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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.

Holy God, who alone knows what a day will bring forth, draw our lawmakers closer to what You desire them to think, say, and do. May they find such inspiration in sacred Scripture that they will know and understand Your will, strengthened by the power of Your word. Lord, guide them by the unfolding of Your providence, directing them around obstacles that hinder Your purposes. Provide them with friendships that will enable them to see You more clearly and to follow You more nearly each day. Give them the wisdom to strive for a true faith of good conscience and genuine love that we may live peaceful and quiet lives in all godliness and holiness.

We pray in Your sacred 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, May 18, 2010.

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 an hour of morning business. The majority will control the first 30 minutes; the Republicans will control the next 30 minutes.

The Senate will then resume consideration of the Wall Street reform legislation. There will be 30 minutes of debate prior to a vote in relation to the Gregg amendment No. 4051 regarding State bailouts.

The Senate will recess from 12:30 until 2:15 for the weekly caucus meetings.

Last night, I filed cloture on the substitute to S. 3217, the Wall Street reform legislation. As a result, there is a 12 noon filing deadline for first-degree amendments. The first vote will occur before noon sometime today.

CLEANING UP THE MESS

Mr. REID. Mr. President, the fundamental principle behind Wall Street reform that we are going to finish this week is accountability. Those who created the mess bear the responsibility for cleaning up the mess. One of its most important provisions promises taxpayers they will never again be asked to bail out big corporations that acted recklessly and put our economy at risk.

When it comes to the ongoing catastrophe in the Gulf of Mexico, our motivation is exactly the same. It is no different. More than 20 million gallons of oil have leaked into and across the waters of the gulf coast since the Deepwater Horizon drilling rig exploded and sank about a month ago. That is double the oil that spewed from the Exxon Valdez.

Eleven crewmen died very quickly, horrific deaths, unnecessary deaths. In the weeks since, an enormous tourism industry has been slowed and business at countless fisheries has been halted at a time when the gulf coast can hardly afford more economic hardship. Our environment has been polluted and life has been disrupted for many along that coast. With every passing day, those consequences are only compounded.

It is the responsibility of Congress and the administration to investigate this disaster and it is the responsibility of BP and anyone else found culpable to foot the bill for the damages. They must be held accountable.

Some estimate this disaster will cost more than $14 billion. We have to put our foot down and make clear that taxpayers will not pick up that tab. I will do everything in my power to make sure the polluters pay the price, which they are obligated to do morally and, I believe, legally.

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, there will now be an hour of debate, equally divided, between the leaders or their designees, with Senators permitted to speak for up to 10 minutes each, with the majority controlling the first half and the Republicans controlling the second half.

The Senator from Washington.

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

Mrs. MURRAY. Mr. President, I see the Senator from New Jersey is on the floor, and I am happy to follow him or precede him, whichever he chooses.

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

UNANIMOUS-CONSENT REQUEST— S. 3305

Mr. MENENDEZ. Mr. President, I wish to thank my distinguished colleague from Washington State. I appreciate it.

I rise because the Senate has three choices on how it is going to protect coastal communities from the economic ravages of the oilspills we are seeing in the gulf. We can have fishermen, coastal residents, and tourism-based small businesses endure the suffering of lost revenue caused by a manmade disaster that was no fault of their own, which clearly in my mind isn't fair, we can have taxpayers provide them with a safety net, which I oppose, or we can make polluters pay all the damages they caused from a spill, which is the appropriate course.

It is not a hard choice. When I was a kid, my mother taught me all I think we need to know here, and I am sure everybody was taught the same way: You clean up your own mess and you are responsible for it. That is all we are asking BP or any other company to do: Clean up the mess, pay for whatever mess you can't clean up yourself and the damages that flow from what you did.

The current law sets a $75 million cap on how much an oil company has to pay for damages. That means BP doesn't have to pay more than $75 million for lost business revenue from fishing or tourism, damage to the environment, the coastline or the lost tax revenues of State and local governments. So I have introduced a bill, along with a number of my colleagues, raising that liability cap for offshore oil well spills from $75 million to $10 billion.

Some of my colleagues have objected to this proposal because they are worried it will drive oil drilling companies in the gulf out of business. Well, in the case of BP, that is a little hard to understand. It is a rather strange argument. After all, BP's profits amounted to $5.6 billion for the first 3 months of this year—profits, not proceeds, profits. That breaks down to $94 million in profits each and every day. That means their current damages liability under the law of $75 million is less than one day's profits—less than one day's profits.

Not every company drilling in the gulf is as big as BP, but why, I say to my colleagues who raise that issue, should an oil company get such a low liability cap when any average person driving down the street has unlimited liability? Why should a company doing an inherently dangerous and potentially polluting activity such as oil drilling enjoy such a low cap on liability, when the guy installing a solar panel on your roof has unlimited liability? It simply doesn't make sense.

The oil companies want it both ways. They want to keep the profits when everything works out well and times are good, but they want taxpayers to bail them out when they spill. It is fundamentally wrong.

Our bill is as simple as it gets. It says no bailout for BP. It says BP pays for its own mess, not the Nation's taxpayers. It says either you want to fully protect the small businesses and communities devastated by the spill or you want to protect multibillion-dollar oil companies from being held fully accountable.

BP says they are going to be liable for all legitimate claims, but they would not define what ''legitimate'' is. So if they are saying that, why are we hesitant to raise the liability cap to make sure that what they are saying is kept true and that anyone else in the future will have the same responsibility? Does anyone who has been watching the images coming in from the gulf believe we should be protecting multibillion-dollar oil companies instead of the small businesses, fisheries, and coastal residents who are losing their livelihoods?

It seems to me it is time this Senate stand up to big oil and make them pay for their own mess, not taxpayers, small business owners, States or the Federal Government.

I know a number of my colleagues who have cosponsored this legislation with me wish to speak. At the end of that process, I intend to make a unanimous consent request so we can move forward and make sure now—not years later, now—that all those who are damaged as a result of the spill in the gulf are protected and that taxpayers don't pay one penny toward this liability that BP and others may have.

With that, for the moment, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank my colleague from New Jersey because I, too, come to the floor to strongly support the Big Oil Bailout Provision Act and to ask some simple questions of the Senators who are objecting to this bill being passed. For whom are you fighting? Whom are you trying to help? Are you here to protect and shield the big oil companies or to fight for families and taxpayers?

I know where I stand. I came to the Senate to fight for families and small business owners in my home State of Washington, and those are the people I work for every single day—moms and dads who are working hard, paying their taxes, doing their best but who have watched, over the last 2 years, as Wall Street executives and big banks derailed our economy and then held out their hands for a bailout from the rest of us, men and women who have seen their friends, family, and neighbors lose their jobs, who have driven by neighborhood shops they have known for decades that are now sitting empty and boarded up. They have seen all this, and they have also seen Wall Street and big banks go right back to their ''bonus as usual'' mentality, acting as though nothing ever happened, handing out millions of taxpayer dollars to their executives, and shamelessly sending lobbyists to Washington, DC, to try and water down reform.

Families in Washington State and across the country have seen all this and they are angry about it and they have good reason to be. Those families need to know that now we are fighting for them in the Senate. The debate we are having today demonstrates clearly who is standing for them and who is not.

Here are the facts: On April 20, 2010, there was a massive blowout and explosion on a BP oil platform in the Gulf of Mexico. Eleven workers are missing, presumed dead; 17 more injured. The explosion, as we know, caused a gushing spill that has poured hundreds of thousands of barrels of oil into the gulf and threatens to spill millions more. It has created an environmental and economic tragedy the magnitude of which we are only now beginning to comprehend. It is threatening entire communities and businesses. The oil and chemical dispersants being sprayed into the gulf have the potential now to kill underwater wildlife and create underwater dead zones for years and years to come. Those are the facts.

The questions are: Who should be responsible for this cleanup? Who should bear the burden for big oil's mistakes? Should it be the taxpayers, the families and small business owners who are already being asked to bear so much today or should it be BP, the company that is responsible for this spill and that made $6.1 billion in profits in the first 3 months of this year alone?

I cosponsored the Big Oil Bailout Prevention Act because, to me, the answer is pretty clear.

I believe BP needs to be held accountable for the environmental and economic damage of this spill. I am going to continue to fight to make sure our taxpayers do not end up losing a single dime to pay for the mess this big oil company created.

To me, this is an issue of fundamental fairness. If an oil company causes a spill, they should be the ones to pay to clean it up, not the taxpayers. The bill raises the cap on oil company liability from the current limit of only $75 million—that is a pittance considering this spill's potential damage—to $10 billion.

So taxpayers will not be left holding the bag for big oil's mistakes. This is straightforward common sense, and it is fair. It hits particularly close for families in the Northwest—my area—who saw firsthand the devastation caused by the Exxon Valdez disaster and the long and arduous battle over cleanup costs.

Mr. President, I was disappointed when this bill was blocked by Republicans last week. We are going to keep fighting because we want this bill to pass. I am going to keep fighting for our families and taxpayers in Washington State and across the country.

The bottom line is, if oil companies are going to make billions in profits when times are good, they should not be allowed to leave taxpayers hanging when times are tough. The Big Oil Bailout Prevention Act writes this commonsense policy into law. I urge every Senator to side with the taxpayers and support this important legislation.

I yield the floor.

Mr. MENENDEZ. Mr. President, on behalf of the leadership, I ask unanimous consent that Senator NELSON be next for 5 minutes, and then Senator CARDIN for 4 minutes, and then Senator LAUTENBERG for 5 minutes.

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

The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I say to my colleagues on the Senate floor, my worst nightmare is becoming reality. Tar balls have been discovered, as reported by CNN, in Key West. Even if they are not the tar balls from this spill, since the spill is flowing southward, it is getting into the Loop Current. That current goes southward into the Gulf of Mexico, around the Florida Keys, and becomes the Gulf Stream.

The University of Miami oceanographer testified to us that once it gets into the Loop Current in the northern Gulf of Mexico, it will take, maximum, 10 days to get to the Florida Keys. Eighty-five percent of North America's living coral reefs are in the Florida Keys. The Gulf Stream hugs the Florida Keys going northward and the southeast coast of Florida. The Gulf Stream parallels the entire eastern coast, the Atlantic seaboard, all the way north to Cape Hatteras, North Carolina, and proceeds across the Atlantic to Scotland.

We are looking at a gargantuan economic and environmental disaster facing this Nation but particularly those States on the gulf coast and the Atlantic seaboard. We have heard all the pronouncements, and we have heard those pronouncements now going on 4 weeks. The oilspill has not been stopped. If it continues until a rescue well reaches it in another 2-plus months, this spill will eventually cover up the gulf coast, the places like the sugary white beaches of northwest Florida, where I will be this Friday, where already the cancellations are coming right and left as their tourist season starts; and hotels that would normally have 85 percent occupancy are less than 20 percent occupancy. You can see the economic consequences from this disaster. You see the economic consequences already to the fishing industry in Louisiana. What about the oyster industry in Apalachicola and those delicate bays and estuaries all along the gulf coast where so much of the marine life is spawned?

Now we hear reports that it is not just on the surface, it is at a depth of 1,500 feet. Then just off the floor of the ocean at 4,500 feet, almost a mile below the surface—a slick that is 10 miles long and 3 miles wide and 2 football fields thick. What happens when that eventually gets to the surface? But in the meantime, what happens when it settles to the ocean floor?

For the life of me, I can't understand someone objecting, as they are going to do, to raising an artificial limit of $75 million up to at least $10 billion—and it is probably going to exceed that. The argument you are going to hear is: Oh, it should not be this; it ought to be tied to profit. Is it really responsible public policy to say because a company makes less money, it should be responsible for less damage? No.

If I seem emotional, it is because my people are scared. They are frightened at what they are facing.

I yield the floor.

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

Mr. CARDIN. I thank Senator MENENDEZ for his leadership on S. 3305. I hope his request will be granted. As the other Senators have said, basically whose side are you on? Who should pay for this disaster? Should it be the taxpayers of this country? Should it be the small business owners whose livelihood is now in jeopardy? Should it be the property owners who are going to suffer damage? No. It should be BP Oil and its affiliates.

That is what the Menendez bill does. It places responsibility on the appropriate party. BP should pay, and there are many reasons they should pay. As Senator MENENDEZ points out, their profit was $6 billion in the last quarter. Another reason: BP, in its exploration plan that it presented to the Mineral Management Service, MMS, to get an environmental waiver, stated ''unlikely event of an oil spill as having little risk of contact or impact on the coastlines and associated environmental resources.''

Unlikely event? Little risk of contact? They have relied upon proven response technology—these blowout preventers. They were failsafe, according to BP Oil. Yet MMS showed that the blowout preventers had failed or otherwise played a role in at least 14 accidents. There was little information about the blowout preventers at 5,000 feet of water. That was used to avoid a full environmental review.

We have an environmental disaster, and BP should be held fully accountable for many reasons, not the least of which is they misrepresented the environmental risk to the public and the regulators.

Let's talk about the extent of the damage. BP is continuing to underestimate this damage because they don't want the public to fully understand the extent of the damage. First, they tell us 1,000 barrels a day, and then 5,000 barrels a day. The experts tell us the methodology used by BP is not reliable. They should have given us a range, not a specific barrel amount.

We had people who were prepared to come in and do a real assessment without jeopardizing BP Oil's efforts to stop the flow, and BP doesn't let them do that because they don't want the public to know the status of it, as Senator NELSON pointed out, using dispersants, which is a good option but not the better option. The oil is going to stay in the ocean and give us dead zones, and it is going to cause additional damage.

It starts with the Menendez bill, with holding BP Oil responsible for all of the damages it has caused through its misrepresentations and the way it has handled the spill. I hope it will continue so we can reenact a moratorium, particularly for the area that I represent in the Mid-Atlantic, which is so environmentally sensitive that if we had the spill in our area I would hate to see what it would do to the Chesapeake Bay and Assateague Island.

I urge my colleagues to move forward today on the Menendez bill. Let's get the consent necessary to make sure everyone understands that what BP Oil says it will do, it will do, which is pay for all the damages it has caused. I hope that will not be the last action. I hope we also will reimpose the moratorium for offshore drilling—at least at this point—until we know we can do it safely.

In my area, I hope the moratorium will be permanent.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, first, I commend my colleague from New Jersey for developing this approach to make sure these companies pay for the damage they have done.

We are going to see today, as we saw the other day, a response from the other side. I hope they have the courage, the guts, to stand and say they are with the ordinary American taxpayers or maybe they will say: We like the other guys better—big oil.

Will the Senate stand with the fishing industries and the hard-working men and women who make a living providing sustenance to our Nation or will it continue its stand with big oil? They need all the help. You heard from our colleague from Maryland about their earnings, incredible earnings. BP, in a quarter, had its earnings increased by $3.2 billion—earnings, not revenue.

So the choice is an easy one: You can stand with the guys who got so much that they are gouging the public or do you want to stand with the working people?

Will the Senate stand with the coastal communities whose families are left jobless, homeless, and hopeless or will it stand steadfast with the big oil companies, as it has done?

Last week, we got an answer. Senators MENENDEZ and NELSON and I asked our colleagues to join with us to end big oil bailouts by raising the liability cap for oil companies from a trifling $75 million to $10 billion. Our colleagues stayed true to the big oil companies. They wanted to make sure they blocked any attempt to pass a bill that would raise their liability.

So here we are again urging our colleagues to stand for the American taxpayers who are sick and tired of bailouts. We need to hold big oil accountable so the gulf coast communities don't meet the same fate as those families whose lives were ruined by the Exxon Valdez accident over 20 years ago. We have to hold them accountable because the American taxpayers are staring down the barrel of a disaster that is currently said to exceed $1 billion in monetary damage.

The fact is, the amount of the monetary damages from the spill in the gulf is on track to surpass those from the Exxon Valdez. As the first Senator to visit Alaska after the Exxon Valdez went ashore, I saw the destruction caused by that oilspill firsthand. But even after issuing a string of apologies, Exxon fought over every penny with the communities and families and the fishermen whose lives were decimated.

We had a hearing the other day in the Environment Committee with three executives from BP, Transocean, and Halliburton. I asked the simple question: Is your company responsible for the leak? No, no, no. They were pointing fingers at one another. Nobody was willing to say they had an accident, they did this or that—no, not them. Later on I asked could they guarantee we would not have any more spills if there was drilling in the ocean, and they said they could not do that.

Mr. President, they are shamefacedly trying to protect themselves against a legitimate obligation they have. And our friends on the other side are not willing to say to those oil companies: Listen, you did it, you messed it up, pay up. Do what you have to as a corporate citizen and as a company that makes so much money you don't know what to do with it.

Once again, I commend my colleague from New Jersey for developing this program.

I yield the floor.

Mr. MENENDEZ. Mr. President, to summarize, this is very simple: Whose side are you on? Are you on the side of the taxpayers or multibillion-dollar oil companies? Are you on the side of fishermen, working hard to make a living, or on the side of multibillion-dollar oil companies? Are you on the side of the small inns that benefit from the tourism in the gulf region or on the side of multibillion-dollar oil companies? Are you on the side of the coastal communities that are going to be affected by virtue of the spill or on the side of multibillion-dollar oil companies?

Because of the fierce urgency now, we believe it is necessary to ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 3305, the Big Oil Bailout Prevention Liability Act of 2010, and that the Senate then proceed to its consideration; that the bill be read three times, passed, and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first of all, I reserve the right to object, and I am going to object in a minute, but I agree with a lot of things that were said by the Senators from New Jersey.

I say to the Senator from New Jersey, I was also there 20 years ago at the Exxon Valdez, which was a transportation accident. We were very much concerned about the recovery. We need to increase the caps. I understand that. But I do agree with the President—he left that blank—because we don't know just how high that should be.

I disagree with the notion that you are either for or against big oil and all of that. Big oil would love to have these caps up there so they can shut out all the independents. We have independents in my State of Oklahoma, and right now 63 percent of the gulf's natural gas and 36 percent of its oil are produced by independents. What you are going to do if you raise the caps right now, precipitously, this high, you are going to help the five big oil companies, including BP, giving them exclusive rights, and help the nationalized big oil companies, such as those in China and Venezuela, and shut out the small and medium-sized independents. For that reason, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. MENENDEZ. Is there still a minute remaining?

The ACTING PRESIDENT pro tempore. The Senator has 3 minutes 50 seconds remaining.

Mr. MENENDEZ. Look, I regret that my distinguished colleague from Oklahoma has decided to object. I would simply say that if you are an ''independent,''—and some of these independent companies are valued at $40 billion—does that mean that because you are not the BPs of the world, you should have less liability? If this spill in the gulf was done not by a BP or an ExxonMobil or any of those but by some other entity, should there be less liability for them; therefore, they can take the risk and go ahead and drill, and if it works out, they get all the profits, but if they spill, their liability would be limited under the guise they were going to create a monopoly for the big five? I am for creating that liability across the entire range. If you are involved in a dangerous activity, one that can create enormous environmental and economic damage, then you should face the liability for such whether you are BP or you are some intermediate entity.

So I don't quite understand the nature of suggesting that we are going to try to give the big companies some form of monopoly. Actually, it seems to me what we are doing is using that argument—and I have heard this argument several times—to not create the liability that is necessary for everybody, so that regardless of who creates this set of circumstances and has a spill and therefore fishermen, shrimp fishermen, seafood processing companies, tourism, coastal communities, and our environment are damaged, they should be let off the hook because they are not as big as BP.

Mr. NELSON of Florida. Would the Senator yield?

Mr. MENENDEZ. I would be happy to yield to my colleague from Florida.

Mr. NELSON of Florida. I thank the Senator for yielding.

Isn't it interesting how all the different companies are pointing at each other now? And the real question is, Is it going to be the taxpayer who will pay for this or will the responsible parties? Why should someone say no to raising the liability simply because they say it ought to be tied to the size or the profitability of the particular company? It makes no sense.

Mr. MENENDEZ. I am happy to yield to my colleague from Minnesota.

Ms. KLOBUCHAR. Mr. President, I recently saw firsthand the miles and miles of oil slick in the Gulf of Mexico. The scope of the disaster is staggering, and an oil rig the size of a football field shouldn't suddenly explode in a massive fireball and threaten the entire coast of our country. But beyond that potential, if they closed the Port of New Orleans, think of the effect that would have on Minnesota or the effect it would have on other parts of our country. And I don't believe the taxpayers of this country should have to pay for that.

That is why I support the Big Oil Bailout Prevention Liability Act, which will help ensure that the current liability gap for a single oilspill will not apply to the gulf coast oil disaster and make sure that BP—a company that just a few weeks ago flouted its record profit of $6 billion in the first quarter of this year alone—will pay for this and that the taxpayers of this country—already burdened with the cost of the difficult economic times and what Wall Street has done—are not stuck with the bill.

Mr. President, I am supportive of the work my colleagues have done, and I thank Senators MENENDEZ, NELSON of Florida, and LAUTENBERG for their efforts.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, let me just make one comment. I don't very often agree with President Obama. Right now, he is unsure what that level should be. I am unsure what that level should be. Maybe it should be the level we are talking about right now, and it may end up there, but we just don't know that.

We know that what the Senator from New Jersey and I experienced up at Exxon Valdez some 20 years ago was not adequate, so that is why we passed the legislation. It should be upgraded. Certainly, we need to raise these limits. Where it should be raised, I don't know. I don't know where the cap should be. We are going to have to find out as this thing moves along.

I would only say this: If you have it up too high, you are going to be singling out BP and the other four largest majors and the nationalized companies, such as China and Venezuela, and shutting out the independent producers. I don't want that to happen. Let's wait and see where that cap should be.

Mr. MENENDEZ. Would the Senator yield for a question?

Mr. INHOFE. I would, yes.

Mr. MENENDEZ. I thank the Senator for yielding.

So is it my understanding that because of your concern about these other independents, let's call them, you would allow them—if they were the cause of this incident—to limit their liability just because they are small?

Mr. INHOFE. No. My answer to the question is, as I said, we don't know where that cap should be. You are coming up with a cap that might end up being the appropriate cap for everyone. But my understanding now would be that the only ones who would be able to live up to that cap would be the five majors and the nationalized companies. If that is the case, yes, I would say we need to have that opened so that we are not just allowing the majors as opposed to the independents. But let's wait and see where the cap should be. Maybe it should be that high. We don't know yet, President Obama doesn't know yet, and I don't know yet. That is the reason I object.

Mr. MENENDEZ. Will the Senator yield for one more question?

Mr. INHOFE. You can ask, but I am going to have to leave here. Go ahead.

Mr. MENENDEZ. If, in fact, it is—I think everybody clearly believes this consequence in damages is at least $10 billion—some have suggested it should be an unlimited cap. If that is the figure, your concern wouldn't stop you from putting it at that figure and making sure all the independents——

Mr. INHOFE. I would repeat, it is too early to come up with a figure, and I think the President agrees with that. Let's see what kind of cap should apply.

HEALTH CARE REFORM

The ACTING PRESIDENT pro tempore. The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I wish to speak for a few moments this morning about a subject that is on the minds of many Americans and I think should still be on the minds of everybody in this Chamber because the health care bill that was passed and signed into law recently is going to have impacts across this country for some time to come.

I am interested in the discussion that has occurred here on the floor of the Senate over the past several weeks, as Senator BARRASSO from Wyoming—who also happens to be an orthopedic surgeon, a physician—has come to the floor to engage in a series of remarks, what he calls the ''second opinion.'' I think his second opinion series of remarks here on the floor has been extremely well pointed in illustrating, in many respects, what is wrong with the health care bill and why this is not something that is going to improve the lives of most Americans but, in fact, is going to worsen the lives of most Americans because they will be faced with higher health care costs, higher taxes, and probably higher deficits for years and years to come.

There is a lot of supporting data now, validation of those arguments we heard during the course of the health care debate. The Democrats, who were supporting it, as was the President, said this health care legislation was going to, No. 1, reduce health care costs for most Americans, and No. 2, reduce the deficit. Of course, they talked a lot about how it was going to extend the lifespan of Medicare as well, even though they were cutting Medicare and using those funds to create a new entitlement program. So all those promises made by the President and made by the Democrats here in the Senate when we were debating health care are now all being completely rebuffed by evidence that comes out all the time from those who study this issue closely.

Frankly, as we get more and more businesses trying to figure out how to interact with this new health care legislation, they are coming to the conclusion that it might be cheaper for them in the long run to drop their coverage and put everybody in the government plan, which is what we predicted would happen all along.

But I think probably the biggest bombshell—certainly the most damning piece of evidence—came out just a few weeks ago when the Actuary of Health and Human Services, HHS, came out with his analysis of the financial impacts the new law would have once it was passed and implemented. I wish to share a few things from that report because I think it is very important. It does, as I said before, illustrate exactly what Senator BARRASSO and others said throughout the course of the debate in the Senate when health care was under consideration.

The Actuary of the Department of Health and Human Services—bear in mind, this agency is supposed to look at these things in a totally objective, nonpolitical way—the Actuary concluded that the Federal Government and the country will spend $310 billion more under the new law than we would have without it. The Actuary's report went on to say that national health expenditures would increase from 17 percent of GDP, which is what it is today, to 21 percent under the new law. But what is interesting about this is that the $310 billion increase in health care costs they now say will result from the passage and implementation of this legislation is more than what would have happened had we done nothing. Had this body done nothing in terms of health care reform, health care costs would have gone up less than they will with this legislation. As I said before, this completely refutes any argument made by the other side during the course of this debate that their legislation would, in fact, drive down health care costs.

The Actuary has now concluded the point that we made throughout the course of the debate; that is, that health care costs will go up, not down; the cost curve will be bent up, not down; and for most Americans, health insurance premiums are going to go up as a result of this legislation. That is what the Actuary is now saying.

What is even more interesting about that report is it goes on to say that health care shortages and price increases are ''plausible and even probable'' under the legislation. The report suggests there will be perhaps as many as 15 percent of Part A providers—Part A providers are hospitals—that will become unprofitable within the 10-year projection period absent further legislative action.

In other words, up to 15 percent of hospitals would have to close as a result of this legislation. Because of that, the report says the law will jeopardize ''access to care for seniors.'' So all these promises about greater access, lower cost—the promises that were made during the course of this debate—are being completely now rebutted by the report that the Actuary came out with just a couple of weeks ago.

The other thing I think is important—we emphasized this as well during the debate—the Actuary concluded that new taxes that are going to be imposed on medical devices, on prescription drugs and insurance plans, were generally passed on through to consumers in the form of higher drug and device prices and higher insurance premiums.

Remember, during the course of the debate we said all the new taxes that will be levied on medical device manufacturers, pharmaceuticals, health insurance plans, would be passed on. This is clearly what they are suggesting as well. So not only do we get the double whammy, we get the whammy of higher insurance premiums, but we get the double whammy of higher taxes that are going to be borne by a lot of people across the country. That also is being substantiated and supported by the Joint Tax Committee, which took a good look at the distribution of the impacts of the tax increases in this bill. A lot of Americans are going to see their tax burdens go up as well.

With respect to the issue of the deficit—which, again, is something I will get to in just a moment—the Actuary notes the bill's Medicare provisions ''cannot be simultaneously used to finance other federal outlays—such as the coverage expansions—and to extend the [life of the Medicare] trust fund, despite the appearance of this result from the respective accounting conventions.''

Essentially what they have said is what they said in a letter in response to questions we posed about how this would impact the Medicare trust fund. Basically, the Actuary is saying what the CBO said; that is, you are double counting revenue, you are basically spending the same money twice. In other words, all the additional revenues that are supposed to become available because of reductions in Medicare benefits or reductions in Medicare payroll taxes that were going to extend the life of Medicare and also going to be used to finance the new health care entitlement program—that is what we said all along, and that is double counting. You can't spend the same money twice, and as a consequence of that you are going to see what they promised in terms of deficit reduction can be very different from what actually happens.

They went on to say that the CLASS Act, which is a long-term care entitlement program—described, believe it or not, by one of my Democratic colleagues as a Ponzi scheme of the highest order, the kind of thing Bernie Madoff would be proud of,—will result in net Federal cost in the longer term. The program is designed to someday down the road to pay long-term care benefits for people who pay premiums into that plan and will face significant risk of failure because of the way they are counting the revenue.

It says it is going to be ''a net Federal cost in the longer term'' because, obviously, when you take premiums today to pay for the unrelated provisions in the health care reform law, and then there is a demand for the CLASS Act benefits at some point in the future by the people who paid those premiums, you cannot use those revenues to pay for the benefits because they have already been spent. To assume otherwise is double counting that revenue.

So you have all this double counting that went on in the course of this bill which, again, as I said, understated the overall cost of the bill and also the deficit numbers I think were attached to it.

To me, this study, this analysis was absolutely a bombshell in terms of the impacts of the actual implementation of the health care bill. As I said, it completely refutes all the arguments that were made that it would lower costs, reduce deficits, and it would improve access. All three of those points are refuted by the analysis that was done by the Actuary at the Health and Human Services Department.

More recently, last week about this time, the Congressional Budget Office came out with a new report. They predicted that the health care overhaul will likely cost about $115 billion more in discretionary spending over 10 years than the original cost projections. So the promises that were made about deficit reduction as a result of this—it was going to somehow save $143 billion over a 10-year period—now are reduced by $115 billion because, as we said throughout the course of the debate, it is going to cost a lot to implement this bill both in the form of cost to HHS, as well as cost of the Internal Revenue Service, which is going to be required to now impose the individual mandate that will fall on a lot of people across this country and the penalties associated with that.

So we have all these implementation costs that are going to add an additional $115 billion in spending over the next 10 years which reduce dramatically any promises about deficit reduction, not to mention what I just stated in terms of the double counting that goes on.

My view on this is, not only is it not going to reduce the deficit, it is going to explode the deficit, particularly in the outyears when the demand for Medicare benefits comes and the demands of the trust fund for those people who paid into the fund and reached the retirement age—a lot of the baby boomers are going to require health care, the Medicare fund is going to be tapped for that, and there will not be any money there to pay for this program.

So you have the Actuary at HHS, you have the CBO coming out with new information which completely validates the argument we made during the course of this debate; that is, it is not only going to increase costs for most people across this country and increase taxes, but it is also going to have a detrimental impact on the budget and the deficit over the long term.

One of the promises that was made, the so-called good points in the health care bill, was that small businesses would benefit from a small business tax credit. That is something administration has been trying to sell to small businesses, putting out notices from the IRS that there are 4 million small businesses that could qualify for the small business tax credit. That kicks in in 2010. But, even there, as is now coming out, there is a lot of fine print I don't think people read very well.

The Chamber of Commerce said of all the small businesses in this country, about 78 percent of those small businesses are self-employed people. Self-employed people are not covered. Families are not covered under this. More important, there is a disincentive to hire people. We have an economy where we are trying to get jobs growing and come out of the recession and get people back to work.

This small business tax credit caps it. In other words, if you get up to 25 employees you are no longer eligible for it. If your average wage is $50,000 you are no longer eligible for it. So there is a real disincentive to pay people higher wages or hire more people because if you do, you are not going to be eligible anymore for the small business tax credit. A lot of those small businesses are saying: What benefit is there to me if I want to grow my business? Yes, I can take advantage of it for a short period of time—a very short period of time—but I am not going to be able, if I am at that threshold where I start hitting—first, it says it is available for businesses with fewer than 10 employees, then it phases out at 25.

But if you get to 24 employees and you are thinking: My gosh, I would like to hire another person; I no longer will be eligible for the small business tax credit, or I want to pay my employees higher wages but then I hit the $50,000 threshold—it is a real disincentive to create jobs.

One of the things that is being touted as a positive about this legislation is it is, in fact, a disincentive for us to get people back to work and to create jobs.

The overall impacts of this, I think, that are still out there I don't think we are going to know for some time. In fact, I don't think CBO has any idea about what this is going to cost in the second decade. They have estimates of the cost in the second decade. They can make some predictions, but they will admit there is tremendous volatility about that, and unpredictability, when we get into the second decade.

But one thing we know in the first decade, one thing we are finding out now as we get more analysis being completed, is in the first decade, according to the HHS Actuary, this is going to increase the cost of health care more than if we did nothing.

In other words, if we had done nothing and we still had health insurance costs going up as they were about double the rate of inflation, if we had done nothing we would have locked that in. But now we are going to continue to have health insurance costs going up, not only at that rate but a significantly higher rate to the tune of $310 billion in more, higher health care costs over the course of the decade.

If we look at how that impacts individual people across the country, most Americans are going to see their health insurance premiums go up. In fact, some of the provisions of the bill also, as part of the—it was just reported last week that this provision that would allow people to keep their kids on their health insurance plans until they are 26 years old will, in fact, increase health insurance premiums by about 1 percent. That is something that was hailed as one of the benefits or virtues of this legislation.

My point is, contrary to the assertions that were made during the course of the debate with respect to lower costs, deficit reduction, greater access—none of that, according to these studies and analyses, is going to be the case. In fact, it will be the opposite. We will see higher health care costs for most Americans. We will see higher taxes for a lot of Americans. We will see higher taxes for sure—for certain—for a lot of small businesses. And I think we are going to see a lot of businesses that are going to just say—and we have already seen reports of that, as a lot of these businesses look at the impact this would have on their bottom lines—it will cost them a lot to cover their employees. It might be cheaper to pay the penalty and to just shove them into one of the government-run exchanges. I think that is something we have yet to see the impact from.

My prediction would be we will see a lot of small businesses, and for that matter a lot of large businesses, that will come to that conclusion and say it makes absolutely no sense for them to continue to provide health coverage for their employees when they can have the government do it and save their companies a lot of money.

So I think the unintended consequences are something we have yet to see, but we do know for certain the consequences of this legislation, these analyses that have been completed, and studies that have been done by those who are supposed to know a lot about this subject—by that I mean the Actuary at the Health and Human Services Department, as well as the Congressional Budget Office—they are now seeing higher insurance costs, higher premiums, and a significant reduction in the so-called deficit reduction that was promised by the administration.

Furthermore, because of the double counting that is done and the way in which Medicare revenues are double counted—CLASS Act revenues are double counted—even for that matter Social Security revenues, payroll taxes are double counted in this—dramatically understate the deficit impact and the long-term debt implications of this legislation and what it will mean to the next generation of Americans who are going to be stuck paying our bills.

I say all that, not to be the Grim Reaper. We tried during the course of this debate to illustrate as much as we could these very points. We tried to offer amendments that we thought made more sense in terms of controlling costs; to actually address the actual underlying drivers of health care costs in this country as opposed to just expanding coverage, which is essentially what the legislation did. It will cover more people. In some ways it will cover more people by putting more people into Medicaid which will pass on more mandates and more costs to our States.

We have already seen a lot of Governors across the country reacting to that, talking about that, how we are going to pay for that. But there is an additional 34 million people, additional people, who are supposed to be covered in this legislation; about 16 million of those are already going into the Medicaid Program which already under-reimburses providers and also imposes huge new costs and new burdens on our State governments.

There is not a lot of good news to report about this. I think that is going to be the case. I think, regrettably, we could have gone a different direction. We should have gone a different direction. But that being said, we are where we are. I hope over time we will have an opportunity to revisit this issue. If we do not, it is going to have a dramatic impact on future generations, on our economy, both in the short term and long term, as a result of higher costs built into the cost structure for health insurance, higher taxes that will impact small businesses and families across this country, and higher deficits for which future generations are going to be assessed and have to pay.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized.

BAILOUTS

Mr. GREGG. Mr. President, I know we are in morning business. But at the conclusion of morning business I will be offering an amendment which I understand is the next one in order. Since there is nobody taking the morning business time, I will take that time to begin the discussion of that amendment.

The amendment which I am proposing goes to this whole issue of who the taxpayers of America should bail out. I personally don't think they should bail out anybody, to be honest with you. They certainly should not be bailing out financial institutions that have gotten too big. They should not be bailing out automobile companies that have overextended themselves and are doing a poor job. They should not be bailing out other countries. They certainly should not be bailing out States and local governments that are about to default on their debt.

It is very hard to explain to a citizen of New Hampshire or Illinois, Connecticut, New Jersey, Pennsylvania, why their tax dollars should go to bail out a State which is about to default on the debt it has run up because it has been irresponsible in its spending. The obvious State that comes to mind is the State of California, which has very serious problems. But they are self-inflicted problems. These are not problems which were created as a result of some general problems across the country, and they were not problems created, for example, by an event—an environmental event or emergency such as Katrina.

They were totally self-inflicted problems. The question is, Should the American taxpayer, all the rest of us in this country, be put in a position where we have to bail out that State? I do not think we should. That is what my amendment is going to go to.

But I see now the Senator from Florida has arrived. He has the morning business time we are in.

I reserve the remainder of my time and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

GULF OILSPILL

Mr. LEMIEUX. Mr. President, I wish to thank my friend and colleague from New Hampshire for allowing me to take some time on the floor this morning. If I may, I wish to speak about an issue that is of great impact to Florida; that is, this oilspill. This is not the first time I have come to the floor to speak about the potential impact this gulf oilspill may have upon the coast of Florida.

I have called upon British Petroleum to set up a $1 billion fund, a replenishing or evergreen fund, if you will, so we can get to work to get ready to prepare, if this oil is to come ashore, to mitigate its effect, to prevent, as much as possible, the oil from coming ashore.

So far, there has been $25 million given to Florida and other Gulf States, another $25 million is coming for advertising purposes. The good news is, we believe the oil is not ashore yet. But there is some disturbing new information.

This morning, I had the opportunity to speak to RADM William Baumgartner of the Coast Guard. Reports yesterday afternoon tell us some tar balls have washed ashore in Key West, FL. That is far ahead of any projections of oil from this spill being put onto the Loop Current in the southern part of the Gulf of Mexico and coming in contact with the southernmost point of Florida. It was not expected that that would happen for several days. But it could be that the oil is far more spread out than we anticipated. It is not unusual for there to be oil to come upon the shore of Florida or any other Gulf States. In fact, it naturally occurs. We know from the Florida Department of Environmental Protection that there were at least 600 reports in the past 2 years of tar balls and things such as that because, as we have come to find out, this is a naturally occurring phenomenon as well, that oil will seep from the ocean floor and potentially come upon our shores in the form of tar balls and other small things.

But the concern is, these 20 tar balls that came upon the shore yesterday in Key West are from the gulf oilspill. If that is the case, the oilspill is far larger and has spread far more quickly than we could have anticipated.

Right now those samples of those tar balls are being sent for research and evaluation to determine whether they are, in fact, from the oilspill that happened now almost 1 month ago. Whether those tar balls are from the disaster or whether they are naturally occurring, we know this oil slick is spreading. We know it is going to get into the Loop Current, the Loop Current which will then bring that oil down close to the Keys, potentially all the way up the Atlantic side of Florida.

