futures Trading Commission, and the appropriate regulatory authorities (as that term is defined in section 15F(g) of the Securities Exchange Act of 1934, as added by this Act, or section 4s(a) of the Commodity Exchange Act, as added by this Act), as applicable, shall issue rules under sections 15F(b), 15F(c), 15F(f), 17(l), 17C(c)(2), and 17C(d)(2) of the Securities Exchange Act of 1934 (as added by this Act), sections 4r(c)(2), 4r(d)(2), 4s(c), 4s(d), and 4s(g) of the Commodity Exchange Act (as added by this Act), and sections 301 and 302 of this Act, not later than 180 days after the date of enactment of this Act.

SEC. 305. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or as specifically provided in the amendments made by this Act, this Act and the amendments made by this Act, shall become effective on the date of enactment of this Act.

(b) OTHER EFFECTIVE DATES.—The amendments made by sections 102(b) and 202(b) of this Act and the provisions of section 15F(a) of the Securities Exchange Act of 1934 (as added by this Act) and section 4s(b) of the Commodity Exchange Act (as added by this Act) shall become effective 6 months after the date of enactment of this Act.

By Mr. LEAHY (for himself, Mr. CARDIN, and Mr. KAUFMAN):

S. 1692. A bill to extend the sunset of certain provisions of the USA PATRIOT Act and the authority to issue national security letters, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, security and liberty are both essential in our free society. Benjamin Franklin wrote: ''Those who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.'' I have been mindful of this since the devastating attacks of September 11, and each time we have considered the USA PATRIOT Act. The American people of today and those of tomorrow—our children and grandchildren—depend on us to do our best to ensure both security and the preservation of our essential liberties.

After September 11, the Government's power to gather information about those suspected of, or connected to, potential terrorists increased. Because such surveillance may, sometimes by mistake, sweep in U.S. citizens, we must vigilantly monitor these laws to ensure that they are implemented appropriately. This calls for public, judicial and congressional oversight to make sure we maintain the proper respect for security and liberty.

After September 11, I introduced the USA PATRIOT Act, Patriot Act, to give the Government the tools needed to defend this country and aggressively pursue those who would do us harm. Even in those dark days, I insisted on oversight. Working with the then House Majority Leader, Republican Dick Armey, we included sunsets for some of the provisions of the bill that had the greatest potential to directly affect Americans.

We debated the reauthorization of the Patriot Act for several months in 2005 and 2006. I again fought to protect the civil liberties and constitutional rights of Americans. Unfortunately, after a series of short extensions, the reauthorization of 2006 lacked sufficient constitutional protections over the vast authorities it granted to the Government. I had worked to secure increased oversight and to include new sunsets in the bill.

With those sunsets expiring on December 31, 2009, we must once again consider the Patriot Act. Three provisions of the Patriot Act are slated to expire at the end of this year, including the authorization for roving wiretaps, the ''lone wolf'' measure, and orders for tangible things, commonly referred to as the ''library'' provision.

In March, I sent Attorney General Holder a letter requesting the administration's views on these expiring provisions. I reiterated that request at a Senate Judiciary Committee oversight hearing in June. I have recently received a letter from the Attorney General urging us to extend the expiring authorities. I appreciate the President and the Attorney General's emphasis on accountability and checks and balances, and their willingness to consider additional ideas.

Today I am introducing a bill with Senators CARDIN and KAUFMAN that does just that. It will extend the authorization of the three expiring provisions. The bill also updates checks and balances by increasing judicial review of the use of Government powers that capture information on U.S. citizens, and augments congressional oversight. We propose increasing Government accountability through more transparent public reporting of the use of surveillance, and by requiring audits of how these vast authorities have been used since they were last reauthorized. In addition, we propose that, given their extensive use abuse and intrusiveness, we include a sunset for National Security Letters, NSLs. I introduced a bill in 2006, after the most recent Patriot Act reauthorization, to impose a sunset on NSLs. This sunset provision, combined with a comprehensive audit by the Inspector General, will help to hold the Federal Bureau of Investigation, FBI, accountable in its use of this authority.

In developing this bill, I worked closely with Senators FEINGOLD and DURBIN to protect the rights and privacy of Americans, and to expand oversight. Senators FEINGOLD and DURBIN have worked tirelessly over the years to protect the civil liberties of Americans, from the first debate over the Patriot Act in 2001, to the reauthorization in 2006, to the FISA Amendments Act enacted last year. I am pleased that Senators CARDIN, KAUFMAN and I have adopted some of the concepts they proposed in the SAFE Act of 2005, and that were included in the broader Patriot Act reauthorization bill they introduced last week, the JUSTICE Act.

I have long been concerned over the issuance and oversight of NSLs. National Security Letters are, in effect, a form of administrative subpoena. They do not require approval by a court, grand jury, or prosecutor. They are issued in secret, with recipients silenced, under penalty of law. Yet NSLs allow the Government to collect sensitive information, such as personal financial records. As Congress expanded the NSL authority in recent years, I raised concerns about how the FBI handles the information it collects on Americans. I noted that, with no real limits imposed by Congress, the FBI could store this information electronically and use it for large-scale, data-mining operations. We now know that the NSL authority was significantly misused. In 2008 the Department of Justice Inspector General issued a report on the FBI's use of NSLs revealing serious over-collection of information and abuse of the NSL authority.

We should reconsider the breadth of the NSL authority. This bill would also impose more judicial oversight and higher standards on the issuance of NSLs. It would require the FBI to include a statement of facts articulating why the information it is seeking is relevant to an authorized investigation.

The bill also addresses the constitutional deficiency recently identified by the Second Circuit Court of appeals in Doe v. Musasey. The Second Circuit found that the nondisclosure, or ''gag orders,'' issued under NSLs are a constitutional infringement. I have long maintained that position. The bill establishes a procedure whereby the recipient of an NSL has 21 days to notify the Government that it wishes to challenge the nondisclosure requirement. The Government then has 21 additional days to apply for a court order to compel compliance with the nondisclosure requirement. This scheme corrects the constitutional defects found by the Second Circuit. The bill would shift the burden of defending the need for a gag order to the Government. This bill also eliminates the NSL nondisclosure provision that allows the Government to ensure itself of victory by certifying that, in its view, disclosure ''may'' endanger national security or ''may'' interfere with diplomatic relations. The bill further strengthens judicial review of nondisclosure or ''gag orders'' associated with NSLs by imposing a one-year limitation on such orders. To protect on-going law enforcement investigations, it permits renewals of the nondisclosure orders in appropriate cases.

The power of the government to collect records for tangible things under Section 215 of the original Patriot Act, commonly referred to as the ''library records'' provision, is another authority that I worked to reform during the last reauthorization. It is time to redefine the way we describe this authority to accurately reflect the broad scope of information it allows the government to collect. Section 215 allows the FISA court to secretly require any entity to produce any document or other tangible thing with a minimal standard of relevance and a presumption in favor of the Government's showing of relevance. This bill correctly identifies Section 215 orders as orders for ''tangible things'' as opposed to only for ''business records'' as it is in current law.

This bill adopts the reasonable constitutional standard that I supported in 2006 for 215 orders. First, it would eliminate the presumption in favor of the government's assertion that the records it is seeking are relevant to its investigation. This bill would require the Government to make a connection between the records or other things it seeks and a suspected terrorist or spy before it is able to obtain confidential records such as library, medical and telephone records. Section 215 orders for tangible things permit the Government to collect an even broader scope of information than NSLs. For that reason, it is critical that the Government show that the records it seeks are both relevant to an investigation and connected to at least a suspected terrorist or spy.

This bill would also establish more meaningful judicial review of Section 215 orders. First, it repeals the requirement in current law that requires a recipient of a Section 215 nondisclosure order to wait for a full year before challenging that gag order. There is no justification for this mandatory waiting period for judicial review, and this bill eliminates it. It also repeals a provision added to the law in 2006 stating that a conclusive presumption in favor of the Government shall apply where a high level official certifies that disclosure of the order for tangible things would endanger national security or interfere with diplomatic relations. These restraints on meaningful judicial review are unfair, unjustified, and completely unacceptable. I fought hard to keep these two provisions out of the 2006 reauthorization, but the Republican majority at that time insisted they be included.

This bill will strengthen court oversight of Section 215 orders by requiring court oversight of minimization procedures when information concerning a U.S. person is acquired, retained, or disseminated. Requiring FISA Court approval of minimization procedures would simply bring Section 215 orders in line with other FISA authorities—such as wiretaps, physical searches,

and pen register and trap and trace devices—that already require FISA court approval of minimization procedures. This is another common sense modification to the law that was drafted in consultation with Senators FEINGOLD and DURBIN. If we are to allow personal information to be collected in secret, the court must be more involved in making sure the authorities are used responsibly and that Americans' information and personal privacy are protected.

Finally, this bill addresses concerns over the use of pen register or trap and trace devices ''pen/trap''. The bill raises the standard for pen/trap in the same manner as it raises the standard for Section 215 orders. The Government would be required to show that the information it seeks is both relevant to an investigation and connected to a suspected terrorist or spy. This section also requires court review of minimization procedures, which are not required under current law, and adds an Inspector General audit of the use of pen/trap that is modeled on the the audits of Section 215 orders and NSLs.

I look forward to working with the members of the Judiciary Committee, the Senate, the House and with the administration as this bill moves forward, and I welcome the views of others.

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. 1692

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 ''USA PATRIOT Act Sunset Extension Act of 2009''.

SEC. 2. SUNSETS.

(a) SECTIONS 206 AND 215 SUNSET.—

(1) IN GENERAL.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1805 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862 note) is amended by striking ''2009'' and inserting ''2013''.

(2) CONFORMING AMENDMENTS.—

(A) IN GENERAL.—Section 601(a)(1)(D) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)(D)) is amended by striking ''section 501;'' and inserting ''section 502 or under section 501 pursuant to section 102(b)(2) the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1861 note);''.

(B) APPLICATION UNDER SECTION 404 OF THE FISA AMENDMENTS ACT OF 2008.—Section 404(b)(4)(A) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2477) is amended by striking the period at the end and inserting '', except that paragraph (1)(D) of such section 601(a) shall be applied as if it read as follows:

'(D) access to records under section 502 or under section 501 pursuant to section 102(b)(2) the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1861 note);'.''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on December 31, 2013.

(b) EXTENSION OF SUNSET RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.—

(1) IN GENERAL.—Section 6001(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 50 U.S.C. 1801 note) is amended to read as follows:

''(b) SUNSET.—

''(1) REPEAL.—Subparagraph (C) of section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)), as added by subsection (a), is repealed effective December 31, 2013.

''(2) TRANSITION PROVISION.—Notwithstanding paragraph (1), subparagraph (C) of section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) shall continue to apply after December 31, 2013 with respect to any particular foreign intelligence investigation or with respect to any particular offense or potential offense that began or occurred before December 31, 2013.''.

(2) CONFORMING AMENDMENT.—

(A) IN GENERAL.—Section 601(a)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(2)) is amended by striking the semicolon at the end and inserting ''pursuant to subsection (b)(2) of section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 50 U.S.C. 1801 note);''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on December 31, 2013.

(c) NATIONAL SECURITY LETTERS.—

(1) IN GENERAL.—Effective on December 31, 2013, the following provisions of law are repealed:

(A) Section 2709 of title 18, United States Code.

(B) Section 1114(a)(5) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)).

(C) Subsections (a) and (b) of section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u).

(D) Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v).

(E) Section 802 of the National Security Act of 1947 (50 U.S.C. 436).

(2) TRANSITION PROVISION.—Notwithstanding paragraph (1), the provisions of law referred to in paragraph (1) shall continue to apply after December 31, 2013 with respect to any particular foreign intelligence investigation or with respect to any particular offense or potential offense that began or occurred before December 31, 2013.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TITLE 18.—Title 18, United States Code, is amended—

(i) in the table of sections for chapter 121, by striking the item relating to section 2709;

(ii) by striking section 3511; and

(iii) in the table of sections for chapter 223, by striking the item relating to section 3511.

(B) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681) is amended—

(i) in section 626 (15 U.S.C. 1681u)—

(I) in subsection (d)(1), by striking ''the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c)'' and inserting ''a consumer report respecting any consumer under subsection (c)'';

(II) in subsection (h)(1), by striking ''subsections (a), (b), and (c)'' and inserting ''subsection (c)''; and

(ii) in the table of sections, by striking the item relating to section 627.

(C) NATIONAL SECURITY ACT OF 1947.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended—

(i) in section 507(b) (50 U.S.C. 415b(b))—

(I) by striking paragraph (5); and

(II) by redesignating paragraph (6) as paragraph (5); and

(ii) in the table of contents, by striking the item relating to section 802.

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on December 31, 2013.

SEC. 3. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS FOR ACCESS TO TANGIBLE THINGS.

(a) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in the section heading, by striking ''certain business records'' and inserting ''tangible things'';

(2) in subsection (b)(2), by striking subparagraphs (A) and (B) and inserting the following:

''(A) a statement of facts showing that there are reasonable grounds to believe that the records or other things sought—

''(i) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

''(ii)(I) pertain to a foreign power or an agent of a foreign power;

''(II) are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

''(III) pertain to an individual in contact with, or known to, a suspected agent of a foreign power; and

''(B) a statement of proposed minimization procedures.''; and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting ''and that the proposed minimization procedures meet the definition of minimization procedures under subsection (g)'' after ''subsections (a) and (b)''; and

(ii) by striking the second sentence; and

(B) in paragraph (2)—

(i) in subparagraph (D), by striking ''and'' at the end;

(ii) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(F) shall direct that the minimization procedures be followed.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE HEADING.—Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended in the title heading by striking ''CERTAIN BUSINESS RECORDS'' and inserting ''TANGIBLE THINGS''.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to title V and section 501 and inserting the following:

''TITLE V—ACCESS TO TANGIBLE THINGS FOR FOREIGN INTELLIGENCE PURPOSES

''Sec. 501. Access to tangible things for foreign intelligence purposes and international terrorism investigations.''.

SEC. 4. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS FOR PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES.

(a) IN GENERAL.—

(1) APPLICATION.—Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended—

(A) in paragraph (1), by striking ''and'' at the end; and

(B) by striking paragraph (2) and inserting the following:

''(2) a statement of facts showing that there are reasonable grounds to believe that the information likely to be obtained—

''(A) is relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(1) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

''(B)(i) pertains to a foreign power or an agent of a foreign power;

''(ii) is relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

''(iii) pertains to an individual in contact with, or known to, a suspected agent of a foreign power; and

''(3) a statement of proposed minimization procedures.''.

(2) MINIMIZATION.—

(A) DEFINITION.—Section 401 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841) is amended by adding at the end the following:

''(4) The term 'minimization procedures' means—

''(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the installation and use of a pen register or trap and trace device, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

''(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 101(e)(1), shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance; and

''(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.''.

(B) PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended—

(i) in subsection (d)—

(I) in paragraph (1), by inserting '', and that the proposed minimization procedures meet the definition of minimization procedures under this title'' before the period at the end; and

(II) in paragraph (2)(B)—

(aa) in clause (ii)(II), by striking ''and'' after the semicolon; and

(bb) by adding at the end the following:

''(iv) the minimization procedures be followed; and''; and

(ii) by adding at the end the following:

''(h) At or before the end of the period of time for which the installation and use of a pen register or trap and trace device is approved under an order or an extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''.

(C) EMERGENCIES.—Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(i) by redesignating subsection (c) as (d); and

(ii) by inserting after subsection (b) the following:

''(c) If the Attorney General authorizes the emergency installation and use of a pen register or trap and trace device under this section, the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.''.

(D) USE OF INFORMATION.—Section 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1845(a)) is amended by striking ''provisions of'' and inserting ''minimization procedures required under''.

SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECURITY LETTERS.

(a) IN GENERAL.—Section 2709 of title 18, United States Code, is amended by striking subsection (c) and inserting the following:

''(c) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no wire or electronic communication service provider, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A wire or electronic communication service provider, or officer, employee, or agent thereof, that receives a request under subsection (a) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

''(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A wire or electronic communications service provider that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of this title.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the wire or electronic service provider, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(b) IDENTITY OF FINANCIAL INSTITUTIONS AND CREDIT REPORTS.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended by striking subsection (d) and inserting the following:

''(d) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no consumer reporting agency, or officer, employee, or agent thereof, that receives a request or order under subsection (a), (b), or (c), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A consumer reporting agency, or officer, employee, or agent thereof, that receives a request or order under subsection (a), (b), or (c) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request or order;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request or order; or

''(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request or order is issued under subsection (a), (b), or (c) in the same manner as the person to whom the request or order is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request or order that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A consumer reporting agency that receives a request or order under subsection (a), (b), or (c) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request or order under subsection (a), (b), or (c) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request or order.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request or order under subsection (a), (b), or (c) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(c) DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES.—Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) is amended by striking subsection (c) and inserting the following:

''(c) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no consumer reporting agency, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A consumer reporting agency, or officer, employee, or agent thereof, that receives a request under subsection (a) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

''(iii) other persons as permitted by the head of the government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee.

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The head of a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A consumer reporting agency that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(d) FINANCIAL RECORDS.—Section 1114(a)(5) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)) is amended by striking subparagraph (D) and inserting the following:

''(D) PROHIBITION OF CERTAIN DISCLOSURE.—

''(i) PROHIBITION.—

''(I) IN GENERAL.—If a certification is issued under subclause (II) and notice of the right to judicial review under clause (iv) is provided, no financial institution, or officer, employee, or agent thereof, that receives a request under subparagraph (A), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(II) CERTIFICATION.—The requirements of subclause (I) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that, absent a prohibition of disclosure under this subparagraph, there may result—

''(aa) a danger to the national security of the United States;

''(bb) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(cc) interference with diplomatic relations; or

''(dd) danger to the life or physical safety of any person.

''(ii) EXCEPTION.—

''(I) IN GENERAL.—A financial institution, or officer, employee, or agent thereof, that receives a request under subparagraph (A) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(aa) those persons to whom disclosure is necessary in order to comply with the request;

''(bb) an attorney in order to obtain legal advice or assistance regarding the request; or

''(cc) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(II) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subclause (I) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subparagraph (A) in the same manner as the person to whom the request is issued.

''(III) NOTICE.—Any recipient that discloses to a person described in subclause (I) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(iii) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office, may extend a nondisclosure requirement for additional periods

of not longer than 1 year if, at the time of each extension, a new certification is made under clause (i)(II) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(iv) RIGHT TO JUDICIAL REVIEW.—

''(I) IN GENERAL.—A financial institution that receives a request under subparagraph (A) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(II) TIMING.—

''(aa) IN GENERAL.—A request under subparagraph (A) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(bb) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under clause (iii) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(III) INITIATION OF PROCEEDINGS.—If a recipient of a request under subparagraph (A) makes a notification under subclause (II), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(v) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the financial institution, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(e) REQUESTS BY AUTHORIZED INVESTIGATIVE AGENCIES.—Section 802 of the National Security Act of 1947 (50 U.S.C. 436), is amended by striking subsection (b) and inserting the following:

''(b) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no governmental or private entity, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of an authorized investigative agency described in subsection (a), or a designee, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A governmental or private entity, or officer, employee, or agent thereof, that receives a request under subsection (a) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

''(iii) other persons as permitted by the head of the authorized investigative agency described in subsection (a).

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The head of an authorized investigative agency described in subsection (a), or a designee, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A governmental or private entity that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the authorized investigative agency described in subsection (a) shall promptly notify the governmental or private entity, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

SEC. 6. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL SECURITY LETTERS.

(a) FISA.—Section 501(f)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i)—

(i) by striking ''a production order'' and inserting ''a production order or nondisclosure order''; and

(ii) by striking ''Not less than 1 year'' and all that follows;

(B) in clause (ii), by striking ''production order or nondisclosure''; and

(2) in subparagraph (C)—

(A) by striking clause (ii); and

(B) by redesignating clause (iii) as clause (ii).

(b) JUDICIAL REVIEW OF NATIONAL SECURITY LETTERS.—Section 3511(b) of title 18, United States Code, is amended to read as follows:

''(b) NONDISCLOSURE.—

''(1) IN GENERAL.—

''(A) NOTICE.—If a recipient of a request or order for a report, records, or other information under section 2709 of this title, section 626 or 627 of the Fair Credit Reporting Act (15 U.S.C. 1681u and 1681v), section 1114 of the Right to Financial Privacy Act (12 U.S.C. 3414), or section 802 of the National Security Act of 1947 (50 U.S.C. 436), wishes to have a court review a nondisclosure requirement imposed in connection with the request, the recipient shall notify the Government not later than 21 days after the date of receipt of the request or of notice that an applicable nondisclosure requirement has been extended.

''(B) APPLICATION.—Not later than 21 days after the date of receipt of a notification under subparagraph (A), the Government shall apply for an order prohibiting the disclosure of particular information about the existence or contents of the relevant request or order. An application under this subparagraph may be filed in the district court of the United States for any district within which the authorized investigation that is the basis for the request or order is being conducted. The applicable nondisclosure requirement shall remain in effect during the pendency of proceedings relating to the requirement.

''(C) CONSIDERATION.—A district court of the United States that receives an application under subparagraph (B) should rule expeditiously, and may issue a nondisclosure order for a period of not longer than 1 year, unless the facts justify a longer period of nondisclosure.

''(D) DENIAL.—If a district court of the United States rejects an application for a nondisclosure order or extension thereof, the nondisclosure requirement shall no longer be in effect.

''(2) APPLICATION CONTENTS.—An application for a nondisclosure order or extension thereof under this subsection shall include—

''(A) a statement of the facts indicating that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person; and

''(B) the time period during which the Government believes the nondisclosure requirement should apply.

''(3) STANDARD.—A district court of the United States may issue a nondisclosure requirement order or extension thereof under this subsection if the court determines that there is reason to believe that disclosure of the information subject to the nondisclosure requirement during the applicable time period will result in—

''(A) a danger to the national security of the United States;

''(B) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(C) interference with diplomatic relations; or

''(D) danger to the life or physical safety of any person.

''(4) RENEWAL.—A nondisclosure order under this subsection may be renewed for additional periods of not longer than 1 year, unless the facts of the case justify a longer period of nondisclosure, upon submission of an application meeting the requirements of

paragraph (2), and a determination by the court that the circumstances described in paragraph (3) continue to exist.''.

(c) MINIMIZATION.—Section 501(g) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(g)) is amended—

(1) in paragraph (1), by striking ''Not later than'' and all that follows and inserting ''At or before the end of the period of time for the production of tangible things under an order approved under this section or at any time after the production of tangible things under an order approved under this section, a judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''; and

(2) in paragraph (2)(A), by inserting ''acquisition and'' after ''to minimize the''.

SEC. 7. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.