We cannot wait to find out what is going to happen. We cannot wait to pay claims after damages have already been incurred by the people of Florida. Florida is reliant upon the beauty of its State for its economy. We have actually more than 80 million tourists who come to Florida each year, more than a $65 billion tourism industry. Recreational saltwater fishing has a $5 billion impact on Florida and is responsible for more than 50,000 jobs. Recreational boating has an $18 billion impact. We have more registered boaters in Florida than any other State in the Union. Some 90 percent of Florida's population lives within 10 miles of its coast. We are the State, besides Alaska, with the largest coastline and more beaches than any other State.

There have been a lot of problems here. One, why did this spill happen; the failure of regulation by the Department of the Interior, the lack of a quick response by this administration, and a lack of a quick response by British Petroleum, mistakes being made at the scene; why did the blowout preventers fail, all the other things we have read about and heard about. We are having hearings in Congress on what caused this tragic incident to happen in the first place.

We are going to get to the bottom of all those things. Right now we need dollars in the hands of our States in the gulf, to get together our volunteers, our businesses, our local governments, county, city, and State, to try to prevent this oil from coming ashore. We need a flotilla of Florida boaters out there trying to scoop up these tar balls before they come ashore.

We need a volunteer effort not unlike what we had in World War II in Europe, where the British came to Dunkirk and rescued the military and brought them ashore when they were fleeing. We need to get the Florida volunteers, senior citizens and others, on the beaches getting ready to help mitigate this damage that I think, unfortunately, is going to come ashore.

We need the funds to do that today. We do not need them a month from now. We do not need them 6 months from now. We do not need them a year from now to pay claims. We need to do everything possible to keep that oil from coming ashore. If we do that, we can keep our economy, our tourism economy strong. Right now, people need to know they should still be coming to Florida to fish, still be coming to Florida for a beach vacation because the oil has not washed upon the shore in west Florida, on the panhandle, and we only have these 20 tar balls in the Keys. Let's hope that is the end of it.

I did not want to miss this opportunity to come to the floor to make the point again that we need to make sure the money comes now. Senator VITTER and I and others have filed legislation to make sure oil companies are responsible well beyond the $75 million cap for damages to communities that are impacted by these oilspills. It is focused on profits, more than it is focused on a $10 billion cap, which is a proposal that my friends and colleagues have proposed.

Why does it make more sense? Well, based on profits, we know BP may be liable for up to as much as $20 billion for this incident. That is more money to help pay for this. Second, if you just put it on $10 billion, we are only going to have two or three oil companies in this country because no other oil company will be able to get into the business because they will not be able to afford the potential $10 billion cap.

If you do not have enough money to pay for it, $10 billion is pretty illusory anyway. What we need to be focused on is making sure those responsible can pay and pay enough to make sure we solve the problem. A lot needs to be done.

A lot of questions need to be asked. A lot of answers need to be forthcoming. But right now we need the dollars to protect our shorelines and our beaches.

I see my colleague and friend from New Hampshire is ready to speak again.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Morning business is closed.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 3217, which the clerk will report.

The assistant legislative read as follows:

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

Pending:

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

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

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

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

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

Whitehouse modified amendment No. 3746 (to amendment No. 3739), to restore to the States the right to protect consumers from usurious lenders.

Dodd (for Cantwell) amendment No. 3884 (to amendment No. 3739), to improve appropriate limitations on affiliations with certain member banks.

Cardin amendment No. 4050 (to amendment No. 3739), to require the disclosure of payments by resource extraction issuers.

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes of debate, equally divided and controlled between the Senator from Connecticut, Mr. DODD, and the Senator from New Hampshire, Mr. GREGG, or their designees, prior to a vote in relation to amendment No. 4051.

The Senator from New Hampshire is recognized.

AMENDMENT NO. 4051

Mr. GREGG. Mr. President, I sort of did a trailer version of this bill a few minutes ago while we had some time in morning business. But let me discuss the amendment again.

The PRESIDING OFFICER. Will the Senator call up his amendment.

Mr. GREGG. I call up amendment No. 4051 and ask unanimous consent that the pending amendment be set aside.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 4051 to amendment No. 3739.

Mr. GREGG. 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 taxpayer bailouts of fiscally irresponsible State and local governments)

On page 18, between lines 17 and 18, insert the following:

SEC. 5. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PAY STATE OBLIGATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, no Federal funds may be used to purchase or guarantee obligations of, issue lines of credit to or provide direct or indirect grants-and-aid to, any State government, municipal government, local government, or county government which has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(b) LIMIT ON USE OF BORROWED FUNDS.—The Secretary shall not, directly or indirectly, use general fund revenues or funds borrowed pursuant to title 31, United States Code, to purchase or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(c) LIMIT ON FEDERAL RESERVE FUNDS.—The Board of Governors shall not, directly or indirectly, lend against, purchase, or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, local government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government. Notwithstanding any other provision of law, no Federal funds may be used to pay the obligations of any State, or to issue a line of credit to any State.

Mr. GREGG. Mr. President, this amendment is pretty simple. It says American taxpayers should not be put on the hook for States which have been profligate. It says, specifically, that: Federal funds cannot be used to purchase obligations of States or local communities that are in default or are about to default, unless those States have gone through some sort of crisis such as the Katrina situation.

But if the default that the State or local community is about to experience is the function of their failure to discipline their fiscal house, then we are not going to ask the taxpayers across this country to support that error in judgment and that misguided fiscal policy of that State or that local government.

If we do not have this type of rule in play, basically we will be setting up a situation where the American people will become the guarantor of inappropriate actions across this country by legislators and city governments. You will have this untoward situation where you will basically create an atmosphere that there is an incentive for State governments and local communities to not be fiscally responsible.

It is this moral hazard issue. We debated it at considerable length when we discussed too big to fail in the banking system. This bill has a lot of issues, as far as I am concerned, but one of the things it actually handles reasonably well is the issue of too big to fail. It does need some adjustment. But it basically handles that issue pretty well.

We have designed language in this bill between Senator DODD and Senator SHELBY, which essentially says: No longer will the American taxpayer be presumed or in any way expected or have any obligation at all to support a financial institution which has gotten too large and has taken on too many risky decisions and is therefore in fiscal distress. That institution will fail. Its stockholders will be wiped out. Unsecured bondholders will be wiped out and the American taxpayer will not come in and defend that situation.

Too big to fail ends with this bill, hopefully. But it should apply also to States and local governments. We should not create the moral hazard of having taxpayers in New Hampshire or taxpayers in Nebraska or taxpayers in New Mexico responsible for profligate activity in other States.

In fact, many of our States, of course, have balanced budget requirements. In fact, in Nebraska, they do not even allow any debt, period. They have a constitutional amendment that says, there can be no debt. So they are extremely disciplined, these States, in the way they handle their budgets.

The taxpayers and the citizens of those States expect their leaders to be disciplined. So how can we ask those taxpayers and those citizens in those States that have been disciplined, who have elected people who are willing to live within their means as they govern, whether it is at the community level or at the State level, how can we ask those citizens across this country to go in and bail out other States and our communities that have been totally undisciplined in managing their fiscal house and have put themselves at huge distress and have defaulted on their debt or are about to default on their debt?

This is not acceptable. If we are going to have a bill which addresses the issue of too big to fail, it should apply to this type of a situation. So I have offered this amendment. It is very simple, as I said. It prohibits Federal funds from being used to purchase or guarantee obligations of States and local communities that are in default or about to go into default.

It is a pretty strict standard, pretty clear. If you have a State that for reasons of its own making has created a fiscal mess of inordinate proportions and cannot pay its debt, it cannot come to Washington and say: We want you to bail us out.

That is not right. That is not appropriate. So this bill bans that sort of an event from occurring. Why do we need to do this? It is pretty obvious. There are a couple States in this country that have been irresponsible in their spending, that have not disciplined themselves, and that, I think, are expecting everybody else in this country to bail them out.

I sure do not want to be part that. I do not want my taxpayers in New Hampshire to be part of that. It is not fair that they should be part of that. Those States are going to have to figure out how to straighten out their own fiscal house. They should have to do that within the terms of their own spending streams and their own revenue streams.

They should not expect the Federal Government to come in and take them out of their distress, which was self-imposed and self-created. There is an exception in this bill. There is this language so that if a State is put into severe distress because of an emergency situation, such as a Katrina-type situation, this would not apply. Obviously, it should not apply then.

If it is a self-imposed event, simply resulting from the human nature of legislators and city councils to sometimes spend a heck of a lot more money than they have and that they can take in under their structure, they should have to pay for it and figure out how to deal with it themselves. They should not pass that problem on to the American people by financing it through Washington. It is consistent with the theme of this bill that there should be nothing that is too big to fail in this country, including State governments and local governments or financial institutions. I hope my colleagues will support the amendment.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. BURRIS. Mr. President, as I take the floor today, my colleagues and I are caught up in a momentous debate over the shape of our Wall Street reform bill.

This legislation will not only help secure America's continuing economic recovery, it will also help prevent this kind of economic crisis from happening again in the future.

It would create commonsense regulations designed to keep major institutions from gambling with America's economic stability, and it would extend a helping hand to the underserved populations that are currently suffering the most especially minority individuals and the elderly.

I believe when the history of this economic crisis is written, we will judge that its most damaging legacy was the harm it did to people's savings and investments.

It wiped out stock portfolios and 401(K)s. It forced many fixed-income retirees to go back to work, and it undermined the hard-earned retirement security of an entire generation of Americans. So it is time to take action.

We need to do everything we can to protect people's savings, investments, and retirement security.

In a broad sense, this means limiting the risk that big firms can pose to the economy as a whole, and shoring up our overall financial stability. But it also means we need to guard against fraud and abuse.

We need to prevent scam artists and people like Bernie Madoff from taking advantage of hard-working Americans, so folks can breathe a bit easier, so people know that their money is safe.

Today, many Americans—including 39 percent of minority households—invest in the financial markets.

Most of these folks expect their portfolio to be there for them when they retire.

But when big companies sell risky investment packages, and then bet against those investments—when companies have no incentive to be honest about high-risk opportunities—regular folks are bound to get the short end of the stick.

That is why we need to institute basic rules of the road—to cut down on fraud and misrepresentation, and make sure financial institutions are operating fairly.

That is why our Wall Street reform bill includes a number of key protections for American investors.

Our legislation would create a new program at the Securities and Exchange Commission which would mandate an annual assessment of all internal supervisory controls, and encourage folks to report violations.

It would establish a new Office of Credit Rating Agencies to strengthen regulation, expose hidden risks, and make sure a warning system is in place so we are never caught off guard again.

Our bill would also require companies that sell mortgage-backed securities to hold on to at least 5 percent of the credit risk—or meet underlying loan standards—so their performance is tied to the products they are distributing.

It would require these companies to be more transparent about the assets that underlie these securities, and more straightforward in their quality analysis.

Finally, our legislation would give a company's shareholders the right to a nonbinding vote on executive pay so pay can be brought in line with performance, and these folks can make their voices heard.

Together these measures would help to bring transparency and stability back to the financial markets.

This would bolster the integrity of people's investments, and would help ensure that their retirement savings are secure.

There will always be risk associated with making investments, and that is exactly as it should be.

That is how our free market system is designed to work.

But we need to eliminate the possibility that fraud and abuse can undermine the security of our entire economy.

We need to pass rules of the road that will keep financial institutions honest, so ordinary Americans will be protected from serious harm at the hands of those they entrust with their savings.

I yield the floor, suggest the absence of quorum, and ask unanimous consent that the time under the quorum be charged equally to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KOHL. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KOHL. I ask unanimous consent to speak for up to 5 minutes.

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

Mr. KOHL. I joined the Senate Banking Committee about a year and a half ago, shortly after failures on Wall Street forced a taxpayer bailout. Bear Stearns, AIG, and other pillars of our economy had collapsed, and we learned that our financial system was built on a foundation of sand. The crisis on Wall Street hit Wisconsin households hard. Families lost their homes, workers lost their jobs, and retirees lost their life savings.

Seventy years ago Congress reacted aggressively to our gravest economic crisis, and put us on the road to prosperity by creating new regulations and institutions that avoided a meltdown for generations. By creating agencies like the Securities and Exchange Commission and establishing margin requirements, the Federal Government helped put the markets back on track.

We are now called on to set up rules to put our economy on the right track just like we did in the 1930s. For over a year, the Senate Banking Committee held hearings to study the financial crisis. We know that the conditions that led to this mess did not occur suddenly in 2008, and these problems cannot be fixed overnight.

Wall Street needs accountability and transparency to avoid future financial meltdowns. The legislation we are considering takes vital steps to end ''too big to fail,'' bring unregulated shadow markets into the light, and make our financial system work better for everyone.

This bill protects Main Street jobs by focusing on Wall Street, where the crisis began. Community banks and credit unions have continued to act responsibly, and should not be subject to new layers of regulation that will impede their business.

The bill also protects consumers, and I would like to thank Senator AKAKA for working with me on the consumer protections in title XII of this bill. This title will help mainstream financial institutions make small loans on affordable terms to people who are currently limited to riskier choices like payday loans. This title will also help Americans get bank accounts, and encourages banks to offer financial education to their customers.

I would also like to thank my friend and Chairman CHRIS DODD for his leadership on this legislation. Fixing our financial system is a complex challenge, and Chairman DODD has worked tirelessly to get this done right. He has been called upon to do so much in this Congress, and he has done it all with fairness, wisdom, and good humor. We will miss his steady hand in the future.

I hope the Senate will continue to work in a bipartisan manner to complete this important bill. Our economy is slowly recovering from a devastating shock, and we must ensure that our progress is built on a more secure foundation. Continuing business as usual on Wall Street is not an option.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I rise to speak on the Gregg amendment and ask unanimous consent to be included as an original cosponsor.

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

Mr. BOND. It is important we recognize what a fiscal crisis we face in the United States. Today, America's public debt stands at over $12.9 trillion. Regrettably, that will be on our children's and grandchildren's credit cards. We have, just last year, raised that debt by $1.4 trillion, and it will be $1.6 trillion added this year. This mountain of debt is going on the backs of our children and grandchildren. We will have to pay the interest on it, but they are the ones who will bear the real burden. Taxpayers are already bailing out Wall Street and failed banks with $700 billion; GM and Chrysler, $80 billion; the toxic twins, Fannie Mae and Freddie Mac, more than $1.2 trillion. We have tried unsuccessfully to deal with Fannie and Freddie in this financial regulation bill. When we look at the cause of the financial crisis, it is the subprime market, the bad home loans that were enabled by Fannie and Freddie being willing to purchase them. In my humble estimation, we should not pass a financial regulation bill designed to prevent a reoccurrence of the crisis which we have just gone through without dealing with Fannie and Freddie.

But when you look at the budget deficit, taxpayers are on the hook for $1 trillion in a failed stimulus package which only created jobs in the government. It was a government expansion, not a measure to create jobs in the private sector.

The President and majorities in Congress have also recently created a new taxpayer-funded entitlement for health insurance. Many of us in December were pointing out the fact that this bill would add to the debt, it would drive up costs of private health insurance, it would limit the ability of seniors on Medicare to get their services by cutting the amount of money going into Medicare, and it would lead to higher taxes.

Funny thing, the new Actuary at the CMS has just come out and repeated those same four things. The health care bill is not only going to drive up private insurance costs, you are not going to be able to keep the same plan you had, it will continue to squeeze down the services Medicare recipients can receive, and it will add to the deficit and, thus, the debt.

But how much more debt and how many more unfunded liabilities can we take on before destroying the economy? What is happening in Greece, regrettably, could happen here. I strongly support the Gregg amendment, which will ensure that taxpayer funds are not used to bail out States.

We talked about too big to fail in terms of financial institutions. We ought to be talking about it in terms of governments. We adopted an amendment saying we should not use taxpayer money to bail out Greece. But we should not be in the position where we would be called upon to bail out States which have been unable to get their spending under control and get their spending in line with their revenues.

I know a little bit about tight State budgets. When I was Governor of Missouri, we had to make tough decisions. I came back into office as Governor in 1981, with a huge deficit in the middle of the year, and we could not borrow money to cover that deficit. So we made major, drastic cuts in spending, and it was not pleasant. I was picketed by people who had to be laid off from the State government. But we readjusted and managed to provide services our State needed and put the State back on a sound financial footing.

States all across the country are taking tough steps. There are areas where they have agreed to go without services to get their budget back in balance. Most States do not have the ability to run deficits. Those that do have the ability to do that should not be operating on the false assumption that the Federal taxpayers and our children and our grandchildren will come back in and be asked to take the irresponsible and unacceptable task of putting a burden on residents of the States that have made the tough decisions and cut spending to pay for the mounting debt of other States that have spent their way into the red for years.

In fact, a bailout of States would create a disincentive, an ongoing disincentive, for State leaders to make tough decisions and implement necessary reforms to get their budgets in balance and future liabilities under control.

The Missourians I hear from are very angry. They are angry every day at spending money on things that are too big to fail. They are angry that the government continues to use their hard-earned dollars to help companies such as AIG and potentially to help a country such as Greece, which failed, instead of paying down our debt and cutting the runaway spending.

This bailout mentality must end. I thought that was one message we were going to carry with this legislation. I hope this legislation actually does, although I am concerned there are provisions that could enable the Federal Government to continue bailing out and taking over more businesses.

The Federal Government must not continue to be an enabler of those companies or those countries or States that continue to spend beyond their means. It is time for the leadership at the State, as well as the national level, to make the decisions necessary to put all of us on a sound financial footing.

I thank Senator GREGG for his strong leadership on budget issues and for offering this amendment, and I urge my colleagues to support his amendment.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, first, let me thank the Senator from Missouri for his thoughtful and substantive discussion of this amendment. As a former Governor, I think he appreciates how tough it is to maintain balances in the State budget, and you have to make the very difficult decisions to make sure your State does not get its fiscal house into disarray and end up defaulting on debt. That would be the worst thing that could possibly happen if you were a Governor—or one of the worst things. In any event, he certainly did that when he was Governor. I tried to do that when I was Governor.

The PRESIDING OFFICER. The time of the Senator from New Hampshire has expired.

Mr. GREGG. Mr. President, I ask unanimous consent that after the Senator from Connecticut has used up the time that was originally allocated to him, the remaining time between now and 12:05 be divided equally between the two sides.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unanimous consent to speak on that remaining time.

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

Mr. GREGG. I think the Senator from Missouri has made a superb case that it is inappropriate to set up a structure where States can be profligate or communities can be profligate and then basically throw the problems they have created on the rest of the country and the taxpayers of the rest of the country—whether they are from New Mexico or Missouri or Connecticut or New Hampshire. There is no reason why our taxpayers should pay for inappropriate fiscal actions by some other State or some other community. Rather, those States and communities should have to straighten out their own financial house and not expect that they can come to the Federal Government for a bailout if their problems have been self-inflicted, created by their own failure to discipline their fiscal house.

As I said earlier in the discussion, a lot of States have a balanced budget amendment. I am not sure whether Missouri did—New Hampshire did not—but we understood if we did not run fiscally responsible budgets in New Hampshire, we would find our debt downgraded. That is what we were worried about—to get to the point where you might actually default, which would be, as I said, a totally terrible situation.

But in States that have balanced budget amendments, States which have worked very hard to keep their fiscal house in order, the taxpayers of those States should not have to suddenly step up and take care of the taxpayers of another State that has failed to do that. It is not fair. It is not equitable. You certainly do not want to create that atmosphere because if you have an atmosphere where one State can throw its problems on to every other State, then you create an incentive for States to be profligate and irresponsible.

AMENDMENT NO. 4051, AS MODIFIED

With those comments, Mr. President, I ask to modify my amendment. I believe the modification is at the desk.

Have we shared the modification with the Chairman?

Mr. DODD. I believe so.

I ask the Senator, this is the modification?

Mr. GREGG. Yes.

Mr. DODD. As I understand it, the modification is a new paragraph:

(d) Limitation.—Subsections (a) and (b) shall not apply to federal assistance provided in response to a natural disaster.

Is that right?

Mr. GREGG. That is correct.

The PRESIDING OFFICER. Is there objection?

Without objection, it will be so modified.

The amendment, as modified, is as follows:

On page 18, between lines 17 and 18, insert the following:

SEC. 5. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PAY STATE OBLIGATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, no Federal funds may be used to purchase or guarantee obligations of, issue lines of credit to or provide direct or indirect grants-and-aid to, any State government, municipal government, local government, or county government which has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(b) LIMIT ON USE OF BORROWED FUNDS.—The Secretary shall not, directly or indirectly, use general fund revenues or funds borrowed pursuant to title 31, United States Code, to purchase or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(c) LIMIT ON FEDERAL RESERVE FUNDS.—The Board of Governors shall not, directly or indirectly, lend against, purchase, or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, local government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government. Notwithstanding any other provision of law, no Federal funds may be used to pay the obligations of any State, or to issue a line of credit to any State.

(d) LIMITATION.—Subsections (a) and (b) shall not apply to Federal assistance provided in response to a natural disaster.

Mr. GREGG. A parliamentary question: Mr. President, don't I have the right to modify without asking for unanimous consent?

The PRESIDING OFFICER. There was a time limit on the amendment. That did require unanimous consent.

Mr. GREGG. I thank the Chair.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent that the time until 12:05 p.m. be divided for debate with respect to the Gregg amendment No. 4051, and that at 12:05 p.m., the Senate proceed to vote in relation to the amendment, with the provisions of the previous order remaining in effect.

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

Mr. DODD. Mr. President, let me address this amendment, if I can.

First of all, let me express my admiration and respect for JUDD GREGG. He and I are good friends. We have worked together on numerous issues over the years, so I have developed a great deal of respect for him. In fact, it was JUDD GREGG and a handful of others who made it possible, 18 months ago, for us to develop the emergency economic stabilization bill. Without his leadership and support, I think our country, unarguably, and, beyond our own borders, the world would have been in much more difficult economic shape—had it not been for his leadership, along with others who pulled together that proposal that passed this body 75 to 24 on that night in late September of 2008. So my admiration for Senator GREGG—and among other accomplishments he has had during his service here—is strong.

This proposal, however, goes way beyond anything I have ever quite seen here, which basically says the Federal Government cannot provide any help to States and local governments. Then the wording of it: even if you might be in trouble.

I go back and I think of New York City, a major metropolitan area of our country, which was in economic difficulties. I do not remember the history, exactly, of what occurred that brought the city to that fiscal brink, but it was serious enough, and there was a serious debate here that occurred before I became a Member of this body over what could be done to help put that city back on its feet again.

As a result of the efforts, both in New York, New York State, as well as here, New York recovered, paid back whatever it was it received in financial assistance, and, arguably, the most important metropolitan area of our Nation survived a fiscal disaster.

Again, now, through the IMF and the World Bank, we appropriate moneys each and every year to support international organizations that have as one of their purposes—or their purpose is to provide financial assistance and stability to nations that are struggling. In many cases, I suspect they are struggling for exactly the same reason my colleague and friend from New Hampshire has identified: They made bad choices, bad decisions. I am not suggesting their problems were afflicted by outside forces, although that could happen.

Certainly what we are watching today in Europe is a classic example, where you have other nations now in trouble because of one Nation's I will even call it fiscal irresponsibility. I am not sure that is the final conclusion, but let's call it that. Yet we find the declining Euro, we find debt in trouble in that country, so other nations are feeling the effects of it.

We have all seen where events could occur in our own country: The automobile industry in Michigan ends up in deep trouble. That has an impact on other States. It certainly affects the economy of Michigan. The idea is ''one nation,'' and we are one nation. We are not Europe where we have separate political structures and separate rules and regulations and one currency which pose difficulties. We are one people here, whether you live in New Hampshire or Connecticut or Arizona or Alaska or Hawaii or Texas or Oklahoma. Wherever it is, we are one people.

Lord knows, we do not want to reward irresponsible behavior on the part of a local government or a State. But the idea that we are going to terminate or not provide any kind of assistance because we have drawn the conclusion, in the wording of this amendment, as I read it in this language here:

> The Board of Governors shall not, directly or indirectly, lend against, purchase—

All these things we could do here—

> State government, municipal government, local government, or county government [that] has defaulted on its obligations, is at risk of defaulting, or is likely to default. . . .

Who makes that determination: ''is likely to default'' or ''is in danger of''? Is there some omnipotent force that is going to lean over all of this and say: I think such and such a county or such and such a State is ''in danger of''? That is pretty vague language here to decide, all of a sudden, regardless of the reasons.

We have excluded natural disasters. I appreciate that addition to this amendment. But there can be other factors which can contribute to these circumstances in a State.

Again, according to the language on the first page of the amendment, it says:

> Notwithstanding any other provision of law, no Federal funds may be used to purchase or guarantee obligations of, issue lines of credit to or provide direct or indirect grants-and-aid to, any State. . . .

I remind my colleagues that is a pretty broad, sweeping proposal.

Medicaid; the Children's Health Insurance Fund; the CDC's disease control, research, and prevention programs; the Special Supplementary Nutrition Program for Women, Infants, and Children; the Unemployment Trust Fund; Veterans Health Administration medical services; Department of Justice, State, and local enforcement assistance; FEMA—FEMA, I guess, may be excluded because of ''a natural disaster''—but the idea we would be depriving a State of these resources seems to me would only exacerbate the problem.

Again, I will acknowledge in certain circumstances local governments or State governments have made irresponsible choices. But you do not blame the entire population of that State or locality because some leadership has made a bad choice and then cut off Medicaid, nutrition assistance, and so forth. Do you blame a child living in a State because some Governor, a mayor, a county executive has made dumb decisions, and all of sudden, we say: ''I am sorry, you happen to live in that State. You are going to have to move. Go someplace else in order to get help''?

I, for the life of me, do not understand. I understand the frustration we all feel when we read about States and localities that could have made better decisions. But, again, I remind my colleagues here, we are one Nation—one Nation. ''E Pluribus Unum''—they are the words right above the Presiding Officer's chair—''from the many, one.'' We are many: Over 300 million in 50 States and hundreds and hundreds of jurisdictions across the country. Thank the Lord we are not just some collection of disparate entities bound together by a common currency and little else. We are bound together by much more as a nation.

So I hope my colleagues, at 12:05 or thereafter when we vote on this, would say respectfully to our friend from New Hampshire that this amendment ought to be rejected.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I admire the Senator from Connecticut and I appreciate what he has done in his efforts to stabilize the financial industry in this country. At the core of what he has done, of course, is to say: No more bailouts. That is essentially what this bill is about: No more bailouts; the taxpayers of this country will not step up and bail out large financial institutions which have taken actions which have put them at risk financially, and the only people who should bear that burden are the stockholders and the unsecured bondholders of those institutions.

What this bill also says is no bailouts, no bailouts for States which are in default or about to default on their debt. They are doing it not as a result of some external event forcing them into dire straits but because they simply spent their way into a fiscal situation where they can't pay their own debts. Why should the people of Connecticut, the people of New Hampshire have to bail out the people of California—let's be honest about this; this is about California, the people of California—because their government has been totally irresponsible in spending for a large number of years, has created a massive obligation, especially in their public pension programs, which they can't afford to pay? Why did they run up those obligations? So that people who were running for office in California could get elected. Just promise this, promise that, promise this, promise that. Then, the people in New Hampshire are supposed to pay to help those people get elected on those promises which they could never fulfill and for which they created obligations to pay for? I don't think so. I don't think that is fair or right.

If the people of New Hampshire and the people of Connecticut and the people of New Mexico have been fiscally responsible in the managing of their towns and their cities and their States and their counties, why should they suddenly have to pay for California which hasn't been? Clearly, they shouldn't. If we are going to have a no bailout bill, it ought to apply to California as well as to large financial institutions that have acted inappropriately and unwisely.

That is all this says. It doesn't say you are not going to be able to get your usual Federal assistance that comes through the usual course of action. That is a bit of hyperbole. I appreciate the intensity and energy of the Senator from Connecticut, but that is hyperbole. This is about not having Federal funds be available to States that are in default or about to go into default on their debt as a result of the actions of the State leadership as elected by the people of that State and not asking the people in the rest of the country to have to pay the cost of those inappropriate actions and those actions which were fiscally irresponsible. It seems like a proposal which is totally consistent with the basic purpose of this bill, which is to end bailouts.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I will not take a long time to respond.

First of all, the distinction between a public company—and, again, my colleague is absolutely correct; we want to end bailouts of those companies, and we certainly want to discourage the kind of behavior that can put a county or a city or a community or a State in fiscal jeopardy.

But the legislation also looks backward. On page 2 of the amendment it says: ''Municipal government, local government, or county government which has defaulted on its obligation.'' So it isn't just those that may default. Orange County, CA, for instance, defaulted, and worked itself out of its difficulties. But now I am to understand that because Orange County was in default a number of years ago, got out of its difficulties, yet the adoption of this amendment would preclude Orange County potentially from getting any kind of assistance. I don't understand that.

Again, there are a lot of reasons, aside from natural disasters, why this can happen. Some of them have nothing to do—a major industry which all of a sudden finds itself departed. How many times have we seen a company located in a State or a locality, particularly a county, that is the major employer, employs thousands of people, all of a sudden go offshore. There is a dramatic decline in tax revenues that come in. So that community's obligations to its citizenry on education, health, highways, everything else, all of a sudden are in jeopardy. That is not mismanagement of the government. It is that company made the decision to leave. All of a sudden we find an area in trouble and they turn to their national government for some help, and we are saying: Well, because you are at risk of defaulting—not that you have defaulted; the language is, ''is likely to default or at risk to default,'' you can't get any help because you might be in trouble, not because you have done anything wrong necessarily but because it has happened to you. I just feel that such a step would be draconian, in the extreme, when it comes to the people of our Nation who, from time to time, need help with that list of obligations that would have to be curtailed if a community is likely to or is at risk of defaulting or has defaulted on its obligations. Over what period of time? Are we talking about 10 years, 20 years, over 100 years? How far do I go back to determine whether someone has defaulted? What were the reasons for it that occurred at that time? It provides none of that relief, except that maybe it was a natural disaster.

Ms. STABENOW. Would my distinguished colleague yield for a question?

Mr. DODD. I am happy to yield.

Ms. STABENOW. First, I would say to our distinguished chair of the Banking Committee that when you describe communities where businesses have collapsed and left communities struggling, certainly we have many of those in Michigan. Through no fault of the communities, and many times through no fault of businesses in terms of our recession right now, we have many communities in this situation.

Would the Senator from Connecticut agree that what we are talking about is not the cities or counties but the local communities and what happens? It is people. It is whether they are going to have a police force, police on the street or whether they are going to have the firefighters being able to answer if there is a fire or whether they are going to be able to pick up the garbage or whether they are going to be able to do snow removal on the streets. Aren't we talking about whether communities—people, families, and communities—if they need help, whether we would be able to respond to them? So it is not about the government; it is about whom it serves and the people who would be hurt through something such as this; would the Senator agree?

Mr. DODD. Mr. President, my colleague from Michigan is absolutely correct and that was the point I made earlier and she makes it even more strongly. Again, I don't want to sound like I am in a civics class, but we are not just sort of a collection of disparate States and communities, we are a country, we are one Nation. It has been a great source of our strength. Our country has been through difficult times periodically, obviously through some natural disasters, through some manmade disasters. We are dealing with one as we speak. That is not a natural disaster occurring in the Gulf of Mexico; that is a manmade one. People didn't put in the proper safeguards and all of a sudden we are looking at the worst environmental disaster maybe in our Nation's history.

What do we say to the States of Louisiana or Alabama or Florida, depending upon where these currents flow, and all of a sudden we find major industries—tourism, for instance, in the State of Florida. I don't know what percentage of the economy of that State depends upon tourism, but I suspect a pretty heavy number. All of a sudden beaches are closed on the west coast of Florida. Maybe that current brings it around to the east coast. All of a sudden hotels and resort areas are shut down. The economy begins to falter. A manmade disaster, created through the fault of some engineers or whoever else, of an oil company: What do we say if this amendment was adopted? I am sorry, Florida. It is in danger of defaulting or at risk of defaulting on its obligations because the revenues that would come into that State through the normal exercise of its business practices was affected not by a natural disaster but by one created through the fault, malfeasance or misfeasance of a company that caused this kind of danger—or Louisiana, which has already been through a natural disaster and is now facing this one, or Alabama as well and its coastline.

So, again, for all these reasons, I urge my colleagues to reject this amendment. I thank my colleague from Michigan for making her points.

I reserve the remainder of my time, yield the floor, and note the absence of a quorum. I ask unanimous consent that the time be charged equally between the two sides.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3884, AS MODIFIED

Mr. DODD. Mr. President, on behalf of Senator CANTWELL and others, I ask unanimous consent to send a modification to the desk.

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

The amendment, as modified, is as follows:

At the end of subtitle C of title I, add the following:

SEC. 171. LIMITATIONS ON BANK AFFILIATIONS.

(a) LIMITATION ON AFFILIATION.—Beginning 2 years after the date of enactment of the Restoring American Financial Stability Act of 2010, no member bank may be affiliated, in any manner described in section 2(b), with any corporation, association, business trust, or other similar organization that is engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation stocks, bonds, debenture, notes, or other securities, except that nothing in this section shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business, except such as may be incidental to the liquidation of its affairs.

(b) LIMITATION ON COMPENSATION.—Beginning 2 years after the date of enactment of the Restoring American Financial Stability Act of 2010, no officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve simultaneously as an officer, director, or employee of any member bank, except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when, in the judgment of the Board of Governors, it would not unduly influence the investment policies of such member bank or the advice given to customers by the member bank regarding investments.

(c) PROHIBITING DEPOSITORY INSTITUTIONS FROM ENGAGING IN INSURANCE-RELATED ACTIVITIES.—

(1) IN GENERAL.—Beginning 2 years after the date of enactment of this Act, in no case may a depository institution engage in the business of insurance or any insurance-related activity.

(2) DEFINITION.—As used in this section, the term ''business of insurance'' means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

Mr. DODD. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BOND. 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. BOND. Mr. President, I ask unanimous consent to speak for 2 minutes remaining on Senator GREGG's time.

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

AMENDMENT NO. 4051

Mr. BOND. Mr. President, the argument has been made that this bill would somehow limit responses to natural or manmade disasters, a natural disaster such as a flood or a tornado, a manmade disaster such as what is occurring in the gulf.

I have read this language. It is very clear. It is talking about defaulting on obligations. It in no way restricts the ability of the Federal Government to respond to disasters.

I used to chair the subcommittee on the Federal Emergency Management Act, and when there was a disaster, we provided money for those disasters, to deal with those disasters. But one cannot continue to present unbalanced budgets and enact them into law and continue to drive up the debt and say it is because of a natural or manmade disaster.

That is a stupid decision. I don't think the taxpayers of the United States should be in a position of bailing out governments that make bad decisions and that, year after year after year, spend more money than they are taking in on their ongoing obligations. It has nothing to do with a sudden natural disaster or even a manmade disaster such as the spill in the gulf, which is partly natural and partly manmade. I agree that we should not stop providing assistance where there is such a disaster, but that is not the focus of this amendment.

I urge my colleagues who really believe we should not be promising to bail out profligate States that continue to spend more than they take in, we should not bail them out with taxpayer funds.

I yield the floor.

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

The PRESIDING OFFICER. Two minutes 40 seconds.

Mr. GREGG. Mr. President, I really think the Senator from Connecticut is sort of reaching in his arguments here. This is really about a State like California defaulting and the rest of us having to pay for it. That is what this is about. This is about a State that has been irresponsible, to be kind, with its spending and now finds itself in a situation where it cannot pay its debt. You know the legislators of that State are saying: Let's go to Washington and get the money so that we can get reelected on the basis of spending all this money. That is not fair. That is not how a federalist system is supposed to work. You cannot argue that the American system was set up so that when one State would be profligate, another State would have to pay for the cost of that profligateness.

The Senator's bill uses this same language. The Senator from Connecticut had phraseology that claimed my language as inappropriate on the issue of default and how he defined it, and it basically mirrors his language in title II. If it works in title II, it ought to work here.

The real issue is that we should not set up a situation where States and communities can expect to spend a lot more than they can take in, know they are spending more than they are taking in, run up a lot of debts they cannot pay, and then come to the rest of America and say: You pay our debts because we want to get reelected. That is what this is about. It is limiting the ability of States to act in a fiscally irresponsible manner and expect the country will stand behind them and bail them out.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I ask unanimous consent that the time run equally against both sides.

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

Mr. GREGG. I yield the floor.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the Gregg amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 47, nays 50, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—47

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

NAYS—50

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

NOT VOTING—3

Byrd	Lincoln	Specter

The PRESIDING OFFICER. On this vote, the yeas are 47, the nays are 50. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, in a minute I will note the absence of a quorum, but we are working on a consent agreement that would schedule two votes after the weekly caucus conference lunches. We will possibly be able to do that. We are trying to get that written up. As soon as we get it written up, I will present it. But I see my colleague from Texas is ready to speak, so I will yield the floor and let her go ahead.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I was going to speak on the amendment Senator LANDRIEU and I have, the Hutchison-Landrieu amendment. I will be happy to yield any time the chairman of the committee wishes to clarify. Until he does, I will speak on the

Hutchison-Landrieu amendment, which is an amendment that has been filed but is not yet pending.

This is an amendment that will provide a permanent exemption for publicly traded small businesses with less than $150 million from the costly reporting requirements mandated by section 404(b) of the Sarbanes-Oxley Act. In removing this great burden, our amendment will free small businesses to focus on the capital investment and job creation that we need now to get our Nation's economy back on the right track.

In 2002, Congress passed the Sarbanes-Oxley Act in the aftermath of the huge accounting frauds at Enron, Tyco, and Worldcom. This landmark bill was enacted to restore investor confidence in the wake of these shocking abuses by making it harder for companies to misrepresent corporate earnings.

Hindsight is 20–20, though, and, while the Sarbanes-Oxley Act was well intentioned, it has created unexpected and unprecedented costs for the small to medium sized businesses that serve as the backbone of our economy.

The main culprit of this immense burden on small businesses is section 404 of Sarbanes-Oxley. Here a public company is required to include in its annual report an assessment of the effectiveness of its internal control structure and procedures for financial reporting. The company's auditor must attest to and report on the company's assessment.

The compliance costs of section 404(b) have been far greater than expected. In 2009, the SEC reported that companies paid an average of $2.3 million to comply with section 404. When taking into account the size of a company, small businesses with less than $150 million in public float, or the shares held by outside investors, are disproportionately encumbered by section 404(b), facing a compliance cost that is seven times greater than large companies.

Small businesses are being forced to tie up time and money on burdensome amounts of paperwork. They should be directing these resources toward operations and capital investment that will create jobs and spur our economy toward recovery. The Hutchison-Landrieu amendment will fix this issue, ensuring that smaller public companies will no longer be subject to the cost burden imposed by section 404(b).

Under current SEC rules, small public companies with less than $75 million in public float are now exempt from section 404(b). However, this exemption expires in June. The Hutchison-Landrieu amendment builds on this existing exemption and takes into account recommendations from the SEC to increase the exemption. Our amendment will permanently exempt small businesses with less than $150 million in public float from the section 404(b).