(a) IN GENERAL.—Section 2709(b)(1) of title 18, United States Code, is amended—

(1) by striking ''certifies in writing'' and inserting ''provides a written certification by the Director (or a designee)''; and

(2) by inserting ''that includes a statement of facts showing that there are reasonable grounds to believe'' before ''that the name,''.

(b) IDENTITY OF FINANCIAL INSTITUTIONS AND CREDIT REPORTS.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended—

(1) in subsection (a), by striking ''has determined in writing, that such information is sought for'' and inserting ''provides to the consumer reporting agency a written determination that includes a statement of facts showing that there are reasonable grounds to believe that such information is relevant to''; and

(2) in subsection (b), by striking ''has determined in writing that such information is sought for'' and inserting ''provides to the consumer reporting agency a written determination that includes a statement of facts showing that there are reasonable grounds to believe that such information is relevant to''.

(c) DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES.—Section 627(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) is amended by inserting ''that includes a statement of facts showing that there are reasonable grounds to believe'' before ''that such information is necessary for''.

(d) FINANCIAL RECORDS.—Section 1114(a)(5)(A) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(A)) is amended—

(1) by striking ''certifies in writing'' and inserting ''provides a written certification by the Director (or a designee)''; and

(2) by striking ''that such records are sought for foreign counter intelligence purposes'' and inserting ''that includes a statement of facts showing that there are reasonable grounds to believe that such records are relevant to a foreign counterintelligence investigation''.

(e) REQUESTS BY AUTHORIZED INVESTIGATIVE AGENCIES.—Section 802(a)(3) of the National Security Act of 1947 (50 U.S.C. 436(a)(3)), is amended—

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

(2) by inserting after subparagraph (A) the following:

''(B) shall include a statement of facts showing that there are reasonable grounds to believe, based on credible information, that the person is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;''.

SEC. 8. PUBLIC REPORTING ON NATIONAL SECURITY LETTERS.

Section 118(c) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (18 U.S.C. 3511 note) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''concerning different United States persons''; and

(B) in subparagraph (A), by striking '', excluding the number of requests for subscriber information'';

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

''(2) CONTENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), each report required under this subsection shall include the total number of requests described in paragraph (1) requiring disclosure of information concerning—

''(i) United States persons;

''(ii) persons who are not United States persons;

''(iii) persons who are the subjects of authorized national security investigations; or

''(iv) persons who are not the subjects of authorized national security investigations.

''(B) EXCEPTION.—With respect to the number of requests for subscriber information under section 2709 of title 18, United States Code, a report required under this subsection need not provide information separated into each of the categories described in subparagraph (A).''.

SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.

Section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

(2) by inserting after subsection (a) the following:

''(b) PUBLIC REPORT.—The Attorney General shall make publicly available the portion of each report under subsection (a) relating to paragraphs (1) and (2) of subsection (a).''; and

(3) in subsection (e), as so redesignated, by striking ''subsection (c)'' and inserting ''subsection (d)''.

SEC. 10. AUDITS.

(a) TANGIBLE THINGS.—Section 106A of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 120 Stat. 200) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''2006'' and inserting ''2012''; and

(B) in paragraph (5)(C), by striking ''calendar year 2006'' and inserting ''each of calendar years 2006 through 2012'';

(2) in subsection (c), by adding at the end the following:

''(3) CALENDAR YEARS 2007 AND 2008.—Not later than December 31, 2010, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2007 and 2008.

''(4) CALENDAR YEARS 2009 THROUGH 2012.—Not later than December 31, 2011, and every year thereafter through 2013, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for the previous calendar year.'';

(3) in subsection (d)—

(A) in paragraph (1), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(B) in paragraph (2), by striking ''and (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(4) in subsection (e), by striking ''and (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''.

(b) NATIONAL SECURITY LETTERS.—Section 119 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 120 Stat. 219) is amended—

(1) in subsection (b)(1), by striking ''2006'' and inserting ''2012'';

(2) in subsection (c), by adding at the end the following:

''(3) CALENDAR YEARS 2007 AND 2008.—Not later than December 31, 2010, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2007 and 2008.

''(4) CALENDAR YEARS 2009 THROUGH 2012.—Not later than December 31, 2011, and every year thereafter through 2013, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for the previous calendar year.'';

(3) in subsection (d)—

(A) in paragraph (1), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(B) in paragraph (2), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(4) in subsection (e), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''.

(c) PEN REGISTERS AND TRAP AND TRACE DEVICES.—

(1) AUDITS.—The Inspector General of the Department of Justice shall perform comprehensive audits of the effectiveness and use, including any improper or illegal use, of pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq.) during the period beginning on January 1, 2007 and ending on December 31, 2012.

(2) REQUIREMENTS.—The audits required under paragraph (1) shall include—

(A) an examination of each instance in which the Attorney General or any other attorney for the Government submitted an application for an order or extension of an order under title IV of the Foreign Intelligence Surveillance Act of 1978, including whether the court granted, modified, or denied the application (including an examination of the basis for any modification or denial);

(B) an examination of each instance in which the Attorney General authorized the installation and use of a pen register or trap and trace device on an emergency basis under section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843);

(C) whether the Federal Bureau of Investigation requested that the Department of Justice submit an application for an order or extension of an order under title IV of the Foreign Intelligence Surveillance Act of 1978 and the request was not submitted to the court (including an examination of the basis for not submitting the application);

(D) whether bureaucratic or procedural impediments to the use of pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 prevent the Federal Bureau of Investigation from taking full advantage of the authorities provided under that title;

(E) any noteworthy facts or circumstances relating to the use of a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978, including any improper or illegal use of the authority provided under that title; and

(F) an examination of the effectiveness of the authority under title IV of the Foreign Intelligence Surveillance Act of 1978 as an investigative tool, including—

(i) the importance of the information acquired to the intelligence activities of the Federal Bureau of Investigation or any other department or agency of the Federal Government;

(ii) the manner in which the information is collected, retained, analyzed, and disseminated by the Federal Bureau of Investigation, including any direct access to the information provided to any other department, agency, or instrumentality of Federal, State, local, or tribal governments or any private sector entity;

(iii) with respect to calendar years 2010 through 2012, an examination of the minimization procedures used in relation to pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 and whether the minimization procedures protect the constitutional rights of United States persons;

(iv) whether, and how often, the Federal Bureau of Investigation used information acquired under a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978 to produce an analytical intelligence product for distribution within the Federal Bureau of Investigation, to the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), or to other Federal, State, local, or tribal government departments, agencies, or instrumentalities; and

(v) whether, and how often, the Federal Bureau of Investigation provided information acquired under a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978 to law enforcement authorities for use in criminal proceedings.

(3) SUBMISSION DATES.—

(A) PRIOR YEARS.—Not later than December 31, 2010, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under this section for calendar years 2007 thorough 2009.

(B) CALENDAR YEARS 2010 THROUGH 2012.—Not later than December 31, 2011, and every year thereafter through 2013, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under this section for the previous calendar year.

(4) PRIOR NOTICE TO ATTORNEY GENERAL AND DIRECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—

(A) NOTICE.—Not less than 30 days before the submission of a report under subparagraph (A) or (B) of paragraph (3), the Inspector General of the Department of Justice shall provide the report to the Attorney General and the Director of National Intelligence.

(B) COMMENTS.—The Attorney General or the Director of National Intelligence may provide such comments to be included in a report submitted under subparagraph (A) or (B) of paragraph (3) as the Attorney General or the Director of National Intelligence may consider necessary.

(5) UNCLASSIFIED FORM.—A report submitted under subparagraph (A) or (B) of paragraph (3) and any comments included under paragraph (4)(B) shall be in unclassified form, but may include a classified annex.

By Mr. ROCKEFELLER (for himself and Mrs. HUTCHISON):

S. 1694. A bill to allow the funding for the interoperable emergency communications grant program established under the Digital Television Transition and Public Safety Act of 2005 to remain available until expended through fiscal year 2012, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce legislation that will help improve public safety communications.

September is a month when we remember. We remember that 8 years ago we witnessed the impossible horror of September 11th. We remember that 4 years ago we watched the watery devastation of Hurricane Katrina. We remember because even with the passage of time, these are wounds that do not heal and losses we will never forget.

These events also demonstrated the tremendous bravery of our public safety officials. Their courage awes and inspires. So when tragedy strikes, we want to make sure that those who wear the shield have the communications systems they need to do the job. We know now that public safety communications can mean the difference between security and harm.

Yet when it comes to public safety communications, we still have a lot of work to do. Four years ago, Congress took an important first step. In the Digital Television and Public Safety Act of 2005, Congress authorized the National Telecommunications and Information Administration, in consultation with the Department of Homeland Security, to implement the Public Safety Interoperable Communications Grant Program. This program provided a one-time, formula-based, matching grant opportunity for public safety agencies to improve interoperable communications systems.

Governors across the country lined up to designate State agencies to apply for and administer these funds. Under the program, funds were originally available for the purchase and deployment of communications equipment and training for system users. Later, in the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress expanded the program to include planning and coordination activities.

But now millions of these dollars are at risk. The September 30, 2010, deadline for expending funds that is a holdover from the original legislation could inadvertently jeopardize the effectiveness of public safety communications projects in States across the country. Many grantees spent the first year of the grant period developing required plans and justifications and then awaiting approvals from the Department of Homeland Security and the National Telecommunications and Information Administration. As a result, many grantees did not have the full 3-year award period to acquire and deploy interoperable communications equipment. They face the real possibility of reaching the September 30, 2010, deadline with communications projects incomplete. In short, it is no longer sensible to bind the States to this original deadline in 2010.

There is no need to take my word for it. The Inspector General at the Department of Commerce reached exactly the same conclusion. In a report published in March 2009, the Inspector General found that grantees were unlikely to finish their communications projects within the statutory time frames. The Inspector General even recommended that the National Telecommunications and Information Administration work with Congress to extend the deadline for grantees to expend their communications funds from this program. Now the National Governors Association and the Association of Public Safety Communications Officials also have chimed in to support an extension.

I rise today so we can do something about it. By extending the September 30, 2010, deadline by one year and on a case-by-case basis two years, we can make sure that the funds are used exactly as Congress intended. We can make sure that public safety projects are not stranded due to arbitrary deadlines. We can make sure that our first responders have the first class communications systems they desperately need and deserve. For this reason, I urge my colleagues to join me and Senator HUTCHISON and support this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed into the RECORD.

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

S. 1694

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANTS.

(a) Notwithstanding section 3006(a)(2) of the Digital Television Transition and Public Safety Act of 2005 (47U.S.C. 309 note), sums made available to administer the Public Safety Interoperable Communications Grant Program under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) shall remain available until expended, but not beyond September 30, 2012.

(b) The period for performance of any investment approved under the Program as of the date of enactment of this Act shall be extended by one year, but not later than September 30, 2011, except that the Assistant

Secretary of Commerce for Communications and Information may extend, on a case-by-case basis, the period of performance for any investment approved under the Program as of that date for a period of not more than 2 years, but not later than September 30, 2012. In making a determination as to whether an extension beyond September 30, 2011, is warranted, the Assistant Secretary should consider the circumstances that gave rise to the need for the extension, the likelihood of completion of performance within the deadline for completion, and such other factors as the Assistant Secretary deems necessary to make the determination.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 279—MAKING MINORITY PARTY APPOINTMENTS FOR CERTAIN COMMITTEES FOR THE 111TH CONGRESS

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 279

Resolved, That the following be the minority membership on the following committees for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON ARMED SERVICES: Mr. McCain, Mr. Inhofe, Mr. Sessions, Mr. Chambliss, Mr. Graham, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Burr, Mr. Vitter, and Ms. Collins.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS: Mr. Shelby, Mr. Bennett, Mr. Bunning, Mr. Crapo, Mr. Corker, Mr. DeMint, Mr. Vitter, Mr. Johanns, Mrs. Hutchison, and Mr. Gregg.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION: Mrs. Hutchison, Ms. Snowe, Mr. Ensign, Mr. DeMint, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Isakson, Mr. Vitter, Mr. Brownback, and Mr. Johanns.