I am pleased that my amendment has the strong bipartisan support of my colleague, the distinguished chair of the Small Business Committee, Senator LANDRIEU. I also thank our other cosponsors, Senator BOB BENNETT, Senator SCOTT BROWN, Senator CRAPO, Senator DEMINT, and Senator HATCH.

We are offering our amendment on behalf of the small businesses across our country that face this disproportionate burden. We have the support of: The Biotechnology Industry Organization, The Competitive Enterprise Institute, TechAmerica, The Association for Competitive Technologies, Advanced Medical Technology Association, and Technet.

These groups represent the companies that want to innovate. That want to grow. They want to excel. But their companies are spending vast amounts of money on compliance costs, and, according to an SEC study, this money is being misdirected. The SEC reports that 75 percent of companies believe that the attestations of auditors required by Sarbanes-Oxley have little to no impact on investor confidence. Thus, rather than devoting important resources to invest and create jobs, small businesses are spending millions of dollars on paperwork that investors don't even care about.

Our amendment also has the support of the Independent Community Bankers of America, and the American Bankers Association. Our community banks want to lend to worthy entrepreneurs and help jump start our economy. But our entrepreneurs and small businesses are hesitant to grow if they are hit with the high costs associated with 404(b) compliance.

We are also offering this amendment because of the unintended consequences on our initial public offering market brought by section 404(b). Since the enactment of Sarbanes-Oxley in 2002, IPOs in the United States have been lower each year than in every year of the 1990s. Even in 2006, the peak year of economic growth after Sarbanes-Oxley, the 162 U.S. IPOs were far below the 295 IPOs issued in 1991 when our economy was mired in recession. This drop-off in IPO's hit the map in 2008 and 2009, when, according to a Renaissance Capital report, the IPO level was lower than any period since the Vietnam war.

Why is this? Why are companies avoiding initial public offerings? Why are companies refusing to access the capital that the stock markets provide? Quite frankly, companies do not want to deal with onerous burden of Sarbanes-Oxley. And based on the costs I mentioned, who can blame them?

This provision incentivizes small businesses to remain private to avoid 404(b) altogether. Worse, it incentivizes small businesses to go abroad to markets such as the London Stock Exchange, which has advertised itself as a Sarbanes-Oxley Free Zone, to encourage our companies to do their IPOs there instead of in Ameirca.

Small businesses should not be incentivized to stop growing or list overseas. The Hutchison-Landrieu amendment also has the support of the New York Stock Exchange and NASDAQ, who want to see American companies list here and remain homegrown. Now more than ever, we should be encouraging our Nation's small businesses to invest in new jobs, plants and markets. Our amendment will help small businesses do this by reducing their paperwork costs. A similar measure was included in the House financial reform language, and with immense bipartisan support. I ask my colleagues to support the Hutchison-Landrieu amendment to permanently exempt small businesses under $150 million from Sarbanes Oxley section 404(b), to ensure that small businesses can fully devote their resources toward being the engines that drive our Nation's economy.

I ask unanimous consent to have printed in the RECORD the editorial that appeared today in the Wall Street Journal that is entitled ''The No-Cost Stimulus.''

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

[From the Wall Street Journal, May 18, 2010]

THE NO-COST STIMULUS

Senate Majority Leader Harry Reid wants a floor vote this week on financial regulatory reform, and he should first add at least one provision worthy of the name. Senators Kay Bailey Hutchison (R., Texas) and Mary Landrieu (D., La.) have offered an amendment to spare the smallest public companies from the worst bureaucratic horrors of the 2002 Sarbanes-Oxley law.

Sarbox, the Beltway's previous attempt at financial-regulatory reform, was intended to improve the information investors receive about public companies. The law did nothing to prevent poor disclosure at companies like Lehman Brothers but it did saddle the U.S. economy with billions in unexpected costs. Even the Securities and Exchange Commission, a Sarbox cheerleader, found in a 2009 survey that the average public company pays more than $2 million per year complying with the law's Section 404. The indirect costs may be much greater, as initial public offerings of U.S. companies have never returned to pre-Sarbox levels.

The SEC admits that compliance burdens fall disproportionately on smaller companies. This is one reason the two Senators aim to exempt companies with less than $150 million of shares held by the public from ''internal-controls'' audits.

These audits are piled on top of the traditional financial audit, and on top of a company's own internal-controls review. The result is that going public in the U.S., once the dream of entrepreneurs world-wide, has for too many company founders become something to avoid. If President Obama is hoping for an unemployment rate below 9%, encouraging these job creators is an obvious step.

Thanks to New Jersey's Republican Scott Garrett and Democrat John Adler, the House has already passed a similar reform. Now the Senate should allow America's most innovative companies to create jobs at no cost to taxpayers.

Mrs. HUTCHISON. Mr. President, this editorial that appeared in the Wall Street Journal today says we can have a stimulus that will cost taxpayers nothing by freeing our small businesses and especially our entrepreneurial and high-tech businesses from the burdens of all this paperwork and instead let them focus on growing, on listing their IPOs in America for the benefit of the American economy. That is what we should be doing, and that is what the editorial says.

I hope very much my colleagues will listen and we will be able to pass the Hutchison-Landrieu amendment, hopefully by voice vote. This should be a unanimous amendment passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I want to propound a unanimous consent request. It has been cleared on both sides. I ask unanimous consent that at 2:15 p.m., the Senate consider the following two amendments: Senator CORKER of Tennessee, amendment No. 4034, and Senator CARPER of Delaware, amendment No. 4071, which is side-by-side to the Corker amendment; that the amendments be debated concurrently for a total of 30 minutes, with the time equally divided and controlled between Senators CARPER and CORKER or their designees; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Corker amendment, to be followed by a vote in relation to the Carper amendment, with no amendment in order to either amendment prior to a vote.

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

RECESS

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

Thereupon, the Senate, at 12:40 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I ask unanimous consent to speak for 3 minutes as in morning business.

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

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

ANTIPERSONNEL LANDMINES

Mr. LEAHY. Mr. President, earlier today I, along with 67 other Senators, sent a letter to President Obama on an issue that has concerned the Congress since the late 1980s.

Our letter, signed by more than two-thirds of the Senate, commends the President for conducting a comprehensive review of the U.S. Government's policy on antipersonnel mines. That review has been underway for some time, and I expect it will be completed later this summer.

It has involved consultations with the Department of Defense including active and retired U.S. military officers, the Department of State including current and former U.S. diplomats, key military allies, and humanitarian and arms control organizations. The review has examined the historical record, asked rigorous questions, and solicited a wide range of views.

I want to thank the Senators who joined me and Senator VOINOVICH in signing this letter, which states our belief that through a thorough, deliberative review the administration can identify any obstacles to joining the Ottawa Treaty banning the production, use, transfer and stockpiling of antipersonnel mines, and develop a plan to overcome them as soon as possible.

The treaty has been signed by 158 countries, including our NATO allies whose troops are fighting with our forces in Afghanistan and Iraq, and by every other country in this hemisphere except Cuba.

This issue has a long history, and I do not have time to recount it in detail today. But suffice it to say that 13 years ago the United States missed an opportunity to play a leadership role in the international effort to ban antipersonnel mines, which culminated in the treaty. Although our country declined to join the treaty then, as early as 1994 President Clinton announced to the United Nations General Assembly his support for ridding the world of antipersonnel mines, and a plan to develop alternatives to these weapons with the intent of joining the treaty by 2006.

That date came and went, alternatives were developed, and U.S. troops have fought in two wars without, to the best of our knowledge, using these weapons. In the meantime, most of our closest allies have renounced antipersonnel mines, and their militaries long ago made the necessary doctrinal and technological adjustments to meet their force protection needs in accordance with the requirements of the treaty.

Antipersonnel landmines, which are triggered by the victim, have no place in the arsenal of a modern military. They function like some of the IEDs used by insurgents in Afghanistan and Iraq that have caused so many casualties of innocent people, as well as U.S. and coalition forces. Landmines are inherently indiscriminate, and no matter how sophisticated the technology they do not distinguish between a combatant and a civilian. They can be dropped by aircraft or disbursed by artillery by the thousands over wide areas. In today's fast moving battlefield where mobility is a priority, they can pose as much of a danger to our own forces as to the enemy.

Thirteen years ago the Pentagon argued that we should continue to stockpile antipersonnel mines. They said these weapons might be necessary in Korea or in a mechanized war against enemy armor.

But ownership and control of the mines in the Korean DMZ have been transferred to South Korea, and the United States has renounced the use of these types of mines, including in Korea. While there is the possibility that one day we may find ourselves in a conventional war against a major world power, antipersonnel landmines would have little if any utility or relevance in such a war. Rather than our own troops needing these weapons, if our adversary were so lacking in more effective weapons as to use them, our troops would not need antipersonnel mines they would need effective countermine technology.

There have been other arguments made, none of which are persuasive. For example:

Some have asked, after landmines what is the next weapon the Pentagon will be asked to give up? Isn't this a slippery slope for those seeking to ban other types of weapons? This hypothetical question has nothing to do with antipersonnel landmines, which are in a unique category of weapons that are designed to be triggered by the victim.

They are not like bullets or bombs that are aimed or targeted by a soldier. They are inherently indiscriminate, activated by whoever comes into contact with them, whether an enemy soldier, a refugee woman searching for firewood, or a child. Renouncing landmines should have no bearing on U.S. policy toward other weapons.

I have heard it asked how we can ensure that our troops can operate in coalitions with countries that are not parties to the treaty, for example South Korea. The answer is the same way as the NATO countries that have signed the treaty whose troops are fighting in coalition with our forces in Afghanistan and Iraq.

Why join the treaty when we are in de facto compliance already? What would we gain at this point? First, this question implicitly acknowledges that the United States does not require antipersonnel landmines. We have not used them since 1991, we have not exported them since 1992, we have not produced them since 1997 and the Pentagon has no plan to do so in the future.

It is important to recognize that the United States is not causing the mine problem today, although mines we exported to dozens of countries, or that are left over from past wars involving U.S. forces especially in Southeast Asia, continue to kill and injure civilians.

But most importantly, it would be a mistake to underestimate or devalue the positive reaction, practical effects and depth of goodwill toward the United States and our military that would result from joining the treaty. Other countries know the United States, the world's most powerful nation, needs to be part of multilateral agreements if those agreements are to achieve their goals. And they know the United States needs to be part of the solution to the landmine problem, which means more than conforming our policy to the treaty and it means more than joining the treaty. It means actively using our influence to persuade other counties to join. Countries like India and Pakistan, China and Russia, Israel and Egypt today make the excuse that the United States has not joined, so why should they?

One particularly farfetched notion is that giving up landmines while Russia, China and other potential adversaries keep theirs is at odds with our usual arms control strategy, which seeks to use disarmament agreements as a means of enhancing U.S. security. This makes sense in the context of long-range missiles and nuclear bombs, but antipersonnel landmines? We have not used these weapons for 19 years, and no one can credibly argue that they are necessary to protect the national security of the United States or that our security is threatened by China's and Russia's antipersonnel landmines which are deployed along their common border.

Today, the United States is the largest contributor to humanitarian demining, a fact I am proud of, and I have been asked if by joining the treaty we would feel less obligated to support it. This question is nonsensical to me. Speaking as the chairman of the Appropriations subcommittee that funds these programs, whether or not we are a party to the treaty has nothing to do with our interest and responsibility in helping get rid of the millions of mines and other unexploded ordnance that litter and plague dozens of countries, including allies like Jordan, Afghanistan and Vietnam whose citizens continue to lose their lives and limbs from these hidden killers. Some of those mines and bombs were manufactured here and left behind by U.S. forces decades ago.

Some might ask why bother developing a plan to join the treaty, since the fact that 68 Senators signed a letter supporting it does not guarantee that two-thirds of the Senate will vote to ratify it. It is true that no one can guarantee what the U.S. Senate will do about treaties or anything else. But that is hardly a reason not to join. The fact that more than two-thirds of the Senate today supports such a policy, including 10 Republicans and 2 Independents, should certainly give momentum to doing so, and convey to the President that the treaty would find wide acceptance in the Senate.

Finally, I have heard it suggested that U.S. troops might need antipersonnel mines in Afghanistan. I find it hard to imagine that the United States, which has spent hundreds of millions of dollars to get rid of mines left over from past wars in Afghanistan that have killed and injured more civilians than in any other country, at a time when our military leaders are trying to minimize civilian casualties which have caused so many Afghans to turn against us, would use antipersonnel landmines in Afghanistan—a party to the treaty—and risk the public outcry that would result.

We could debate whether the United States should have joined the Ottawa Convention 13 years ago, but there is no point in that. The question today is why not now? Many years have passed and we have seen the benefits of the treaty. The number of antipersonnel mines produced and exported has plummeted, as has the number of victims.

But landmines remain a deadly legacy in many countries, and the world needs the leadership of the United States to help universalize the treaty and put an end to the time when antipersonnel landmines were an acceptable weapon. It will not happen overnight, but it will never happen without U.S. support. As President Obama said in his acceptance speech for the Nobel Peace Prize, ''I am convinced that adhering to standards, international standards, strengthens those who do, and isolates and weakens those who don't.'' We are fortunate to have a President, and top leaders at the Pentagon and commanders on the battlefield, who recognize that civilians far too often bear the brunt of war's misery, and who believe that we can and must do more to prevent it. There is no better way to begin implementing that important principle, and working toward that goal, than by joining the Ottawa Treaty.

The United States is by far the world's strongest military power. We also have the moral authority that no other country has and the obligation to use that authority in ways that set an example for the rest of the world. It was 16 years ago that President Clinton embraced the goal of ridding the world of these indiscriminate weapons. The Obama administration's review of U.S. policy can finally turn that goal into reality.

I ask unanimous consent that a copy of the letter sent to President Obama be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, May 18, 2010.

Hon. BARACK OBAMA,
The White House,
Washington, DC.

DEAR MR. PRESIDENT, we are writing to convey our strong support for the Administration's decision to conduct a comprehensive review of United States policy on landmines. The Second Review Conference of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, held last December in Cartagena, Colombia, makes this review particularly timely. It is also consistent with your commitment to reaffirm U.S. leadership in solving global problems and with your remarks in Oslo when you accepted the Nobel Peace Prize: ''I am convinced that adhering to standards, international standards, strengthens those who do, and isolates and weakens those who don't.''

These indiscriminate weapons are triggered by the victim, and even those that are designed to self-destruct after a period of time (so-called ''smart'' mines) pose a risk of being triggered by U.S. forces or civilians, such as a farmer working in the fields or a young child. It is our understanding that the United States has not exported anti-personnel mines since 1992, has not produced anti-personnel mines since 1997, and has not used anti-personnel mines since 1991. We are also proud that the United States is the world's largest contributor to humanitarian demining and rehabilitation programs for landmine survivors.

In the ten years since the Convention came into force, 158 nations have signed including the United Kingdom and other ISAF partners, as well as Iraq and Afghanistan which, like Colombia, are parties to the Convention and have suffered thousands of mine casualties. The Convention has led to a dramatic decline in the use, production, and export of anti-personnel mines.

We note that our NATO allies have addressed their force protection needs in accordance with their obligations under the Convention. We are also mindful that anti-personnel mines pose grave dangers to civilians, and that avoiding civilian casualties and the anger and resentment that result has become a key priority in building public support for our mission in Afghanistan. Finally, we are aware that anti-personnel mines in the Korean DMZ are South Korean mines, and that the U.S. has alternative munitions that are not victim-activated.

We believe the Administration's review should include consultations with the Departments of Defense and State as well as retired senior U.S. military officers and diplomats, allies such as Canada and the United Kingdom that played a key role in the negotiations on the Convention, Members of Congress, the International Committee of the Red Cross, and other experts on landmines, humanitarian law and arms control.

We are confident that through a thorough, deliberative review the Administration can identify any obstacles to joining the Convention and develop a plan to overcome them as soon as possible.

Sincerely,

Patrick Leahy, George V. Voinovich, Richard G. Lugar, John F. Kerry, Jack Reed, Orrin G. Hatch, Daniel K. Inouye, Carl Levin, Olympia J. Snowe, Charles E. Schumer, Joseph I. Lieberman, Robert F. Bennett, Jeff Bingaman, Dianne Feinstein, Susan M. Collins, Ben Nelson, Max Baucus, Lisa Murkowski, Judd Gregg, Robert Menendez, Arlen Specter, Barbara A. Mikulski, Sheldon Whitehouse, Christopher J. Dodd, Harry Reid, Sherrod Brown, Benjamin L. Cardin, Kent Conrad, Mike Crapo, Bill Nelson, Richard J. Durbin, Patty Murray, Ron Wyden, Blanche L. Lincoln, Byron Dorgan, Mark Warner, Evan Bayh, George S. LeMieux, Michael F. Bennet, Mary L. Landrieu, Russell D. Feingold, Tim Johnson, Maria Cantwell, Thomas R. Carper, Herb Kohl, Kirsten E. Gillibrand, Robert C. Byrd, Frank R. Lautenberg, Jon Tester, John D. Rockefeller IV, Edward E. Kaufman, Daniel K. Akaka, Mark L. Pryor, Kay R. Hagan, Tom Udall, Jeanne Shaheen, Claire McCaskill, Al Franken, Mark Udall, Jeff Merkley, Debbie Stabenow, Robert P. Casey, Jr., Mark Begich, Amy Klobuchar, Tom Harkin, Barbara Boxer, Roland W. Burris, Bernard Sanders.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

AMENDMENT NO. 3997 TO AMENDMENT NO. 3739

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the pending business be set aside and my amendment No. 3997 be called up.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, I understand the amendment is dealing with the Congo that is being offered by my colleague from Kansas and the Senator from Maryland. Is that correct?

Mr. BROWNBACK. The Senator from Wisconsin and the Senator from Illinois are the cosponsors on this one.

Mr. DODD. This is a good amendment and one that I believe has great value. It has been agreed to across the spectrum in the Senate. So if we can get a quick voice vote, I am prepared to do so.

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

The clerk will report.

The assistant bill clerk read as follows:

The Senator from Kansas [Mr. BROWNBACK], for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, Mr. JOHNSON, Mr. WHITEHOUSE, Mr. LAUTENBERG, Mrs. BOXER, and Mr. MERKLEY, proposes an amendment numbered 3997 to amendment number 3739.

Mr. BROWNBACK. 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 require annual disclosure by certain persons to the Securities and Exchange Commission if columbite-tantalite, cassiterite, gold, or wolframite from the Democratic Republic of Congo are necessary to the functionality or production of a product manufactured by the person)

On page 1565, after line 23, add the following:

TITLE XIII—CONGO CONFLICT MINERALS

SEC. 1301. SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

It is the sense of Congress that the exploitation and trade of columbite-tantalite, cassiterite, gold, and wolframite in the eastern Democratic Republic of Congo is helping to finance extreme levels of violence in the eastern Democratic Republic of Congo, particularly sexual and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302.

SEC. 1302. DISCLOSURE TO SECURITIES AND EXCHANGE COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by section 763 of this Act, is further amended by adding at the end the following new subsection:

‘‘(o) DISCLOSURES TO COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.—

‘‘(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate rules requiring any person described in paragraph (2)—

‘‘(A) to disclose annually to the Commission in a report—

‘‘(i) whether the columbite-tantalite, cassiterite, gold, or wolframite that was necessary as described in paragraph (2)(A)(ii) in the year for which such report is submitted originated or may have originated in the Democratic Republic of Congo or an adjoining country; and

‘‘(ii) a description of the measures taken by the person, which may include an independent audit, to exercise due diligence on the source and chain of custody of such columbite-tantalite, cassiterite, gold, or wolframite, or derivatives of such minerals, in order to ensure that the activities of such person that involve such minerals or derivatives did not directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country; and

‘‘(B) make the information disclosed under subparagraph (A) available to the public on the Internet website of the person.

‘‘(2) PERSON DESCRIBED.—

‘‘(A) IN GENERAL.—A person is described in this paragraph if—

‘‘(i) the person is required to file reports to the Commission under subsection (a)(2); and

‘‘(ii) columbite-tantalite, cassiterite, gold, or wolframite is necessary to the functionality or production of a product manufactured by such person.

‘‘(B) DERIVATIVES.—For purposes of this paragraph, if a derivative of a mineral is necessary to the functionality or production of a product manufactured by a person, such mineral shall also be considered necessary to the functionality or production of a product manufactured by the person.

‘‘(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President determines that such revision or waiver is in the public interest.

‘‘(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

‘‘(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall terminate on the date that is 5 years after the date of the enactment of this subsection.

‘‘(B) EXTENSION BY SECRETARY OF STATE.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

‘‘(5) ADJOINING COUNTRY DEFINED.—In this subsection, the term ‘adjoining country’, with respect to the Democratic Republic of Congo, means a country that shares an internationally recognized border with the Democratic Republic of Congo.’’.

SEC. 1303. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;

(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.

Mr. BROWNBACK. This is an issue that has been around for several years. It is on Congo conflict commodities. It is a narrow SEC reporting requirement. As I understand, both sides have cleared it. I would ask, if possible, if we can get it up for a voice vote. I certainly want to go with the timeframes of the manager and be cognizant of the Senator from Tennessee.

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

The amendment (No. 3997) was agreed to.

Mr. DODD. Mr. President, I move to reconsider that vote and lay that motion upon the table.

The motion to lay upon the table was agreed to.

Mr. DODD. Mr. President, what is the pending business now?

The PRESIDING OFFICER. The next amendment in order is the Corker amendment.

Mr. DODD. There is 30 minutes equally divided between the proponents and opponents of that and the Carper amendment?

The PRESIDING OFFICER. That is correct.

The Senator from Tennessee.

AMENDMENT NO. 4034 TO AMENDMENT NO. 3739

Mr. CORKER. Mr. President, I hope I have the good fortune our Senator from Kansas just had. I ask unanimous consent to call up amendment No. 4034.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. CORKER] proposes an amendment numbered 4034 to amendment No. 3739.

The amendment is as follows:

(Purpose: To address the applicability of certain State authorities with respect to national banks, and for other purposes)

On page 1315, strike line 18, and all that follows through page 1325, line 20 and insert the following:

‘‘(B) the State consumer financial law is preempted in accordance with the legal standards of the decision of the Supreme Court in Barnett Bank v. Nelson (517 U.S. 25 (1996)), and any preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency, on a case-by-case basis, in accordance with applicable law; or

‘‘(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

‘‘(2) SAVINGS CLAUSE.—This title does not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

‘‘(3) CASE-BY-CASE BASIS.—

‘‘(A) DEFINITION.—As used in this section the term ‘case-by-case basis’ refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

''(5) STANDARDS OF REVIEW.—

''(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

''(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

''(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

''(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

''(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

''(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

''(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

''(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

''(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).''.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

''(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

''Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(j) VISITORIAL POWERS.—

''(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C., 5 (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action in a court of appropriate jurisdiction to enforce an applicable nonpreempted State law against a national bank, as authorized by such law, and to seek relief as authorized by such law.

''(2) EXCLUSION.—The powers granted to State attorneys general and State regulators under section 1042 of the Restoring American Financial Stability Act of 2010 shall not apply to any national bank, or any subsidiary thereof, regulated by the Office of the Comptroller of the Currency.

''(k) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—The provisions of sections 5136C(j) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.

Mr. CORKER. Mr. President, I know we have two side-by-side amendments. I know the Senator from Delaware, Mr. CARPER, has an amendment which, by the way, I hope everyone on my side of the aisle will support. It has to do with Federal preemption. I think it is a good amendment. I do not think it goes far enough.

Let me speak to the differences. First of all, both the Carper amendment and the Corker amendment deal with the fact that if there is a Federal law relating to our banking system, that cannot be preempted, generally speaking, by State law. I think that is a good step in the right direction. Certainly, I commend Senator CARPER for doing that.

It is something that, by the way, our national banks obviously fully support. They want the ability to operate around the country and know that the rules of the road are basically going to be the same. Where the Carper amendment falls short, and my amendment deals with an issue, is the fact that there are 50 State AGs around the country who, as a result of the Dodd bill, are going to be turned loose on our community banks.

What I mean by that is, the consumer protection agency, as it has been created in the Dodd bill, has no check and balance. It has a very large budget. It is renting space, if you will, at the Federal Reserve. So it has no prudential regulator that is overseeing the rules that it creates.

This consumer protection agency has the ability to write rules with no veto authority against the safety and soundness of financial institutions. Then it has the ability to enforce those rules. A lot of my friends on the other side of the aisle, and certainly people on my side of the aisle, have sought to protect community banks from this consumer protection agency. Let's face it. A big part of that was to build political support for this bill so that community bankers all across our country would rally because they were not necessarily going to be directly under the enforcement of consumer protection.

But the Dodd bill does something else that is very detrimental. That is why they still are very concerned. It allows the 50 State AGs around this country to take actions against credit unions, to take actions against community banks, based on the rules that this consumer protection agency creates.

So here we are, we are going to create an organization that has no real check and balance against the rules that it writes. Then when it writes a rule, an AG in Tennessee or an AG in Alabama or an AG in Delaware or Connecticut can take action against a community bank over these rules.

So it does not matter anymore that this consumer protection agency does not enforce directly against that. Instead, what we have is these AGs all around the country who now will be suing credit unions, suing small banks over rules this Federal agency is creating that has no check and balance against it.

I find that very cumbersome. But to add to that, the Dodd bill adds language called ''abusive.'' In other words, there is a new standard that is going to be created and be the law of the land, a new standard called ''abusive'' that is very vague. By the way, this ''abusive'' language comes in after the fact.

So what it means is, if party A and party B enter into a deal and an AG decides that under this abusive standard one party has been aggrieved—this is after the fact—then whatever contract they have entered into, if it was a loan, for instance, which is likely to be the case, that loan is totally done away with. You cannot enforce against it.

I think this is one of the worst attributes of this bill. The fact that community bankers all across this country in some ways may have thought originally that they were not going to get caught up in this consumer protection agency—oh, no, that is not the case. The fact is, again, 50 AGs around this country—not based on statutes, based on rules—in other words, you know they have the enumerated statutes in this bill under which they can make rules. Then there has been some added in title X—the definition of ''abusive,'' which, again, is very vague, added into this.

But this agency is an agency I believe is going to be very proactive, and I think that is why most people on the other side of the aisle are so excited about this. That is why the White House is very excited about this. They know this is another one of those cases—let no crisis go to waste. We have the opportunity now, because of this crisis, to create this czar, this czar that has no board, and under statutes that are already passed, and some that we are going to pass if this bill passes. This agency can then make rules.

I want to say this one more time. They are going to make rules, and then every AG in the country is going to have the ability, after contracts have been entered into, to say: No, that is abusive, and to basically void those.

This is going to create so much uncertainty out there. Again, to have an organization like this, unfettered, dealing with these types of issues, and then for the first time, for the first time in years, allowing those State AGs to take actions against some of these smaller institutions, I know people in Tennessee—it is not the people on Wall Street. I think we know CitiGroup and Goldman have all come out and said they support this bill.

Why not? The big guys always do better when we create regulations. It is the small guys back in my State who have great concerns. I just want to say, this is one of the most dangerous and problematic attributes of this bill.

So in the name of ensuring that our community banks and credit unions and other small institutions across our country are not abused, are not abused as it relates to this bill, what I hope will happen is that people will not only support the Carper amendment, which does half the job—when you have a bill like this, certainly I support half a loaf of improvement. I hope they will support the Carper amendment, but I hope my friends on the other side of the aisle will join what I believe will be almost everyone on this side of the aisle to ensure that those very people we talk about, talk about back home, do not have advantage taken of them by this consumer protection agency that is unfettered, that is going to write rules, that is going to give the ability to State AGs around this country to take actions against State banks, local banks, but also national banks, to take actions against them based on Federal rules—not just Federal laws, Federal rules.

I will stop. I know my time is about up. This is a very commonsense amendment. I say to my friends on the other side of the aisle: I have offered no messaging amendments, none. I have tried to offer a few commonsense amendments to deal with frailties in this bill that I believe are real. I know there is a lot of stress on the other side of the aisle with everybody trying to hold together. I know the White House and Treasury are over here meeting in backrooms trying to keep people from supporting things that make common sense. I hope others will join with me to ensure that we don't allow this unfettered organization, this czar over consumer protection, to create rules that then put community banks and others at great risk and have the ability to break contracts after the fact based on very vague language that 50 AGs may interpret in very different ways on a case-by-case basis, in whatever mood they are in on that day. I think that is problematic.

I yield the floor.

AMENDMENT NO. 4071 TO AMENDMENT NO. 3739

(Purpose: To address the applicability and preservation of certain State authorities, and for other purposes)

Mr. CARPER. Mr. President, I call up amendment No. 4071.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. CARPER], for himself, Mr. BAYH, Mr. JOHNSON, and Mr. WARNER, proposes an amendment numbered 4071 to amendment No. 3739.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. CARPER. Mr. President, I would like to state to the manager of the bill, if I could ask a question of Senator DODD, one of Senator REID's right-hand lieutenants asked me to ask for an additional 5 minutes on both the Corker and Carper amendments. I presume that has been cleared with him.

Mr. DODD. I have no objection.

Mr. CARPER. I ask unanimous consent that both on the Corker amendment and the amendment I have offered, we have an additional 5 minutes for a total of 20 minutes.

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

Mr. CARPER. Mr. President, let me start off by thanking Senator CORKER for all the time and energy he and Courtney and others on his staff have put into this issue, both in committee and as we come to the floor.

Last week, Senator CORKER and I and about 11 other Republicans and a number of Democrats joined to offer the amendment he is offering at this time. When it became clear to me that we were not going to be able to muster the 60 votes to prevail on what was our amendment, we began working with Senator DODD and his staff—I hope we kept our colleagues in the loop, as we went through the negotiations—to come up with legislation that enables us to get a half a loaf. I think we probably got more than half a loaf. Time will tell. History will judge.

I wish to back up a little bit and say what I think the authors of the legislation had in mind in the bill as it came to the floor. The idea is to create a new unit I call the consumer bureau. Their job is to promulgate the rules and regulations with respect to consumer protections, not only for national banks or State-chartered banks, not just for credit unions or nonbank banks but for all of the above. That is a big part of the job. The job of the new consumer bureau is to promulgate rules and regulations going forward to protect consumers.

Does that entity have an enforcement responsibility as well? Yes, they do. Under the bill as it came to the floor, they would have the obligation for enforcing, among the largest national banks—roughly 100—the rules and regulations with respect to consumer protection which they promulgate.

I like to think of about three or four entities. One is nonbank banks, a second is credit unions, third is State chartered banks, and the fourth is the national banks. Of those four, the one for sure the consumer bureau actually enforces the rules that will be promulgated is with national banks and the largest ones there. Most of the banks we have in this country are State chartered. Under current law and under this legislation, not only would their safety and soundness regulator, the FDIC, be the regulator for consumer protections, but under current law, under the law going forward, State officials can also enter into those frays and again try to undertake actions to protect consumers. That could be done now, and it can be done the way the bill is written.

With respect to nonbank banks, under current law, the FTC has the responsibility going into this endeavor of enforcing consumer protections. They would have the responsibility of enforcing the protections of the rules promulgated by the consumer bureau. There is a good chance that going forward the FTC will also have responsibility for enforcing the consumer protections for the nonbank banks. Credit unions, correct me if I am wrong, I think the responsibility there lies with the NCUA. They are the safety and soundness regulators for credit unions, and they are also the responsible regulator for consumer protection. I am not sure that will change.

What will change is they will have some additional rules and regulations promulgated by the consumer bureau to enforce at least that much. This is where we have gotten into a big debate.

The question is, How about national banks that operate, in some cases, in all 50 States? Who is going to enforce the rules to protect consumers from them?

The way it has worked for years, we followed the guidance of two Supreme Court decisions in this regard. One of them is called Barnett Bank. It has been a part of the case law for about 14 years. The other is called Cuomo v. Clearinghouse. I am not sure why. That is what it is called.

Essentially, the first case law under Barnett attempts to say: We have these national banks. They are actually supervised by the Office of the Comptroller of the Currency. For the most part, States want to come in and exert their own desire and their own will and they can do that, to some extent, under current law. But when they come in and try to exert influence over national banks, if the national banks think the State is out of line, they can go to court and say: No, the State can't do this. This is preempted. This is something that is governed by the Federal Government, by our regulator, the OCC or by this new regulator. If the national banks think that what a State is trying to do, under Barnett Bank, if they think it is out of order, inappropriate, not permitted, it is preempted, they can go to their primary regulator, the OCC. That is what they can do now. If the bank thinks the States are acting in an inappropriate way, inconsistent with the Barnett ruling, the national banks can go to the OCC or they can go into court to have it cleared up. That is current law. That is the Barnett Bank ruling in its simplest form. What we do in this compromise is to retain that language, essentially to retain that language or the spirit therein. Where we make a change with respect to the amendment Senator CORKER offers today and that he and I and others had offered to introduce last week, we make a change with respect to who else can enforce the rules and regulations among national banks that are promulgated by this new consumer bureau.

What we have said is, State officials and the AGs can enforce the rules and regulations of the consumer bureau. They can do that. Can they conduct class action lawsuits against with respect to the rules and regulations? They can't do that. Can they go across State lines? Can the attorney general from Alabama go into Florida and try to enforce the rules across State lines? The AGs can't do that. But what they can do under our compromise is, the State AGs in all 50 States can look at the rules and regulations promulgated by the consumer bureau and enforce those in their own State. For us, that is probably the biggest give with respect to what we introduced last week.

This is a confusing issue. It is arcane. I have tried to explain it to my colleagues with mixed success. I hope I am doing better today on the floor. It is not an easily understood issue.

For me, the question is this: If we are going to have national banks—and we have had them for 150 years—if there are going to be national standards and a tough regulator, let's make sure the consumer bureau has the resources and authority it needs to enforce these rules for national banks. When people say: What is the problem with letting the AGs come in, here is the problem. I like to use Washington, DC, as an example. I live in Delaware. I go back and forth on the train just about every day. Let's say I lived in Maryland, and let's say I worked in Washington, as we do. Let's say my bank is home chartered in Virginia. Let's say I travel all over the country, and I use ATM machines in many different States. If you have a situation where the States can impose their own laws or rules or regulations with respect to features of banking and checking accounts, with respect to my ATM cards and access to ATM machines, the fees I have for my debit cards, that authority sort of thing, how would you apply those rules and regulations in this one instance, someone who lives in Maryland, works in Washington, their bank is in Virginia, and they access banking services all over the country? That could be confusing, very confusing. It is not only going to be confusing for the banks themselves, as they try to comply with this patchwork quilt of 50 different rules and regulations, in addition to the national rules and regulations. It is going to be confusing for consumers too.

This is not something we are doing simply to make the banks happy. They are not doing handstands over the amendment I am offering as a side-by-side with the previous Carper-Corker amendment.

I am convinced of this: What we are doing is good for consumers, and it is fair for the banks.

Again, to Senator DODD and his staff, I thank them for working with us. I express my thanks to our Republican colleagues who joined us as cosponsors on the amendment last week and those who support us today.

I retain the remainder of my time.

Mr. JOHNSON. Mr. President, it is the goal of all of us in this body to address the inadequacies in bank regulation that led to the crisis, but also preserve the dual banking system. After many conversations with Senator DODD and his staff, I believe we have found the right balance to preserve Federal preemption for national banks but also allow State AG enforcement of the rules where appropriate. I want to thank Senator DODD for working with us to find common ground.

Throughout the committee consideration and the floor process, I have worked to ensure that our efforts to build strong uniform standards through the new Consumer Financial Protection Bureau were not undermined by ending up with a patchwork of different laws for banks and consumers. As our Nation recovers from the economic crisis, it was important to avoid making it difficult for businesses to operate across State lines, and to prevent consumers already struggling with access to credit from losing access to affordable products and services.

I believe the Carper amendment addresses these concerns while also ensuring the State AGs a role. The Carper amendment provides that preemption determinations are made according to a uniform standard, providing certainty to those that offer financial products and those who use the products. It also codifies the Supreme

Court's ruling in the Cuomo case by clearly stating the role State AGs may play in enforcing certain laws against national banks. Last, it also preserves a role for State AGs to ensure that consumers are never again put at risk because Federal regulators are asleep at the switch.

I urge my colleagues to support the Carper-Bayh-Warner-Johnson amendment. This amendment, and the underlying bill creating a new consumer agency, will set strong national standards for consumers, and improve our abilities to detect problems and vastly improve consumer protection.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I will be brief. I commend both the Senator from Delaware and the Senator from Tennessee for their hard work in this area. This is very arcane. It is difficult, but it is very important. I was hoping we could bake a whole loaf of bread, not a half. One-half is better than nothing—but a whole loaf. What we are doing thus far is Main Street. We are not worried about Wall Street. Wall Street will take care of themselves, as Senator CORKER and others have said on this floor. They always have, always will. But it is Main Street, the smaller banks in our communities, in our towns all across the country. If we could, in the wisdom of the chairman of the committee, if we could move to a whole loaf of bread, that would be commendable. I feel like we are not going to do a whole loaf here today because we don't have the votes. But gosh, a whole loaf is always better than half.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Connecticut has 9 minutes 50 seconds.

Mr. DODD. I will take 5 minutes, if the Chair will advise me.

Mr. President, this is striking a balance. If I were king for a day, I might write a different approach than either the Corker or the Carper amendments. But I am 1 of 100 people in this Chamber. Our goal is to try to find common ground on a very difficult issue. This is a complicated question. It isn't just about Main Street and Wall Street; it is about how we enforce laws, how to make sure we don't overreach and create unnecessary duplication and raise costs. We are trying to balance what should not be necessarily competing goals. One is to have stronger consumer protections. I hope I don't have to make that case again. What got us into this mess to begin with was the lack of consumer protection. It was bad mortgages, no documentation, luring people into deals they could never afford, people making decisions to jump into deals they couldn't handle.

For all those reasons, this problem mushroomed out of a mortgage problem into a large, now almost global, problem we are confronting. So, clearly, as to consumer protection, we are doing that in this bill. For the first time in the history of our country, we will now have an agency exclusively dedicated to protecting the average consumer in this country when it comes to financial services. We have it for products you buy. We have it for the food you eat. But Lord forbid you end up in potential ruin because of a financial product. Where do you go? There is no recall. There is no place to get that financial product recalled if you are running into problems. So we do that in this bill.

Let me be the first to admit there are people who are vehemently opposed to have anything like a Consumer Financial Protection Bureau anywhere in our government at all, and I know that. My colleagues know that. I understand, from time to time, attempts to try and undermine this in whatever way you can has been a part of this.

The second goal is the one my colleague from Delaware has mentioned: preserving our national banking system, which has been around for 150 years. It is clearly in our interest to do that. So how do we strike this in a way that strikes that balance?