SPECIAL COMMITTEE ON AGING: Mr. Corker, Mr. Shelby, Ms. Collins, Mr. Hatch, Mr. LeMieux, Mr. Brownback, Mr. Graham, and Mr. Chambliss.

SENATE RESOLUTION 280—CELEBRATING THE 10TH ANNIVERSARY OF THE RULE OF LAW PROGRAM OF TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW

Mr. SPECTER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 280

Whereas in 1997, President William J. Clinton and President Jiang Zemin agreed at the Sino-American Summit to collaborative efforts to enhance legal exchanges between the United States and China;

Whereas in 1999, Temple University established a Master of Laws degree program in Beijing, the first foreign law degree granting program approved by the Chinese Ministry of Education, as a collaborative effort, first with China University of Political Science and Law, and subsequently with Tsinghua University School of Law;

Whereas in 1999, Temple University signed a cooperative agreement with the State Administration of Foreign Expert Affairs of China to deliver rule of law educational programs to Chinese government officials;

Whereas in 2000, Temple University signed a cooperative agreement with the Supreme People's Court of China to conduct judicial training;

Whereas in 2001, Temple University signed a cooperative agreement with the Supreme People's Procuratorate of China to conduct prosecutor training;

Where in 2002, Temple University began a series of scholarly roundtables directed at Chinese law and legal education, with topics including World Trade Organization, Internet, environmental, health, and private international law as well as nongovernmental organization advocacy and experiential legal education;

Whereas Justice Antonin G. Scalia visited Beijing and the Temple University rule of law program as part of a broad legal exchange between the United States and China;

Whereas in 2003, former Temple University School of Law dean Robert Reinstein received the National Friendship Award from Zhu Rongji, former Prime Minister of China in the Great Hall of the People;

Whereas in 2009, Temple University, Tsinghua University, and the State Administration of Foreign Expert Affairs of China will host events in Beijing to commemorate the 10-year anniversary of the rule of law program;

Whereas as of 2009, Temple has educated a total of 903 legal professionals in the rule of law program in China, 78 percent of whom work in the public sector; and

Whereas 391 Chinese legal professionals, including judges, National People's Congress and State Council legislative officers, prosecutors, government officials, law professors, and commercial lawyers have graduated from, or are currently enrolled in, Temple's Beijing Master of Laws program: Now, therefore, be it

Resolved, That the Senate—

(1) commends and congratulates Temple University Beasley School of Law, its faculty, its alumni, its 10th graduating class, and all involved in the 10th anniversary of the China rule of law program; and

(2) recognizes that—

(A) the Temple University Beasley School of Law rule of law program has succeeded in furthering the goal of promoting collaborative legal exchanges between the United States and China; and

(B) Temple University and its partners in China represent the spirit of cooperation and friendship between these 2 great nations, and will surely continue to strengthen those bonds into the future.

Mr. SPECTER. Mr. President, I seek recognition to note the 10th anniversary of Temple University's China Rule of Law Program. The Beasley School of Law housed at Temple University stands as an outstanding leader in promoting cross-cultural partnership between legal professionals in the United States and China. This year, the Beasley School celebrates ten years of cooperation with Tsinghua University in Beijing. Temple University's China Rule-of-Law Program has awarded nearly 400 Master of Laws degrees to Chinese legal professionals to date. The first foreign law degree program to be approved by the Chinese Ministry of Education as well as the American Bar Association, Temple's Rule of Law Program represents a landmark program and step toward increased global understanding of legal procedure by educating Chinese legal professionals in the same manners and by the same standards as those practiced at American law schools. I respectfully submit this resolution to recognize Temple University's outstanding leadership in promoting cross-cultural exchange in the field of international law.

The partnership between Temple University and China's Tsinghua University predates the establishment in 1999 of the Master of Laws Degree program. Shortly after the official reestablishment of diplomatic relations between the United States and China in January of 1979, Temple University awarded Vice Premier Deng Xiaoping with an honorary law degree. Educational and cultural exchange became the centerpieces of renewed cooperation between the two powers over the course of the last three decades. Shortly after President Clinton and President Zemin's mutual call for collaboration in legal exchange in 1997, Temple formally created the China Rule-of-Law Program that merits commendation today.

Cooperating to meet the demands of a global environment in which legal professionals are increasingly required to be trained in international legal standards, American faculty from Temple, Chinese faculty at Tsinghua University, and highly accomplished international practitioners teach courses entirely in English at Tsinghua's facilities in Beijing. The 30 credit curriculum concentrates on American and international law and in particular focuses on the subfields of criminal and business law. The program requires the same standards of scholarship of its Chinese students that ABA accredited American law institutions require at home and requires a full-time student to devote 15 months to complete the program. Students earning their degrees through Temple's Beasley-Tsinghua program participate in the same dialogue-based methods as students in American classrooms; they are also given access to the Lexis and Westlaw legal research tools during their studies. This means that Chinese students receiving the Master of Laws degree from Temple's Beasley Law School at Tsinguah become familiar with the same processes for solving legal puzzles and conducting legal research as those that mark the standard within international circles. Therefore, as a capacity building tool for Chinese professionals within the international legal environment, Temple's China Rule-of-Law program is indispensible.

As a means of promoting bilateral understanding over legal norms and standards, this type of program is even more vital. Legal norms and standards, we must remember, are formed and interpreted within social, cultural, and historical contexts. The continued growth of a strong partnership between our two nations is contingent upon a full understanding of this contextual environment because it serves as the setting in which legal standards are shaped and in which they are applied. In today's international climate, this cooperation is more important than ever before, and Temple should be regarded as an exemplar for its leadership in cultivating such cooperation.

The study abroad component of this program, which brings these Chinese

students to Temple's Philadelphia campus during the summer after the first full year of study, is an important means of achieving this contextual understanding. However, this is just one way in which this landmark program facilitates the integration of Chinese legal professionals into the international legal realm outside of the classroom. An extensive alumni network includes, as previously noted, nearly 400 degree holders, many of whom are involved with the Temple Law Alumni Association of China, which boasts around 550 members. The Rule of Law program has educated over 900 legal professionals through less formal means, including roundtables that have explored topics ranging from the subfields of Internet and Environmental Law to NGO Advocacy and the WTO. The partnership is currently working with the State Administration of Foreign Expert Affairs of China to host a series of events targeted to broadening this exchange in Beijing in the coming months as a celebration of ten successful years, marking an emphasis on continued growth and success.

As our two nations look for additional means of improving and promoting bilateral exchange, Temple University's innovative programming efforts must be celebrated and should be seen as a paradigm for future partnerships. Its increasing alumni network—both of degree holders and of other professionals that have benefitted from the Rule of Law's various programs—must be looked upon as a growing web of future leaders that understand the international legal context upon which international stability, economic development, and global cooperation rely. I urge the Senate to recognize Temple University's contribution to American and Chinese bilateral relations and in setting a high standard for improved and constructive international dialogue.

SENATE CONCURRENT RESOLUTION 40—ENCOURAGING THE GOVERNMENT OF IRAN TO GRANT CONSULAR ACCESS BY THE GOVERNMENT OF SWITZERLAND TO JOSHUA FATTAL, SHANE BAUER, AND SARAH SHOURD, AND TO ALLOW THE 3 YOUNG PEOPLE TO REUNITE WITH THEIR FAMILIES IN THE UNITED STATES AS SOON AS POSSIBLE

Mr. SPECTER (for himself, Mr. CASEY, Mr. NELSON of Florida, Ms. KLOBUCHAR, Mr. FRANKEN, and Mrs. BOXER) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 40

Whereas, on July 31, 2009, officials of the Government of Iran took 3 United States citizens, Joshua Fattal, Shane Bauer, and Sarah Shourd, into custody near the Ahmed Awa region of northern Iraq, after the 3 United States citizens reportedly crossed into the territory of Iran while hiking in Iraq;

Whereas officials of the Government of Iran have confirmed that they are holding the 3 United States citizens; and

Whereas officials of the Government of Iran have not allowed consular access by the Embassy of the Government of Switzerland (in its formal capacity as the representative of the interests of the United States in Iran) to the 3 young United States citizens in accordance with the Vienna Convention on Consular Relations, done at Vienna April 24, 1963: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) encourages the Government of Iran to grant consular access by the Government of Switzerland to Joshua Fattal, Shane Bauer, and Sarah Shourd, and to allow the 3 young people to communicate by telephone with their families in the United States; and

(2) encourages the Government of Iran to allow Joshua Fattal, Shane Bauer, and Sarah Shourd to reunite with their families in the United States as soon as possible.

Mr. SPECTER. Mr. President, I seek recognition to discuss legislation I have introduced encouraging the Government of Iran to grant consular access to and promptly release three young Americans who have been detained in Iran for the past 8 weeks after they reportedly crossed into Iran while on a hike in Iraqi Kurdistan.

On July 31, 2009, University of California, Berkeley graduates Joshua Fattal, 27, Shane Bauer, 27, and Sarah Shourd, 30, went ''on a hike near the border of Iraqi Kursdistan and Iran in an area known for beautiful views and a waterfall, along an unmarked section of the border that zigzags.'' The three inadvertently crossed into Iranian territory and were detained by Iranian officials.

While the Government of Iran has confirmed it is holding Joshua, Shane and Sarah, it has yet to grant the Embassy of the Government of Switzerland, in its formal capacity as the representative of the interests of the United States in Iran, consular access to the three in accordance with the Vienna Convention on Consular Relations. Nor has the Government of Iran allowed Joshua, Shane and Sarah to telephone their families in the United States to let them know they are well.

Based on news accounts I have read, I have every confidence that the three entered Iranian territory accidentally, perhaps due to, as I understand it, the absence of clear border markers in the region near Ahmed Awa. On August 8, an Iraqi government official was quoted as saying the three young Americans crossed the border ''unintentionally and mistakenly.''

The legislation which I have introduced encourages the Government of Iran to: Grant consular access by the Embassy of the Government of Switzerland to the three United States citizens in accordance with the Vienna Convention on Consular Relations; Allow Joshua, Shane and Sarah to communicate by telephone with their families in the U.S.; and Allow Joshua, Shane and Sarah to reunite with their families in the U.S. at the soonest possible opportunity.

It is clear to me that Joshua, Shane and Sarah made a careless navigational mistake which they will not soon repeat. It is my sincere hope that the Government of Iran quickly comes to this conclusion and releases them so they can be reunited with their families in the U.S. at the earliest opportunity, as all have anguished too much already.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2470. Mr. NELSON, of Nebraska (for himself, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. JOHANNS) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2471. Mr. BARRASSO (for himself, Mr. KYL, Mr. ENSIGN, Mr. MCCAIN, Mr. RISCH, and Mr. CRAPO) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra.

SA 2472. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2473. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2474. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2475. Mr. BARRASSO (for himself, Mr. BENNETT, and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2476. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2477. Mr. HARKIN (for himself, Mr. NELSON, of Nebraska, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2478. Mr. MENENDEZ (for himself, Mr. LAUTENBERG, and Mr. SPECTER) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2479. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2480. Mr. COBURN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2481. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2456 submitted by Mr. CARPER (for himself, Mr. MERKLEY, and Ms. KLOBUCHAR) to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2482. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2483. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2484. Mr. JOHANNS submitted an amendment intended to be proposed by him

to the bill H.R. 3326, making appropriations for the Department of Defense for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2485. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 3293, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2486. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1434, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2487. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1407, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2488. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1432, making appropriations for financial services and general government for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2489. Mr. BOND submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2490. Mr. BOND submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2491. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2492. Mr. BINGAMAN (for himself, Mr. CRAPO, Mr. WYDEN, Mr. RISCH, Mr. BAUCUS, Ms. MURKOWSKI, Mrs. MURRAY, Mr. UDALL, of Colorado, Mr. BENNET, Mr. AKAKA, Mr. UDALL, of New Mexico, Mr. BEGICH, Mr. MERKLEY, Ms. CANTWELL, Mr. TESTER, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2493. Mr. BINGAMAN (for himself, Ms. MURKOWSKI, Mrs. BOXER, Mr. WYDEN, Mr. UDALL, of New Mexico, Mr. TESTER, Ms. CANTWELL, Mr. UDALL, of Colorado, Mr. MERKLEY, Mr. BENNET, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2494. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra.

SA 2495. Mr. SCHUMER (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2496. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2497. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2498. Ms. COLLINS (for herself, Mr. VITTER, Mr. ISAKSON, and Mr. ROBERTS) submitted an amendment intended to be proposed by her to the bill H.R. 2996, supra.

SA 2499. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2500. Mr. DEMINT (for himself and Mr. MCCAIN) proposed an amendment to the bill H.R. 2996, supra.

SA 2501. Mr. RISCH submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2502. Mr. WHITEHOUSE (for himself and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2503. Mr. THUNE submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2504. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra.

SA 2505. Mr. CARPER (for himself, Mr. MERKLEY, Ms. KLOBUCHAR, and Mr. FRANKEN) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2506. Mr. CARPER (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2477 submitted by Mr. HARKIN (for himself, Mr. NELSON of Nebraska, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. BOND) and intended to be proposed to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2507. Mr. TESTER (for himself, Mr. BARRASSO, Mr. CRAPO, and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2508. Mr. VITTER proposed an amendment to the bill H.R. 2996, supra.

SA 2509. Mr. ROBERTS (for himself, Mr. BROWNBACK, and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill H.R. 2996, supra; which was ordered to lie on the table.

SA 2510. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 2477 submitted by Mr. HARKIN (for himself, Mr. NELSON of Nebraska, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. BOND) and intended to be proposed to the bill H.R. 2996, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2470. Mr. NELSON of Nebraska (for himself, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. JOHANNS) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. E15 FUEL.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) E15 FUEL.—The term ''E15 fuel'' means transportation fuel that consists of—

(A) 85 percent gasoline; and

(B) 15 percent ethanol.

(3) TRANSPORTATION FUEL.—The term ''transportation fuel'' has the meaning given the term in section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)).

(4) WAIVER.—The term ''waiver'' means a waiver from the requirements of paragraphs (1), (2), and (3) of section 211(f) of the Clean Air Act (42 U.S.C. 7545(f)).

(b) WAIVER.—Not later than December 1, 2009, the Administrator shall issue a waiver for E15 fuel.

(c) FAILURE TO ISSUE A WAIVER.—If the Administrator fails to issue a waiver for E15 fuel under subsection (b) by the date specified in that subsection, none of the funds made available under this or any Act may be used by the Administrator to enforce section 211(f) of the Clean Air Act (42 U.S.C. 7545(f)).

SA 2471. Mr. BARRASSO (for himself, Mr. KYL, Mr. ENSIGN, Mr. MCCAIN, Mr. RISCH, and Mr. CRAPO) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. PROHIBITION ON USE OF WILDLAND FIRE MANAGEMENT STIMULUS FUNDS IN THE DISTRICT OF COLUMBIA.

Notwithstanding any other provision of law, none of the funds made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115) for wildland fire management shall be used in the District of Columbia.

SA 2472. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. PROHIBITION ON USE OF FUNDS TO IMPLEMENT AN ORDER OF THE SECRETARY OF THE INTERIOR RELATING TO CLIMATE CHANGE.

None of the funds made available by this Act shall be used to implement the order of the Secretary of the Interior relating to climate change numbered 3289 and dated September 14, 2009.

SA 2473. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. PROHIBITION ON USE OF FUNDS TO IMPLEMENT A CERTAIN GREENHOUSE GAS RULE UNTIL A PROCEEDING IS CONDUCTED.

None of the funds made available by this Act shall be used to finalize or implement the proposed rule of the Administrator of the Environmental Protection Agency entitled ''Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act'' (74 Fed. Reg. 18886 (April 24, 2009)) until the Administrator of the Environmental Protection Agency conducts the proceeding requested by the U.S. Chamber of Commerce in the petition entitled ''Petition of the Chamber of

Comm. of the U.S.A. for EPA to Conduct Its Endangerment Finding Proceeding On The Record Using APA §§ 556 and 557'' (EPA Docket No. EPAHQ–OAR–2009–0171–3411.1 (June 23, 2009)).

SA 2474. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. PROHIBITION ON USE OF FUNDS TO IMPLEMENT A GREENHOUSE GAS RULE UNTIL A CERTAIN INVESTIGATION IS CONDUCTED.

None of the funds made available by this Act shall be used to finalize, implement, or issue regulations based on the proposed rule of the Administrator of the Environmental Protection Agency entitled ''Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act'' (74 Fed. Reg. 18886 (April 24, 2009)) until the Inspector General of the Environmental Protection Agency conducts the investigation requested by Senator John Thune in the letter to Mr. Bill A. Roderick, Acting Inspector General, dated June 30, 2009, regarding the suppression by the Environmental Protection Agency of a report prepared by Dr. Carlin.

SA 2475. Mr. BARRASSO (for himself, Mr. BENNETT, and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 121, strike lines 10 through 14 and insert the following:

to remain available until expended, and in addition,

SA 2476. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 127, strike lines 11 through 13 and insert the following:

resources, $1,245,786,000, to remain available until September 30, 2011, except as otherwise provided herein: *Provided*, That not less than $1,900,000 of that amount shall be for research on, and monitoring and prevention of, white nose bat syndrome: *Provided further*, That $2,500,000 is for high-priority projects, which

On page 128, line 24, strike ''$82,790,000'' and insert ''$81,390,000''.

On page 129, line 4, after ''2004'', insert '', and not more than $1,400,000 shall be for the Wallkill National Wildlife Refuge''.

SA 2477. Mr. HARKIN (for himself, Mr. NELSON of Nebraska, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 192, between lines 6 and 7, insert the following:

GENERAL PROVISIONS, ENVIRONMENTAL PROTECTION AGENCY

RENEWABLE FUEL PROGRAM

SEC. 201. None of the funds made available for the Environmental Protection Agency under this title may be expended by the Administrator of the Environmental Protection Agency to carry out any activities relating to the inclusion of international indirect land use change emissions in the implementation of the renewable fuel program established under section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)): *Provided*, That nothing in this section prevents the Administrator from promulgating renewable fuel requirements for calendar year 2010 or any subsequent calendar year under section 211(o) of that Act.

SA 2478. Mr. MENENDEZ (for himself, Mr. LAUTENBERG, and Mr. SPECTER) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 129, line 2, strike ''not more than $1,500,000 shall be for land conservation partnerships authorized by the Highlands Conservation Act of 2004: *Provided*, That'' and insert ''not more than $4,000,000 shall be for land conservation partnerships authorized by the Highlands Conservation Act (Public Law 108-421; 118 Stat. 2375): *Provided*, That $2,500,000 of that amount shall be derived from amounts made available under this title for maintenance and facilities of the Department of the Interior: *Provided further*, That''.

SA 2479. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 120, line 22, strike ''$965,721,000'' and insert ''$970,721,000''.

On page 121, lines 15 through 17, strike ''$36,696,000 is for Mining Law Administration program operations, including the cost of administering the mining claim fee program'' and insert ''$41,696,000 is for Mining Law Administration program operations (including the cost of administering the mining claim fee program), of which $5,000,000, to be derived by transfer from unobligated amounts made available by the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), shall be made available to hire additional staff to address permitting delays of filed mining claims''.

On page 121, line 21, strike ''$965,721,000'' and insert ''$970,721,000''.

SA 2480. Mr. COBURN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. In the matter under the heading ''NATIONAL PARK SERVICE'' under the heading ''DEPARTMENT OF THE INTERIOR'' of title I—

(1) reduce the overall amount made available under the heading ''NATIONAL RECREATION AND PRESERVATION'' by $1,000,000 by eliminating any funding for the Sewall-Belmont House; and

(2) increase the overall amount made available under the heading ''CONSTRUCTION'' by $1,000,000 to be used for maintenance, repair, or rehabilitation projects for constructed assets.

SA 2481. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2456 submitted by Mr. CARPER (for himself, Mr. MERKLEY, and Ms. KLOBUCHAR) to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. (a) In this section, the term ''conference'' means a meeting that—

(1) is held for consultation, education, awareness, or discussion;

(2) includes participants who are not all employees of the same Federal agency;

(3) is not held entirely at a facility of a Federal agency;

(4) involves costs associated with travel and lodging for some participants; and

(5) is sponsored by 1 or more Federal agencies, 1 or more organizations that are not Federal agencies, or a combination of such Federal agencies or organizations.

(b) Notwithstanding any other provision of this Act, the aggregate amount made available under this Act for expenses of the Environmental Protection Agency relating to conferences in fiscal year 2010, including expenses relating to conference programs, staff, travel costs, and other conference matters, may not exceed $15,000,000.

SA 2482. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 173, strike line 1 and all that follows through page 174, line 5, and insert the following:

NORTHERN PLAINS HERITAGE AREA, AMENDMENT

SEC. 115. (a) IN GENERAL.—Section 8004 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1240) is amended—

(1) by redesignating subsections (g) through (i) as subsections (h) through (j), respectively;

(2) in subsection (h)(1) (as redesignated by paragraph (1)), in the matter preceding subparagraph (A), by striking ''subsection (i)'' and inserting ''subsection (j)''; and

(3) by inserting after subsection (f) the following:

''(g) REQUIREMENTS FOR INCLUSION AND REMOVAL OF PROPERTY IN A NATIONAL HERITAGE AREA.—

''(1) PRIVATE PROPERTY INCLUSION.—No privately owned property shall be included in a National Heritage Area unless the owner of the private property provides to the management entity a written request for the inclusion.

''(2) PROPERTY REMOVAL.—

''(A) PRIVATE PROPERTY.—At the request of an owner of private property included in a National Heritage Area pursuant to paragraph (1), the private property shall be immediately withdrawn from the National Heritage Area if the owner of the property provides to the management entity a written notice requesting removal.

''(B) PUBLIC PROPERTY.—

''(i) INCLUSION.—Only on written notice from the appropriate State or local government entity may public property be included in a National Heritage Area.

''(ii) WITHDRAWAL.—On written notice from the appropriate State or local government entity, public property shall be immediately withdrawn from a National Heritage Area.''.

(b) PROHIBITION ON USE OF FUNDS.—None of the funds made available by this Act shall be made available for a Heritage Area that does not comply with section 8004(g) of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1240) (as amended by subsection (a)).