The Carper amendment preserves the States' attorneys general role in protecting their citizens from abusive practices. That is about as Main Street as you can get. As I said, the alternative is to have someone from Washington, I suppose, being able to show up to protect those interests. Why not preserve the right of an attorney general at the State level to protect those interests?

But it also makes clear—the Carper amendment does—that the Office of the Comptroller of the Currency can preempt a State consumer law, while preseving our national banking system. So it strikes that balance, which is so critical.

The Carper amendment does three things: It preserves the State's role in enforcing the Federal consumer financial laws. That is No. 1. Secondly, it returns to the Office of the Comptroller of the Currency the preemption of State consumer financial laws to the 1996 Barnett standard, which is the Supreme Court case, and provides for transparent determination procedures for preemption decisions. Thirdly, the Carper amendment makes clear that the States' attorneys general have the authority to enforce certain laws against national banks in their home States.

That is the balance the Carper amendment provides.

The Corker amendment—if we adopted just the Corker amendment—does two things. One, it completely eliminates the State attorney general from enforcement of the Consumer Financial Protection Act. It eliminates it altogether. I do not think you want that. That does not make sense to me. That is where you get confusion. Secondly, it would confuse the Federal preemption standard under the Barnett case that the OCC should apply when preempting State consumer laws.

We are trying to get clarity, and we get clarity with the Carper amendment. That is what we are looking for: National banking gets preserved. Yet the attorneys general can enforce the laws rather than relying on something at the national level to do the job.

So I urge my colleagues—and I say this respectfully because BOB CORKER and I have worked together on a lot of issues over the last number of months—on this one, I respectfully suggest it goes too far. That is why I urge Senator CARPER, who has a strong interest in this subject matter, to sit down and see if we could fashion a compromise that would maintain the balance of allowing State AGs to do their jobs when it comes to enforcing the rules under our Consumer Financial Protection Bureau, while preserving the national banking system, where the OCC has the right to preempt. That is what we have done with the Carper amendment. That is the balance that gets struck here. I say respectfully, the adoption of the Corker amendment throws that balance off whack, and that is what I think would be a step backward when it comes to this provision.

So for those reasons, I would urge a "no" vote on the Corker amendment and a "yes" vote on the Carper amendment, which I think strengthens this bill overall.

With that, I see my colleague from Virginia, who may want to be heard on this amendment as well.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I just wish to briefly add to the discussion and thank both the chairman and Senator CARPER and my good friend Senator CORKER as well. We are breaking new ground. We are creating a new national Consumer Financial Protection Bureau.

I share, I think, actually the goals of both Senator CORKER and Senator CARPER that the bureau ought to have a chance to enforce its rules on an orderly national basis. I know my good friend, Senator CORKER, has a slightly different variation, but I think Senator CARPER's amendment has struck that right balance: ensuring there are opportunities for Federal preemption but, at the same time, recognizing that the balance of the attorneys general role ought to be to focus on the regulations—regulations that it will have had an appropriate period to have been commented on by industry, to have gone through an orderly process, rather than simply what the initial draft would have had, which would have allowed the attorneys general to actually focus on the statute itself, that might have allowed them to run a little more without as many restraints.

So I realize this is a new area. We are trying to strike a balance. I agree with the chairman that the Carper amendment strikes that right balance, and I look forward to supporting his amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I do hope the Senator from Virginia and the Senator from Delaware will support my amendment, since they both cosponsored it originally. I know Treasury has been over and has had a talk with people back in these backrooms. I realize the White House has done that. While there may be discussions about ''striking the appropriate balance,'' the fact is, this was an amendment that had bipartisan support until that occurred.

Let me just say——

Mr. DODD. Will my colleague yield on that point he made?

Mr. CORKER. OK.

Mr. DODD. There is nothing ''in the backroom'' about this. This is an honest, open discussion about how to deal with preemption. The suggestion my colleague makes about a backroom arrangement is not the case.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Well, it was these rooms back here.

Mr. DODD. No, it is not a backroom.

Mr. CORKER. OK. Well, these front rooms back here.

Let me just say, if I could: Look, the fact is, we had a bipartisan agreement that has been throttled back. There is a chance—I understand. That is what I am saying. I hope the cosponsors of this amendment will at least support it on the floor. I do not think there has been anything enlightening that has occurred—just the fact that, look, the White House has expressed opposition to this. I understand that, and that is the way things are when the White House is the White House.

But what I would say is, the Senator from Connecticut specifically tried to get support for this consumer protection agency by saying that institutions under $10 billion in assets would not be enforced upon directly by this consumer protection agency. But what has happened as a result of the bill is the fact that now, instead of that, we now have State AGs—they are going to enforce against these very institutions on rules that emanate from these Federal statutes.

So I would say that is a far worse situation for these community banks and credit unions. I know they view that as far worse from that standpoint. Then, on top of that, we have added language that is vague, language such as ''abusive'', where the AG has the ability to come in after the fact and basically break contracts if, in their view, they decide that something may have been abusive. Again, that is a very vague term.

So what I would say to you is that, yes, you are embarking on new territory. You, in essence, are creating a consumer protection agency that has no board. It reports to one person, the President. It has a 5-year term. There is no veto—no veto—authority by the prudential regulators as it relates to the rules. Now you have State AGs all across the country who have the ability to enforce. I think that is a huge step in the wrong direction.

I had hoped earlier—a couple months ago it seemed like we had a place that was far more middle of the road than this, that kept the State AGs in place, that allowed them to do the things with State laws they already have the power to do. But I think this is vastly expansive.

I realize that with the people talking against my amendment who actually supported my amendment in the past, it is very unlikely my amendment is going to pass. I have heard people on my side of the aisle saying: Look, should we support CARPER or not? It is just really not what ought to happen.

I would say to my friends on this side: Yes, support the Senator's efforts. It is better than what exists.

But there is no question in my mind—and let's face it, the issue that has divided this floor more than anything else is the fact that this consumer protection agency has been created the way it has been created. I think this rulemaking authority it has is the issue that has divided most of us. Now, without my amendment passing, again, what happens is, State AGs, interpreting these in different ways all across the country, will now be taking actions against these institutions on vague language such as ''abusive.'' I think that is inappropriate. I guess I have trouble understanding what that has to do with what we have just gone through.

If underwriting is a problem, let's deal with underwriting. We tried to offer language that dealt with loans. That is the core of this crisis. But, no, we do not want to deal with that. We do not want any crisis to go to waste. We want to create another unfettered organization to get into the lives of Americans, to sort of take over, take over and deal with these kinds of things because we do not want any crisis to go to waste.

So maybe the Senator from Connecticut was a little arisen a minute ago by me saying what I am saying. Look, the fact is, the White House is, I see, going to have its way probably. I still hope as many people as possible will vote for the Corker amendment. I certainly support the Carper amendment. I wish we had done a more balanced job on this issue. I think we would have far more bipartisan support.

I thank the Presiding Officer for the time. I wish to withhold the remainder of my time in case there are other comments that are made. But I do hope the people who originally cosponsored my amendment would at least support it on the floor today.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Delaware.

Mr. CARPER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes 27 seconds.

Mr. CARPER. Mr. President, let me try to be clear on one point, as we come to the close of this discussion.

For States or their national banks, under what is proposed and what would occur under our amendment, if a State AG wants to try to enforce a State law on a national bank, the bank can go in and say to the courts, they can go in and say to the regulator, the Office of the Comptroller of the Currency, that State law is preempted. That cannot be enforced against a national bank.

The question here—and this is a point where I gave on and our side gave on in negotiations—how about if the State AG or State officials want to come in and enforce the rules that have been developed by the new consumer bureau? Under the compromise we have reached, while they cannot come in and enforce their own State laws, or, really, come in and enforce the Federal law we are debating today, the State AG can come in and enforce the rules, which have been worked out over a period of months—draft regulations, proposed regulations, common periods, revised regulations with guidance, and finally adopted regulations with guidance.

In those instances, when the regulations are adopted in their final form—gone through that whole process—then the AGs can come in and not selectively enforce them, but they have the right to enforce those, along with—for big banks, big national banks—the bureau, and if they are not so big national banks, the Office of the Comptroller of the Currency.

That is where I think we have ended up here. I do not think it is a bad compromise. As our colleague from Tennessee and certainly the Presiding Officer and our two floor managers, Senator DODD and Senator SHELBY, know, we have been sent to govern, and sometimes I cannot get what I want. But what we try to do is to be willing to give, and in an orderly fashion we have a final compromise that I think meets muster.

Let me say, as a former Governor—I think there are five former Governors on our original amendment—I do not think anyone can accuse me or any of the other former Governors of not being for States rights. But sometimes we need a strong Federal regulator with strong enforcement authority, particularly when we are dealing with issues of interstate commerce and our national banking system, which we seek to preserve.

In closing, I wish to assure my colleagues that I believe the amendment I offer with a number of my colleagues preserves the ability of States' attorneys general to provide a backstop to the new Consumer Financial Protection Bureau. While the new bureau will be the main enforcer of its new rules, we have preserved the role for the

State AGs to ensure that the consumers are not put at risk because Federal regulators are asleep at the switch.

Again, I wish to thank Senator CORKER for all his work on not just this issue but on others to try to get us to a better place.

With that, I believe our time is just about expired.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. There is 4 minutes 10 seconds.

Mr. CORKER. Mr. President, first of all, I thank the Senator from Delaware, who is one of those Senators whom I truly enjoy working with. He truly does try to do responsible things in this body. I thank him for that. I enjoy working with him. I do think the Senator is trying to put an amendment in place that will pass, and I thank him for that.

Again, I think a half a loaf is a half a loaf; it is not a whole loaf. But I hope everybody on my side of the aisle will support the Carper amendment. I hope everybody on this side of the aisle, obviously, will support the Corker amendment.

I do wish to say that the Chamber of Commerce has just sent out a letter. I thought I would make everybody aware they are urging people to vote for both amendments also. As a matter of fact, they are key voting this. This is one of those issues they think is very important. The Chamber of Commerce, as you know, represents all kinds of small businesses across this country that are very concerned about this expansive bill, especially as it relates to consumer protection.

Again, I wish to say one more time, an activist, if it turned out to be—my guess is, it will be; everything else in this administration leads me to believe this is going to be a fairly activist organization, OK—can write rules after the fact—after the fact—declaring a practice abusive.

I don't know how many people think that is good practice, to write a rule after the fact determining that it is abusive—again, a very vague benchmark.

I thank the Presiding Officer for the time. I thank the Senator from Connecticut for the way he has conducted business here on the floor. I certainly wish this was a 50-vote threshold instead of 60, but I realize those things have to take place. I thank him for the way he has conducted himself on the floor. I look forward to both of these amendments being voted on. I urge people on both sides of the aisle to support both amendments, as the Chamber of Commerce has said it does.

Thank you very much. I yield my time.

Mr. DODD. Let me just clarify. No. 1, there is no 60-vote requirement.

Mr. CORKER. Very good. Thank you.

Mr. DODD. No. 2, I know people want to vote for everything around here, but occasionally we run into conflicts, and there is a conflict between the Corker amendment and Carper amendment, and that is the role of the attorneys general. The Corker amendment excludes the attorneys general from enforcing the regulations of the consumer protection agency. The Carper amendment includes it. With all due respect, I know we would like to vote for all amendments, but somehow we do end up with a conflict. It is a legitimate point. I am not suggesting that my friend from Tennessee doesn't have an argument, but I just think the Carper amendment makes more sense.

So I urge my colleagues, out of respect for each other—I know we like to please each other, but the fact is, we end up with a contradictory conclusion when we are trying to come to some clarity. That is the only point I wish to make.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. If I could, I haven't really noticed that much desire to please each other around here, but I do thank you for the fact that it is a 50-vote threshold. I had been told prior to coming down that it was 60, so thank you for that. But I do hope people will try to please both sides of the aisle by voting for both amendments. Thank you very much.

Mr. DODD. Have the yeas and nays been ordered, Mr. President?

The PRESIDING OFFICER. They have not.

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

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

The question is on agreeing to the Corker amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 43, nays 55, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—43

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

NAYS—55

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

NOT VOTING—2

Lincoln
Specter

The amendment (No. 4034) was rejected.

Mr. DODD. Mr. President, what is the pending business?

VOTE ON AMENDMENT NO. 4071

The PRESIDING OFFICER. The pending question is the Carper amendment No. 4071.

Mr. DODD. Have the yeas and nays been ordered?

The PRESIDING OFFICER. No, they have not.

Mr. DODD. Mr. 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 Arkansas (Mrs. LINCOLN) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

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

The result was announced—yeas 80, nays 18, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—80

Akaka
Alexander
Barrasso
Baucus
Bayh
Begich
Bennet
Bennett
Bingaman
Bond
Brown (MA)
Brownback
Bunning
Burr
Burris
Byrd
Cantwell
Cardin
Carper
Casey
Chambliss
Coburn
Cochran
Collins
Conrad
Corker
Cornyn
Crapo
DeMint
Dodd
Ensign
Enzi
Feinstein
Gillibrand
Graham
Grassley
Gregg
Hagan
Hatch
Hutchison
Inhofe
Inouye
Isakson
Johanns
Johnson
Kaufman
Kerry
Klobuchar
Kohl
Kyl
Landrieu
Lautenberg
LeMieux
Levin
Lieberman
Lugar
McCain
McConnell
Menendez
Mikulski
Murkowski
Murray
Nelson (NE)
Nelson (FL)
Pryor
Risch
Roberts
Schumer
Sessions
Shelby
Snowe
Stabenow
Tester
Thune
Udall (CO)
Vitter
Voinovich
Warner
Webb
Wicker

NAYS—18

Boxer
Brown (OH)
Dorgan
Durbin
Feingold
Franken
Harkin
Leahy
McCaskill
Merkley
Reed
Reid
Rockefeller
Sanders
Shaheen
Udall (NM)
Whitehouse
Wyden

NOT VOTING—2

Lincoln
Specter

The amendment (No. 4071) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mrs. HAGAN. 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. HAGAN. I ask unanimous consent to speak on amendment No. 3744.

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

Mrs. HAGAN. Mr. President, payday lending institutions prey on people who find themselves in need of quick cash often for things like a necessary car repair or a medical problem. The lenders charge astronomical interest rates and expect immediate repayment.

By marketing payday loans as short-term advances, predatory lenders gouge borrowers into a cycle of debt. With repayment due in just days, interest rates that reach 400 percent, and because repayments are due in full, borrowers are often forced to take out new loans to repay the old loan.

The lenders themselves recognize that the loans are not for borrowers who intend to use them repeatedly. For example, one lender notes on its website that, ''Since a payday advance is a short-term solution to an immediate need, it is not intended for repeated use in carrying an individual from payday to payday. When an immediate need arises, we're here to help. But a payday advance is not a long-term solution for ongoing budget management. Repeated or frequent use can create serious financial hardship.''

But the statistics do not add up. Over 60 percent of payday loans go to borrowers with 12 or more transactions per year and 24 percent of payday loans go to borrowers with 21 or more transactions per year.

This startling statistic illustrates just how devastating this problem can be for families.

Take the story of Sandra Harris from Wilmington, NC. She had a job at Head Start and always paid her bills on time. When her husband lost his job, Sandra got a $200 payday loan to pay the couple's car insurance. When she went to repay the loan, she was told she could renew. Sandra ultimately found herself indebted to six different payday lenders, paid some $8,000 in fees.

Now, the payday lending industry will argue that they provide a valuable service. I would simply point out that, whether or not you believe that to be true, my amendment does not prohibit payday loans.

In fact, it allows up to six payday loans to the same borrower. If your business model relies on your ability to rope borrowers into rolling these loans over again and again, even though you are charging 400 percent per loan, I would have some serious questions about your business model.

By reining in payday lenders, we will protect consumers from racking up endless, long-term debt that can ultimately cause a family to declare bankruptcy.

This amendment protects consumers by ensuring that short-term cash advances remain short-term.

It has three parts to accomplish this goal:

First, it limits rollovers by prohibiting creditors from issuing new payday loans to borrowers with six loans in the previous 12 months or 90 days aggregate indebtedness.

Second, it would require lenders to give borrowers the option to repay their loan over a longer time period. Creditors would need to offer an extended repayment plan for borrowers who are unable to meet repayment obligations.

Finally, the bill gives the Federal Reserve Board the authority to require licensing and bonding of payday lenders.

Leading consumer advocates such as the Center for Responsible Lending strongly support this legislation.

This is a commonsense amendment, it will help protect Main Street borrowers from predatory lenders, and I would urge all of my colleagues to join me in supporting it.

I ask unanimous consent to have printed in the RECORD the following letter of support from Michael Calhoun, the president of the Center for Responsible Lending.

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

CENTER FOR RESPONSIBLE LENDING,
May 4, 2010.

Hon. KAY HAGAN,
United States Senator, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HAGAN: We are writing to express our support for your bill, the ''Payday Limitation Act of 2010,'' which would help end the cycle of long-term borrowing that traps so many payday borrowers in high-cost debt.

The payday lending debt trap causes families financial harm, with borrowers more likely to become delinquent on their credit cards, face difficulty in paying other bills, delay medical care, and, ultimately, file for bankruptcy. The average borrower has 9 payday loan transactions each year, typically on a back-to-back basis. This results in borrowers paying more in fees than they are extended in credit.

Your bill would codify the Federal Deposit Insurance Corporation's standard, which prohibits new loans to borrowers who have already been indebted 90 days in a given year, the equivalent of six two-week payday loans. This would ensure that these short-term small loans are used as intended, rather than becoming a long-term financial burden for families already living paycheck-to-paycheck.

If enacted, this legislation would represent a key step forward toward our long-term goal of protecting consumers through a 36 percent annual percentage rate cap on small loans. We commend you on your efforts to reduce the incredible damage caused by this industry to low- and moderate-income families and look forward to working with you to pass this legislation.

Sincerely,

MICHAEL P. CALHOUN,
President.

Mr. DURBIN. Would the Senator yield for a question?

Mrs. HAGAN. I will yield to the Senator.

Mr. DURBIN. I wish to thank the Senator from North Carolina for her leadership on this issue involving title loans and payday loans. I know she led the fight in her home State of North Carolina before she came here to the Senate.

I wish to ask the Senator from North Carolina, is it not true we passed a law a few years ago to protect military families from being exploited by these same lenders, arguing that, here we are, investing all this money in training and preparing men and women to serve in our military, and then they are ensnared by these payday loan operations, they find themselves at their wit's end, they cannot make their payments, they are facing bankruptcy, and many of them had to take leave or be discharged from the military because of these miserable payday loan operations? Is it not true we passed a law protecting military families from this kind of predatory lending a few years ago?

Mrs. HAGAN. The Senator from Illinois is certainly correct. I believe, instead of anywhere near a 400-percent rate, there are limitations of 36 percent. The Senator is correct.

Mr. DURBIN. So I further ask, through the Chair, the Senator from North Carolina is saying, if we want to protect military families from this outrageous conduct by these lenders, then should not we protect all American families who might be in similar circumstances, ensnared by these people who will continue to roll these loans over and over to the point where a person cannot possibly pay it off?

Does not the Senator's amendment say there has to be a limit to the number of rollovers on the loans, and is not the limit somewhere in the range of six rollovers, six times rolled over as a maximum?

Mrs. HAGAN. The Senator is exactly right. This amendment allows, if a family does need to have a short-term advance, for a short-term advance, renewable six times. They can have six of them within a 1-year period of time. If at that point they cannot repay it, the institution has to give them a longer repayment schedule.

We are not saying these loans cannot be given. But that recurring debt over and over and over again is what should be stopped by limiting it to six a year.

Mr. DURBIN. I thank the Senator from North Carolina for her leadership. These are truly the bottom feeders of the credit industry in America.

Mrs. HAGAN. Mr. President, I ask unanimous consent that the pending amendment be laid aside, and that I be allowed to call up amendment No. 3744.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, and on behalf of—would the Chair please restate the request.

The PRESIDING OFFICER (Mr. BEGICH.) The Senator seeks permission to call up amendment No. 3744.

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from North Carolina.

Mrs. HAGAN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I am about to make a unanimous consent request, and I will describe what I am going to request first so Members are aware of this.

Senators MERKLEY and LEVIN, along with many others, over the past number of weeks have worked very hard to develop an amendment dealing with proprietary trading; that is, to ban the use of depositors' monies for excessive risk taking on the part of financial institutions.

This is a complicated area, we all admit and acknowledge. It takes a lot of work. The Treasury Department has been involved, and many others in this Chamber, who have had a strong interest in supporting the efforts of Senator MERKLEY and Senator LEVIN, have crafted and worked on this.

We wish to have a vote on that amendment, even, in fact, just a 50 vote, up and down. Over the last 3 or 4 weeks, I have been happy to have more amendments. I think some 40 or 45 amendments have been considered in this Chamber, the overwhelming majority on a simple 50-vote margin. Some have required 60 votes, I acknowledge that. But I am being told that even a 60-vote requirement on this amendment would be objected to. I think that is terribly unfortunate. This is a critical piece of financial reform. To exclude it, or even the ability to vote on it, I think would be wrong.

I ask unanimous consent that the pending amendment be laid aside and that amendment No. 4101 be called up.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. Mr. President, although I don't necessarily believe I will vote against the Levin-Merkley amendment, if it is brought up and debated, a number of my colleagues are not here on the floor and have asked me to lodge an objection. So on their behalf, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Connecticut.

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I ask unanimous consent that the next amendments in order be the following: Grassley-McCaskill amendment No. 4072 and Bingaman amendment No. 3892; that the Bingaman amendment be modified with the changes at the desk; that a Lincoln amendment as a side-by-side to the Bingaman amendment also be in order; and that Senators GRASSLEY and MCCASKILL each be recognized for a period of 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object—and I will not object—I want to ask the Senator from Connecticut if he might add to that unanimous-consent request that following that, amendment No. 4109, which I have filed, be considered at that point.

Let me explain. I had filed an amendment. We have modified it. The amendment, properly filed, as I had modified it, is amendment No. 4109. It is the amendment that deals with the issue of naked credit default swaps. As my colleague knows, I have been here for 2 weeks attempting to get it pending.

I ask that the unanimous consent request be modified to include making amendment 4109 pending following the disposition of the other two amendments.

Mr. DODD. I have no objection to that.

First of all, can we get the first unanimous consent agreed to, to deal with those two amendments; that is, Grassley and Bingaman?

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I am OK on the first one.

The PRESIDING OFFICER. If there is no objection to the first part, it is so ordered. There is no objection on the first part.

Is there objection to the request of the Senator from North Dakota?

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, my understanding is that there is a question now about how to proceed with respect to which amendments might be allowed to be offered by the two sides. It appears to me, at least from my perspective, that some have decided we will only allow amendments we prefer to be allowed and others who have amendments will not be allowed to offer amendments from this point on.

My colleagues know I have been here I guess a couple of weeks with an amendment. It is filed, No. 4109. It deals with trillions and trillions of dollars of what are called naked credit default swaps—one of the significant problems that caused part of the near collapse of our economy. I have been here now attempting to get this amendment pending because if there is a cloture vote tomorrow, those amendments that are not pending will not be allowed to be offered and voted upon. I am attempting to get this pending.

What we have appears to me to be gatekeepers who decide we will only allow these amendments through the gate, and someone else, unnamed, unknown, will decide that we have to have somebody else object for them. So the result is that an amendment such as this—and I assume there are others as well—would not be able to be considered. To have the negotiations between the manager and the ranking member now come together and decide, well, only amendments they will allow us to offer will be offered—if that were the standard, maybe we could go back and I could think of half a dozen or a dozen amendments that we already had offered and had to vote on that probably we should have said: Let's not offer those. Those are inconvenient, uncomfortable. I don't want to vote on that. But we have not done that. None of us have done that.

Now, all of a sudden, we have been told: Someone else wants us to object, so therefore you can't offer your amendment. That is just, in my judgment, not an acceptable way to proceed.

While I guess we are waiting, I encourage somebody, if they wonder whether the amendment I have filed, No. 4109, dealing with naked credit default swaps—if they are wondering whether there is an urgency to this issue, read the book ''The Big Short'' by Michael Lewis. When you are finished, come back to the floor and ask if you can support this amendment or how quickly you can support this amendment. It is unbelievably necessary to do if, in fact, we are going to finish financial reform and claim we have reformed the financial system.

It is pretty hard for me to understand how we proceed if the point is that someone else has decided exactly which amendments will be tolerable to be considered and those of us who have amendments that are a little more difficult, perhaps a little more aggressive in trying to fix those things, shut the door on the kinds of practices that caused the near collapse of the American economy, if our amendments are inconvenient to someone, we are told: You will not have an opportunity to do this. We will just pick other amendments that we think are fine, amendments that don't have quite as much bark or bite to them. We will consider those amendments along the way, and when we get to the end, if your amendment is not considered, that is just tough luck.

It is much more than tough luck, it seems to me, for the American people.

I have a series of charts. I would like to offer the amendment and have it pending. I have previously been here asking unanimous consent. It was objected to. I have spoken earlier on the floor and was told it would be considered.

If I may have the attention of my colleague from Connecticut, we didn't get to that second portion of the previous UC. Let me ask unanimous consent that following whatever other business has previously been agreed to, amendment No. 4109, which I have properly filed, be considered pending and that we would be able to consider amendment No. 4109.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DODD. Let me say to my colleague, we have been on this bill now for 3 or 4 weeks. We have considered almost 50 amendments. I have a list of about 49 amendments I sent to the minority several days ago, including amendments offered by Democrats, Republicans, some of them bipartisan amendments, that I would be more than willing to accept. I know the minority is looking at them, and they may accept some and reject others. There is that group of amendments. We have a list of about 20 different amendments here, some of which are, like my friend's from North Dakota, controversial amendments that I would like the opportunity to debate and bring up.

The difficulty of managing from this seat is that, obviously, once consent is given for an amendment to be pending, it takes consent then to lay it aside and move forward. Then we turn over to any one Member of this Chamber the ability to veto virtually all other amendments because it takes unanimous consent by this Chamber to agree to proceed to something else. So what it does is allow one Senator to tie up——

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

Mr. DODD. Certainly.

Mr. DORGAN. Has that happened at this point? I don't know of a circumstance where someone, during debate on this bill, has objected to setting the pending amendment aside. I have seen it happen, but that is not what has happened on this bill.

Mr. DODD. As my colleague knows, I happen to be supportive of trying to get to his amendment, trying to negotiate so we can get his amendment up at this point. There are also other amendments we might be able to clear out of the way before we do that. If we stop everything from moving before we get this matter resolved, of course, it deprives others of having a chance to have an amendment considered. That is the effect of it.

Again, the Senator has the right to do it, obviously, objecting to anything going forward. Any one Senator can do that. My colleague has as much right as anyone else to do it, but there is an effect on a lot of other amendments to that. I certainly would not argue about the Senator's right to do it, but the consequence of it is such that other amendments then do not go forward.

Mr. DORGAN. Mr. President, will the Senator yield for a further question?

Mr. DODD. Yes.

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. DORGAN. It is not just me. It is my understanding that the Levin-Merkley amendment is in the same position. So it is a circumstance, it appears to me, where someone said: Well, now, it is inconvenient for us to vote on things that are a little bit controversial or have a little more bite to address these issues. Because it is inconvenient, we are going to object, so you are not going to be able to offer those amendments. I do not know how we got to this cliff, but falling off that cliff is not acceptable to me. We have been voting for 2 weeks and people have been able to offer amendments. I voted on amendments I did not want to vote on from the other side. They had a right to offer them, and I voted on them. That is fine.

Was there a moment when we decided, all of a sudden, that the other side will have a veto authority over our ability to offer amendments of any consequence? I do not know when that happened, but that is totally inappropriate, given the couple weeks we have been through here.

Mr. DODD. Again, my colleague has a right to object if he decides to do so. I just explained what the consequences are of that decision. That is all.

The PRESIDING OFFICER. The Senator from North Dakota still has the floor.

Mr. DORGAN. Well, Mr. President, listen, my objective is not to obstruct or to try to slow anything down. My objective is to allow people to offer amendments, especially those who have been here for some long while, to offer amendments that are consequential relative to the issue of financial reform.

If from this day forward, we have decided—or from today forward we have decided that if someone on the other side—who is at this point unknown—is going to object to amendments that are uncomfortable, amendments that I think will strengthen the bill, this is not much of a process anymore. We will, I guess, pick out the amendments that deal with tourism or babies or whatever it is that is uncontroversial to everybody and pass those and then go on to final passage. Those who had other amendments of consequence are told: Someone objected. We are not quite sure who.

So I guess what I can do is say that I will object to having people decide we will only deal with noncontroversial amendments and that those amendments of substantial consequence to this bill are not relevant enough to be considered.

So I wish that were not the case. But I am not going to sit here and say: Yes, go ahead and just pass over these amendments and pick out some amendments you like. If everybody can agree on amendments we like, you can offer them and we will have votes and no one will have concern over it. But if there are amendments that somebody does not like, you are not going to be able to offer them because someone is going to object.

It does not make much sense to me.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. McCASKILL. Mr. President, is there still a unanimous-consent request pending that the Senator from Connecticut made some while back that there was never an objection heard on?

The PRESIDING OFFICER. That consent request was granted.

Mrs. McCASKILL. OK. So based on that consent request, I would like to talk about amendment No. 4072, the Grassley-McCaskill IG amendment. This amendment is about having a cop on the beat. We have talked a lot about a cop on the beat as it relates to a consumer agency. But in internal workings of these agencies, there are people who are very special in our government who have eyes and ears inside agencies who can find problems, who in fact are our inspectors general.

This amendment will strengthen the independence and the working role of the inspectors general in these agencies that have such an important power over our financial sector. In fact, it was the failure, in some ways, of appropriate oversight that got us into this mess in the first place.

Senator GRASSLEY has been a champion of inspectors general for many years, and since I came to the Senate, I have tried to focus on this because I came here from being a government auditor. For 8 years, I did nothing but government auditing, and I have deep and abiding respect for the professional auditors in our Federal Government who are the watchdogs for taxpayers inside the halls of our government.

This amendment will do a couple of important things.

One, it is going to create a council of inspectors general in the financial sector, the SEC and the CFTC and the FDIC, and they will have to meet four times a year. At that meeting, they are going to have a forced opportunity to compare notes, to talk about the investigations they are doing, to make sure they are not duplicating each other's work, and, most importantly, to talk about systemic risk and are they getting at it in a collective way. It does not cost anything. It is just smart. That is one part of this amendment.

The other part of the amendment has to do with how these inspectors general are selected. There are different kinds of inspectors general in our government. Some are appointed by the President. Some are appointed by the agencies. I will say that anybody who thinks those appointed by the President are the most independent is wrong. Anybody who thinks those appointed by the agencies is the most independent is wrong.

I believe the independence of inspectors general has everything to do with whether someone is selected who is professional and who is going to be independent of any influence.

Here is my reason for supporting this amendment so fully. It is a bad idea to change right now how these inspectors general are selected. We need continuity right now. We need consistency. What we have done in this amendment is change it so these inspectors general will now report to the entire boards they serve and not to just the head of the agency. That is where you can get the cozy relationship and get into trouble. That is why, in fact, this amendment is needed.

It also requires that two-thirds of these boards will be required to fire an inspector general. So this amendment will, in fact, make sure we have continuity, we have a cop on the beat in terms of these inspectors general right now and going forward, and it strengthens their independence and their ability to work with each other.

I will say we have lots of nominations pending, and the notion that we would decide we need five more nominations pending with, I am afraid, secret holds that might come about—we have one inspector general who has a secret hold now—I certainly do not want the inspectors general for these agencies to be held up with secret holds over the next couple years and us have a lack of continuity and certainty in terms of leadership at these important organizations as we move forward to clean up this mess that has occurred in our financial sector.

So I urge my colleagues to support the Grassley-McCaskill amendment, amendment No. 4072.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the Senator from Missouri, my friend, has given a very good explanation of this bill. Before I give my version of it, which will be similar to hers, I wish to compliment her because she is in a position of jurisdiction over IGs. She has done a very good job of strengthening these positions in other legislation she has sponsored. So I feel very good to be in the company of the Senator from Missouri on this amendment.

Our amendment would correct serious problems in section 989B of the Dodd-Lincoln substitute. This section of the bill would change the way that five inspectors general are hired and fired.

Currently, these five inspectors general are hired and fired by the agency that they oversee, but section 989B would put the President in charge of hiring and firing them. This provision was included because the sponsors of the legislation believe that making inspectors general Presidentially appointed will make them more independent.

However, rather than strengthening oversight over our financial institutions with more independent watchdogs, section 989B could introduce politics into what have traditionally been career, nonpolitical positions.

Under the Inspector General Act of 1978, there are two types of inspectors general, presidentially appointed IGs and designated Federal entity IGs, DFE IGs. Both types of inspectors general are tasked with hunting down waste, fraud, and abuse at Federal agencies. However, there are some major differences in how they are appointed and removed from office and how they operate.

DFE IGs are appointed by the agency rather than the President. The Inspector General Act created 30 of them, not just the 5 addressed in this bill. The agency-appointed IGs typically run smaller offices than Presidential appointees, often with just a handful of employees. Almost all of them oversee agencies that are headed by a bipartisan board or commission.

By contrast, Presidentially appointed IG's generally run much larger offices and employ dozens or hundreds of employees to oversee Departments such as the Department of Defense, the Department of Justice, Health and Human Services, and so on. They are nominated by the President and confirmed by the Senate. They are subject to removal at any time by the President. However, the President must provide Congress 30 days notice and a written list of reasons for dismissing the inspector general.

Agency-appointed IGs have a similar protection requiring that the agency notify Congress in advance of the reasons for any removal.

The sponsors of section 989B argue that because agency-appointed IGs are hired and fired by the agency they oversee, they might be tempted to pull their punches more than someone who could only be fired by the President. I actually agree that this is a potential problem. However, the solution in this bill misses the mark.

Unfortunately, section 989B only attempts to address this independence issue at five of the 30 agency-appointed IGs. In my view, this fix is too narrow. In addition, it attempts to ensure independence by replacing these five IGs with Presidential appointees.

There is no evidence that Presidential appointees will be more independent than their predecessors. There have been problems in the past with Presidential appointees being too cozy with the agency they are supposed to oversee or pulling punches for political reasons.

There is strong evidence that agency-appointed IGs can be fiercely independent despite the possibility of being removed by the agency head. It all depends on the quality of the appointment.

For example, David Kotz, the Securities Exchange Commission inspector general has exposed the SEC's failures in the Madoff and Stanford cases, and is currently looking into the timing of the government suit against Goldman Sachs. Similarly, the Pension Benefit Guarantee Corporation's, PBGC, inspector general aggressively investigated the former head of the agency, Charles Millard, and has challenged the acting director about providing inaccurate information to Congress. Despite the potential risks of being replaced, these IGs have not been timid about challenging their agencies to improve.

Because of the way section 989B is currently drafted, these IGs could be summarily dismissed soon after the bill is signed into law. Under this provision, each IG could continue to serve but only until the President nominates a replacement. Once the President makes a nomination, the IGs would no longer enjoy legal protections for their independence and would become instant lame ducks. In fact, SEC Inspector General Kotz recently stated that if this provision becomes law it will effectively end some of the ongoing investigations his office has at the SEC.

There is a practical problem with Presidential appointments as well. This administration does not have a great track record in filling vacancies in an expeditious manner. Having no watchdog on duty is a concern for all Americans.

There are over a dozen IG positions where there is a vacancy, an acting, or an interim IG. The administration waited 18 months to appoint an IG at the Federal Housing Finance Agency, which oversees Freddie Mac and Fannie Mae. That is 18 months without strong leadership able to direct audits, investigations or examinations of agency policy. That's 18 months without a cop on the beat. Maybe that is the way the administration likes it. I am sure the bureaucrats at these agencies would enjoy life more without an inspector general asking questions. Imagine if the SEC were not held accountable for their failures in stopping the Madoff or Sanford Ponzi schemes.

This bill would create five lame ducks in the IG community and the potential for more extended vacancies unless we fix it. There would be far less oversight during the lengthy transition process under the current bill with no guarantee of vigorous oversight by the new appointees. Essentially, this provision could politicize the positions that have historically been filled by career public servants.

I know the goal of this provision is to enhance IG independence, but there are better ways to protect the independence of these IGs than by replacing them with Presidential appointees.

We should do it more effectively and make sure that all agency-appointed IGs are more independent, not just the five singled out in the bill. That is why I am offering this amendment. The Grassley-McCaskill amendment simply applies the same sort of protections that have worked for one of the 30 agency appointed IGs to the other 29 agency-appointed IGs. The Postal Service inspector general enjoys enhanced protections and my amendment would extend those protections more broadly.

Our amendment would strike section 989B of the bill and replace it with a system that will bring true reform, independence, and accountability.

It would make the IGs report to the entire bipartisan board or commission heading their agency, and the IG could only be removed for cause by a ⅔ majority vote of the bipartisan board or commission. This would ensure that should an agency make a political attempt to remove an IG, there would be the possibility of dissent among the board or commission members.

These are serious protections from political interference currently enjoyed by the Postal Service IG, but it also allows an IG to be held accountable when necessary. These same provisions have worked for the Postal Service inspector general and it is time to extend them to all the agency-appointed IGs.

It also holds IG's accountable by requiring that they disclose the results of all their peer reviews in the semi-annual reports to Congress, thereby making them public.

This amendment strikes the right balance, improving both independence and accountability of all DFE–IGs. In fact, even the White House has gone on the record telling the Center for Public Integrity, ''the administration does not support in any way politicizing the function of the Inspector General and we have not proposed these changes'' in the Dodd-Lincoln substitute.

The amendment is supported by the nonpartisan Project on Government Oversight and has bipartisan support from members on the committee with jurisdiction over the IG Act. This important amendment deserves an up-or-down vote at the appropriate time.

In summary, our amendment would correct serious problems in section 989B of the Dodd-Lincoln substitute. This section of the bill would change the way that five inspectors general are hired and fired. Currently, these five inspectors general are hired and fired by the agency they oversee, but this section of the bill would put the President in charge of hiring and firing them. This provision was included because sponsors of the legislation believed that making inspectors general presidentially appointed would make them more independent.

However, rather than strengthening oversight over our financial institutions with more independent watchdogs, this section could introduce politics into what has traditionally been career, nonpolitical positions. It is important to ensure that this bill does not then hurt the oversight of these designated Federal regulatory agencies by the inspectors general.

I think our amendment corrects the potential to create long-term vacancies at five important regulatory agencies that, quite frankly, cannot afford to have these sorts of vacancies and not have the proper oversight.

The amendment provides true transparency, and with transparency you get accountability among inspectors general. We are going to bring about real independence—or maybe it would be better for me to say maintain the independence these folks have shown already.

We should take steps to make all agency-appointed IGs more independent, not just the five addressed in the bill. These five should not be singled out. The amendment before us makes the IGs report to the entire bipartisan board or commission heading their agency and requires a two-thirds vote to remove an inspector general.

I will not speak about the peer review Senator McCASKILL has already spoken about. But I think it is important we have semiannual reports to Congress on the effectiveness of the people in their various positions. By reporting to the entire bipartisan board or commission rather than just the chairs, these IGs will be further insulated from political influence. As a consequence, they will be more independent. So in the final analysis, I think this brings the right balance to the independence of it.

As I said, this amendment is supported by the nonpartisan Project On Government Oversight. Because it comes from another committee of jurisdiction, I am glad that through Senator McCASKILL and other people on the committee, we have bipartisan support from the committee of jurisdiction.

This is an important amendment and deserves an up-or-down vote at the appropriate time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, first, let me commend my colleagues from Iowa and Missouri for raising an issue of this importance. Senator MENENDEZ of our committee, the Senator from New Jersey, has an interest in the subject matter, I explain to my good friends and colleagues from Iowa and Missouri, and he may want to be heard on this amendment.

I understand the purpose and the intent, and in many respects I agree with my colleagues from Iowa and Missouri. But in fairness to my colleague from New Jersey, I wish to give him a chance to respond, as a member of our Banking Committee. So if we could just pause for a few minutes and give him an opportunity to come to the floor and say why he believes the existing language in the bill has merit, I would appreciate that.

So I wish to suggest the absence of a quorum and give him a chance to come on over and make his case. Then, hopefully, we can get to a vote. In the meantime, I do not know if Senator BINGAMAN is here or others are here who would like to be heard on the Bingaman amendment and the side-by-side I think being offered as well. That would certainly be a useful use of the time. People could go and discuss that particular proposition while we are waiting to hear from Senator MENENDEZ.

So I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Mr. President, I am going to speak for a few moments about the amendment I just referenced, amendment No. 4109, which was filed and to which there has now been an objection. As I have indicated to my colleague, objections run both ways. I could sit here and object as well to most things that are going to go on here, if we have a gatekeeper or several gatekeepers who decide that two amendments that would get a little tougher on Wall Street are amendments they don't want to vote on; if they don't want to countenance an amendment that would tighten the strings just a little bit.

Let me speak about what this amendment is because it sounds like a foreign language, ''naked credit default swaps.'' ''Credit default swaps'' by itself sounds like a foreign language. The reason is they haven't been around all that long. This is an exotic financial instrument that was created to allow certain things to happen on Wall Street between banks and big hedge funds and so on. If we have not yet at this point understood the danger of this unbelievable orgy of speculation in credit default swaps—and especially what are called naked credit default swaps—then I guess we are destined to never fully understand what happened, and that is fine. Maybe some people don't want to know what happened.

A naked credit default swap is pretty simple. Someone out there needs some money, so they issue bonds. Someone else buys the bonds. Now they hold the bonds and the person who issued them has the money. The person who bought the bonds wants to make sure the person who issued the bonds won't default, so they want to buy an insurance policy from someone else, a credit default swap. So for a small amount of money, they buy an insurance policy against the bonds defaulting. It is a relatively recent phenomenon where all of this has been created.

Normally speaking, if someone issued bonds, the other people bought the bonds and they did due diligence on the other side to decide if this is a good risk, and that is the way it worked. Now they buy insurance called credit default swaps.

The difficulty is credit default swaps are now called naked credit default swaps if, in fact, they have no insurable interest at all. That is a credit default swap that bets that someone who issued bonds is going to default, despite the fact that neither party to this transaction ever has purchased any of those bonds. They don't have an insurable interest in the bonds; they just made a bet. They have said: We have not bought those bonds over there. But those bonds were issued, and we would like to make a wager. We think those bonds are probably going to default. Someone else says: I don't think they will. So you have a naked credit default swap with no insurable interest in anything.

Why is that troublesome? Well, I can't buy fire insurance on the house of the Presiding Officer in Alaska. Why would they not allow me to buy fire insurance on his house? Because I don't have an interest in his house, and they don't want about 10 or 15 people having a fire insurance policy on his house. The only way you can get fire insurance is if you have an insurable interest. I can't buy a life insurance policy on someone else's life because I don't have an insurable interest.

Those are rules most of us understand. You can't buy fire insurance against somebody else's house; you can't buy a life insurance policy against somebody else's life. But Wall Street has discovered there is a new way to allow someone to buy insurance policies or speculate in certain kinds of insurance without ever having an interest; that is, allowing two parties to speculate on whether a third party might default on a bond issue they placed with a fourth party, despite the fact that the first two parties have no interest in that at all. It is just as if they went to Las Vegas and one bet on red and the other bet against red on the roulette wheel. It is just a flatout bet. It is not an investment; it is just a bet.

Let me talk about how prevalent this is, just because I think it is important. There was about $10.9 trillion in naked credit default swaps held by commercial banks in the fourth quarter of last year; $10.9 trillion held by commercial banks. Those are institutions, by the way, whose deposits are insured by us, by the American taxpayer, by the FDIC. Up to $19.9 trillion of naked credit default swaps are held by the top 25 holding companies.

It is estimated by one expert that as much as 80 percent of the credit default swap market is traded by firms that don't own the underlying debt. There is also a United Kingdom report shared by the Congressional Research Service that says only 20 percent of the credit default swaps are estimated to be covered. That means 80 percent of all of this paper that is put out there in credit default swaps is so-called naked. It has no insurable interest. It is a bet rather than an investment.

Let me just show what some of the experts are saying about this. One of the editors of the Financial Times says: I can't understand why we are still allowing the trade in credit default swaps—he meant naked swaps—without ownership of the underlying securities. A generalized ban on so-called naked CDS's should be a no-brainer.

It ought to be a no-brainer. It is not a no-brainer in this Chamber, apparently. A naked CDS purchase means someone takes out insurance on bonds without actually owning them. It is a purely speculative gamble. There is not one social or economic benefit.

My amendment is trying to shut this down, but I am being blocked by those who don't want us to get tough on Wall Street.

Charlie Munger, who is the partner of Warren Buffett and who has spoken a lot about these issues, said:

> If I were the governor of the world I would eliminate credit default swaps entirely, 100 percent. That's the best solution. It isn't as though the economic world didn't function quite well without it and it isn't as though what has happened has been so wonderfully desirable that we should logically want more of it.

Do we need to go to the edge of a cliff again with this economy, with tens of trillions of dollars of notional value of credit default swaps before we decide this is a problem for our country and for our future?

Again, the associated editor of the Financial Times:

> Another argument I have heard from a lobbyist is that naked CDS's allow investors to hedge more effectively. That is like saying that a bank robbery brings benefits to the robber.

Well, I guess so.

George Soros, a pretty good investor I might say, made $3 billion last year, I am told in the reports:

> CDS's are toxic instruments whose use ought to be strictly regulated: Only those who own the underlying bonds ought to be allowed to buy them.

Well, those are a few thoughts from some people of consequence: editor of the Financial Times, Charlie Munger; George Soros; and others. But it describes a very significant problem. It describes, in my judgment, a fairly large portion of what caused this country's economy to teeter on the edge of a cliff.

The Treasury Secretary one day comes and leans across a lectern on a Friday and says to us: You need to ante up $700 billion and pass a three-page bill in 3 days or the economy might collapse. Now, a year and a half has passed, a little more, and some, I think, have too quickly forgotten the lessons.

So the question is, Are we going to do something about naked credit default swaps, about the unbelievable orgy of speculation, the bubble of speculation that exists to the tune of tens of trillions of dollars?

Let me read it again:

> Up to $10.9 trillion in naked credit default swaps were held by commercial banks in this country in the fourth quarter of 2009.

I am talking about up to $10.9 trillion of naked credit default swaps in the bowels of commercial banks. These are institutions that we guarantee, we underwrite.

I don't understand at all the notion that we should be prevented from addressing this issue. It may be that we have people here willing to shake the pompoms and be cheerleaders for naked credit default swaps. Good for you, if that is the way you feel. It is just you have missed a significant chapter of American financial history. But if you feel that way, vote against my legislation. My legislation would ban the use of naked credit default swaps.

> After the phase-in period, they are gone. If you don't have an insurable interest, they are gone. It is a simple enough proposition to say: Why should we have 5 or 10 times the number of insurance policies against bonds than there are bonds to insure? Why should we allow that? We don't allow it in other circumstances.

I understand the offering of this amendment and the shutting down of naked credit default swaps will cost Wall Street a substantial amount of money. They will not get fees on these things. I understand that. This is all about churning and getting fees and making a lot of money. I understand all that. I also understand sometimes this notion of making a lot of money in a short period of time by cutting corners and by doing things that aren't appropriate is the wrong thing.

My colleagues know and I know that we saw banks being robbed in this country. Yes, we saw banks being robbed in the last several years. In the old days, when I used to watch the western movies, you could tell who the bank robber was. They usually had a bandana, they brandished a couple of six-guns. Often they stopped a train or they ran into a bank, and that is the way they robbed things.

In the last several years, there have been some bank robberies going on in this country, and I can refer you to a lot of contemporary writing that describes the way those banks were robbed. Two people driving home from work, each making $20 million, one supervising the other in one of the biggest investment banks, loading that bank up with unbelievably risky investments because they know at the end of the day, somebody is going to lean over a lectern and say: Oh, by the way, we need to bail all these folks out.

The folks who went to the basement of the Securities and Exchange Commission, I believe, in the year 2004—

said: We need you to allow us, the biggest investment banks in the country, to extend our leverage from 12 times to 30 times and more. You need to give us the opportunity to free up some money by exacerbating the leverage capabilities we have. The Securities and Exchange Commission, ever the compliant regulatory agency, said: Yes, sir—saluting handily in the basement of their building—absolutely, go right ahead.

By the way, one of those companies was run by Mr. Paulson who, 2 years later, came back as Treasury Secretary and leaned across the lectern and said: I need $700 billion to bail out these companies.

What was part and parcel of that which caused these companies to almost ruin this economy? Naked credit default swaps, just flatout gaming. Not investing, just betting. The question is, Do we want to continue to do that?

I fear we are going to pass a piece of legislation that does not address too big to fail. At the end of the day, we will have institutions that are still too big to fail. I have an amendment on that, but I haven't bothered because we already did one amendment on too big to fail, the Brown-Kaufman amendment. That got 33 votes, too big to fail. Banning these unbelievable speculative instruments like naked credit default swaps, if we can't do that, it is very hard, it seems to me, to climb on the high step and say we have taken on this subject. We have really made sure this isn't going to happen again. So I have an amendment that is filed, and now I am told that, no; it is inconvenient and uncomfortable for me to offer this amendment and, therefore, someone has objected.

To my colleague from Alabama, I would say I understand. He is required—when people in the caucus say there is an objection, his job is to reflect the objection of someone in his caucus. So my beef is not with him. But I would just say that it is not acceptable to me to, at 5 o'clock on Tuesday, have a process by which we have now decided that if amendments are inconvenient—getting a little too tough on Wall Street; trying to draw the strings a little tighter on things that have to be fixed in this bill—if that is the case, well, then, you know what. We are not going to allow those things to be offered. We will just sit here and offer amendments on tourism or something else equally benign.

If that is the case, then I will just sit here as well and say that is not a process I respect. It seems to me we ought to have the right to bring to this Chamber at this point, given the shadow of what we have been through as a country, the right to bring amendments to this bill that try to address some very significant problems; the right to bring them to the floor, to have a debate, and to offer them for a vote. If that is not going to be the case, then I am going to sit here and object to proceeding until it is the case.

So my colleague, Senator BINGAMAN, I know is here. I have more to say, but I will save it because I fully expect either to get to this amendment or to be sitting here for some long while, and I will have an opportunity again to talk about naked credit default swaps, their danger to this economy, and why, when this bill is done, it ought to include the provisions of amendment No. 4109 which bans the use of naked credit default swaps and says there is a place to gamble in America and it is not in a bank lobby.

If you want to put a Keno table or a blackjack table in a bank lobby, shame on you. We ought to pass this amendment, and, most importantly, we ought to allow amendments to be offered. I will sit here until that is the case.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

AMENDMENT NO. 3892, AS MODIFIED, TO AMENDMENT NO. 3739

Mr. BINGAMAN. Madam President, I call up amendment No. 3892, as modified, for consideration.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, Ms. MURKOWSKI, Mr. REID, Mr. BROWNBACK, Ms. CANTWELL, Mr. CORNYN, Mr. WYDEN, Mr. CORKER, Mr. INOUYE, Mrs. MURRAY, and Mrs. SHAHEEN, proposes an amendment numbered 3892 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To preserve the authority of the Federal Energy Regulatory Commission to ensure just and reasonable electric and natural gas rates and to protect the public interest)

On page 565, between lines 2 and 3, insert the following:

(e) JUST AND REASONABLE RATES.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

''(vi) Notwithstanding the exclusive jurisdiction of the Commission with respect to accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery under this Act, no provision of this Act shall be construed—

''(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);

''(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission to ensure just and reasonable rates and protect the public interest under the Acts described in subclause (I); or

''(III) to supersede or limit the authority of a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) that has jurisdiction to regulate rates and charges for the sale of electric energy within the State, or restrict that State regulatory authority from carrying out the duties and responsibilities of the State regulatory authority pursuant to the jurisdiction of the State regulatory authority to regulate rates and charges for the transmission or sale of electric energy.''.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

''(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

''(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

''(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

''(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).''.

Mr. BINGAMAN. Madam President, the amendment that is before the Senate, No. 3892, as modified, is one I talked about at length a week ago last Friday, so it has now been about 11 days ago. I will summarize it again and make some comments about some of the things that have happened since then.

First, let me ask unanimous consent to add Senators SHAHEEN, MURRAY, and INOUYE as cosponsors.

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

Mr. BINGAMAN. Madam President, with the addition of those three Senators, the other cosponsors on the amendment are Senators MURKOWSKI, REID from Nevada, BROWNBACK, CANTWELL, WYDEN, CORNYN, and CORKER.

The amendment preserves the existing authority of the Federal Energy Regulatory Commission and the authority of the States to be sure that electricity and natural gas rates are just and reasonable, while at the same time leaving the Commodity Futures Trading Commission its full authority to police derivatives and futures markets.

First, I applaud the good work Senator DODD and Senator SHELBY have done on this bill. I particularly applaud the provisions that have come from Senators LINCOLN and CHAMBLISS and the Agriculture Committee in setting up a system to get control of derivatives markets.

I am, however, concerned that without this amendment, the law could be interpreted to allow the Commodity Futures Trading Commission to override the jurisdiction the Congress has given to the FERC and that the new provisions included here could make this problem worse.

There is probably not a sector of the economy that is more tightly regulated than the electricity industry. The natural gas industry is not far behind for a claim to that title. FERC regulates wholesale rates and transportation in interstate commerce for both electricity and gas and must approve mergers of utilities. FERC also has authority to police the manipulation of electricity and gas markets, granted by the Congress in 2005 as a response to Enron's manipulation of electricity markets in the West. The States have that same authority for retail sales both with regard to electricity and natural gas. There are tight rules for transactions among affiliates of holding companies in these industries. There are extensive transparency and reporting requirements for contracts and transactions. This is all intended to be sure that the customers of utilities are getting what they are paying for and that they are paying rates that, in fact, are just and reasonable.

The concern has been that the exclusive jurisdiction of the CFTC under the Commodities Exchange Act could be interpreted to supersede the regulation by FERC of important aspects of these industries.

The amendment I am offering with my cosponsors is a proposed solution that I believe is consistent with the philosophy of consumer protection that underlies other parts of the bill we are considering. The effect is simple. This amendment preserves the authority of both the Federal Energy Regulatory Commission and the individual States to ensure that electricity and natural gas rates are just and reasonable, and in the case of FERC, to prevent market manipulation that could affect prices.

Direct examination of prices is central to each agency's mission. In FERC's case, this authority is longstanding; it was established over 70 years ago. Without this amendment, a critical check on energy prices could be lost, and this is so for two obvious reasons: First, the CFTC's so-called ''exclusive jurisdiction'' could be interpreted to operate to prevent FERC and State public utility commissions from acting, where their jurisdictions intersect the CFTC's jurisdiction. Second, the CFTC's regulatory mission differs significantly from that of the FERC and the State public utility commissions. The Commodity Futures Trading Commission's mission is to protect market participants and promote fair and orderly trading. It doesn't directly examine commodity prices in its markets, nor does it consider the reasonableness of rates. While properly functioning futures markets are important, the CFTC cannot duplicate the direct ratepayer protections provided by the FERC and by the State public utility commissions.

There are some things this amendment does not do that it has been charged with doing. First, it doesn't give FERC jurisdiction over futures, swaps, or options. FERC has jurisdiction over rates for the sale of electricity and gas and contracts that are associated with those sales. Derivatives that are related are still jurisdictional to the Commodity Futures Trading Commission. Nothing changes in that regard. We are merely preserving that authority that the Federal Power Act and the Natural Gas Act gave to FERC decades ago and in the Energy Policy Act of 2005. Second, the amendment doesn't give FERC jurisdiction over NYMEX or ICE or any other futures exchanges. They are not public utilities. They do not sell electricity or natural gas.

As I have said, I support this bill generally. I believe it is essential in ensuring that consumers are protected. However, both I and my cosponsors strongly believe it is necessary to preserve enduring consumer protections that might otherwise be lost.

It is a simple, tailored amendment that doesn't create any loopholes in jurisdiction. It also does nothing to diminish the ability of the CFTC to regulate commodity exchanges such as NYMEX or to require public disclosure of swaps or any other public authority they have to regulate the mechanics of commodity markets, including those who trade energy commodities.

We have received letters of support for this amendment from the National Association of Regulatory Utility Commissioners, the FERC, utility industry companies and associations, including Edison Electric Institute, the American Public Power Association, the American Public Gas Association, the Electric Power Supply Association, the American Wind Energy Association, the California Independent System Operator, the American Gas Association, the Large Public Power Council, the Natural Gas Supply Association, Compete, and PJM Interconnection.

I ask unanimous consent to have printed in the RECORD the letters of support I have referred to following my statement.

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

(See exhibit 1.)

Mr. BINGAMAN. Mr. President, I have also been informed that the administration supports this amendment. I advise my colleagues that is the case as well.

Once again, I thank my cosponsors and urge my colleagues to support the amendment. I gather that a time will be found during our deliberations of the bill to consider the amendment.

With that, I yield the floor.

MAY 11, 2010.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.
Hon. LISA MURKOWSKI,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR LEADER REID, CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI: We are writing in support of your amendment to S. 3217, the Restoring American Financial Stability Act, which would preserve the authority of the Federal Energy Regulatory Commission (FERC) and the states to ensure just and reasonable rates for electricity and natural gas consumers. The undersigned associations represent most of the electricity and natural gas consumers in the United States.

FERC and the states already regulate transactions, products, services and agreements in wholesale and retail electricity and natural gas markets, respectively. In addition, FERC regulates regional transmission organizations (RTOs) and independent system operators (ISOs), which are responsible for the planning and operation of the transmission grid in many areas of the country. There is no regulatory gap that needs to be filled with respect to the transactions, agreements, contracts, products and services that regulated energy companies provide.

The underlying derivatives language in the Senate financial reform bill could cause the Commodity Futures Trading Commission to assert jurisdiction to regulate products offered in wholesale electricity markets, such as financial transmission rights (FTRs), which are used to manage the cost of transmission congestion. This could affect the ability of our member companies and utilities to have continued access to FTRs and other products on reasonable terms and conditions, which is essential to their ability to reliably serve their retail consumers at reasonable rates and with less price volatility.

We thank you and the other co-sponsors of this amendment for recognizing and addressing this issue. While a more clear delineation of FERC's authority would be helpful, we believe this amendment is a significant step in the right direction, and we look forward to passage of the amendment and continuing dialogue on this issue as financial regulatory reform legislation moves forward in Congress.

Sincerely,

American Gas Association; American Public Power Association; American Wind Energy Association; California ISO; COMPETE; Edison Electric Institute; Electric Power Supply Association; Large Public Power Council; Natural Gas Supply Association; PJM Interconnection, L.L.C.

FEDERAL ENERGY REGULATORY COMMISSION, OFFICE OF THE CHAIRMAN,
Washington, DC, May 12, 2010.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.
Hon. LISA MURKOWSKI,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI: I write in support of your bipartisan amendment No. 3892 to amendment No. 3739 to. S. 3217, the financial regulatory reform legislation currently being debated by the Senate.

Your amendment preserves existing Federal Energy Regulatory Commission (FERC) authority to protect energy consumers from rate increases and in no way allows FERC to supersede the regulatory jurisdiction of the Commodity Futures Trading Commission (CFTC) with respect to the markets or instruments the CFTC now regulates, especially futures markets. Any suggestion to the contrary flies in the face of the plain language of your amendment.

As you know, FERC is the only federal agency charged with regulating physical electricity and natural gas markets for ''just and reasonable rates''. But the broad jurisdiction the underlying legislation grants to the CFTC over ''swaps'' could undermine FERC's ability to regulate the electricity and natural gas markets and thus lead to increased costs to consumers, because CFTC has no ratemaking authority. Your amendment rightly maintains FERC's ratemaking authority within the physical electricity and natural gas markets while preserving CFTC's role to ensure that the futures markets operate in a fair and orderly manner.

FERC also has an obligation to police the physical electricity and natural gas markets for fraud and manipulation and punish any wrongdoing. In the aftermath of the California energy crisis and the schemes perpetrated by Enron and others, Congress gave FERC under EPAct 2005 more robust authorities to prevent fraud and market manipulation by allowing a penalty of up to $1 million per violation per day. In Fiscal Year 2009, FERC's policing efforts yielded approximately $38.3 million in civil penalties and recovered $38.7 million in ill-gotten gains. We are concerned that the underlying bill could inadvertently undermine those authorities, but your amendment will preserve them.

Finally, I note that the American Gas Association, the American Public Power Association, the American Wind Energy Association, the Edison Electric Institute, the Electric Power Supply Association, the Large Public Power Council, the National Association of Regulatory Utility Commissioners, the Natural Gas Supply Association, California ISO, PJM Interconnection, L.L.C., and COMPETE support your amendment.

Sincerely,

JON WELLINGHOFF,
Chairman.

NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS,
May 10, 2010.

Re Bingaman, Murkowski, Reid Amendment to the ''Restoring American Financial Stability Act'' (S. 3217).

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy & Nat. Resources, U.S. Senate.
Hon. LISA MURKOWSKI,
Ranking Member, Committee on Energy & Nat. Resources, U.S. Senate.
Hon. HARRY REID,
Majority Leader,
U.S. Senate.

DEAR CHAIRMAN BINGAMAN, RANKING MEMBER MURKOWSKI, AND MAJORITY LEADER REID: On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I write to you today to express NARUC's strong support for your amendment to the ''Restoring American Financial Stability Act'' (S. 3217) addressing federal and State electric and gas utility rate jurisdiction. Your Amendment correctly confirms State and federal regulatory authority to ensure that retail and wholesale energy consumers pay just and reasonable rates for utility service.

The FERC and the States are the regulatory agencies with the necessary expertise and statutory mandates to oversee electricity and natural gas markets to protect the public interest and consumers. S. 3217 should not preempt FERC and the States from continuing to exercise their authority under existing law to ensure consumers pay just and reasonable rates for reliable utility service. These markets that are already regulated by FERC and the States under accepted tariffs or rate schedules should remain subject to this existing regulation, which includes jurisdiction over physical and financial transmission rights and market oversight.

NARUC thanks you and your colleagues for offering this important amendment. By continuing FERC and State authority, under S. 3217, to oversee any agreement, contract, transaction, product, market mechanism or service offered or provided pursuant to a tariff or rate schedule filed and accepted by the FERC and/or the States, we believe this amendment ensures that the consumers and the public interest will be protected.

Sincerely,

CHARLES D. GRAY,
Executive Director.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, May 14, 2010.

DEAR SENATOR: On May 13, the American Farm Bureau Federation (AFBF) wrote you in opposition to Senate Amendment #3892 to be offered by Senator Jeff Bingaman (D–N.M.) to S. 3217, the Senate financial markets reform package. Sen. Bingaman has modified the amendment since that time and we wish to notify you that we can now support it.

The amendment acknowledges and protects continued Federal Energy Regulatory Commission (FERC) jurisdiction over physical natural gas and electricity transactions. In addition, the amendment acknowledges continued Commodity Futures Trading Commission (CFTC) jurisdiction over energy futures and options contracts traded on CFTC-regulated exchanges. The CFTC has long had regulatory authority over exchange-traded futures and options transactions, and this has worked well to maintain the price discovery function of these markets.

Finally, the amendment provides that the new CFTC jurisdiction over ''swaps'' (contained in S. 3217) does not change this status quo allocation of jurisdiction between FERC and the CFTC. Rather, the amendment now sets forth an expedited and cooperative exemption process to allow both regulatory agencies to fulfill their obligations to the American public.

We appreciate your work on this important legislation.

Sincerely,

BOB STALLMAN,
President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 4072 TO AMENDMENT NO. 3739

Mr. GRASSLEY. Madam President, I ask unanimous consent to set aside the pending amendment for the purpose of calling up amendment No. 4072.

The PRESIDING OFFICER. The clerk will report the amendment.

The Senator from North Dakota.

Mr. DORGAN. Madam President, I object.

The PRESIDING OFFICER. The Senator has the right to call up his amendment under the previous order.

The clerk will report the amendment.

The assistant editor of the Dailey Digest read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 4072 to amendment No. 3739.

Mr. GRASSLEY. Madam President, I ask unanimous consent to waive the reading of the amendment in the whole.

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

The amendment is as follows:

(Purpose: To provide for the independence of Inspecters General of certain designated Federal entitites, and for other purposes)

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

Mr. GRASSLEY. Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MENENDEZ. Madam President, I rise to speak on the pending amendment, the amendment by Senator GRASSLEY. I have a great deal of respect for the Senator from Iowa. Actually, there is a series of things I propose that are in the underlying bill that go to the heart of much of what that amendment is going to do.

I would start off by saying I agree with most of what my colleagues are proposing. I agree we need to make sure we have a strong regulatory agency to act as cops on the beat. We need to make sure those cops on the beat are doing their job.

I agree we should require financial regulators to respond when inspectors general identify deficiencies in their agencies—either by taking corrective action or explaining to Congress why they are not taking those actions.

I agree we should require inspectors general to report to the board of the organization rather than the head of the organization.

I agree we should require publication of any negative recommendations from the inspector general's peer review of the work of other inspectors general.

I also agree inspectors general should not suffer any reduction in pay and that current inspectors general should keep their jobs until the new Presidential appointment system I included in the legislation kicks in.

I think those are great ideas and I proposed them myself. But here is where we have a disagreement. That is that this amendment takes away something I think is incredibly important in the underlying bill. It takes away making these inspectors general at these financial institutions Presidential appointments with Senate confirmation of inspectors general at financial regulatory agencies. In its place, it wants to let the heads of the agencies appoint their own inspectors general.

I think that inures to the possibility of conflicts of interest. Look, if I am the head of an agency and I am going to put in the cop on the beat who is going to supervise me, the inclination is to pick someone who is going to give me a lot of flexibility at the end of the day.

I want a robust cop on the beat. The way I ensure there is a robust cop on the beat, in terms of the inspector general, is having a Presidentially appointed one, one confirmed by the Senate, to know that in fact this person is worthy of pursuing all of the actions of that particular agency in a robust way so they are independent of the agency, not appointed by the very head of the agency they are now going to supervise and review.

I think that is a fundamental weakness, which is why the Banking Committee agreed with me and put the Presidential appointment there and Senate confirmation of inspectors general at financial regulatory agencies.

It seems to me what we want an inspector general to do is make sure the agency is doing its job. Being appointed by the head of the very agency I have to criticize, that I have to critique, that I may raise actions about, means it is a lot less likely the inspector general is truly independent. It is like going to court and saying let me pick the judge who is going to decide on my case. We wouldn't tolerate that in a courtroom and I do not see this as being any different.

I have so much with which I am in agreement with my distinguished colleague, as I mentioned at the beginning—all of those elements. I think we need to make sure when an inspector general identifies efficiencies, either by taking corrective action or explaining to Congress why they are not, that needs to be responded to by the regulators. I agree we should require inspectors general to report to the boards of organizations rather than the head of the organization. I agree we should require publication of any negative recommendation from the IG peer review of any other inspector general's work. I agree the inspectors general should not suffer any reduction in pay and that those who are there should be able to keep their job until the new Presidential appointment system kicks in.

But at the end of the day, if we want a true cop on the beat who is independent of the very agency he or she has to review, I would not want them appointed by the head of the agency and say to themselves, who am I appointing? Am I appointing a robust cop on the beat or am I appointing someone who is far less than robust?

We have forum shopping in the court. Trial lawyers try to pick the best judge from their perspective as to who can best look at their case. I want to be honest. I don't think we should be having the agency heads picking the IG and looking at who is going to treat them most lightly.

I think that is what is at stake. The underlying bill permits the Presidentially appointed, Senate confirmed. I think we should have that right. I think we need a robust cop on the beat and that is why in that one respect I oppose the Grassley amendment.

I hope we can work something out so we can keep the Presidential appointment and Senate confirmation and have all of the other safeguards, many of which I already offered in the bill to be included, and we would have a harmony of view and a robust inspector general regime.

If we are going to have an up-or-down vote on the existing amendment without any changes, then I urge a ''no'' vote. But I do hope we can make a change that permits the inspector general to be Presidentially appointed, confirmed by the Senate. That confers the ultimate independence, the ultimate vigilance, the ultimate vigor in pursuing the very same things my colleague from Iowa and I want to see happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I appreciate very much the words of my colleague from New Jersey. He is a very thoughtful Senator. He is a member of the Finance Committee so I have a lot of relationships with him. I am glad he spoke highly of some of the changes we have suggested in the IG system generally through our amendment. But I think the real difference for Senator MCCASKILL and this Senator is the fact of whether they should be Presidentially appointed. That is probably a difference that is going to be hard to bridge. So I will speak to that point and also say I hope Senator MCCASKILL will be able to come over here and rebut Senator MENENDEZ because she is on the committee that has jurisdiction over IGs, and she has been very much involved over her recent tenure in the Senate on strengthening the system of IGs.

She will probably speak with more authority on this issue than I can, from the standpoint that I am not on that committee—even though I am involved very deeply in strengthening IGs because I think they are an extension of the checks and balances of government, particularly the extent to which they work with those of us involved in the constitutional responsibility of oversight performed by the Congress.

I wish to say flat out I do not accept the argument that Presidentially appointed IGs are always more independent. I think Senator MCCASKILL spoke on this point earlier when she was presenting our amendment. In fact, Presidential appointments raise another problem. President Obama has had a problem with filling IG vacancies. It took the President 18 months to appoint the IG at the Federal Housing Finance Agency. That is one example. Eighteen months without a cop on the beat would be a disaster at these financial agencies. Just think, if the SEC, Securities and Exchange Commission, did not have an IG for 18 months, how many more Madoffs would there be, how many more Sanford Ponzi schemes would there be.

Our amendment provides flexibility with accountability and transparency by reporting to the entire board or commission. The IG is not beholden to one person.

That brings up the point, for 80 years now, since independent agencies have been set up—well, I suppose for 130 years, going back to the setting up of the Interstate Commerce Commission, as an example—they have been meant to be a fourth branch of government, pretty much immune to any one President due to the fact they are appointed to overlapping terms and there has to be representation of both political parties on a commission. Just from the history and purpose of independent agencies, you would also want to make sure that inspector general was independent from the chief executive; not totally independent—because the President appoints them—but at least more independent than inspectors general in Treasury and State and the Justice Department—name any of the Cabinet positions you want.

Also, it provides for accountability by requiring a two-thirds vote to remove an inspector general. If the inspector general were appointed by the President, the IG could be removed, then, by one person. This takes politics out of the equation. Our amendment takes politics out of the equation. It strengthens the IG's independence and obviously that is why we are offering the amendment.

I suppose we are offering the amendment from the standpoint that we want that independence to be there because it has accountability with independence; also, because we think there can be a lapse in the work of an inspector general when a President takes a long time to appoint somebody.

In further response to the reasons Senator MENENDEZ has given, I wish to say that the underlying language in the bill would allow the IGs to serve, yes, until the President appoints someone.

But this means once the President nominates someone, the current IG is removed because there is a long lapse between appointment and Senate confirmation. This means the entire time the Senate debates the nominee, the agency does not have an IG. This is an invitation to allow waste, fraud, and abuse and mismanagement in agencies.

So we come to you—when I say ''we,'' I mean Senator MCCASKILL and myself—with a sincere desire that if something is not broken, do not fix it. We come with a desire to say these agencies are so important there should not be any lapse in time between what they are doing now and some new process of bringing somebody aboard.

I have seen the independence of these IGs to do their job and to help us uncover a lot of things that are wrong, particularly, as I think I have been able to point out with the Securities and Exchange Commission, not only under this administration but under the previous administration.

Probably in the last couple of years of the Bush administration, we were able to, working with IGs, make sure the job was done right and exposed a lot of things that were wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Madam President, I appreciate the statement of my colleague from Iowa. I will just make one or two observations. First, if we are talking about someone being beholden to one person, well, under the Senator's view that person is going to be beholden to the department authority that appoints him, the very same department authority that person is going to supervise and review. So it seems to me to the extent that there is always going to be an appointing authority, I would rather have the President of the United States, with the interests of the American people, whatever President that might be, be the appointing authority over an agency where the IG is not going to be beholden to the agency that appointed them.

I think that is a much more compelling issue. As it relates to the time, the lapse of time, I would just simply say, well, first of all, if we do not have filibusters and have up-or-down votes on people, then we will not have much of a lapse in time in terms of having an IG come before the Senate for confirmation.

I do not know why Senators would want to give up the right they would have under the bill to confirm inspectors general and make sure that person has a robust quality to them, the integrity and the background and the history to make sure they are going to go after this agency when it is appropriate to do so.

I would say, to the extent that any lapse of time versus the robust nature of how this person gets appointed is worthy of consideration. So I do not find, while I agree with my colleague on so many of the other points I have already mentioned, this one fundamental issue is one that I find difficult to understand how, when it is like—sort of like having the fox be appointed to watch the chicken coop. If I appoint someone to watch over me, I would like to believe I am going to have the most robust, tough cop on the beat do it. But human nature being what it is, I am not so sure that agency heads are going to do that. I am not so sure they are going to pick the toughest cop on the beat versus actually someone who might have a less vigilant view. I think maybe we can agree that inspectors general have to come for an immediate vote on the Senate floor and not be subject to being filibustered, and this way we could have an up-or-down vote on them and the issue of lapsing time would be taken care of.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, this will be the last time I will speak on it, and just for a couple of minutes. I hope the Senate would give some discretion to the fact that when Senator MCCASKILL comes over, that she would be able to speak for 2 or 3 minutes on this issue so that people can hear from the other side of the aisle on the importance of this amendment.

We appear to have a fundamental difference regarding how independent

Presidential appointees are. If I were an inspector general, I would feel more independent with a two-thirds vote of a bipartisan panel, meaning commission appointees, as opposed to one person. Our amendment assures IGs, if they are terminated, it will be in a public forum and not the back room of the White House, if they are Presidentially appointed.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 4114 TO AMENDMENT NO. 4072

(Purpose: To ban naked credit default swaps and for other purposes.)

Mr. DORGAN. Madam President, I send a second-degree amendment to the desk to the Grassley amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 4114 to amendment No. 4072.

Mr. DORGAN. 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 printed in today's RECORD under "Text of Amendments.")

Mr. DORGAN. Madam President, the second-degree amendment that I have just sent to the desk to the Grassley amendment is the amendment that there has been an objection to my offering. So it is the only way, apparently, I can offer the amendment. It is the amendment dealing with naked credit default swaps.

We cannot possibly end this discussion without addressing the central issues that caused the near collapse of our economy, one of which is the unbearable speculation, the speculation in exotic financial instruments such as credit default swaps that, by the way, now is on the rise. It is not receding, it is on the rise.

The fourth quarter of last year the credit default swaps were up by 8 percent, $14 trillion in notional value, up 8 percent in the fourth quarter of last year alone. I also feel very strongly that the issue of too big to fail is a real issue. We cannot just brush it away saying: I wish it was not an issue.

The too-big-to-fail companies have gotten bigger, much bigger. Well, that is not a solution for this country's economy. The issue of betting in the lobby of our banks, as I have said, they might as well put in a Keno table or a blackjack table and wager that way. These are bets, not investments.

There are tens of trillions of dollars' worth of these bets. Because we want to tighten the laces a little on this, this amendment would ban naked credit default swaps over a period of time. Because we want to tighten the laces a bit, we have folks who object to even offering this because it would take on Wall Street. Well, you know what. That is what this legislation is about. If we go back to 2008 when Wall Street lost—I think, $36 billion net loss—and they paid out bonuses of $17 or $18 billion. They were having a carnival.

What was it all about? It was about big fees, trading all of these unbelievably speculative instruments, things that we had never heard of before—and, by the way, instruments in which they had no insurable interest. I said before you cannot buy fire insurance on someone else's house. You cannot buy life insurance on someone else's life. But what is happening is the biggest financial institutions in this country are buying and selling credit default swaps, are selling insurance policies against bonds that they will never own and have never owned.

It is like buying things they will never get from people who never had it and making fees on both sides of the transaction, except it is building a pyramid of speculation. At some point that pyramid came down and nearly took the entire American economy with it. So we now do something called financial reform.

The central question is, are we going to do it right? Are we going to be tough? Are we going to make sure we get rid of these things, the unbelievable speculation that injured this country's economy? There are trillions of dollars of them out there. And, by the way, the five largest commercial banks in this country hold 90 percent of the total credit derivatives, the $13.2 trillion of credit derivatives. They are owned by the five largest commercial banks.

Somebody said: Well, you cannot ban these things. The banking industry needs them. Oh, really? Well, if that is the case, why are only five companies doing 90 percent of the business in what are called naked credit default swaps?

I will speak about this at another time. I promised my colleague from Maine I would be a minute. I have gone well over the minute. But I will speak about the second-degree amendment at much greater length. It is the only way, apparently, I can offer an amendment.

So I believe that method, using a parliamentary technique that is perfectly legitimate, gives me an opportunity to force a vote on this amendment at some point.

It is an amendment that should have been able to have been offered as a result of an agreement on both sides to deal with real issues, in real time, on one of the most significant challenges that confront our country: how to put this financial system back together again in which the financial industry plays a very important role in the expansion of this country, as opposed to building more and more and more speculation and seeing that too-big-to-fail institutions get builder and bigger and bigger.

I yield the floor, and I will come back and speak on the second-degree at some point later.

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 3883

Ms. SNOWE. Madam President, I rise again to speak on the amendment that is pending that I had offered last week, No. 3883, which I have introduced with my good friend and colleague, Senator PRYOR.