SA 2483. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MAINTENANCE BACKLOG.

Notwithstanding any other provision of this Act, any funds provided from the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5) to an agency under this Act for Federal land acquisition shall be used by the agency for maintenance, repair, or rehabilitation projects for constructed assets.

SA 2484. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 3326, making appropriations for the Department of Defense for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 263, between lines 10 and 11, insert the following:

SEC. 9____. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

SA 2485. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill H.R. 3293, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 267, between lines 14 and 15, insert the following:

SEC. 4____. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

SA 2486. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1434, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 217, between lines 12 and 13, insert the following:

GENERAL PROHIBITION ON USE OF FUNDS

SEC. 70____. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

SA 2487. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1407, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 60, after line 24, insert the following:

SEC. 6____. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

SA 2488. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1432, making appropriations for financial services and general government for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 166, between lines 14 and 15, insert the following:

TITLE IX—ADDITIONAL GENERAL PROVISIONS

SEC. 901. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

SA 2489. Mr. BOND submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 240, between lines 13 and 14, insert the following:

PROHIBITION ON USE OF FUNDS

SEC. 4__. None of the funds made available in this Act may be used to promulgate or implement any regulation of carbon dioxide emissions under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) that will result in significant job loss in manufacturing- or coal-dependent regions of the United States such as the Midwest, Great Plains or South.

SA 2490. Mr. BOND submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 240, between lines 13 and 14, insert the following:

PROHIBITION ON USE OF FUNDS

SEC. 4__. None of the funds made available in this Act may be used to promulgate or implement any regulation of carbon dioxide emissions under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) that will result in an increase in retail prices of fertilizer or fuels used for agricultural production.

SA 2491. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. NATIONAL FOREST FOUNDATION.

(a) MEMBERSHIP OF BOARD OF DIRECTORS.—Section 403(a) of the National Forest Foundation Act (16 U.S.C. 583j-1(a)) is amended, in the first sentence, by striking ''fifteen Directors'' and inserting ''not more than 30 Directors''.

(b) ADMINISTRATIVE SERVICES AND SUPPORT.—Section 405 of the National Forest Foundation Act (16 U.S.C. 583j-3) is amended—

(1) in subsection (a), by striking ''section 410(a)'' and inserting ''section 410''; and

(2) in subsection (b), by striking ''section 410(b)'' and inserting ''section 410''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 410 of the National Forest Foundation Act (16 U.S.C. 583j-8) is amended to read as follows:

''SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to the Secretary of Agriculture to carry out this title $3,000,000 for fiscal year 2009 and each fiscal year thereafter, to be made available to the Foundation to match, on a 1-for-1 basis, private contributions that are made to the Foundation.''.

SA 2492. Mr. BINGAMAN (for himself, Mr. CRAPO, Mr. WYDEN, Mr. RISCH, Mr. BAUCUS, Ms. MURKOWSKI, Mrs. MURRAY, Mr. UDALL of Colorado, Mr. BENNET, Mr. AKAKA, Mr. UDALL of New Mexico, Mr. BEGICH, Mr. MERKLEY, Ms. CANTWELL, Mr. TESTER, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 197, line 11, strike ''$2,586,637,000'' and insert ''$2,576,637,000''.

On page 198, line 10, strike ''$350,285,000'' and insert ''$340,285,000''.

On page 200, between lines 13 and 14, insert the following:

COLLABORATIVE FOREST LANDSCAPE RESTORATION FUND

For expenses authorized by section 4003(f) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(f)), $10,000,000, to remain available until expended.

SA 2493. Mr. BINGAMAN (for himself, Ms. MURKOWSKI, Mrs. BOXER, Mr.

WYDEN, Mr. UDALL of New Mexico, Mr. TESTER, Ms. CANTWELL, Mr. UDALL of Colorado, Mr. MERKLEY, Mr. BENNET, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 159, line 25, strike ''$979,637,000'' and insert ''$904,637,000''.

On page 197, line 11, strike'' $2,586,637,000'' and insert ''$1,827,637,000''.

On page 240, between lines 13 and 14, insert the following:

SEC. 423. FLAME FUND FOR EMERGENCY WILDFIRE SUPPRESSION ACTIVITIES.

(a) DEFINITIONS.—In this section:

(1) FEDERAL LAND.—The term ''Federal land'' means—

(A) public land, as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702);

(B) units of the National Park System;

(C) refuges of the National Wildlife Refuge System;

(D) land held in trust by the United States for the benefit of Indian tribes or members of an Indian tribe; and

(E) land in the National Forest System, as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

(2) FLAME FUND.—The term ''Flame Fund'' means the Federal Land Assistance, Management, and Enhancement Fund established by subsection (b).

(3) SECRETARIES.—The term ''Secretaries'' means the Secretary of the Interior and the Secretary of Agriculture, acting jointly.

(4) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

(A) the Secretary of the Interior, with respect to Federal land described in subparagraphs (A), (B), (C), and (D) of paragraph (1); and

(B) the Secretary of Agriculture, with respect to National Forest System land.

(b) ESTABLISHMENT OF FLAME FUND.—There is established in the Treasury of the United States a fund to be known as the ''Federal Land Assistance, Management, and Enhancement Fund'', consisting of—

(1) such amounts as are appropriated to the Flame Fund; and

(2) such amounts as are transferred to the Flame Fund under subsection (d).

(c) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated to the Flame Fund such amounts as are necessary to carry out this section.

(B) CONGRESSIONAL INTENT.—It is the intent of Congress that the amounts appropriated to the Flame Fund for each fiscal year should be not less than the combined average amount expended by each Secretary concerned for emergency wildfire suppression activities over the 5 fiscal years preceding the fiscal year for which amounts are appropriated.

(C) AVAILABILITY.—Amounts appropriated to the Flame Fund shall remain available until expended.

(2) APPROPRIATION.—There is appropriated to the Flame Fund, out of funds of the Treasury not otherwise appropriated, $834,000,000.

(3) SENSE OF CONGRESS ON DESIGNATION OF FLAME FUND APPROPRIATIONS AS EMERGENCY REQUIREMENT.—It is the sense of Congress that—

(A) further amounts appropriated to the Flame Fund should be designated as amounts necessary to meet emergency needs; and

(B) the new budget authority and outlays resulting from the appropriations should not be considered for the purposes of titles III and IV of the Congressional Budget Act of 1974 (2 U.S.C. 631 et seq.).

(4) NOTICE OF INSUFFICIENT FUNDS.—The Secretaries shall notify the congressional committees described in subsection (h)(2) if the Secretaries estimate that only 60 days worth of funding remains in the Flame Fund.

(d) TRANSFER OF EXCESS WILDFIRE SUPPRESSION AMOUNTS INTO FLAME FUND.—At the end of each fiscal year, the Secretary concerned shall transfer to the Flame Fund amounts that—

(1) are appropriated to the Secretary concerned for wildfire suppression activities for the fiscal year; but

(2) are not obligated for wildfire suppression activities before the end of the fiscal year.

(e) USE OF FLAME FUND.—

(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), amounts in the Flame Fund shall be available to the Secretary concerned to pay the costs of emergency wildfire suppression activities that are separate from amounts annually appropriated to the Secretary concerned for routine wildfire suppression activities.

(2) DECLARATION REQUIRED.—

(A) IN GENERAL.—Amounts in the Flame Fund shall be made available to the Secretary concerned only after the Secretaries issue a declaration that a wildfire suppression activity is eligible for funding from the Flame Fund.

(B) DECLARATION CRITERIA.—A declaration by the Secretaries under subparagraph (A) may be issued only if—

(i) in the case of an individual wildfire incident—

(I) the fire covers 300 or more acres; and

(II) the Secretaries determine that the fire has required an emergency Federal response based on the significant complexity, severity, or threat posed by the fire to human life, property, or resources; or

(ii) the cumulative costs of wildfire suppression activities for the Secretary concerned have exceeded the amounts appropriated to the Secretary concerned for those activities (not including funds deposited in the Flame Fund).

(3) TRANSFER OF AMOUNTS TO SECRETARY CONCERNED.—After issuance of a declaration under paragraph (2) and on request of the Secretary concerned, the Secretary of the Treasury shall transfer from the Flame Fund to the Secretary concerned such amounts as the Secretaries determine are necessary for wildfire suppression activities associated with the declaration.

(4) STATE, PRIVATE, AND TRIBAL LAND.—Use of the Flame Fund for emergency wildfire suppression activities on State land, private land, and tribal land shall be consistent with any existing agreements in which the Secretary concerned has agreed to assume responsibility for wildfire suppression activities on the land.

(f) TREATMENT OF ANTICIPATED AND PREDICTED ACTIVITIES.—

(1) IN GENERAL.—Subject to subsection (e)(2)(B)(ii), the Secretary concerned shall continue to fund routine wildfire suppression activities within the appropriate agency budget for each fiscal year.

(2) CONGRESSIONAL INTENT.—It is the intent of Congress that funding made available through the Flame Fund be used—

(A) to supplement the funding otherwise appropriated to the Secretary concerned; and

(B) only for purposes in, and instances consistent with, this section.

(g) PROHIBITION ON OTHER TRANSFERS.—Any amounts in the Flame Fund and any amounts appropriated for the purpose of wildfire suppression on Federal land shall be obligated before the Secretary concerned may transfer funds from non-fire accounts for wildfire suppression.

(h) ACCOUNTING AND REPORTS.—

(1) ACCOUNTING AND REPORTING SYSTEM.—The Secretaries shall establish an accounting and reporting system for the Flame Fund that is compatible with existing National Fire Plan reporting procedures.

(2) ANNUAL REPORT.—Annually, the Secretaries shall submit to the Committee on Natural Resources, the Committee on Agriculture, and the Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources, the Committee on Indian Affairs, and the Committee on Appropriations of the Senate and make available to the public a report that—

(A) describes the use of amounts from the Flame Fund; and

(B) includes any recommendations that the Secretaries may have to improve the administrative control and oversight of the Flame Fund.

(3) ESTIMATES OF WILDFIRE SUPPRESSION COSTS TO IMPROVE BUDGETING AND FUNDING.—

(A) IN GENERAL.—Consistent with the schedule provided in subparagraph (C), the Secretaries shall submit to the committees described in paragraph (2) an estimate of anticipated wildfire suppression costs for the applicable fiscal year and the subsequent fiscal year.

(B) PEER REVIEW.—The methodology for developing the estimates under subparagraph (A) shall be subject to periodic peer review to ensure compliance with subparagraph (D).

(C) SCHEDULE.—The Secretaries shall submit an estimate under subparagraph (A) during—

(i) the first week of February of each year;

(ii) the first week of April of each year;

(iii) the first week of July of each year; and

(iv) if a bill making appropriations for the Department of the Interior and the Forest Service for the following fiscal year has not been enacted by September 1, the first week of September of each year.

(D) REQUIREMENTS.—An estimate of anticipated wildfire suppression costs shall be developed using the best available—

(i) climate, weather, and other relevant data; and

(ii) models and other analytic tools.

(i) TERMINATION OF AUTHORITY.—The authority under this section shall terminate at the end of the third fiscal year in which no appropriations to or withdrawals from the Flame Fund have been made for a period of 3 consecutive fiscal years.

SEC. 424. COHESIVE WILDFIRE MANAGEMENT STRATEGY.

(a) STRATEGY REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture, acting jointly, shall submit to Congress a report that contains a cohesive wildfire management strategy, consistent with the recommendations described in recent reports of the Government Accountability Office regarding management strategies.