Our amendment would ensure fairness and regulatory transparency for small business in the financial regulatory reform measure that we are now considering. This bipartisan amendment was also cosponsored by my colleagues, Senator GRAHAM, Senator MENENDEZ, Senator FRANKEN, Senator BOND, Senator BURRIS and Senator THUNE.

Our amendment would ensure that this newly created bureau in the bill, the Consumer Financial Protection Bureau, would, before it promulgates proposed rules, fully consider the economic effect that those rules and regulations would impose on our Nation's approximately 30 million small businesses that create 64 percent of all of the net new jobs in America. That certainly has been the case over the last 15 years, and they are the ones that we are depending on to lead us out of this jobless recovery.

Our amendment would designate the Consumer Financial Protection Bureau as a "covered agency" under the Regulatory Flexibility Act—so that small business review panels would apply to the Bureau's rulemaking process. Now, it is critically important to have these advisory small panels that currently only apply to EPA and to OSHA. They have been extremely successful in helping to shape more workable regulations at those agencies for small businesses to be much more attentive to the impact that these statutes are going to have on the well-being of small businesses.

Since 1996, when these small business panel provisions were passed—unanimously, I might add, in the Senate as part of the Small Business Regulatory Enforcement Fairness Act, SBREFA—and signed into law by then-President Clinton, the EPA has convened 35 panels and OSHA has convened 9 panels. The findings of these panel reports have helped EPA and OSHA improve their proposed rules by tailoring regulatory approaches and alternatives to the unique situations of small businesses. And that is very important.

As we look over the number of panels that have been convened over the last 14 years, we have seen there have been rules regarding groundwater, radon in drinking water, arsenic in drinking water, tuberculosis, ergonomics, and the list goes on and on. It has worked exceptionally well in this process for those agencies that obviously could have a tremendous effect on small businesses by creating unintended consequences.

So is it not better to know potential small business effects at the forefront of the regulatory process, not afterwards, in which the small businesses are consumed not only with time but energy and money in order to fight the regulatory process once it has taken effect?

So our amendment would specify very clearly the same process that has applied to EPA and OSHA for the last 14 years has been supported by the Senate unanimously when SBREFA was adopted; that the bureau must consider the economic effect that these rules will have on the cost of credit for small businesses. This is critical because, as we know, and according to the National Federation of Independent of Business, NFIB, which is the largest voice for small business in this country, 42 percent of small business owners use a personal credit card for business purposes.

So it is absolutely vital that small business interests are fully considered before the bureau issues regulations on consumer credit cards, so that however well intentioned those rules and regulations are, we want to make sure the bureau does not inadvertently cut off or suspend vital small business credit sources, especially during these fragile economic times when, as a recent Federal Deposit Insurance Company survey noted, banks posted their sharpest decline in lending since 1942.

I want to add that there are some fundamental misconceptions about the pending amendment. I would like to address them because I think it is critically important that we sort through the misperceptions and mischaracterizations and get to the truth of what this amendment is all about.

First and foremost, this is a tried-and-true proposal. It has been the law for the last 14 years for EPA and OSHA.

Some, including the Treasury Department, have argued that my amendment would compromise the independence of the new bureau by holding it captive the very businesses it is set to regulate. This argument is flawed for many reasons. Given how many months—in most cases, years—it takes Federal agencies to promulgate new rules under the notice and comment process, how does 60 days built into the process undermine key consumer protections the underlying legislation seeks to achieve? I really don't understand exactly what the Treasury Department is so concerned about, let alone afraid of.

If there are going to be adverse economic effects on small firms, our Nation's primary job creators—at this key juncture when unemployment is at virtually 10 percent and 15 million Americans are unemployed, and we are depending on small businesses to be the job generators—wouldn't we want to know what effect any rules and regulations this bureau is about to promulgate would have on small businesses? Why not know that ahead of time, set up a small business review panel, which has been done in so many instances in the past and worked effectively and successfully, to ascertain exactly what might affect small businesses' well-being so that we can address it at the forefront of the regulatory process and not afterward? That is what this is all about. Wouldn't we want to know before an agency proposes a rule as opposed to afterward? That is what we do with EPA as well as OSHA.

Secondly, it is the bureau itself—not SBA, not OMB or any other agency within government—that is overseeing the small business advisory panel process as well as the report and recommendations. The bureau does this with the input of small business stakeholders that the bureau, in consultation with the independent SBA Office of Advocacy, chooses to include. So the bureau has flexibility in this process.

The bureau gets to choose what small businesses participate, what information it shares with the panel, and it overseas the process and the writing of the report. I ask my colleagues again, how would the bureau be controlled by the regulating community, unless the bureau allows itself to be controlled?

I went back to look at the SBA Office of Advocacy to determine how they view this process and how well it has worked. They said: Invariably, the participation of these panels provides extremely valuable information on the real-world impacts and compliance costs of agency proposals.

The purpose of the panel process is threefold. This is from the independent office within the Small Business Administration. The Office of Advocacy has authored their own independent assessment, separate and apart from the SBA, to determine what works and what does not work. First, the panel process ensures that small entities that would be affected by a regulatory proposal are consulted about the pending action and offered an opportunity to provide information on its potential effects. Secondly, a panel can develop, consider, and recommend less burdensome alternatives to a regulatory proposal when warranted. Finally, the rulemaking agency has the benefit of input from both real-world small entities and analysis prior to publication. Wouldn't we want to know the real-world effect? Certainly, we would. We can act theoretically when we pass legislation that becomes law, but ultimately, how is it going to affect the real world? What is it going to do to small businesses on Main Street?

Now I am hearing from the Treasury Department that they simply don't want to know the truth. It is too invasive. It is taking too much time. They want to put all these regulations by this new bureau within the act, this Consumer Financial Protection Bureau that essentially comprises more than 300 pages out of this 1,500-page bill, that is obviously going to have a host of rules and regulations. They are saying: No, it is too invasive. We can't take that kind of time. It might hold us up.

We are saying a 60-day process. It is a 60-day review process. This panel would be convened if the bureau itself determines that, yes, in fact, some of the rules they may propose will have an effect on small businesses. So then they convene a panel. They choose the particular stakeholders across the board within the agencies and with the small business community. They convene for 60 days. Within 60 days, the bureau completes the report and submits it to the bureau. It contains recommendations that are advisory, not mandatory. Then the bureau considers these recommendations as it proposes its rules and regulations. I think that is a pretty logical process. I can't understand why the Treasury Department would be so adamantly opposed to this very logical, straightforward approach that has already been utilized time and again for EPA and OSHA. It is mystifying to me.

The attorneys at the Treasury Department say it could take 6 months to do these panels. Our amendment would adhere to the Regulatory Flexibility Act requirements that specify 60 days. How the bureau handles that 60-day report is obviously up to them. There is list after list of panels where these review panels have been used time and again under OSHA and EPA. It has been very effective—understandably so. We want to make sure these rules work.

Why wouldn't the Treasury Department want to know whether these rules and regulations will work for small businesses? Thirty million small businesses in this country generate two-thirds of all the net new jobs each year. We are surely depending on them to create the jobs in this jobless recovery. I've said it before and I will say it agin: A jobless recovery is not a true recovery. We need jobs. But we are saying: No, we don't want to bother with this 60-day review panel. We don't want to bother with that because it could interfere with our process. We want to put everything on a fast track. We will figure out later whether it works for small businesses.

That is unacceptable and objectionable. That is why there is so much anger and frustration across America. Go up and down Main Streets and see what is happening to small businesses. Now we are saying, with this new Consumer Financial Protection Bureau, that we don't want to take the time to consider anything that would have an effect on small businesses. We will find out about it later. Let them pay the price of whether they can survive. Let them pay the price as to whether they can afford these regulations, that it makes sense, that it is workable, or to fight the regulatory process.

Anybody been through that process? We know what it is all about. It is time-consuming, complex, and bureaucratic. It is simply unaffordable for most small businesses. Ultimately, they will have to close their doors or they will not hire or they are going to lay off people. That is what the net result of all this will be. Yet we have had a demonstrable approach with this by virtue of what has happened to EPA and OSHA.

According to the independent SBA Office of Advocacy report:

[t]he panel process does not replace, but enhances, the regular notice-and-comment process.

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

It makes good sense that they would be able to consider less burdensome alternatives in the event this 60-day review process by a small business panel, which would be established and appointed by the bureau itself, would determine they would be more preferable than the ones that originally were being considered.

I understand the majority intends to offer a side-by-side amendment that astoundingly does not have the support of the small business community. An abundance of organizations support this amendment offered by Senator PRYOR and others, along with myself. We have more than 23 organizations that have supported this legislation.

Let's look at the alternative that may be offered. And I truly hope it isn't offered. As this chart reveals, the side-by-side my colleagues are proposing on behalf of the Treasury Department would be a diluted version of the amendment I am offering.

My amendment with Senator PRYOR would permit the small business voice to be heard before a rule is actually proposed. It certainly makes sense to know the consequences of any potential rules before they take effect, before they go through the rulemaking process.

The side-by-side that my colleagues may be offering includes a loophole under which the bureau could evade entirely its small business panel requirements, so the small business voice would never be heard if their amendment is adopted.

Mind you, the language in their amendment would take 90 days for the small business panel to make its report. My amendment would take 60 days. Their process would take 90 days, and it would be a permanent panel. I am not asking for a permanent panel. I am saying that whenever the bureau determines they will be proposing rules that would have a significant impact on a substantial number of small businesses, that the Bureau convene a small business panel in which they would have to complete their work within 60 days, the bureau would submit their report for consideration, and the bureau would have to consider the small business panel report as they develop their proposed rule, before they promulgate it.

The difference between my amendment and the side-by-side that could potentially be offered is they create a permanent board and it is not even tied to rulemaking. They create a board that will meet four times a year. Now it is a bureaucracy within a bureaucracy. That is essentially what it is all about. It would create a bureaucracy within the bureau to meet four times a year for no particular purpose. Maybe they could consider small business economic effects from a potential rulemaking but maybe not, under this amendment. It clearly doesn't make any sense. And then it is an additional cost to the taxpayers. And it doesn't require, most importantly, the panel recommendations before the rules are actually proposed in the federal register. But even worse than that, they are not even required to consider any of the panel's recommendations, if they have any, before the final rule is issued. So that is a fairly major loophole in their amendment.

So here we are. We have the amendment Senator PRYOR and I have offered that would create a 60-day process that has been utilized time and again for the last 14 years and worked exceptionally well. They submit their proposal to the bureau. It is a panel established by the bureau. They can determine who will be represented in that panel. They can consider the recommendations as they draft their rules for the rulemaking process, at the outset before a rule is proposed.

In this case, on the other hand, the amendment my colleagues intend to offer—I know it is the Senator from Louisiana, Ms. LANDRIEU contains a loophole under which the Bureau would never have to consider the recommendations of the small business panel. They will meet four times a year for no particular purpose. It is not even tied to a rulemaking process.

I hope our amendment will be adopted. It really has already been established in precedent, in practice, not in theory. It is not conceptual; it is very real. Certainly, it will be real to small businesses in terms of whether it is going to have a major effect on their ability to conduct their business.

Our amendment builds on the current requirements under the Regulatory Flexibility Act. Since the Regulatory Flexibility Act was amended by the Small Business Regulatory Enforcement Fairness Act, SBREFA, back in 1996, to include these small business review panels, EPA has convened 35 panels and OSHA has convened 9 panels. It has worked very well.

Our amendment will ensure transparency in the regulatory process because the small business panel reports would be included in those proposed rules. It will allow the voice of small businesses to be heard at the front end of a regulation, before the proposed regulation has been published in the Federal Register. In contrast, the side-by-side amendment that potentially will be offered would expedite the bureau's rulemaking process and allow it to finalize onerous regulations that could crush small businesses without considering first the small business effects either during the proposed or the final rule stage of the regulatory process.

I urge my colleagues to oppose the side-by-side amendment. It would establish a dangerous precedent of diluting not only current law in the way it now functions with respect to EPA and OSHA but also how it has been extremely successful. My amendment is an extension of current law as it applied to the Consumer Financial Protection Bureau.

As you will see on the next chart, we have strong support from a broad cross section of 23 stakeholders, representing millions and millions of small businesses across the spectrum—of course, the National Federation of Independent Business, known as NFIB; the Associated Building and Contractors; the National Restaurant Association; the National Lumber and Building Material Dealers Association; S Corporation Association; the U.S. Chamber of Commerce; the United States Black Chamber; the United States Hispanic Chamber of Commerce; Women Impacting Public Policy; the International Franchise Association, the Independent Electrical Contractors; the Hispanic Leadership Fund.

The list goes on, and rightfully so, because they understand what is at stake. They understand the effects it will have on small business. We want to make sure we have a very practical, real process that is going to work for small businesses.

I hope we are not going to disregard the invaluable voices of small businesses to have the ability to have input at the forefront of the regulatory process, and utilizing a process that has worked so well. I hope we would reject any other watered-down, side-by-side amendment because, as I have already pointed out, it has a number of weaknesses and a loophole. It establishes a permanent panel for no apparent reason and that is not necessarily tied to the rulemaking. But more critical is the fact that, under the side-by-side amendment, the Bureau can totally ignore and disregard the input. Even if they created one of these panels for a rule-making process, they do not have to consider it, either before the proposed rule is published or before the final rule is promulgated in the Federal Register.

Something does not make sense. The bottom line is, the side-by-side amendment would be a job killer for small business. So if we are talking about jobs, jobs, jobs—and I hope we are going to get to a small business tax relief bill. I have been hoping since January we are going to get to it because it is so critically important. I know there are a lot of things to consider here on the floor of the Senate, but primary of which should be about creating jobs. So while we are saying we want to create jobs on the one hand, and we are concerned about small businesses' economic well-being on the other hand, we are doing things that are going to undermine the status of small businesses in America, as they are struggling to survive. They are struggling to survive. We know that. We have had an abundance of hearings in the Small Business Committee. As ranking member of the Small Business Committee, I can tell you, we hear it time and again repeatedly. They are desperate. They need our support. We cannot hinder their ability to survive in this very tough, unprecedented environment.

So if we are depending on them to create jobs, then I think we better think very seriously about whether to support my amendment. I hope it would not be rejected. I hope it will be supported. There is no reason, there is no rationale, there is no logical explanation as to why the Treasury Department—of all the Departments, frankly, we are here because the Treasury Department did not provide the necessary and effective oversight of financial institutions—we are dealing with a financial regulatory reform bill, so I cannot imagine rejecting something that has been tried before and has worked so effectively.

That is what I am asking, that we would allow my amendment to be adopted. Because, as you can see, this amendment is supported overwhelmingly by critical small business organizations, because they understand the reality. They understand the net effect of what is going to happen. They need this support. This is not a minimalist amendment. It has real consequences, if we fail to adopt it. That is the fact. That is reality that small businesses are facing all across America.

So when we are creating this new entity, this Consumer Financial Protection Bureau, that literally consumes hundreds of pages in the pending legislation, are we not saying we want to make sure, when they are drafting those rules, we are going to consider how it will affect small businesses on a day-to-day basis? Because that is what they are going to live with.

By the way, I think we all know who pays more for regulatory compliance. It is not the large corporations. It is the small business.

In the past, we think about Sarbanes-Oxley. I know there is an amendment that has been filed that has been offered by the Senator from Texas and the Senator from Louisiana that will ''spare,'' as it says in this Wall Street Journal editorial, ''the smallest public companies from the worst bureaucratic horrors of the 2002 Sarbanes-Oxley law.'' They said:

> This is one reason the two Senators aim to exempt companies with less than $150 million of shares held by the public from ''internal-controls'' audits.

Because of the indirect costs, as well as the direct costs, they said that:

> [T]he average public company pays more than $2 million per year complying with the law's Section 404. The indirect costs may be much greater . . .

The indirect costs are even greater from Sarbanes-Oxley. Small firms pay 45 percent more in regulatory compliance costs than larger firms, according to the Office of Advocacy within the Small Business Administration.

That is the point. So on one hand, we are saying: Well, in financial regulatory reform, we should exempt small public companies because of the bureaucratic hindrance that Sarbanes-Oxley has provided. So there is another example of what the effects are, the unintended consequences, when rules have a disproportionate effect on small businesses. That is what has happened in that instance.

So these are legitimate and valid issues based on reality, based on the experiences of small businesses, what they have had to already endure. So why compel them to have to further endure another regulatory nightmare and quagmire that might ensue as a result of this bureau? We are asking to take an intermediate step: 60 days. Somebody is saying 60 days is too much time to give consideration to the well-being of small businesses in America?

Well, we are offering amendments that say: Gee, we ought to exempt the smallest companies because of what occurred under Sarbanes-Oxley, what it has done with the unintentional effects. We all know the adverse consequences that can emanate and result from legislation that becomes law. So let's be attentive and sensitive to those issues at the forefront of this process. That is what this amendment is all about. I would hope there would be strong support for my amendment because there truly is overwhelming support from all of these organizations and more that are represented on these charts.

I ask unanimous consent to have printed in the RECORD a list of organizations in support of my amendment, as well as a number of letters that have been sent from small business organizations declaring that it is an imperative that this amendment be accepted because of the concern, the abiding concern, of the small businesses community across this country that they are going to suffocate under this rulemaking process if they do not have a voice.

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

ORGANIZATIONS IN SUPPORT

Associated Builders and Contractors; Association of Kentucky Fried Chicken Franchisees; Hearth, Patio & Barbecue Association; Hispanic Leadership Fund; Independent Electrical Contractors; Institute for Liberty; International Franchise Association; National Association for the Self-Employed; National Federation of Independent Business, which is ''key-voting'' in support of our amendment and opposing the majority's side-by-side; National Lumber and Building Material Dealers Association; National Restaurant Association; National Roofing Contractors Association; National Small Business Association; Printing Industries of America; S Corporation Association; Small Business & Entrepreneurship Council; Society of American Florists; Society of Chemical Manufacturers & Affiliates; Tire Industry Association; U.S. Chamber of Commerce; United States Black Chamber; United States Hispanic Chamber of Commerce; and Women Impacting Public Policy.

MAY 12, 2010.

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

DEAR MAJORITY LEADER, MINORITY LEADER, CHAIRMAN DODD, AND RANKING MEMBER SHELBY: The undersigned organizations representing millions of American small business owners are writing to urge that the Senate consider the Small Business Fairness and Regulatory Transparency Amendment (S. Amdt. 3883) sponsored by Senator Pryor and Senator Snowe as part of the Senate's deliberations on S. 3217, Restoring American Financial Stability Act of 2010.

As you know, new jobs primarily come from the small business sector of our economy. Small business has created about two of every three net new jobs in the United States since at least the early 1970s. And nearly all job creation since 1980 has occurred in firms less than five years old. In fact, data from the 1990's show small business are the only sector producing jobs coming out of a recession. The amendment offered by Senators Pryor and Snowe is an effort to prevent unintended consequences by a new agency that could harm the small business sector.

According to the U.S. Small Business Administration, small firms shoulder a 45 percent higher burden to comply with federal regulations than their larger business competitors. This economic distortion can be eased when agencies carefully consider how their regulations will impact small firms, which is why delegates to the 1995 White House Conference on Small Business called for direct small business participation in the rulemaking process. That recommendation from the White House Conference was a key provision in the Small Business Regulatory Enforcement Fairness Act (SBREFA), signed by President Clinton in 1996. The amendment offered by Senators Pryor and Snowe applies the same standards of transparency and small business consultation found in SBREFA to the Consumer Financial Protection Bureau (hereinafter referred to as the ''Bureau'').

Additionally, S. Amdt. 3883 calls upon the Bureau to consider how its rules will impact small business access to credit. Almost 90 percent of the nation's 26 million small businesses use some form of credit. And, economists have raised concerns that actions by the Bureau will tighten the credit squeeze, raising interest rates and curbing job growth. The amendment offered by Senators Pryor and Snowe provides assurance that small business access to credit is a top consideration by Bureau officials as they take on the important task of overseeing our financial sector.

Small business is a critically important sector. America needs their job creation strength to bring down unemployment and their innovative strength in a global marketplace. We know you share our desire to take every step necessary to protect Main Street while you are trying to fix the practices on

Wall Street and we urge you to include S. Amdt. 3883, the Small Business Fairness and Regulatory Transparency amendment, as part of the Senate's debate on S. 3217. Once the amendment is under consideration, we urge your support for its passage.

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

NATIONAL SMALL BUSINESS ASSOCIATION,
Washington, DC, May 18, 2010.

Hon. CHRISTOPHER J. DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: The National Small Business Association (NSBA) is urging you to support the Ensuring Small Business Fairness and Regulatory Transparency Amendment (S. Amdt. 3883)—or the Snowe/Pryor amendment—to the Restoring American Financial Stability Act (S. 3217). This critical amendment, supported by a very broad, bipartisan group of Senators, will ensure that the Consumer Financial Protection Bureau considers how its rulemakings affect America's small businesses. Reaching 150,000 small firms across the nation, NSBA is the country's oldest small-business advocacy organization.

As the Consumer Financial Protection Bureau likely is to be established as an independent agency with rulemaking authority, it should be required to consider the unique needs and constraints of small firms as it promulgates its rules.

NSBA strongly supports requiring the Bureau to conduct Regulatory Flexibility Analyses in conjunction with its rulemaking. It is critical that the Bureau provide the public with transparent information on how its proposed rules would affect small firms. NSBA also supports requiring the Bureau to consult with a Small Business Advocacy Review Panel prior to the publication of any proposed rule, with the Review Panel's recommendations published in any eventual proposal.

Small businesses bear a disproportionate burden of federal regulations. In fact, the smallest firms—those with fewer than 20 employees spend 45 percent more per employee than larger firms to comply with federal regulations. Incorporating the Snowe/Pryor amendment in S. 3217 will take the important steps toward alleviating this gross inequity.

Increased transparency is a stated goal of the current administration and Congress. This is a perfect opportunity to achieve progress towards that objective. This amendment will ensure a public exchange of data, analysis, and recommendations, detailing the potential benefits and costs to small businesses of any proposed regulations. This is a welcome achievement.

I urge you to consider the many pitfalls caused by the absence of such language in other sweeping pieces of legislation, namely Sarbanes/Oxley, which has constituted a major burden for America's small businesses. On behalf of the many struggling small businesses in the U.S. today, I am calling upon you to do everything in your power to prevent any roadblocks for future entrepreneurs, and urge your support of the Snowe/Pryor amendment.

Sincerely,

TODD O. MCCRACKEN,
President.

U.S. BLACK CHAMBER, INC.,
Washington, DC, May 11, 2010.

The US Black Chamber, Inc. represents over 30% of all the Black owned business nationwide. We have united to ensure that our voice is heard. Black business owners are a strong economic force in the United States, and increasingly throughout the world. Their contributions extend beyond the number of firms they own, the people they employ and the revenues they generate. Their economic influence is multiplied many times through the direct and indirect economic impact they generate through their business ownership.

We are writing you to urge that the Senate consider the Small Business Fairness and Regulatory Transparency Amendment (S. Amdt. 3883). Small business develop the majority of the jobs that have been created in the United States. The recession has shown that small businesses are in fact the only sector that is creating new jobs.

S. Amdt. 3883 calls upon the Bureau to consider how its rules will impact small business access to credit. Black-owned firms are less likely to receive loans than non-white firms (23% of non-minority firms receive loans compared to 17% of minority firms.) Black owned firms receive lower loan amounts than white firms. Black-owned firms are more likely to be denied loans (42% denial rate for Black and 16% denial rate for whites). We feel actions by the Bureau will tighten the credit squeeze, raise interest and slow job growth.

S. Amdt. 3883 provides assurance that our members and small business access to credit is a top consideration. We urge your support for its passage.

Thank you, and we look forward to working together with you and our membership, to bring this plan into reality.

In the Spirit of Success,

RON BUSBY,
President & CEO.

Ms. SNOWE. I urge adoption of this amendment.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Delaware is recognized.

Mr. KAUFMAN. Mr. President, I am on the floor here incredibly disappointed by the decision by my friends across the aisle to block a vote on the Merkley-Levin Volcker rule amendment and the Dorgan amendment to ban naked credit default swaps.

We have had good comity on this bill. I think both sides have taken amendments for a vote they did not like based on how the vote turned out, where you have votes where a majority of the Republicans voted for an amendment they put forward and a majority of the Democrats voted against it or a vast majority of Democrats voted against it, but we allowed it to come to a vote.

I think we are getting late in the processing of the bill. It would have been nice if we could have gone through the whole process the way we started and the way we were in the middle and allowed these important issues to come up, especially issues as important as this one.

I want to praise Chairman DODD—and I mean it—for an incredible piece of work and all my colleagues who have worked diligently on this bill. It has been incredible in holding this together. There are many provisions in this bill I strongly support.

However, there is one portion of the bill that many of my colleagues and I have discussed on the floor extensively, and that is the question of how we prevent systemic risks from manifesting themselves among our largest Wall Street banks—those that have been deemed too big, too big, too big to fail due to their tendency to engage in highly leveraged and extremely risky speculative trading activities.

As my colleagues know, Senator BROWN and I, along with others, offered an amendment to tackle this problem directly and preemptively. The Brown-Kaufman amendment would have scaled down the size and risk of our megabanks through limits on leverage and on unstable nondeposit liabilities. While I am disappointed the amendment did not pass, I know the debate will persist as long as too-big-to-fail banks continue to exist. For as long as we still have banks so large they are too big to fail, they will pose mortal risks—mortal risks—to the American economy.

Within days of the Senate's consideration of Brown-Kaufman, we saw the EU and IMF scramble to put together an almost $1 trillion emergency package to forestall a full-blown series of sovereign debt crises throughout the continent. While ostensibly reported in the press as a rescue package for overleveraged and embattled sovereign nations such as Greece and Spain, it was actually a bailout of Europe's megabanks, not to mention our own. That is what it was about. It was about bailing out Europe's megabanks. German and French banks alone have more than $900 billion in exposure to Greece and other vulnerable Euro countries, including Ireland, Portugal, and Spain.

Meanwhile, our top five banks have an estimated $2.5 trillion in exposure to Europe. That is $2.5 trillion in exposure to Europe.

So long as we have too-big-to-fail institutions, we will continue to go through the ''doomsday'' cycles of booms, busts, and bailouts. There are two amendments left that address this critical question directly, two others that would help. I believe at least one of the two represents a critical test of whether we as a body are serious about curbing systemic risk. While I would prefer we pass the Cantwell-McCain amendment, which would restore the Glass-Steagall Act's 60-years-long separation between commercial and investment banking activities—which I have spoken on the floor many times about—I believe very strongly that, at a minimum, we must pass the Merkley-Levin amendment that would ban proprietary trading activities by commercial banks.

This is not a radical amendment. After all, it is President Obama's proposal, which he has named the Volcker rule, after the most respected bank regulator in the last half century, former Federal Reserve Chairman Paul Volcker. It has been represented to us for many weeks that even the current version of the bill includes a mandatory imposition of the Volcker rule after a 6-month study. The Merkley-Levin amendment would remove any doubt about whether the new council could, after its review, recommend modifications to the rule.

Merkley-Levin, in my view, is where the rubber hits the road. It is a true test of whether the administration and the Congress are serious about imposing limitations on the activities of the government-guaranteed part of our financial system—in short, so that casino-like activities can no longer remain centered at the heart of too-big-to-fail institutions.

I also believe that a strong financial reform bill must retain the key provisions on too big to fail that are already in the bill, particularly Senator LINCOLN's provision to prohibit banks with swap dealers from receiving emergency Federal loans, and an amendment to the bill, Senator DORGAN's amendment, which bans naked credit default swaps.

As I said, I am proud to support Senator MERKLEY's and Senator LEVIN's amendment to include a more robust version of the Volcker rule ban on proprietary trading within commercial banks in the bill.

Specifically, the amendment would bar banks and their affiliates from engaging in proprietary trading and from owning a hedge fund or private equity fund. To avoid regulatory arbitrage, it would also increase capital requirements on large nonbank financial institutions engaged in proprietary trading.

The Merkley-Levin amendment would minimize the potential procedural roadblocks to the Volcker rule contained in the current bill by specifically directing the regulators to develop rules to implement the Volcker rule restrictions. It would not give unnecessary discretion to the same regulators who have long had the authority to prohibit speculative activities at banks but never opted to do so.

I have heard some proposals call for so-called de minimis exceptions and other loopholes to a ban on proprietary trading at banks. Loopholes of this kind, however, undermine the very spirit of the Volcker rule and would allow banks that benefit from federally insured deposits and access to the Fed window to continue to engage in activities that are speculative in nature. Importantly, this amendment would also build upon the work of Senator LEVIN's Permanent Subcommittee on Investigations to address conflicts of interest within the modern investment banking model. The PSI subcommittee hearings, in which I had the privilege to participate, demonstrated how Wall Street firms sold clients securities without disclosing their financial interests in seeing such securities fail or perform poorly—basically betting against the very securities they were selling to their clients. Talk about a conflict of interest. This amendment would address this problem by prohibiting underwriters of an asset-backed security from engaging in transactions that create material conflicts of interest with respect to the securities being sold—something I think everyone, on observation, agrees should be the case.

I strongly urge my colleagues to support Merkley-Levin so we can say to the American people we have acted in Congress to prevent another crisis. I do not want to put my faith in a stability council of regulators detecting ''early warning signals'' of financial instability. I would rather we move our largest banks off of the San Andreas Fault of leverage and speculation on which they now sit.

I also support strongly Senators CANTWELL's and MCCAIN's amendment to break up the largest banks by reimposing the Glass-Steagall Act. Unless we break the megabanks apart, they will remain too large and interconnected for regulators effectively to control. Once the next inevitable financial crisis occurs and the contagion spreads too quickly for the government to believe that a failing firm won't take down others as well, the American taxpayer—the good old American taxpayer—will again be forced into the breach.

By statutorily splitting apart massive financial institutions that house both banking and security operations, we will both cut our megabanks down to reasonable and manageable sizes and rightfully limit government support to traditional banks. This worked for nearly 60 years and once again will ensure the soundness of commercial banks while placing risky bank investment activities far beyond any government safety net check.

If Congress fails to impose needed structural changes like Glass-Steagall, the same systemic risks to our financial system remain and grow bigger and bigger and bigger. When the next crisis occurs, however, the legislative pendulum will suddenly shift direction and will fall hard on Wall Street in the form of Glass-Steagall and far more Draconian reforms.

I also believe we must preserve section 716 of the current Senate bill. The provision included in the bill by Senate Agriculture Committee Chairman LINCOLN would prohibit banks with swap dealers from receiving emergency assistance from the Federal Reserve or FDIC. By forcing megabanks to spin off their swap dealers into an affiliate or separate company, this section would help restore the wall between the government-guaranteed part of the financial system and those financial entities that remain free to take on greater risk.

It would also help address the enormous concentration of power among a few too-big-to-fail institutions. As has been quoted many times on this Senate floor over the last several weeks, the five largest banks—Goldman Sachs, Morgan Stanley, JPMorgan Chase, Citigroup, and Bank of America—control over 90 percent of the over-the-counter derivatives market. That is nine zero, 90 percent, our 5 largest banks. Yet there are those who say that forcing these megabanks to spin off their swap dealers to affiliates in only a few years' time would disrupt the derivatives market. The historical record shows repeatedly that financial institutions can adapt to regulatory changes quite quickly. Look at Goldman Sachs. Goldman Sachs has been a bank holding company for fewer than 2 years. Within that time, it has used its newly formed bank, which is just one-tenth the size of the overall holding company, to source the vast majority of its derivatives transactions. That is just in the last 2 years. Amazingly, Goldman Sachs has a $41 trillion derivatives book attached to a $91 billion bank. Do you have that? A $91 billion bank with a $41 trillion derivatives book attached to it.

Unfortunately, allowing massive derivatives dealers to be housed within banks creates moral hazard, a term often invoked by my conservative colleagues. This was true of AIG, which rented out its AAA rating and the financial strength of its insurance subsidiaries, to write credit default swap contracts that systemically underpriced risk. It is also true of dealer banks whose access to federally insured deposits and the government backstop of emergency lending allows them to underprice risk on swap contracts. Notably, this government subsidy allows these institutions to be lax in their collateral and margin requirements on derivatives transactions.

Some complain that requiring the megabanks to spin off their derivatives dealers would require these dealers to raise extra capital as affiliates. I say that is precisely the point. Housing a large derivatives dealer book in a bank, even a small one, allows these institutions to arbitrage capital requirements. Requiring them to spin off their dealer to a separate broker-dealer affiliate would appropriately require them to raise more capital based upon the riskiness of their derivatives book. This is good. Currently, these institutions are undercapitalized.

Yet Fed Chairman Bernanke claims:

> Forcing these activities out of insured depository institutions would weaken both financial stability and strong prudential regulation derivative activities.

I beg to differ. Spinning off large derivatives dealers would force these institutions to adequately price and capitalize the risks associated with these activities. By ending the aforementioned moral hazard, we are only strengthening financial institutions. By requiring derivative dealers to hold capital commensurate with the risk of their business, we are only strengthening prudential regulation.

Meanwhile, FDIC Chair Bair states that derivatives:

do have legitimate and important functions as risk management tools and ensure banks play an essential role in providing market-making functions for these products.

Requiring banks to spin off their derivatives, however, would not preclude them from using derivatives as risk management tools or as products to service client needs. For example, if a client wanted to hedge the interest rate risk on a floating loan through a swap, the bank would still be able to execute that transaction. Senator LINCOLN's provision doesn't ban banks from using derivatives. Instead, it says that it is inappropriate for a commercial bank to have an almost $80 trillion derivatives book, as some do.

Of course, anyone can come up with a reason for maintaining the status quo—of saying, for example, that Senator LINCOLN's inspired solution simply goes too far. But after the crisis we just suffered, I would ask my colleagues to support these proposals which represent real reform and change. I would ask my colleagues to see the wisdom of building an enduring structure of laws instead of investing our hopes in unelected regulatory discretion. We have seen the effects of regulators neglecting their duties and banks left to self-regulation.

Instead of trusting our financial stability solely to unelected financial guardians, these amendments and provisions would all address preemptively the persistent problem of too big to fail. They all say speculative securities activity should not be covered by the government's deposit safety net. By reducing the size and scope of our largest banks, we will limit their risky behavior and minimize the possibility of one institution's failure causing an industrywide panic and a subsequent bailout of several failing megabanks.

By adopting these commonsense proposals, we can go a long way toward stabilizing our economy, restoring confidence in our market, and protecting the American people from a future bailout. America cannot afford another financial meltdown. The American people are looking to Congress to assure that it does not happen. We have a precious few remaining days on this bill to follow through on that commitment.

As I started out, I wish to commend Chairman DODD and the committee for the excellent work they have done on this bill. I also commend Chairman DODD for the fact that we have had such good comity and such good relations between both sides of the aisle on this bill. That is why I am so concerned about the decision by the other side to block the Merkley-Levin amendment. This is at the heart of this bill. If you had to look at one of the things that is very important and that everyone commends, it would be this amendment. We have voted for a lot of Republican amendments and accepted a lot of Republican amendments that Democrats were not in favor of. This seems like the wrong time in the process toward the end to do this.

I hope my friends on the other side of the aisle will rethink what we are doing and that we get a chance to vote, because it is absolutely essential to this bill that we have a vote on the Merkley-Levin amendment.

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.

Mr. BINGAMAN. 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. 3892, AS FURTHER MODIFIED, TO AMENDMENT NO. 3739

Mr. BINGAMAN. Mr. President, I have an amendment No. 3892, as modified, and I ask unanimous consent to further modify it.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The amendment is further modified.

The amendment, as further modified, is as follows:

On page 565, between lines 2 and 3, insert the following:

(e) JUST AND REASONABLE RATES.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

''(vi) Notwithstanding the exclusive jurisdiction of the Commission with respect to accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery under this Act, no provision of this Act shall be construed—

''(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);

''(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission to ensure just and reasonable rates and protect the public interest under the Acts described in subclause (I); or

''(III) to supersede or limit the authority of a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) that has jurisdiction to regulate rates and charges for the sale of electric energy within the State, or restrict that State regulatory authority from carrying out the duties and responsibilities of the State regulatory authority pursuant to the jurisdiction of the State regulatory authority to regulate rates and charges for the transmission or sale of electric energy.

''(vii) Nothing in clause (vi) shall affect the Commission's authority with respect to the trading, execution, or clearing of any agreement, contract, or transaction on or subject to the rules of a registered entity, including a designated contract market, derivatives clearing organization, or swaps execution facility.''.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

''(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

''(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

''(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

''(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).''.

Mr. BINGAMAN. Mr. President, the further modification clarifies that each agency—that is, the FERC and the CFTC—will retain its legitimate authority, whether to review derivatives or to review rates and charges and prevent manipulation, without one agency knocking the other agency out of the box of its respective mission. It is a good improvement.

I believe this amendment is now without substantial objection. I ask that we proceed to a voice vote on the amendment.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 3892), as further modified, was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, our colleague from North Dakota is going to speak over the next several minutes. At the conclusion of that, I will make some remarks, and then there will be a tabling motion of the Dorgan amendment. To make colleagues aware, that is what will happen.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have spoken on this amendment previously and have waited patiently for several weeks to be able to have an opportunity to vote on it. We have not been able to get it pending. I now have it pending because I offered it as a second-degree amendment to the Grassley amendment.

This is an amendment that would ban the use of naked credit default swaps. You ask, how does a credit default swap get naked? It is an exotic, new financial instrument that has been developed over recent years to be traded back and forth by the big financial institutions. In fact, 90 percent of them are traded by the five biggest financial institutions. When people say you need these—banks need these—just a handful of banks trade most of these.

What is a naked credit default swap? It means someone is buying insurance against some other instrument that they have no interest in, except they want to make a wager. I have said before that I can't buy fire insurance on the house that the Presiding Officer owns in Colorado. Why? Because I don't have an insurable interest in that house. If I went to somebody and said: I would like to buy some insurance against fire for that house, they would say: You don't own that house, so I cannot possibly sell you that policy. Also, I cannot buy a life insurance policy against my colleague from Connecticut because I don't have an insurable interest either.

But I can go buy $100 million worth of insurance, right this second, on a bond issue that was issued by some company yesterday, even though I never, ever intend to own the bond, have no interest in the bond, and don't know much about the company. I just want to bet someone who will take the opposite side of the wager. I believe the bonds will not be repaid, and the counterparty says: No, you are wrong about that. I think that company will repay its bonds. So we make a friendly wager—kind of like one of those Saturday sports wagers. We bet. I am betting this person about the question of whether the bonds will default. It is called synthetic when it is not real or naked when it has no interest. So this would be a synthetic or a naked credit default swap.

It is a different story if I have an interest, where I actually bought those bonds—some company let the bonds and I bought them, so I am the investor in the bonds. But I want to make sure the default doesn't take me down with it, so I buy an insurance policy. That is a credit default swap that is covered. Naked means you have no interest, just a bet. Covered means it is an investment you made to try to hedge your risk on the default of the bonds.

Here is what is interesting. We expect, based on what we know to be the case, that about 80 percent of all credit default swaps are not covered or what are called naked swaps—80 percent. Some people say to us: Well, we can't get rid of these financial instruments. These are very important for normal hedging. That is absolutely absurd, total rubbish.

My amendment would say that at some point we have to ban naked credit default swaps. Mr. Pearlstein, who writes for the Washington Post, asked the question many months ago:

> Why should there be more insurance policies sold on a bond issue than there are bonds to be insured?

Why should you have 20 times more insurance policies than you do bonds? Because it is wagering, not investing.

I find myself fairly disappointed by what is happening. This is a moment of substantial consequence for our country. We came very close, they say, to a meltdown of our economy. Trillions of dollars were lost. I guess there was about $14 trillion or $15 trillion in lost value for the American people. Millions of people lost their jobs. Millions of people have lost their homes. By the way, at graduation time, when colleges all across the country are graduating these bright, young men and women who have now gotten their college diploma—they are out looking for work, and way too many of them cannot find a job because of what happened to this economy in recent years.

What happened? We created a casino economy. You didn't have to read the newspapers very much to understand what was going on. This unbelievable speculation, a bubble of speculation, occurred in virtually every single area, and there were new financial products on steroids—securitizing everything. Are you loaning somebody some money? Well, put it into a security, wrap it up and sell it to a hedge fund or an investment bank. Securitize everything. By the way, you can get some very bad stuff that is rated AAA. So sell it up. By the way, once you start selling things, you don't ever have to worry about whom you are issuing credit cards to or that you are wallpapering the room of people who don't have jobs with more credit cards. You don't have to do normal underwriting or sit across from somebody who wants to buy a house and look into their eyes and say: Tell us your income. How are you going to repay the loan if we loan you the money? You can put out liars' loans, no-doc loans. Don't document your income because we don't care. Don't pay any interest or principal now; we will put that on the back side. We will make the first 12 months of payments for you. If you have no credit or low credit, come to us—I will show you the advertisements that were on the radio, television, and newspapers: Slow credit, no credit, bad credit? We want to loan you money.

They said: Let's securitize it and we will ship it upstream and we will all make big profits and fees and we will create credit default swaps and CDOs and we will all have a great time. When the whole thing crashes down, ''Wall Street'' will have lost about $36 billion in 1 year and paid $17 billion in bonuses at the very same time.

Do you think this wasn't a carnival of greed? Of course it was. There are a number of things we ought to do and too many that we will not do in this legislation. Too big to fail ought to have meant to all of us that you are simply too big. By the way, those who were judged too big to fail and would cause a grave risk to this entire economy if that firm should fail, they have now become much larger by the actions of the Federal Government arranging marriages of companies that weren't making it. So the too-big-to-fail companies are actually much larger now, and the underlying legislation doesn't do a thing about too big to fail in terms of paring it away and deciding if you are too big to fail, you are too big and you must divest until you don't cause a grave risk to the entire economy.

In addition to the issue of too big to fail, there is the Glass-Steagall reconnection. My colleague has an amendment on that. There is this issue I am raising on naked credit default swaps. If we have decided we are not going to get rid of these financial curveballs—financial instruments on steroids that took this country for a huge ride and stuck the American people with trillions and trillions of dollars of loss and bad debt—if we don't do that, let's not crow about what we did because this is essential, in my judgment.

This is what I think happens, as is always the case when it comes to Wall Street versus the rest of us; it is let's pretend time. This is a case of whose side are you on? Are you going to try to see if you can shut the door and deal with those issues that helped cause this near collapse of our economy or are we just going to buff it up a little bit around the edges? I am trying to tighten this bill.

I have not been able to get this amendment up, except by offering it as a second-degree amendment. My understanding is, there will be a tabling motion. Those who decide they want to table it don't want to tighten this bill, don't want to take on Wall Street on these issues. They say: No, let's let Wall Street prance around and trade naked credit default swaps. They were up 8 percent in the fourth quarter of last year. You would think somebody would learn a lesson. They had a $700 billion bailout fund and so on, so you would think they would tone it down. No. In the fourth quarter of 2009, the use of credit default swaps was up 8 percent. If one wonders how much money is involved in all these things—I have spoken before about John Paulson, whose name came up recently with Goldman in the scandal that was the subject of a congressional hearing. In 2007, he was the highest income earner on Wall Street, earning $3.6 billion—one person. When he came home and his spouse said: Honey, how are we doing? If she wanted it by the month, he could say that this month we made $300 million. If she wanted it by the day, he could say: Pretty good. It is Saturday and I made $10 million—$10 million a day, $3.6 billion a year.

There was so much money involved in all these issues, and the reason there was so much was this unbelievable binge of speculation. We can pass financial reform, and we can call it whatever we want, but if we pass it and don't put a cork in this bottle, and we fail to deal with this issue, I will tell you, we will be back and we will find a way to have to confront, once again, the creation of these unbelievable speculative issues—naked credit default swaps—that have no insurable interest. We will regret the day we didn't address this issue head on.

I understand why there is pushback from Wall Street and why some will be nervous about voting for this. They will want to table it because they are getting pushback from Wall Street. Wall Street is wrong—dead wrong. They don't need, nor do American banks need, to be trading credit default swaps in order to make money. Yet, as I indicated to you, five of the largest financial institutions in this country have 90 percent of the credit default swaps. We think about 80 percent of them are without any insurable interest in anything. That is wagering, not investing.

This country deserves better, and the American people deserve for the Congress to stand up to Wall Street and say: You know what, the creation of these instruments exacerbated the economic troubles of this country in a significant way, and at long last it is time to put an end to it. This amendment simply bans the use of naked credit default swaps. It has a provision that says, if such a ban in a certain timeframe would cause undue—Mr. President, the Senate is not in order.

There is a provision in this legislation that, as opposed to a ban on a date certain, if that would prove to be troublesome, it would stretch out for an 18-month period by which such a ban could take effect.

Let me say this. I understand the tabling motion will be made. My hope is that colleagues who believe we ought to take on Wall Street on these issues will stand up for the American people on these issues and do the right thing on these issues, especially since we are living in the shadow of a near collapse of this economy.

My hope is that my colleagues will vote against tabling this amendment and, thereby, express their support for the amendment I am offering.

I am offering this amendment on behalf of colleagues which I will submit for the RECORD as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I wish to speak a couple of minutes. This is the first opportunity we have had, with all the other amendments we talked about, to even talk about this very critically important part of the legislation, and that is the section dealing with derivatives, which is a source of major interest.

I wish to spend a couple of minutes describing to my colleagues what is in this bill that is before us dealing with derivatives, and then I will express some concerns about the amendment of my good friend and colleague from North Dakota. Then at the conclusion of that, unless others would like to be quickly heard on this matter, I will move to table the Dorgan amendment.

That is normally not what we have done. There have been no tabling motions made over these 2½ weeks. Let me express my regret that Senator DORGAN was unable to get a straight up-or-down vote on his amendment. Even though I have concerns about it, I tried over the last 2 weeks to have everyone have their amendments raised so we could have a good, vibrant, full-throated debate on matters and let Members decide. In some cases, we had a 60-vote margin; in most cases a 50-vote margin. No one has said to anyone yet: Your amendment can't come up.

I say to the Senator from North Dakota, I tried to see to it that everybody has the opportunity to be heard. As he knows and others know, we have had a stalemate this afternoon on whether matters can be heard.

As I said, derivatives, as most of my colleagues and many in the country understand, are essentially hedges or bets whose worth rises and falls with the price of something in the marketplace. They can be very commonsense financial tools to help businesses manage their costs. The word is taken on a pejorative, but actually derivatives are critically important in our economy.

For instance, let's say you make candy for a living; you are a candy manufacturer. The price of sugar is an incredibly important factor in determining your bottom line, and the cost of sugar can fluctuate dramatically. All sorts of factors can raise or lower the price of sugar, which is a critical component in your production of candy, but it is a factor you cannot control. You do not necessarily control what happens to the price of sugar as a candy manufacturer. Derivatives can help you manage volatility, and that is why they are so valuable in our economy.

If it sounds like insurance, that is because if used properly, that is exactly what it is.

Let's say you are an investor and you will not be able to afford the loss if your company or government whose bonds you bought defaults. Again, you do not have control over that company's or government's ability to pay you back. So a form of insurance has sprung up in the form of derivatives that would protect you against that kind of default. It is called a credit default swap, or CDS.

Just like a derivatives contract on the price of sugar, it is not necessarily a bad thing. In fact, it could be very helpful in terms of managing volatility and protecting against losses totally unconnected with your activity.

Credit default swaps played a huge role, as we now know, in the lead-up to the financial crisis that has cost our country so much.

For instance, take what happened to AIG, the former insurance giant. Before the crisis, institutions around the world bought credit protection against mortgage-backed securities from AIG, just like you or I might have bought some other, more pedestrian insurance policy. When those mortgage-backed securities failed, AIG owed money to all of those protection buyers around the world. But AIG, as a seller of CDSs, had no regulatory requirement that it actually have the capital on hand that it would need to pay those parties if, in fact, it was called.

Guess who ended up having to make those counterparties whole. We, the taxpayers, the taxpayers across the country because AIG lacked the capital behind those derivatives. Even worse, because there was no reporting requirement, regulators did not even know where the risks were in the financial system. Because there was no requirement that these transactions run through a clearinghouse, even people in the financial sector could not figure out for sure who was exposed to AIG's potential failure.

The result, of course, was a total freeze in our markets and our financial system because financial sector actors no longer trusted that their counterparties would be creditworthy. And who could blame them? It is like if you did not trust your bank to be around the next day, you would get your money out in a hurry, as many did back 80 years ago when there were no protections. When the word went out, people took to the streets. That is why the bill drawn up in our Banking Committee and Agriculture Committee contains some very tough new rules for CDSs and the rest of the derivatives market.

Under the terms of our bill, CDSs must centrally be cleared and traded on regulated exchanges in order to reduce counterparty risks and to promote transparency and stability in our financial system.

The central clearinghouse will set margin requirements and position limits. Those ideas have been around for decades, by the way, within the commodities markets, going back to the 1870s or 1880s. Margin requirements and collateral requirements have been required; hence, there are very few problems in the commodities markets because of margin requirements and collateral requirements.

The bill before us includes tough new rules for protection sellers, such as AIG and dealers such as Goldman Sachs, that will be registered and regulated by the SEC and CFTC. They will have to face tough new rules to curb excessive risk taking, and all CDSs will be reported through a central clearinghouse, data repository, or directly to regulators.

For the very first time, financial advisers working with municipalities—the people helping to ensure that our communities invest wisely—will have to register and be subject to rules and regulations.

Our colleague from North Dakota, Senator DORGAN, has offered an important amendment to tackle yet another problem, as he sees it, with CDSs. If you owned a house and bought a policy that would pay you money if the house burned down, we would call that insurance. But if you bought that policy on someone else's house, a house you did not even own, you probably would not get invited to spend the weekend there because you were betting the house would catch on fire.

At best, we call that a cynical bet. Unfortunately, it happens a lot in our financial system. It is called a naked CDS. It is a CDS in which the entity buying protection does not even own the underlying credit.

During the crisis, traders bought protection hoping that borrowers would fail to pay back their loans—borrowers such as the government of Greece or the State of California, for that matter.

Betting on failure, of course, is dangerous, as we know. That is why Senator DORGAN has offered an important amendment, in his mind, to define the problem. In addition to requiring all CDSs to be cleared, it outright bans naked CDSs and synthetic asset-backed securities.

I have described the serious steps we have taken in our underlying bill to reduce the dangers in the CDS market. Senator DORGAN's amendment goes a step further and, in my view, too far at this particular juncture. Let me explain why.

I don't know, nor can anyone say with absolute clarity, what are the implications and the unintended consequences if we have a total ban on the naked synthetic credit default swaps.

Here is my concern. You can have, for instance, people hedging against where they have uninsured interests. In fact Greece—a country that may fall, an entity in which there is no particular financial interest but there is a concern that economy may not be there—they lack insurable interests, necessarily, but it is not illegitimate to want to protect yourself against an event such as the collapse of another country that could cause financial disruptions.

My concern about the Dorgan amendment, and had we been dealing with it in another means—that is, we had offered the Dorgan amendment—I intended to offer a side-by-side amendment that would have allowed this to go forward but asking the security risk management operation we set up in this bill to make valuation to determine how this could work.

I happen to believe in certain instances what Senator DORGAN offers makes sense. My concern is I cannot tell you with certainty what the unintended consequences are. I cannot say with absolute certainty what Senator DORGAN is proposing actually will be doing what it claims or if there are broader implications to it.

This is a very important matter. I do not minimize it at all. But as chairman of this committee responsible for advising colleagues and drafting legislation, I need to talk with some certainty about what I think the implications will be of certain proposals. I cannot tell you what the outcome of this will be. There may be serious consequences negatively to our economy if we adopt this amendment as is.

For those reasons this evening, I feel compelled to disagree with this amendment. The only alternative I have to disagreeing to it is to vote to table because of the procedural position in which we find ourselves. I would have preferred a side-by-side which would have given some room for the Dorgan amendment to move forward with further consideration as to how it is applied.

Lacking that ability, do we accept or reject the amendment? Because of the concerns I have about accepting the amendment without knowing what the consequences may be, I have to recommend the amendment be defeated. Without necessary protections for commercial end users, financial stability, and governments and corporations that depend on credit in which to operate and any alternative, we risk shutting down a $25 trillion credit default swap market—a $25 trillion credit default swap market. We need thorough examination and study before taking this kind of dramatic action. That much is at risk if this amendment were to be adopted.

I urge my colleagues, given the circumstances, to support the tabling motion.

I see my colleague from North Dakota. I withhold making the tabling motion and give him a chance to respond.

Mr. DORGAN. Mr. President, I appreciate the courtesy of my colleague from Connecticut. My colleague talks about unintended consequences. We already know the real consequences of what are called naked credit default swaps. That is all we are talking about with this amendment.

My colleague started out by talking about normal hedging by a candy manufacturer with respect to the price of sugar. That is not what this is about at all, and I am not prepared to lose a debate in which I am not involved. That is not what this is about. This is about naked credit default swaps.

My colleague says there is $25 trillion of notional value of credit default swaps. I have cited two sources—the best two of which I am aware—that says 80 percent of them—think of this—as much as 80 percent of them have no insurable interest. They are just flatout naked, just gambling, betting, not investing.

This is not a case of unintended consequences. We know the real consequences. We have already lived it and experienced it and we ought to understand that we cannot accept it any longer.

This bill allows us to decide what kind of financial system we want going forward. Do we want to leave here saying we want a financial system in which the big shots on Wall Street decide they want to trade $25 trillion worth of credit default swaps, 90 percent of them in the five biggest banks?

If that is what they want to do and it is betting rather than investing, God bless them; let them do it. Who are we to tell them? Who are we to tell them? We lost about $15 trillion, that is who we are.

My question is: Are we going to see if we can sober up this system to say this is not the kind of financial system with which we grew up? Only in the last decade and a half did we decide to securitize everything and create these new exotic instruments—CDOs, naked credit default swaps and the like. That has happened recently. It was not because my colleagues from Connecticut and Alabama came to the floor of the Senate and said: Let's decide to create a whole series of new financial instruments in this country that are hard to pronounce and understand. They can all make a lot of money in fees, pay big bonuses, and it will work out just fine. That is not how it happened. It happened because we had a bunch of brain-dead regulators, among other things, who said: Go play. And they all went to play and made a lot of money, and this economy nearly pancaked.

So this amendment, I would say to the Senator from Connecticut, is very simple. It would ban the use of naked credit default swaps in which no one has any insurable interest.

By the way, with respect to unintended consequences, under this modified amendment I have offered, the appropriate Federal regulators, including the chair of the Financial Stability Oversight Board, may phase in the effective date for up to 18 months if they determine the phase-in of the prohibitions and limitations in the amendment is necessary to avoid undue market disruptions.

Having said that, I respect the view of my colleague. I profoundly disagree with it. I hope very much that my colleagues will decide not to table this amendment and to stand on the side of people who say: Let's really make a change here. We understand what happened. It was awful for this country. Let's make sure it doesn't happen again. The only way we will do that is to effect the kind of change that exists in this amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, again very briefly, obviously much of what we have included under our bill, of course, is designed specifically to avoid the kinds of losses that occurred. There are provisions in the bill dealing with those kinds of safeguards—the clearinghouses, the regulators, the mandatory exchanges, and the like. That is in the bill.

Again, I have to say to my colleagues here that there are potentially serious consequences to this. There are no protections for commercial end users if this amendment is adopted. We run the risk of financial instability in governments and corporations that depend upon credit to operate—$25 trillion.

Again, I would have offered a side-by-side which would have taken some of the good aspects of the Dorgan amendment, but my concern is about exactly the provisions I have mentioned, and there is too much at risk, in my view.

If this is the only choice we are given, I have to provide my recommendation. My recommendation is, given the choice we are given, the choice I have to make in this particular case is that we table this amendment.

For those reasons, Mr. President, I move to table the Dorgan amendment, and I ask for the yeas and nays.

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

Mr. DODD. Mr. President, I ask unanimous consent that if the Dorgan amendment No. 4114 is disposed of, then the Senate proceed to vote in relation to the Grassley amendment No. 4072, with no intervening amendment in order.

The PRESIDING OFFICER. Without objection, the unanimous consent request is agreed to.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Arkansas (Mrs. LINCOLN), the Senator from New York (Mr. SCHUMER), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Ohio (Mr. VOINOVICH).

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

The result was announced—yeas 57, nays 38, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—57

Akaka	DeMint	LeMieux
Alexander	Dodd	Lieberman
Barrasso	Enzi	Lugar
Baucus	Gillibrand	McCain
Bayh	Graham	McConnell
Bennett	Grassley	Mikulski
Bingaman	Gregg	Murkowski
Bond	Hagan	Nelson (NE)
Brown (MA)	Hatch	Reed
Brownback	Hutchison	Risch
Burr	Inhofe	Roberts
Carper	Inouye	Sessions
Chambliss	Isakson	Shelby
Coburn	Johanns	Snowe
Cochran	Johnson	Stabenow
Collins	Kerry	Thune
Corker	Kohl	Vitter
Cornyn	Kyl	Warner
Crapo	Landrieu	Wicker

NAYS—38

Begich	Feingold	Nelson (FL)
Bennet	Feinstein	Pryor
Boxer	Franken	Reid
Brown (OH)	Harkin	Rockefeller
Bunning	Kaufman	Sanders
Burris	Klobuchar	Shaheen
Cantwell	Lautenberg	Tester
Cardin	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Conrad	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden
Ensign	Murray	

NOT VOTING—5

Byrd	Schumer	Voinovich
Lincoln	Specter	

The motion was agreed to.

Mr. DODD. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4072

Mr. DODD. I inquire of the Chair, the pending business is now the Grassley amendment; is that correct?

The PRESIDING OFFICER. The pending amendment is the Grassley amendment.

Mr. DODD. I understand there will be a request for a rollcall vote on the Grassley amendment. After that, we are still anxious—we have additional amendments. I say to my colleagues, many of you have submitted amendments you would like to have considered this evening before we get to a cloture vote tomorrow. I am willing to stay and try to accommodate as many as possible. I know Members would like to have clarity on whether we will have any more votes. There are a number of other amendments we would take up in relatively short order.

I have submitted some 49 amendments to my good friend, RICHARD SHELBY, the ranking member of the committee, that we could accept, both Democratic and Republican amendments. Some are bipartisan amendments. I am not expecting to accept every one of them, but there are many that could be part of a managers' amendment that could take care of a lot of concerns others have raised. We will have to wait to determine whether they have been cleared.

Tomorrow, there will be a cloture motion. In the meantime, there is still time this evening to consider amendments that otherwise would probably fail in a postcloture environment. I am willing to stay and deal with as many of these amendments as we can before we get to that cloture motion tomorrow, but the pending matter is the Grassley amendment.

There has been a request for the yeas and nays on those votes. That is the immediate business. After that, I cannot tell you with absolute certainty there will be additional rollcall votes. If others ask for them, we may ask you to come back and cast a ballot.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we are trying to have more votes, but we will have to see if we do. We will have this vote. I think it is fair to say it may be difficult to have more votes tonight.

We are going to work—we are scheduled to have the vote an hour after we come in. I will work with the Republican leader to find out exactly what time we need that to be. I know there are some problems with attendance. We will have it at either 10 o'clock or 11 o'clock, whatever is convenient for everyone. We may be able to dispose of some amendments, even in the morning.

Mr. DODD. While all Members are here, this has been a remarkable 3 weeks. I realize not every amendment has been adopted, but for many of us, we were able to get back to the business where we actually have amendments offered, debates occurring, a good-throated discussion of a very important set of issues.

My hope would be that tomorrow—it is coming to the point where we can go on indefinitely on the subject matter. We need to get to closure at some point. My plea to colleagues, as you are thinking about this evening, amendments tonight, a few amendments tomorrow, some amendments in postcloture, we need to come to closure on this legislation. It is a good bill. The country is expecting us to answer the issue of whether we are going to protect our people from future bailouts, give them some protection against the kinds of problems that occurred in the past.

I urge you, as the chairman of this committee, to be supportive of our motion tomorrow and begin to reach closure on this bill so we can move on to other matters.

Mr. President, I ask for the yeas and nays on the Grassley amendment.

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

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Ohio (Mr. VOINOVICH).

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

The result was announced—yeas 75, nays 21, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—75

Alexander	DeMint	Lugar
Barrasso	Dorgan	McCain
Baucus	Durbin	McCaskill
Bayh	Ensign	McConnell
Begich	Enzi	Mikulski
Bennet	Feingold	Murkowski
Bennett	Graham	Murray
Bingaman	Grassley	Nelson (NE)
Bond	Gregg	Nelson (FL)
Brown (MA)	Hagan	Risch
Brown (OH)	Harkin	Roberts
Brownback	Hatch	Sessions
Bunning	Hutchison	Shaheen
Burr	Inhofe	Shelby
Cantwell	Isakson	Snowe
Carper	Johanns	Stabenow
Casey	Johnson	Tester
Chambliss	Kaufman	Thune
Coburn	Kerry	Udall (CO)
Cochran	Klobuchar	Udall (NM)
Collins	Kohl	Vitter
Conrad	Kyl	Webb
Corker	Landrieu	Whitehouse
Cornyn	Leahy	Wicker
Crapo	LeMieux	Wyden

NAYS—21

Akaka	Gillibrand	Pryor
Boxer	Inouye	Reed
Burris	Lautenberg	Reid
Cardin	Levin	Rockefeller
Dodd	Lieberman	Sanders
Feinstein	Menendez	Schumer
Franken	Merkley	Warner

NOT VOTING—4

Byrd	Specter
Lincoln	Voinovich

The amendment (No. 4072) was agreed to.

Mr. DODD. I move to reconsider the vote and to lay that on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I call up amendment No. 4085 and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment?

Mr. ENZI. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HARKIN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. What is the pending amendment?

The PRESIDING OFFICER. The pending amendment is amendment No. 4050, offered by the Senator from Maryland, Mr. CARDIN.

Mr. HARKIN. Mr. President, I wish to be heard on this amendment. We were told to stay here tonight so we could offer amendments. I have had an amendment pending since this bill was brought to the floor. I have not been able to bring it up. We were told we could stay here tonight and offer amendments. In good faith, I stayed here to offer an amendment. Now I am told we can't offer amendments because of the pending amendment, and we can't set it aside. What kind of games are being played around here? I had this amendment pending ever since the beginning, and I have not been allowed to bring it up. With cloture tomorrow, it would fall. What does it mean that we should stay around here to offer amendments tonight, when there is a pending amendment we can't set aside?

If that is the game we are going to play, I am going to put in a quorum call and we will not call it off.

Mr. REID. Will my friend yield without losing his right to the floor?

Mr. HARKIN. Without losing my right to the floor, I yield to the majority leader.

Mr. REID. In the conversations we just continued over here, I tried to work something out. It was my understanding that the minority, the Republicans, agreed to allow the Senator's amendment dealing with annuities to come up.

Mr. HARKIN. I can't hear.

Mr. REID. In a conversation we had over here a few minutes ago, the Republicans and Senator DODD and his staff thought it would be appropriate to bring up your amendment dealing with annuities. That was part of the general agreement we had worked out over here.

Mr. HARKIN. Well, I have my ATM amendment, and then there is an annuities amendment.

Mr. REID. The annuities amendment is what the conversation was about.

Mr. HARKIN. This is the ATM amendment that I have had filed since the beginning. I have had it filed since this bill was brought to the floor.

Mr. REID. So what about the annuity amendment?

Mr. HARKIN. I have that amendment too. I didn't know there was a limit. I have two amendments. I have an annuities amendment and an ATM amendment.

Mr. REID. I guess my question through the Chair to my friend from Iowa is, rather than going into a quorum call tonight, you could always do that some other time. I think it would be more productive if your amendment, which is dealing with annuities, was lumped into a number of other amendments that have been agreed to on both sides. See if we can dispose of those. Then if you still feel aggrieved at a later time, you could still do whatever you want.

Mr. HARKIN. I will not be able to because there will be a cloture vote tomorrow, and I will have been precluded for 3 weeks from offering my amendment. That is not quite fair ball around here. I said I would do my amendment in 5 minutes. I don't need to take much time.

Mr. REID. I say again through the Chair to my friend, it seems that it would be better that you would have the opportunity at least to get the annuity amendment, which a number of us believe is a very important amendment. I think it would be better if we were able to at least get rid of that amendment in a positive way. I think that is a very important amendment. If I had to choose between the ATM amendment or the amendment dealing with annuities, it would be hard for me to make a choice which one is the most important amendment. It is not a question of not having two amendments. It is a question of couldn't we at least dispose of one of them which is an important amendment; otherwise, the way this train is going, we may never get to the annuity amendment.

Mr. HARKIN. I say to my friend, the leader, that we seem to have an impasse. I have an annuities amendment. I don't know what is going to happen to that. I don't know if they are going to bring it up, vote on it or not vote on it. No one has said to me what they are going to do with it. I have an ATM amendment I have been trying to bring up. I heard my friend from Connecticut—and he is my friend; I respect him highly—say: Stay around here tonight and offer amendments. I just offered an amendment, and now I can't offer the amendment because they will not set aside the pending amendment.

Mr. REID. I am not going to belabor the point, other than to say to my friend, there has been a tentative agreement between the two managers of the bill, including offering your amendment dealing with annuities. That is an important amendment. I support it a lot. I think the other amendment is good too. But we don't have agreement on both of them. We do on one of them.

Mr. HARKIN. Mr. President, until we find some way to work something out, 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. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. NELSON of Florida. I object.

The PRESIDING OFFICER. Objection is heard.

The bill clerk continued with the call of the roll.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to vacate the quorum call.

The PRESIDING OFFICER. Is there objection?

Without objection, the quorum call is lifted.

Mr. WYDEN. Mr. President, I ask unanimous consent to set aside the pending amendment and call up amendment No. 4019, the bipartisan amendment Senator GRASSLEY and I have worked on for years to end secret holds here in the Senate, and permit 10 minutes of debate.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SHELBY. I object on behalf of Senator DEMINT.

The PRESIDING OFFICER. Objection is heard.

The Senator from Oregon.

Mr. WYDEN. Parliamentary inquiry: Could the Senator who objected to my request identify on whose behalf the objection was made?

Mr. SHELBY. I objected on behalf of Senator DEMINT.

Mr. WYDEN. Mr. President, if I could be heard on this very briefly, my friend Senator GRASSLEY is here, and perhaps we could take 3 minutes or so each to discuss this.

We have worked on this now for more than a decade. The American people are furious at the way business is done in Washington, DC, and if ever there were a concrete reason why, we have seen it in the handling of this bipartisan effort to once and for all take business in the Senate out of the shadows and do public business in public. This has widespread, bipartisan support. It is designed to ensure that when a Senator uses one of the most powerful tools at their disposal to actually block the public from seeing public business, that Senator would be publicly accountable. That hasn't been the case, and again and again we have seen colleagues over the last decade abuse this process.

It used to be years ago something that was a courtesy. Now it has come to rule life here in the Senate. Scores and scores of instances of holds have been used by both political parties. There is one Senator in this body—just one—who has objected to this coming up, and that Senator has been unwilling on multiple occasions to come to the floor of the Senate and actually state why he insists on defending secret holds. So the effort to derail secret holds is, in effect, something that is also being done in secret.

We wish to open the Senate to the kind of transparency and accountability the American people deserve, but we can't even get to a debate because the person who wants to derail this effort for new openness and new transparency won't even come to the floor and say it to our face. That is what this is all about. One can have their own views with respect to holds. Colleagues will differ on this, but what we ought to insist on is what Senator GRASSLEY has said over this decade and that is if you are going to object, you ought to have the guts to come forward and do it publicly.

I will tell my colleagues, I believe the secret hold here in the Senate is an absolutely indefensible violation of the public's right to know. Having an office here in the Senate, honored by the people of your State, in my view is a sacred trust. I believe if you told the people of your home State that you are going to go to Washington and keep the public from even getting a peek at a critical nomination or a bill, they wouldn't stand for it for a moment. They certainly wouldn't send you back to the Senate.

I intend to come back to this floor again and again and again. I see my friend Senator GRASSLEY here, who has in my view been a leader in the fight for open and transparent government. I will tell my colleagues, I think the idea that one Senator—because we got this to a vote and we asked for 10 minutes tonight for a debate, this would pass overwhelmingly—but one Senator objects to our even getting a vote for more sunshine in government. Again, that Senator has been unwilling on multiple occasions to come to the floor and say why he favors secrecy.

In fact, yesterday—I say this to my friend, the Senator from Alabama, my good friend—the objector said, Well, he was interested in the Senator from South Carolina having the opportunity to come and talk to Senator GRASSLEY and me about our amendment. He has done nothing of the sort. So he objected the first time without notice when we were minutes away from a victory that would have transformed Senate procedure for new openness. He has objected through colleagues. He has been unwilling to come and talk to us about why he insists on secrecy—and, by the way, what he apparently wants to do is something I have actually voted for.

This strikes me as an absolutely indefensible way to do business. It is a concrete case, in my view, of why the American people are so furious about the way business is done in Washington, DC.

I wish to have my friend from Iowa have a few minutes, and then, with the indulgence of the Chair, we will wrap up. This is our third such effort, and I don't care how many times we have to come back to the floor to win this fight for open, transparent, and accountable government. I think it goes right to the core of our duties in the Senate.

I yield the floor, and I particularly express my appreciation to the Senator from Iowa for his patience. We now have well over 10 years into this cause and we are going to prosecute this issue of openness and accountability until the public interest prevails.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, my friend from Oregon has adequately spoken about the rationale behind what we are trying to do as well as the substance of it, so there is no point in my repeating that. But I think people ought to wake up to what is inevitable around here. When 3 or 4 years ago we had exactly the same substance up, it passed the Senate 84 to 13, I think, and through subterfuge, it was taken out in conference. The House doesn't conference a Senate procedure, so that is why I use the word ''subterfuge.'' So we ended up with something that has not worked in the last 3 or 4 years.

Then we hear, particularly from the other side, about the holds, blaming this side for it. Every side has some guilt of misuse of holds. The fact is there is nothing in our amendment that changes the power of an individual Senator to hold up something. It is not as though we are trying to compromise this very significant power that an individual Senator has, but we are taking the adjective ''secret'' away from secret hold so that you know who the person is; so you can have dialogue with that person; so you can find out what their objections are; so you can reach compromises. That is the purpose of it. When things are secret, it is not only obnoxious to our principle of representative government; it violates the opportunity for an institution such as this to actually work. We should want to enhance the respect of this institution and one way to do that is to take the adjective out of secret hold, not to change anything else. It will enhance so much public understanding of what we are doing, because the public's business ought to be public. In our democracy, 99 percent of what we do—and maybe the only exception would be privacy of an individual or national security—of the public's business ought to be public, and that is what the people expect. But this word ''secret'' keeps from the public knowledge a lot of information that ought to be there to make this body work and to make sure we reduce the cynicism of the public toward government operation.

As I said, first, it is inevitable that this is going to happen. Senator WYDEN and I are going to pursue this, because this is the time to do it. The abuse of this power has gone on way too long.

I yield the floor.

Mr. SHELBY. 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. MERKLEY. 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. MERKLEY. Mr. President, I ask unanimous consent that the pending amendment be set aside and that my amendment No. 4101 be brought up, considered as read, and that a vote be held at 9 p.m. this evening.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. MERKLEY. Mr. President, earlier this evening, my colleague noted that philosophically he shared some interest in this amendment. Others were objecting to it. I wonder whether he would share, in the interest of the debate—and Senator WYDEN was just speaking to it, and Senator GRASSLEY was also—who is objecting to this amendment being debated tonight.

Mr. SHELBY. I was objecting on behalf of myself and a lot of other Members.

Mr. MERKLEY. I thank the Senator. I think it would be useful if the citizens of our Nation were to know who was objecting and that the names be read into the RECORD. I think the citizens have a right to know where their Senators stand on this issue. It is an ideal time to let the citizens know who is putting the secret holds on this amendment.

Mr. SHELBY. Mr. President, if I can respond, there is no secret hold here. I am objecting on behalf of myself to his unanimous consent request.

Mr. MERKLEY. Mr. President, I know I put my colleague in a terrible spot by asking that question. But I do think the citizens of our Nation deserve an explanation as to why we are here tonight and not currently debating any of a whole list of amendments that Members of this body wanted to bring forward about how we improve our financial system.

The amendment, No. 4101, is an amendment that is cosponsored by CARL LEVIN and myself and about 20 other Senators in this body. There are not that many amendments that have 20-plus cosponsors. I will tell you that it is not the number of cosponsors, although that indicates a genuine interest among colleagues in debating this; it is the substance that goes to the heart of the conversation between Wall Street and Main Street.

This amendment is about how we aggregate capital in our country and how we allocate it. How do we get money where it does the most good to build our economy and build the success of our families? We have a couple of different ways of doing that in our Nation. One is that we make a deposit in a bank, and the bank also has access to the Federal Reserve window, where they get very low cost loans. The intent of us providing both access to the Fed window and the low-cost loan and providing a government insurance on deposits is that this money is going to go into loans to our families and our small businesses. That access to capital is absolutely essential for building our small businesses.

Right now, our businesses are having a difficult time accessing capital. I bet every Member of this body has gone around their States and heard the stories I hear in Oregon. I hear about credit lines being cut in half or eliminated. I hear about projects where they are ready to seize a business opportunity but that opportunity is blocked because they cannot get a loan they would have gotten in a heartbeat last year or 2 years ago or 3 years ago. Those opportunities are not just about the success of the business; they are about the success of our families because when those small businesses expand, they put people to work.

Right now, access to capital is frozen through much of our economy, inaccessible to our families and small businesses to be able to seize those opportunities to expand. Why is that? It is because we put in the same house both our lending system and our high-risk investing system. Both of these work very well.

Let me explain the high-risk investing side. If you are so fortunate as to have a big chunk of capital, you may say: I am going to put this into this private equity fund or venture capital fund or this hedge fund, and they are going to have some very capable managers who are going to look for investments—often high-risk opportunities. They will scour the United States, and they are going to find opportunities to invest. A lot of the time those investments pay off handsomely. Those who are fortunate enough to have the funds to be able to put them into such investment vehicles often do very well.

Occasionally, the bets that are made go awry. Why is that? Well, a fund says: You know what, there is a huge new opportunity in Russia, for example, because the price of oil is going up and they have a lot of oil they want to develop. They are changing their rules and there are new opportunities for business to thrive and take advantage of those new rules. So they invest in Russia, but something goes wrong and the price of oil drops and their investments blow up—suddenly, the investment fund blows up.

If that investment fund is by itself, it doesn't really hurt the rest of the economy. As long as it is by itself and not systemically so large that it poses a huge risk to the rest of the economy, and it goes bust, the investors simply lose their money. No harm done. But if it is inside of a bank, now you have a problem because when that goes bust, the bank is responsible for the responsibilities of that fund, and the result is that the bank goes down.

We saw that Citibank went down. We saw so many other big banks—when I say ''went down,'' I mean they had huge losses. Citibank is still alive. I know the folks in South Dakota will be happy to know that. They had huge losses, and the former chair of Citibank believes we need to separate the high-risk investing and the function of depositing, accessing money through the Fed, and making those loans to our families and small businesses so they can thrive. It is a separation between two functions.

I would be happy to yield to my colleague if he wants to explain why he is objecting to having a debate on the floor of the Senate that is a debate that is so important to the success of our small businesses, so important to the success of our families, that is so important because we should have learned over what happened in the last 2 years that if these two functions are combined, they hurt each other. Why would we not want to debate the diversion of money out of the hands of our small businesses and into Wall Street? I would yield if my colleague across the aisle would like to say why he is objecting to having this debate tonight. If he would like to jump up later and explain it, I will take that comment at that time.

We cannot do our job here in the Senate if a Senator blocks the debate of issues that are important to the success of our Republic. We cannot do our job here in the Senate if a Senator blocks the debate of issues that are important to our families. We cannot do our job if folks, on behalf of Wall Street giants, come to the floor and object to the debate of fixing our financial system so our small businesses can thrive.

I can tell you this: Back home, people know that this body helped out the biggest corporations in America last year in a very difficult time for them, when many of them would have gone bust. They want to know why this body, tonight, is unwilling to debate changes in the law that will help the small businesses of America, changes that will help the families of America, debate that will enable us to discuss improving our system so that we can have decades of solid growth in the years ahead. Why should Wall Street veto a debate in this body tonight for Main Street? I can't explain that to the folks back home.

I can't explain to the folks back home that we have an amendment that has been carefully worked on for months; that there are colleagues on both sides of the aisle who wanted to have this debate; that we have an amendment that was worked on very carefully with experts from Wall Street to make sure we got it right; that we have an amendment about which the Treasury Department called in experts, brought them in through meetings and said: Here is the challenge, here is what you need do and how you can fix it. How do I explain to them that, with all that work, we could have a rational debate. But it isn't going to happen because Wall Street is asking colleagues to block the debate for the American people. Why is Wall Street winning and Main Street losing tonight? I would like an explanation. The American people would like an explanation.

Another piece of this bill says that nonbank financial organizations—by this, you can simply say hedge funds and equity funds, funds that pool money and make risky investments—that if they are so large, they pose a risk to the economy as a whole, then the regulators can add additional capital requirements, so they have to set aside more dollars for every dollar they invest.