(b) ELEMENTS OF STRATEGY.—The strategy required by subsection (a) shall provide for—

(1) the identification of the most cost-effective means for allocating fire management budget resources;

(2) the reinvestment in non-fire programs by the Secretary of the Interior and the Secretary of Agriculture;

(3) employing the appropriate management response to wildfires;

(4) assessing the level of risk to communities;

(5) the allocation of hazardous fuels reduction funds based on the priority of hazardous fuels reduction projects;

(6) assessing the impacts of climate change on the frequency and severity of wildfire; and

(7) studying the effects of invasive species on wildfire risk.

(c) REVISION.—At least once during each 5-year period beginning on the date of the submission of the cohesive wildfire management strategy under subsection (a), the Secretaries shall revise the strategy submitted under that subsection to address any changes affecting the strategy, including changes with respect to landscape, vegetation, climate, and weather.

SA 2494. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. JUNGO DISPOSAL SITE EVALUATION.

Using funds made available under this Act, the Director of the United States Geological Survey shall conduct an evaluation of the aquifers in the area of the Jungo Disposal Site in Humboldt County, Nevada (referred to in this section as the ''site''), to evaluate—

(1) how long it would take waste seepage (including asbestos, discarded tires, and sludge from water treatment plants) from the site to contaminate local underground water resources;

(2) the distance that contamination from the site would travel in each of—

(A) 95 years; and

(B) 190 years;

(3) the potential impact of expected waste seepage from the site on nearby surface water resources, including Rye Patch Reservoir and the Humboldt River;

(4) the size and elevation of the aquifers; and

(5) any impact that the waste seepage from the site would have on the municipal water resources of Winnemucca, Nevada.

SA 2495. Mr. SCHUMER (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 193, line 13, insert before '': *Provided*'' the following: ''and of which $2,000,000 may be made available to the Pest and Disease Revolving Loan Fund established by section 10205(b) of the Food, Conservation, and Energy Act of 2008 (16 U.S.C. 2104a(b))''.

SA 2496. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROHIBITION ON USE OF FUNDS FOR THE NATIONAL ENDOWMENT FOR THE ARTS.

None of the funds made available under this Act may be used for the National Endowment for the Arts.

SA 2497. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. PROHIBITION ON USE OF FUNDS FOR CALIFORNIA NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER, NEVADA.

None of the funds made available under this Act may be used for the California National Historic Trail Interpretive Center in the State of Nevada.

SA 2498. Ms. COLLINS (for herself, Mr. VITTER, Mr. ISAKSON, and Mr. ROBERTS) submitted an amendment intended to be proposed by her to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

At the appropriate place, insert the following:

FUNDING LIMITATION

SEC. ___. None of the funds made available by this Act or any other Act may be used for the administrative expenses of any official identified by the President to serve in a position without express statutory authorization and which is responsible for the interagency development or coordination of any rule, regulation, or policy unless—

(1) the President certifies to Congress that such official will respond to all reasonable requests to testify before, or provide information to, any congressional committee with jurisdiction over such matters; and

(2) such official submits a report biannually to each congressional committee with jurisdiction over such matters, describing the activities of the official and the office of such official, any rule, regulation, or policy that the official or the office of such official participated or assisted in the development of, or any rule, regulation, or policy that the official or the office of such official directed be developed by the department or agency with statutory responsibility for the matter.

SA 2499. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 209, line 21, before the period at the end, insert '': *Provided further*, That if the Indian Health Service has reserved unobligated funds for contract health services for fiscal year 2009, the Service shall pay, not later than 90 days after the date of enactment of this Act, the Indian Health Service share of contract health service obligations that were approved for payment before October 1, 2009, and incurred after October 1, 1999, for contract health care provided to contract health service-eligible users in the Schurz Service Unit''.

SA 2500. Mr. DEMINT (for himself and Mr. MCCAIN) proposed an amendment to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

At the appropriate place, insert the following:

None of the funds made available by this Act may be used by the Secretary of the Interior to restrict, reduce, or reallocate any water, as determined in—

(1) the biological opinion published by the United States Fish and Wildlife Service and dated December 15, 2008; and

(2) the biological opinion published by the National Marine Fisheries Service and dated June 4, 2009.

SA 2501. Mr. RISCH submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 122, line 11, insert before the period at the end the following: '': *Provided*, That, notwithstanding the joint explanatory statement of the Committee on Appropriations of the House of Representatives accompanying Public Law 111–8 (123 Stat. 524), the amount of $2,000,000 made available for the Henry's Lake ACEC in the State of Idaho (as described in the table entitled ''Congressionally Designated Spending'' contained in section 430 of that joint explanatory statement) shall be made available for the Upper Snake/South Fork River ACEC/SRMA in the State of Idaho''.

SA 2502. Mr. WHITEHOUSE (for himself and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. (a) The Senate finds that—

(1)(A) mercury was used in switches found in the convenience lighting and anti-lock brake systems of old cars, including models manufactured overseas before 1992 and models manufactured in the United States before 2003;

(B) if those switches are not removed from a car prior to crushing, the resulting scrap metal will contain mercury;

(C) every year, the steel industry melts down 12,000,000 to 14,000,000 used cars as valuable feedstock for steel;

(D) when the scrap is melted, mercury is released through the stacks of the furnaces and into the air people breathe;

(E) while each switch is small, the quantity of mercury found in the switches adds up quickly;

(F) in 2003, the cars recycled by the steel industry contained 8,500,000 switches and approximately 10 tons of mercury;

(G) steel is the fourth largest emitter of mercury in the United States; and

(H) vehicle switches are the largest source of mercury for the steel industry;

(2)(A) in August 2006, 9 organizations launched the National Vehicle Mercury Switch Recovery Program (referred to in this section as the ''Program'') to increase the recovery of mercury-filled switches found in old cars, including—

(i) the American Iron and Steel Institute;

(ii) the Steel Manufacturers Association;

(iii) the Automotive Recyclers Association;

(iv) the Institute of Scrap Recycling Industries;

(v) the End of Life Vehicles Corporation;

(vi) the Environmental Defense Fund;

(vii) the Ecology Center;

(viii) the Environmental Council of the States; and

(ix) the Environmental Protection Agency;

(B) the Program is operating through the End of Life Vehicles Corporation (referred to in this section as ''ELVS''), a nonprofit organization established and operated by automobile manufacturers and other founders of the national voluntary Program; and

(C) ELVS—

(i) educates scrappers on how to recover mercury switches;

(ii) provides sealed containers for the scrappers to use when shipping the switches to ELVS;

(iii) negotiates responsible disposal of the switches;

(iv) pays incentive bounties for each recovered switch; and

(v) handles the receipt and responsible disposal of switches from States with mandatory mercury switch recycling laws;

(3)(A) in February 2008, after 18 months of operation, the Program collected 1,000,000 switches; and

(B) collection has picked up since with more than 1,000,000 switches recovered during the 12 month-period beginning in August 2008; and

(4)(A) since August 2009, however, the bounty fund established by the auto and steel industry had been empty;

(B) funding for the operation of ELVS itself is in jeopardy; and

(C) the timing is particularly unfortunate in light of the success of the Cash for Clunkers Temporary Vehicle Trade-In Program, which has resulted in another 670,000 old cars being taken off the road and recycled.

(b) It the sense of the Senate that the Senate—

(1) supports the National Vehicle Mercury Switch Recovery Program; and

(2) urges the founders of the effective Program find a way to fund the Program so that the successful efforts of the Program to prevent mercury pollution may continue.

SA 2503. Mr. THUNE submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 144, strike line 11 and all that follows through page 146, line 23, and insert the following:

$2,334,322,000, to remain available until September 30, 2011 except as otherwise provided herein; of which not to exceed $8,500 may be for official reception and representation expenses; of which not to exceed $74,915,000 shall be for welfare assistance payments: *Provided*, That in cases of designated Federal disasters, the Secretary may exceed such cap, from the amounts provided herein, to provide for disaster relief to Indian communities affected by the disaster; of which, notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, not to exceed $154,794,000 shall be available for payments for contract support costs associated with ongoing contracts, grants, compacts, or annual funding agreements entered into with the Bureau prior to or during fiscal year 2010, as authorized by such Act, except that tribes and tribal organizations may use their tribal priority allocations for unmet contract support costs of ongoing contracts, grants, or compacts, or annual funding agreements and for unmet welfare assistance costs; of which not to exceed $566,702,000 for school operations costs of Bureau-funded schools and other education programs shall become available on July 1, 2010, and shall remain available until September 30, 2011; of which $50,000,000 is appropriated to the Emergency Fund for Indian Safety and Health, established by section 601 of Public Law 110–293 (25 U.S.C. 443c); and of which not to exceed $60,958,000 shall remain available until expended for housing improvement, road maintenance, attorney fees, litigation support, the Indian Self-Determination Fund, land records improvement, and the Navajo-Hopi Settlement Program: *Provided further*, That notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, and 25 U.S.C. 2008, not to exceed $43,373,000 within and only from such amounts made available for school operations shall be available for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during fiscal year 2009 for the operation of Bureau-funded schools, and up to $500,000 within and only from such amounts made available for administrative cost grants shall be available for the transitional costs of initial administrative cost grants to grantees that assume operation on or after July 1, 2009, of Bureau-funded schools: *Provided further*, That any forestry funds allocated to a tribe which remain unobligated as of September 30, 2011, may be transferred during fiscal year 2012 to an Indian forest land assistance account established for the benefit of the holder of the funds within the holder's trust fund account: *Provided further*, That any such unobligated balances not so transferred shall expire on September 30, 2012: *Provided further*, That in order to enhance the safety of Bureau field employees, the Bureau may use funds to purchase uniforms or other identifying articles of clothing for personnel.

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For construction, repair, improvement, and maintenance of irrigation and power systems, buildings, utilities, and other facilities, including architectural and engineering services by contract; acquisition of lands, and interests in lands; and preparation of lands for farming, and for construction of the Navajo Indian Irrigation Project pursuant to Public Law 87–483, $200,000,000, to remain available

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SA 2504. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

On page 219, line 5, before ''and including'', insert the following: ''of which $5,000,000 may be made available to the Secretary of the Interior to develop, in conjunction with Morehouse College, a program to catalogue,preserve, provide public access to and research on, develop curriculum and courses based on, provide public access to, and conduct scholarly forums on the important works and papers of Dr. Martin Luther King, Jr. to provide a better understanding of the message and teachings of Dr. Martine Luther King, Jr.;''.

SA 2505. Mr. CARPER (for himself, Mr. MERKLEY, Ms. KLOBUCHAR, and Mr. FRANKEN) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 192, between lines 6 and 7, insert the following:

GENERAL PROVISIONS, ENVIRONMENTAL PROTECTION AGENCY

BLACK CARBON

SEC. 201. (a) Not later than 18 months after the date of enactment of this Act, the Administrator, in consultation with other Federal agencies, may carry out and submit to Congress the results of a study to define black carbon, assess the impacts of black carbon on global and regional climate, and identify the most cost-effective ways to reduce black carbon emissions—

(1) to improve global and domestic public health; and

(2) to mitigate the climate impacts of black carbon.

(b) In carrying out the study, the Administrator shall—

(1) identify global and domestic black carbon sources, the quantities of emissions from those sources, and cost-effective mitigation technologies and strategies;

(2) evaluate the public health, climate, and economic impacts of black carbon;

(3) identify current and practicable future opportunities to provide financial, technical, and related assistance to reduce domestic and international black carbon emissions; and

(4) identify opportunities for future research and development to reduce black carbon emissions and protect public health in the United States and internationally.

(c) Of the amounts made available under this title under the heading ''ENVIRONMENTAL PROGRAMS AND MANAGEMENT'' for operations and administration, up to $2,000,000 shall be—

(1) transferred to the account used to fund the Office of Air Quality Planning and Standards of the Environmental Protection Agency; and

(2) used by the Administrator to carry out this section.

SA 2506. Mr. CARPER (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2477 submitted by Mr. HARKIN (for himself, Mr. NELSON of Nebraska, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. BOND) and intended to be proposed to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 1, strike line 6 and all that follows through page 2, line 5, and insert the following:

SEC. 201. The funds made available for the Environmental Protection Agency under this title may be expended by the Administrator of the Environmental Protection Agency to promulgate regulations for the renewable fuel program established under section 211(o) of the Clean Air Act (42U.S.C. 7545(o)) only if the regulations take into consideration an appropriate characterization, as determined by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Agriculture and the Secretary of Energy, of the uncertainty in calculating the international indirect land use change emissions in the implementation of the renewable fuel program.

SA 2507. Mr. TESTER (for himself, Mr. BARRASSO, Mr. CRAPO, and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 193, line 9, strike ''$1,556,329,000'' and insert ''$1,552,429,000''.

On page 193, line 20, insert before the period at the end the following: '': *Provided further*, that $282,617,000 shall be made available for recreation, heritage, and wilderness''.

On page 240, between lines 13 and 14, insert the following:

SEC. 423. CABIN USER FEES.

Notwithstanding any other provision of law, none of the funds made available by this Act shall be used to increase the amount of cabin user fees under section 608 of the Cabin User Fee Fairness Act of 2000 (16 U.S.C. 6207) to an amount beyond the amount levied on December 31, 2009.

SA 2508. Mr. VITTER proposed an amendment to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

On page 240, between lines 13 and 14, insert the following:

SEC. 423. PROHIBITION ON USE OF FUND TO DELAY DRAFT PROPOSED OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM 2010–2015.

None of the funds made available by this Act shall be used to delay the Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program 2010–2015 issued by the Secretary of the Interior under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344).

SA 2509. Mr. ROBERTS (for himself, Mr. BROWNBACK, and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title IV, add the following:

BUYOUT AND RELOCATION

SEC. 4____. (a) As soon as practicable after the date of enactment of this Act, the Administrator of the Environmental Protection Agency (referred to in this section as the ''Administrator'') is encouraged to consider all appropriate criteria, including cost-effectiveness, relating to the buyout and relocation of residents of properties in Treece, Kansas, that are subject to risk relating to, and that may endanger the health of occupants as a result of risks posed by, chat (as defined in section 278.1(b) of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act)).

(b) For the purpose of the remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) that includes permanent relocation of residents of Treece, Kansas, any such relocation shall not be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(c) Nothing in this section shall in any way affect, impede, or change the relocation or remediation activities pursuant to the Record of Decision Operable Unit 4, Chat Piles, Other Mine and Mill Waste, and Smelter Waste, Tar Creek Superfund Site, Ottawa County, Oklahoma (OKD980629844) issued by the Environmental Protection Agency Region 6 on February 20, 2008, or any other previous Record of Decision at the Tar Creek, Oklahoma, National Priority List Site, by any Federal agency or through any funding by any Federal agency.

SA 2510. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 2477 submitted by Mr. HARKIN (for himself, Mr. NELSON of Nebraska, Mr. GRASSLEY, Mr. THUNE, Mr. JOHNSON, and Mr. BOND) and intended to be proposed to the bill H.R. 2996, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 1, strike line 6 and all that follows through page 2, line 5, and insert the following:

SEC. 201. The funds made available for the Environmental Protection Agency under this title may be expended by the Administrator of the Environmental Protection Agency to promulgate regulations for the renewable fuel program established under section 211(o) of the Clean Air Act (42U.S.C. 7545(o)) only if the regulations take into consideration an appropriate characterization of ranges, as determined by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Agriculture and the Secretary of Energy, of the uncertainty in calculating the international indirect land use change emissions in the implementation of the renewable fuel program.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing previously announced for September 17, 2009, has been rescheduled before the Senate Committee on Energy and Natural Resources. The hearing will now be held on Thursday, October 1, 2009, at 9:45 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on Energy and Related Economic Effects of Global Climate Change Legislation.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150, or by e-mail to *Gina_Weinstock@energy.senate.gov*.

For further information, please contact Jonathan Black at (202) 224–6722 or Gina Weinstock at (202) 224–5684.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on September 22, 2009, at 9 a.m., in room 216 of the Hart Senate Office Building.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 22, 2009, at 10 a.m. to conduct a hearing entitled ''World at Risk: The Weapons of Mass Destruction Prevention and Preparedness Act of 2009.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on September 22, 2009 at 2:30 p.m.

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

SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Terrorism and Homeland Security, be authorized to meet during the session of the Senate, on September 22, 2009, at 2:30 p.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Strengthening Security and Oversight at Biological Research Laboratories.''

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

MAKING MINORITY PARTY COMMITTEE APPOINTMENTS

Mr. SANDERS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 279, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 279) making minority party appointments for certain committees for the 111th Congress.

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

Mr. SANDERS. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 279) was agreed to, as follows:

S. RES. 279

Resolved, that the following be the minority membership on the following committees for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON ARMED SERVICES: Mr. McCain, Mr. Inhofe, Mr. Sessions, Mr. Chambliss, Mr. Graham, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Burr, Mr. Vitter, and Ms. Collins.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS: Mr. Shelby, Mr. Bennett, Mr. Bunning, Mr. Crapo, Mr. Corker, Mr. DeMint, Mr. Vitter, Mr. Johanns, Mrs. Hutchison, and Mr. Gregg.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION: Mrs. Hutchison, Ms. Snowe, Mr. Ensign, Mr. DeMint, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Isakson, Mr. Vitter, Mr. Brownback, and Mr. Johanns.

SPECIAL COMMITTEE ON AGING: Mr. Corker, Mr. Shelby, Ms. Collins, Mr. Hatch, Mr. LeMieux, Mr. Brownback, Mr. Graham, and Mr. Chambliss.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Republican leader, pursuant to the provisions of Public Law 99–93, as amended by Public Law 99–151, appoints the Senator from Idaho, Mr. RISCH, as a member of the United States Senate Caucus on International Narcotics Control.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SANDERS. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 304, 428, 430, 431, 432, 433, and 434; that the nominations be confirmed en bloc and the motions to reconsider be laid upon the table en bloc; that no further motions be in order; that any statements relating to the nominations be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Carmen R. Nazario, of Puerto Rico, to be Assistant Secretary for Family Support, Department of Health and Human Services.

DEPARTMENT OF STATE

David C. Jacobson, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Canada.

Lee Andrew Feinstein, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Poland.

Barry B. White, of Massachusetts, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Norway.

Michael H. Posner, of New York, to be Assistant Secretary of State for Democracy, Human Rights, and Labor.

Robert D. Hormats, of New York, to be an Under Secretary of State (Economic, Energy, and Agricultural Affairs).

Robert D. Hormats, of New York, to be United States Alternate Governor of the International Bank for Reconstruction and Development for a term of five years; United States Alternate Governor of the Inter-American Development Bank for a term of five years; United States Alternate Governor of the African Development Bank for a term of five years; United States Alternate Governor of the African Development Fund; United States Alternate Governor of the Asian Development Bank; and United States Alternate Governor of the European Bank for Reconstruction and Development.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

Mr. SANDERS. 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. REID. 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. REID. Mr. President, are we in a period of morning business?

The PRESIDING OFFICER. Yes, we are.

Mr. REID. I ask unanimous consent that we terminate morning business and move to the legislation that is before the Senate.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Continued

The PRESIDING OFFICER. The clerk will report the title of the bill.

The legislative clerk read as follows:

A bill, (H.R. 2996) making appropriations for the Department of the Interior, environment and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk on the substitute amendment.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee substitute amendment to Calendar No. 98, H.R. 2996, the Interior Appropriations Act for Fiscal Year 2010.

Harry Reid, Dianne Feinstein, Patrick J. Leahy, Edward E. Kaufman, Debbie Stabenow, Patty Murray, Barbara A. Mikulski, Barbara Boxer, Daniel K. Inouye, Ben Nelson, Sherrod Brown, Michael F. Bennet, Tom Harkin, Bill Nelson, Richard J. Durbin, Sheldon Whitehouse, John F. Kerry.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk with respect to the bill.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Calendar No. 98, H.R. 2996, the Interior Appropriations Act for Fiscal Year 2010.

Harry Reid, Dianne Feinstein, Patrick J. Leahy, Edward E. Kaufman, Debbie Stabenow, Patty Murray, Barbara A. Mikulski, Barbara Boxer, Daniel K. Inouye, Ben Nelson, Sherrod Brown, Michael F. Bennet, Tom Harkin, Bill Nelson, Richard J. Durbin, Sheldon Whitehouse, John F. Kerry.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorums required under rule XXII be waived.

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

ORDERS FOR WEDNESDAY, SEPTEMBER 23, 2009

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Wednesday, September 23; that following the prayer and the 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 proceed to a period of morning business for 90 minutes, with Senators permitted to speak therein for up to 10 minutes each, with the majority controlling the first 45 minutes and the Republicans controlling the second 45 minutes; that following morning business, the Senate resume consideration of Calendar No. 98, the Interior appropriations.

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

PROGRAM

Mr. REID. Mr. President, there will be some rollcall votes during tomorrow's session, the extent of which has not been determined at this time. Cloture motions were filed earlier on the committee substitute amendment and on the bill itself. As a result, there is a filing deadline for first-degree amendments to H.R. 2996 of 1 p.m. tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 7:43 p.m., adjourned until Wednesday, September 23, 2009, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Tuesday, September 22, 2009:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CARMEN R. NAZARIO, OF PUERTO RICO, TO BE ASSISTANT SECRETARY FOR FAMILY SUPPORT, DEPARTMENT OF HEALTH AND HUMAN SERVICES.

DEPARTMENT OF STATE

DAVID C. JACOBSON, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO CANADA.

LEE ANDREW FEINSTEIN, OF VIRGINIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF POLAND.

BARRY B. WHITE, OF MASSACHUSETTS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO NORWAY.

MICHAEL H. POSNER, OF NEW YORK, TO BE ASSISTANT SECRETARY OF STATE FOR DEMOCRACY, HUMAN RIGHTS, AND LABOR.

ROBERT D. HORMATS, OF NEW YORK, TO BE AN UNDER SECRETARY OF STATE (ECONOMIC, ENERGY, AND AGRICULTURAL AFFAIRS).

ROBERT D. HORMATS, OF NEW YORK, TO BE UNITED STATES ALTERNATE GOVERNOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF FIVE YEARS; UNITED STATES ALTERNATE GOVERNOR OF THE INTER-AMERICAN DEVELOPMENT BANK FOR A TERM OF FIVE YEARS; UNITED STATES ALTERNATE GOVERNOR OF THE AFRICAN DEVELOPMENT BANK FOR A TERM OF FIVE YEARS; UNITED STATES ALTERNATE GOVERNOR OF THE AFRICAN DEVELOPMENT FUND; UNITED STATES ALTERNATE GOVERNOR OF THE ASIAN DEVELOPMENT BANK; AND UNITED STATES ALTERNATE GOVERNOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.