Two years ago, the SEC lifted the capital requirements on the largest five investment banks in America. Bear Stearns went from 20-to-1 leverage to 40-to-1 leverage in 1 year. What do I mean by that? For every dollar they set aside in case investments went bad, they invested $20. So you only had to have a 5-percent drop in value to wipe out what they set aside. At the end of the year, they got 40-to-1 leverage, and that meant for every $100 invested, they only had $2.50 set aside, and you only needed 2.5 percent reduction in investments to go bust. What kind of regulation system would allow 40-to-1 leverage?

Should we not have a debate on the second main piece of this amendment, which says that regulators, when you have a systemically significant firm, can increase the leverage requirement, increase the capital set aside, so that firm is not operating in a way that it can bring down our economy or punch a huge hole in our economy?

So the first part of the amendment says that high-risk investing is wonderful for allocating capital but do it away from our lending system so that our small businesses and our families can have access to a steady flow of capital, so that capital will not be frozen when investments go bad.

The second part of the amendment says: Give the regulators the power to increase the capital requirement when they are large and can tear a big hole, so if they do crazy, risky things and they lose, they do not hurt the rest of the economy. I think it is common sense. Why is that debate so scary to my colleagues who are objecting to it tonight?

This is not about whether the amendment wins. We offered tonight to have this vote with our arms tied behind our back and one leg. What do I mean by that? We offered to have this vote tonight with a 60-vote requirement, even though a number of Democratic Senators are missing—a supermajority requirement so that we can have a debate on Main Street about Main Street, about Main Street working better. But Wall Street asked colleagues to block this debate. That is wrong.

The third part of this amendment says we need integrity in writing securities. This is the superb work of my colleague, Senator LEVIN. I know he will expand on it in due course. But here is the thing. A system with integrity is good for allocating capital efficiently because people want to invest in a system that has integrity. When we established the Securities and Exchange Commission to oversee the stock world, people gained more faith that the system was not rigged. They were more willing to buy stocks and, by that fashion, invest their moneys in the companies of America, build those companies. The success of those companies was good for our families—our working families—and the jobs that went with them.

But now in securities, we have a very opaque, a very dark market where only a few companies have control of the information and people do not know what the price point is, and they do not know what the details are. We have swaps being written where if you participate in it, you do not even know who is on the other side of the deal. There were folks doing deals with middlemen on Wall Street, and they did not know who the insurer was. They did not know it was AIG on the other side of the deal. When you buy insurance, you want to know who the insurer is. They could not get access to that information.

In securities, here is the thing. Right now, we have companies that while they are designing and selling securities also are betting against the success of those securities. I must say, that does not instill much confidence in the integrity of the system.

I ask my colleagues, and I ask the citizens of this country: Would you like to buy a car from someone who would not tell you whether they installed brakes and who was taking out an insurance policy on your life; they are betting you are going to get in a wreck? You would say: No, I would not want to buy a car from someone who is not telling me if they put in the brakes and is taking out a life insurance policy on my life. I would be scared to death to buy that car.

The story goes on. Would you buy a loaf of bread from someone who would not tell you what the ingredients were and you do not know if it is a good loaf of bread, and they are taking an insurance policy out on your life? You would be worried about the ingredients in that bread.

That is the problem we have in the securities world. It is a very simple approach that Senator LEVIN has laid out in which it calls for integrity in securities. If you are designing and selling them, you do not bet against them.

There are all kinds of details that have been put into these three parts of the amendment to make them work. Actually, there is nothing in this amendment that is very far outside a core set of issues being considered. Modern bank holding companies do a lot of things. They do wealth management. They do broker dealers in securities and other financial products. They do market making where they help bring together this group that wants to buy and this group that wants to sell. They make loans to power up our families and our small businesses. All those functions continue in our bill.

But amidst that set, there is one thing that is being carved out, and that one thing is high-risk investing. When Merrill Lynch blows up, you do not want it to take down Bank of America. Two years ago, Merrill Lynch blew up. It would not have taken down Bank of America because it was not in Bank of America. But it is today. It is a riskier system we have today than 2 years ago.

We should have a debate about this on the floor of the Senate. Bear Stearns, 2 years ago, was by itself. But now it is part of JPMorgan Chase. If Bear Stearns, 10 years from now, makes investments that go awry and it goes down, it blows up a major lender. These types of bankruptcies need to not be a situation where they send shock waves and paralyze our economy. So common sense: more collateral, if you are a huge investor, set by regulators at a rational level with appropriate hearings. That high-risk investing, do it under a different roof so if it blows up, it does not affect lending, and those securities—a little bit of integrity in the marketing of securities.

These are simple ideas. These are commonsense ideas that will make our financial system work better for everyone, making it more feasible for our small businesses to gain access to credit, making it more feasible for our families to gain access to credit, making it less likely that a major disruption in investing is going to freeze up those loans and the result is that credit lines are being cut so they cannot expand business and cannot hire.

That is where we are now. We are frozen. In mortgages, we do not have a functioning securities market right now. It is important because banks make loans and then they sell them on to the market. But they can only sell them if the market has somebody to sell to. Right now investors are leery, and they should be leery when there are these conflicts of interest that the good work my friend from Michigan has done addresses.

This debate should happen. It is wrong for a Senator to object to the people of the United States having their day to talk about a financial system that works for small businesses and works for families.

I know my colleague from Michigan is prepared to expand on the work he has been doing. At the close of my remarks, I wish to thank many of my colleagues who have been immersed in this effort to design a better financial system. Senator DODD and his team on Banking have been working night and day looking at every angle to get this amendment right. My friends at Treasury—I cannot tell you how many nights they have been up working, consulting with folks who are deep in the industry, to understand what works and does not to get this right. Senator LEVIN's team and my team have been working so hard in consulting and facilitating and writing and rewriting so we could have this debate in a responsible way tonight. We did not want to have a debate where we had an amendment that was illogical or had rough edges that had not been sanded off. We wanted to have a responsible debate.

We may not have had the votes necessary to adopt the amendment. We do not know. That is a mystery. But what we know for sure is that the people of America have been shortchanged tonight by some colleagues at the request of Wall Street blocking consideration of this amendment, and that is not right.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I ask unanimous consent that the cloture vote on the Dodd-Lincoln substitute amendment No. 3739 occur at 2 p.m., Wednesday, May 19; and that Members have until 1 p.m. to file germane second-degree amendments.

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

Mr. REED. Under a previous order, a Shelby amendment No. 4010 and a Vitter amendment No. 4003 were ordered to be called up. I would like to state for the record that those amendments are still in order to be called up and hope that the RECORD will so reflect.

The PRESIDING OFFICER. The RECORD will so reflect.

Mr. REID. Mr. President, months ago, one of the most respected names in finance, Paul Volcker, the former Chairman of the Federal Reserve Board, made a commonsense proposal to protect taxpayers from the risk-taking on Wall Street.

The essence of the proposal was this: Banks that have an explicit or implicit backing from taxpayers, through deposit insurance or otherwise, should not be allowed to make investments for their own profits. Banks can do one or the other, but not both.

The goal of the proposal is clear: We will not let Wall Street bankers take advantage of taxpayers to make themselves rich.

Wall Street should be free to serve their clients, help investors save and allow entrepreneurs to raise the money they need to grow their businesses. But big banks should not be taking exaggerated risks that benefit only themselves and their own pocketbooks.

Our Wall Street reform bill has a provision that reflects this principle. Senators LEVIN and MERKLEY have been working for weeks on a proposal that makes the tough underlying bill even tougher by giving taxpayers additional safeguards.

Their amendment would stop big banks from high-risk speculation and stop them from investing in hedge funds or private-equity funds. It would impose tough capital requirements on the biggest firms that pose the biggest risks to the financial system.

And it prohibits the conflicts of interest that allow Wall Street firms to bet against the very products they sell to their clients.

Mr. President, financial instruments and securities trading are complex. But this amendment is nothing more than simple common sense.

It stops Wall Street from gambling away other people's money with little risk and large reward. It rejects the rules in place today—which are the same rules that were in place when our economy nearly collapsed—rules that let big banks take home their winnings but ask for all us to cover the loses. And it says to those who game the system: the game is over.

If Republicans are serious about learning from the mistakes of the past, they'll join us. If they agree that protecting middle-class consumers, safeguarding families' savings and protecting seniors' pensions is more important than carrying water for Wall Street millionaires, they'll join us. If they don't, it will be clear to the American people who's on their side, and who isn't.

And even if—in spite of all the evidence to the contrary—they still disagree that taxpayers shouldn't be on the hook for big banks' bad bets, I ask them to at least let us have a vote on this amendment, and let the majority rule.

The Levin-Merkley amendment and this larger bill will help prevent future financial crises. They will guarantee taxpayers that they won't ever again be asked to bail out a out bank that doesn't want to take responsibility for its own mistakes. And they will make sure the disastrous recession our families and businesses have endured for the last several years does not get worse, and never happens again.

Mr. INOUYE. Mr. President, the financial reform bill before the Senate includes a section, subtitle J, section 991, that would permit the Securities and Exchange Commission, SEC, to be ''self-funded,'' meaning that the SEC would set its own budget and collect the subsequent fees from the companies the agency regulates. The effect of this action would be to remove a critical oversight role for the Appropriations Committee.

Currently, Congress sets the amount to be collected and the SEC adjusts their fees during the year accordingly. The provision included in S. 3217 allows the SEC to both set the fee level and adjust the fees accordingly, basically creating a carte blanche approach to SEC budgeting.

I, along with eight of my colleagues, including the vice chairman of the Appropriations Committee, Senator COCHRAN, the chairman and ranking member of the subcommittee with oversight responsibilities for the SEC, Senators DURBIN and COLLINS, along with Senators BYRD, HARKIN, VOINOVICH, MURKOWSKI, and BROWNBACK, have introduced a bipartisan amendment to strike the provision from the underlying bill.

No one disputes the fine job Chairperson Mary Schapiro has done since taking the helm of the SEC. But the foundation of our government is based on checks and balances, not personalities. Agencies should not be given sole authority to negotiate the fees that support their operations with the very institutions over which they regulate. Such a situation allows for absolutely no meaningful oversight by Congress.

However, if Congress is going to concede to the SEC absolute control of its billion-dollar budget, then the agency must have effective internal controls in place. Unfortunately, that is not the case. The Government Accountability Office has faulted the SEC several times in the past for weaknesses in this very area.

So the underlying provision will exempt an agency from the appropriations process and its annual congressional oversight without ensuring that any internal controls are in place for revenue and budget management. While it may not be the intent of the underlying provision, what is clear is that spending for the SEC would go unmonitored.

The amendment I and my colleagues introduced would strike section 991 from the bill, and thus restore the existing fee-based system for the SEC. The existing fee-based system is a successful model that has the annual appropriations bill both trigger the collection of the fees and determine the amount that can be spent. This model is used for other fee-based agencies such as the Federal Communications Commission, the Federal Trade Commission, the Patents and Trademark Office, and parts of the Federal Drug Administration.

It is clear that the House of Representatives does not support the approach included in the underlying Senate bill as they did not include a provision for the SEC to be self-funded in their legislation. I have spoken with my fellow cosponsors of this amendment, and we have agreed not to offer this amendment during the current debate. We take this action in support of the managers' and leaderships' interest in wrapping up floor consideration of the measure and because it is clear that this issue will be resolved appropriately during the conference negotiations on this bill.

MORNING BUSINESS

Mr. REED. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

Mr. REED. Mr. President, I request to be recognized in morning business.

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

PRIVATE POOLS OF CAPITAL

Mr. REED. Mr. President, like many of my colleagues, I have several amendments that have been filed. At this moment, it is not possible to call up all the amendments, but I wish to speak to one of them and hope that prior to the conclusion of our debate, I will have the opportunity, and I hope my colleagues do have an opportunity, to call up amendments that are still important to the legislation and deserve consideration by the body.

My amendment would require registration with the Securities and Exchange Commission for private equity funds, hedge funds, and venture capital funds that are larger than $100 million. It recognizes that large pools of capital without any connection to regulatory authority could pose a systemic risk. It is a function, as we found out, in some cases, that if they make erroneous judgments, that could cause a systemic problem.

This proposal has been embraced by a wide cross-section of interested and knowledgeable parties. It has the support of the Obama Administration. It has the support of the North American Securities Administrators Association, who represent State securities regulators. It has the support of the Private Equity Council, the Managed Funds Association, Americans for Financial Reform, the AFL–CIO, and AFSCME. It has broad-based support, and I think it is part of the major effort of this legislation to increase transparency and, as a result, to preclude and prevent fraud, particularly when we are dealing with these large pools of private capital.

Private equity firms' activities can often make or break companies, resulting in a significant loss of jobs. We have seen of the 163 nonfinancial companies that went bankrupt last year, nearly half were backed by leveraged buyout firms.

There are startling examples of companies, going concerns that employ thousands of Americans, that are acquired by private equity companies. Their business model, in many cases, is to leverage that company by borrowing extensively and by using these proceeds to purchase the company and then hopefully to repay themselves handsomely. If they are at a point in which the company is burdened with too much debt, they will either attempt to sell it off or they are forced into bankruptcy. The result, unfortunately, in many cases, is thousands of working men and women in this country lose their jobs. The company goes bust. There is nothing left.

This behavior has to, at least, be on the radar screen, if you will, of the regulators. They have to know that these funds above $100 million are operating. There are many other examples we can cite.

The bill before us has one category. That is hedge funds. We have to recognize there are other major private pools of capital, venture capital funds and private equity funds that should also have to register. The other thing we have to recognize is that the regulatory capacity of any agency is limited. What we have seen over the last several years is a situation where regulators may have had the authority, but they did not have the resources, or they saw situations where certain activity was regulated and other activity was not.

What this amendment argues for is to ensure that we recognize both the potential dangers of large pools of private capital and the limitations of regulations to really differentiate between the pools. That is why the amendment I propose provides no categorical exemptions for these private pools. The rationale is that I do not think, frankly, the regulators can keep up with private funds that can describe their business plan in a way to qualify for an exemption but very well might be conducting the same type of behavior that causes concerns. So I have suggested, and it has been supported by a wide number of individuals and institutions, that we provide this broad-based registration requirement—firms above $100 million would be required to have Federal registration. That is something, I think, that is important. Therefore, we have proposed the amendment.

The investors in these firms deserve, I think, our protection as well. The benefits to the financial system outweigh, in my view, the modest associated costs, and as a result I think we could and should move forward. Many of these firms, frankly, if you have $100 million under management or for investment, and if you don't have good financial controls, I think we have to ask ourselves: Should these firms be operating? Should they be allowed to continue to operate?

The second aspect of this, too, is that the infrastructure of compliance—the infrastructure of risk management—is built into these firms. If it is not, frankly, we should ask: Why are they still doing business? The cost of registration—and this is simply registration; simply telling the Federal regulators, the SEC, that we are doing business like this; we have a certain amount of assets under management or investments that we are managing, and several other items of basic information—has been estimated to be rather modest compared to the money under management and the other operational expenses of these firms.

So again, I think this is a valuable amendment. It is a valuable amendment that reinforces the basic tenets of this legislation—transparency, accountability, and giving our regulators an overall view of the financial situation—the money that is there, the types of business activities that are there—so that they can develop appropriate information for their regulatory endeavors.

The other point I would make is that if we were to stop the camera today and look at the financial scene, we might make judgments that, well, this entity is not very large, this particular entity doesn't do the type of business, et cetera. With the dynamism of our economy, which is a value, going forward 2 or 3 years, those firms could change dramatically, and something that seemed innocuous today could be systematically risky in the future. It might be called the same thing, but its functions are different.

I make a final point in this regard. In some respects, legislation that was considered here in the 1990s looked at derivatives, looked at securitization as a phenomenon that would be static and that wouldn't change. But we know it changed, and it changed in a way the regulators didn't anticipate and weren't prepared to anticipate. So mortgage funds in the 1990s were based on those old-fashioned 20 percent down, a FICO score of 680, income sufficient to amortize the mortgage over the lifetime. The mortgages they were securitizing in 2005–2006—no money down, no income statement, liar loans, et cetera—was a different product. And yet we legislated for products and for business entities that transformed dramatically in the subsequent years.

We have to provide our regulators with the flexibility to not only deal with the problems of today but to fairly anticipate a dynamic and changing financial situation. That is at the heart of this legislation also. So I hope we have an opportunity to further debate this and to offer it and to ask colleagues for their consideration.

With that, I yield the floor to the Senator from Michigan.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I want to briefly come to the floor to talk about what happened here today. We saw the long arm of Wall Street come to the Senate and reach right into this Chamber. It should not have happened. We all should have learned the lesson as to what Wall Street plunged us into. And the idea that Wall Street could do this, through a number of Republican Senators who objected to our even coming to a vote on the so-called Merkley-Levin amendment, is nothing less than shameful. But that is what happened.

We have been going back and forth, a Democrat and a Republican amendment, and it came time for Senator DODD, who is a cosponsor of Merkley-Levin, to offer this amendment, to bring this up to the floor, and it was rejected. It was rejected by the Republican leadership acting through the manager of the bill.

This amendment has been worked for many days. We have attempted very hard, and succeeded in addressing a number of concerns which were raised, but what we insisted upon and will continue to insist upon and will not yield on is our determination that banks not engage in risky bets. Our commercial banks have access to the Fed window. That is taxpayer money. Our commercial banks have access to the Federal Deposit Insurance Corporation. It guarantees that the accounts will be paid. We cannot permit—we cannot allow—banks to engage in risky bets and then expect to be bailed out by taxpayers. That happened to us. It got us into big trouble. We are in a deep recession as a result of what the Wall Street banks did.

There were a lot of other contributors. They were not alone. Our subcommittee hearings were prepared over many months. In fact, the investigation lasted about a year and a half, with millions of documents that were subpoenaed and brought into the subcommittee's offices. What our hearings showed is that upstream we had a number of banks and mortgage companies that were willing to package bad loans, in many cases loans that they knew were fraudulent, and in some very serious cases loans that they knew were likely to go into default. Nonetheless—and the e-mails show this—those upstream banks decided they were going to bundle these mortgages—these dubious risky mortgages, many of which were likely to default—they were going to securitize these mortgages and ship them downstream, where Wall Street was panting for these bundled securitized mortgages because then they were going to slice them and dice them and cut them up into these collateralized deals, which were so complicated and very difficult to explain to the public.

Nonetheless, what happened is the public took a bath, and a number of firms on Wall Street did very well, including Goldman Sachs. It did extremely well through their dealings. Some of the e-mails from Goldman Sachs show how well they did, while everybody else was losing their homes, losing their jobs, and most banks were losing money. In one of their e-mails Goldman Sachs said:

> Much of the plan began working by February as the market dropped by 25 points and our very profitable year was underway.

So the market dropped 25 points and the profitable year at Goldman Sachs was underway. Why? Because they bet against their own clients.

As Senator MERKLEY pointed out—and he has been a real pleasure to work with as a partner—we had a situation here where Goldman Sachs was selling billions of dollars of securities—many of which they knew contained bad assets, and their own e-mails show it—selling to their clients with their right hand and with their left hand betting heavily against those same securities. The way they bet against them is a complicated story—going short, betting short, the big short, using those default swaps, which were described earlier on the floor of the Senate. But they were making a lot of money out of the losses of their clients.

What added insult to injury—the injury was the conflict of interest and betting against something they were selling, and not even disclosing that fact, by the way, to their clients and customers. But the insult that was added was when their own e-mails, over and over again, show that their own salespeople were describing these securities that they were selling to our pension funds and our educational institutions as junk and worse. That is the insult. The underlying injury is the conflict of interest.

Our amendment, as the Senator from Oregon described, goes after the proprietary trading, which is highly risky, in one part of the amendment. Another part of the amendment goes directly at the conflicts of interest which were exemplified by what Goldman Sachs did. Then they tell us in the Permanent Subcommittee on Investigations: Well, that is the way Wall Street does business. You just don't understand.

Well, Main Street understands. We understand the values that Wall Street exemplified in these last years by selling junk to clients and then betting against them. We understand very well what went on, because we, the people of the United States, ended up paying for those bets. When they won the bets, they made out like bandits. Wall Street—Goldman Sachs—won many of those bets because they bet against the very securities that they thought were dubious. But there were also a lot of banks that lost bets, that didn't do what Goldman Sachs did, but nonetheless got stuck with these bad securities. And what happened then? Because of the proprietary trading of those banks and risky securities, they ended up losing a lot of money and the taxpayers had to bail them out.

So the taxpayers of this country lose either way. Our pension funds, our educational institutions lose out to a Goldman Sachs, with their conflicts of interest against their own clients—essentially dealing with themselves as a client against the interest of the person they were selling securities to. You have the Goldman Sachs on the one hand making a lot of money that way. You have the banks, which lost money because of those risky bets on the other side of the bet, ending up being at the public trough and having to be bailed out because they were too big to fail and would have plunged us even more deeply into a deeper recession or a depression had they not been bailed out.

We are trying to prevent that from happening again. The Merkley-Levin amendment is trying to go right to the heart of that problem, and that problem is a very deep one, involving the examples which the Senator from Oregon I believe cited but, if not, let me very briefly summarize. Wall Street has attempted to argue that proprietary trading, which our amendment would seek to end in a very thoughtful way, without hitting the kind of activities that are client oriented, that should be allowed—Wall Street has attempted to argue that proprietary trading was not a significant factor in the downfall of our financial system. The numbers here tell a very different story.

By April of 2008, the Nation's largest financial firms had suffered $230 billion in losses based on their proprietary trading. So by the end of 2008, taxpayers put up hundreds of billions of dollars in so-called TARP funds to avoid the collapse of our economy. One example of the damage here: In 1998, Lehman Brothers had $28 billion in proprietary holdings. Less than 10 years later—2007—its proprietary holdings had soared more than 10 times to $313 billion in those kind of high-risk bets. When the values of the holdings declined in 2007 and 2008, Lehman Brothers then lost $32 billion. Those losses exceeded Lehman Brothers' net worth. By September of 2008, the firm collapsed in the largest bankruptcy in our history.

That is what we are trying to prevent a recurrence of in our amendment. And what happened? Because the Republican leadership decided they would use a parliamentary approach here to stop Merkley-Levin from even being offered, we have been unable to get the remedy for that kind of a catastrophe happening again to the floor of the Senate for a vote.

That is a tragedy which is lying in wait, if we allow it to exist. So Senator MERKLEY and I—the Presiding Officer now and I—are going to do everything we possibly can in the few hours that remain before the cloture vote to prevent the Republican obstruction from succeeding. We are going to continue to try tomorrow morning to see if we can't get our amendment considered by the Senate. We simply cannot stand by and do nothing. We have seen too many massive costs to the taxpayers.

Another example was with Bear Stearns. Bear Stearns lost more than $3 billion, thanks to an investment of about $30 million in two hedge funds. So the losses at Bear Stearns, because of the leverage they used and were allowed to use under existing law, which we would not allow them to use—their losses were 100 times greater than the original investment that crippled the bank and led to an emergency sale to JPMorgan Chase.

We have to protect depositors and taxpayers from the risk of this high-risk proprietary trading at the commercial banks. We have to protect taxpayers from the dilemma of having to pay for Wall Street's risky bets or watch our financial system disintegrate. We have to protect investors and the financial system at large from the conflicts of interest that too often represent business as usual on Wall Street.

We worked with Senator DODD. As Senator MERKLEY pointed out, Senator DODD and his staff worked very closely with us. Senator DODD supports our amendment. So the chairman of the Banking Committee wants our amendment to be considered, and even he cannot persuade the Republican leadership to not use a parliamentary gimmick to stop us, to thwart us, to stymie us from bringing this remedy to the floor of the Senate.

I thank Senator DODD, Senator MERKLEY, and his staff for working so closely with us. We have worked with the Treasury Department very closely, with the Securities and Exchange Commission closely, to make sure we would fix the problems we target without endangering legitimate market activity or activity that is on behalf of clients instead of on behalf of the banks. A number of our colleagues worked with us to make sure there would not inadvertently be restriction of activities that did not cause and would not cause this kind of financial crisis again. Federal Reserve Chairman Paul Volcker endorsed our amendment, as did business leaders such as John Reed, former chairman and CEO of Citibank, and major organizations for Wall Street reform.

But as we stand here and sit here at 9:30, we are stymied. Unless we can unlock this tomorrow morning, there is going to be a cloture vote later on that day which, unless we can figure out a way to make our amendment germane postcloture, will prevent us from getting a vote on this amendment.

Are we serious about reforming the worst excesses of Wall Street? On this side of the aisle, we are. On the Republican side of the aisle, what we have seen now is obstruction, a decision that has been made that they are going to protect Wall Street instead of Main Street. Wall Street has a long arm and hundreds of lobbyists swarming around this Senate. They are determined to stop us from taking up the Merkley-Levin amendment.

There is going to be a dramatic opportunity tomorrow. There is going to be another effort made to have our amendment considered. At least one effort will be made tomorrow, and maybe more, because it is absolutely essential that the average American out there, the average family, that average business on Main Street that we are trying to make sure has funds available to it for its needs—they are going to be looking, hopefully, at this body tomorrow when a decision is going to be made as to whether the reforms that are so critically important to preventing a reoccurrence of this disaster, this economic disaster, will prevail.

Again, I thank Senator MERKLEY for all he has done, for the huge energy he has put in, he and his staff working so closely with us, with the Treasury Department. I am proud to have the name ''Levin'' come after the name ''Merkley'' in Merkley-Levin. Someday—hopefully it will be tomorrow—we are going to get Merkley-Levin considered by the Senate. It is a sad day when the power of Wall Street can overwhelm and overcome the determination of the American people to reform it, to get that cop back on the beat on Wall Street.

We will know tomorrow morning or tomorrow afternoon very early as to whether Wall Street's effort to thwart this Chamber's majority view that the Merkley-Levin reform be voted on—and a majority that would clearly adopt it—whether Wall Street succeeds or not we will know, at least short term, by about noon or 1 o'clock tomorrow afternoon.

I yield the floor.

TRIBUTE TO RICHARD MOE

Mr. REID. Mr. President, today I wish to recognize Mr. Richard Moe on the occasion of his retirement for the outstanding contributions he has made during his half-century career in American politics and the preservation of our Nation's rich heritage. On May 31st, he will retire as the National Trust for Historic Preservation's seventh president after 17 years of distinguished work and achievement. He will have been the longest serving president since Congress chartered that organization back in 1949 to protect some of the country's most important historic places.

His legacy, however, is not just limited to a litany of successes in the preservation of our most treasured historic and cultural resources. That stewardship alone is an accomplishment beyond measure because of the priceless value these places and objects provide us and subsequent generations of Americans into posterity. In honoring Richard Moe's decades of work, though, I would be remiss if I did not call attention to his great devotion to public service as well. Some of those years were spent right here in the Halls of the Senate when he worked for our esteemed former colleague, Walter Mondale. It would be difficult to understand his deep commitment to the Nation and its heritage, a hallmark of his presidency at the National Trust, without mentioning his dedication to serving the American people through those whom our voters have elected.

A native of Duluth, MN, Richard Moe graduated with a bachelor of arts degree in political science from Williams College in Massachusetts. He began his career in politics as administrative assistant to Minneapolis Mayor Arthur Naftalin in 1961 and then as administrative assistant to Minnesota Lieutenant Governor A. M. Keith until 1966. He studied law at the University of Minnesota and passed the Minnesota State bar in 1967. That same year, he became financial director of the Minnesota Democratic-Farmer-Labor Party, eventually rising to chairman, the second youngest in DFL's history. He held that post until 1972, when he joined the Washington office of Senator Mondale and served as his administrative assistant. In 1977, Richard Moe became Vice President Mondale's chief of staff and a member of President Carter's senior staff where he undertook a number of special assignments on behalf of that administration. Following those years at the White House, he joined the Washington office of the New York law firm Davis, Polk & Wardwell and became a partner.

In 1993, he was selected president of the National Trust and forever changed the face of that important organization. Richard Moe's leadership there has taken the organization and the historic preservation movement into the 21st century. His first goal was to make it financially independent and strong. A major portion of the National Trust's funding used to come from the Federal Government. This is no longer the case. The National Trust now adheres to his more entrepreneurial focus on building relationships with private funders. As a result, and through two capital campaigns, the organization's endowment increased by $200 million during his Presidency.

He has broadened the National Trust's original congressional mandate far beyond the red velvet cords of house museums and brought historic preservation into the full and diverse spectrum of the national public policy arena. When in 1993 the Manassas National Battlefield Park and the surrounding countryside were threatened by an incompatible theme park and commercial development, he rallied such opposition to sprawl, poor planning, and the loss of our country's open spaces that the proposal was defeated.

He has focused his organization's attention beyond the importance of just protecting the historic America we know that was built after Jamestown, and called attention to the earlier cultural and historic treasures of the first Americans on our great public lands. And as our national consciousness has turned increasingly toward protecting our environment and conserving precious resources, Richard Moe has led his organization's role in fostering a more sustainable country under the simple but powerful message that preserving and reusing historic buildings is the greatest form of recycling.

His passionate interest in history and especially the events of the Civil War led to a deep and personal commitment to the restoration of President Lincoln's Cottage just 3 miles north of this Chamber. Now, solely as a result of Richard Moe's vision, this once forgotten ''Camp David'' of President Lincoln, where one of our most respected and celebrated Presidents lived and worked, is open to the public for the first time.

In the midst of all these accomplishments, Richard Moe wrote a Civil War history in 1993, ''The Last Full Measure: The Life and Death of the First Minnesota Volunteers,'' and coauthored ''Changing Places: Rebuilding Community in the Age of Sprawl'' in 1997.

In 2007, he was awarded the National Building Museum's Vincent Scully Prize, which recognized his leadership in moving historic preservation into the mainstream of public policy and expanding the public's awareness of our heritage's stewardship. That same year he also received the American Historical Association's Theodore Roosevelt-Woodrow Wilson Award for Public Service. Let me add to the many acknowledgements such as these my gratitude to Richard Moe and that of the entire Senate for his indelible contributions to our American political life and for his unceasing care for our national heritage. I know that even in retirement, he will continue to serve the people of the United States and I wish him well.

HONORING OUR ARMED FORCES

LANCE CORPORAL JOSHUA M. DAVIS

Mr. GRASSLEY. Mr. President, I rise to recognize the sacrifice of a brave young Iowan, LCpl Joshua M. Davis, who died from wounds he received while supporting combat operations in Helmand Province, Afghanistan. He was 19 years old. Josh's loss will be felt very deeply in his hometown of Perry, IA, where his drive and leadership skills were recognized early on as a member of the football and wrestling teams and SkillsUSA. He was determined to serve his country and joined the Marine Corps right after high school, even graduating a trimester early to start basic training. Accounts describe Lance Corporal Davis as humble, but his sense of patriotism and service humbles me and makes me proud to be an Iowan. Learning about the life of this remarkable young man makes the knowledge of his tremendous sacrifice all the more poignant. My thoughts and prayers will be with his family at this time, including his father Dave, his mother Beverly, and all those touched by his loss. I cannot adequately express the debt of gratitude we owe, but I ask all Senators to reflect on, and pay tribute to, the life of a great American, LCpl Joshua Davis.

IN SUPPORT OF JUDGE EDWARD CHEN

Mr. INOUYE. Mr. President, I rise to speak in support of Edward Chen, nominee for Federal judgeship in the United States District Court for the Northern District of California. Judge Chen has been a respected Federal magistrate judge for over 8 years. He is held in high regard by his judicial colleagues and by the attorneys, litigants, and witnesses who have appeared before him, including non partisan prosecutors and law enforcement officials. Judge Chen has issued hundreds of rulings in accordance with the rule of law, and without bias or unfairness. He has facilitated the fair settlement of hundreds of cases, ranging from complex business disputes to civil rights claims. For these reasons, Judge Chen received the highest possible rating of ''well qualified'' from the American Bar Association.

Given his wide support from the legal community, and his record of fairness, what could prevent the U.S. Senate from confirming this outstanding jurist's appointment to the District Court of the Northern District of California?

I am in the opinion that nothing should prevent it. But elements of the extremist media have launched cynical attacks against Judge Chen. Unarmed by facts, accusers resort to tired smears that Judge Chen is a ''radical leftist,'' someone ''who doesn't appear to love America.''

But these charges are completely without basis. Those interested in the true picture of Judge Chen's work and outlook need only look at his actual 8-year record on the Federal bench. I believe that this record is exactly where discussions of his nomination should focus in our Senate Chambers, where good judgment should prevail. Judge Chen has written over 300 published opinions, and what those opinions show is a judge who is committed to the rule of law. He follows case precedent. He checks any personal views at the courthouse door, and rules impartially in each and every case. His decisions reveal a belief in fairness to all.

Judge Chen, like so many others, values diversity in the Federal judiciary. Judges from different backgrounds bring varied life experiences to the court, and this diversity of background and experience helps foster balanced and accurate decisionmaking according to the rule of law.

Judge Chen's belief in the value of diversity is joined also by Supreme Court Justice Samuel Alito. During his 2006 confirmation hearing, Justice Alito stated, ''When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender. And I do take that into account'' in reaching balanced and accurate decisions. Justice Clarence Thomas underscored this very point in his statement about the importance of broad representation in the judiciary: ''My goal is to have a court that is fair, and I think it's fair when we are fair in selecting people from all parts of the country, from all walks of life.''

I believe Judge Chen brings valuable experience and a solid record of judicial fairness to the Federal court. He is faithful to the rule of law. He is committed to impartiality and equality for all. I believe that upon fair and honest consideration by my Senate colleagues, Judge Chen and his judicial record will earn approval. Judge Chen has my full support and deserves to be confirmed by the Senate without delay.

REQUEST FOR CONSULTATION

Mr. COBURN. Mr. President, I ask unanimous consent that my letter to Senator MCCONNELL dated May 18, 2010, be printed in the RECORD.

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

U.S. SENATE,
MAY 18, 2010.

Hon. MITCH MCCONNELL,
Senate Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: I am requesting that I be consulted before the Senate enters into any unanimous consent agreements or time limitations regarding H.R. 1741, the Witness Security and Protection Grant Program Act of 2009. In short, although I support the goals of this legislation and believe that witness security and protection is essential to the effective administration of justice, I do not believe that the federal government bears responsibility for witnesses in state and local courts. My concerns about H.R. 1741 include, but are not necessarily limited to, those outlined in this letter.

As you know, I am extremely concerned about the Nation's fiscal well-being. The national debt is nearly $13 trillion and rising, which amounts to almost $42,000 owed by each U.S. citizen. Moreover, Congress recently raised the national debt ceiling by nearly $2 trillion, and the federal government borrows 41 cents for every dollar that it spends. This dire situation demands that Congress address its spending addiction and adhere strictly to the enumerated powers defined by Article I, Section 8 of the U.S. Constitution.

Providing basic services such as witness security and protection in state courts is the obligation of the states. Budgets everywhere are tight, but state and local governments—like the federal government—must set priorities and eliminate wasteful spending in order to ensure that the highest responsibilities are fulfilled.

Although the Nation's debt crisis demonstrates that Congress no longer has the luxury of funding anything other than the highest federal priorities, I would note that federal dollars are already available for the same purposes contained in H.R. 1741. Those funding sources are as follows:

Edward Byrne Memorial Grant Programs—One of the seven permissible purposes of Byrne/JAG funds is ''crime victim and witness programs'' (P.L. 109162). Significant amounts of federal dollars are available through this program. In FY2009, Congress provided more than $2.5 billion in JAG funding, and in FY2010, Congress provided $519 million for the same programs. In addition to this JAG funding, which is awarded on a formula basis, Congress provided a total of $178.5 million in FY2009 and $185.3 million in FY2010 in Byrne ''discretionary'' funding. This money, totaling $363.8 million, was awarded in the form of congressional earmarks. Competitive funding was limited to $30 million in FY2009 and $40 million in FY2010. In total, the federal government sent approximately $3.4 billion to state and local law enforcement through Byrne grant programs in the last two fiscal years alone. To the extent that states need federal funding for witness protection and security, it would seem that there is ample funding available and that they should consider prioritizing such projects in their requests and budgets.

U.S. Marshals—Current law, 18 U.S.C. §3521, authorizes the Attorney General to provide for relocation and other protection of state witnesses, as well as their family members or close associates, in certain circumstances. That law allows the Attorney General to provide relocation and other protection for state witnesses, as well as their family members or close associates, where there is concern for a witnesses' safety. It allows for, but does not require, reimbursement by the State (18 U.S.C. 3526(b)(1)).

Community-Based Justice Grants for Prosecutors Program—Existing law, 42 U.S.C. §13862, already authorizes federal grants for state and local governments to ''create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.'' This authorization, enacted in 2008, has never been appropriated. Although it remains my belief that Congress lacks both the resources and the responsibility for funding such programs, it should be noted that the statutory authority to provide for state witness protection already exists.

I regret that I am unable to support H.R. 1741. Again, I share concerns for the safety of citizens who participate in our justice system. I believe, however, that the Nation's skyrocketing debt demands that Congress make tough spending choices. Where responsibility lies with state and local governments to provide a service, and especially where federal money is already available, I cannot consent to spending additional taxpayer dollars for the same purpose.

Sincerely,

TOM A. COBURN, M.D.,
United States Senator.

NATIONAL HEPATITIS AWARENESS MONTH

Mr. JOHNSON. Mr. President, I rise today in recognition of National Hepatitis Awareness Month to raise awareness of this public health threat and encourage greater prevention, diagnosis and treatment efforts.

Viral hepatitis is a highly infectious disease that directly attacks the liver and, if left untreated, can lead to life-threatening cirrhosis of the liver, liver failure and liver cancer. The Centers for Disease Control and Prevention—CDC—estimate that roughly 5 to 6 million Americans are infected with viral hepatitis. Yet these chronic infections are silent killers, as those who are infected experience no obvious symptoms until advanced liver damage has occurred after years without treatment. Consequently, up to 50 percent of Americans infected with hepatitis B and 75 percent of Americans infected with hepatitis C are unaware of their disease. Without appropriate screening and management of the disease, viral hepatitis carriers can pass on the infection to others before suffering a premature death from liver cancer or liver disease.

Similar to the human immunodeficiency virus—HIV—hepatitis B and C are spread through infected blood and needles. Despite awareness campaign efforts from advocacy groups and the CDC, there continues to be nearly 50,000 new infections each year in the United States, resulting in 15,000 deaths from chronic viral hepatitis-related diseases. While continued education and outreach is vital to discourage risky behaviors that expose individuals, it is only one part of preventing further spread of hepatitis.

Perhaps most disturbing is the incidence of hepatitis B and C transmission occurring in healthcare settings from exposure to infected blood or the reuse of contaminated syringes. According to the CDC, unsafe injection practices are one of the leading causes of infections in healthcare settings. Although most healthcare workers are aware of the dangers and strictly follow safety guidelines when administering injections, outbreaks of hepatitis in recent years have shown the continued need for awareness, education, and stringent safety practices in healthcare settings.

Chronic liver disease is among the top ten killers of Americans and hepatitis C accounts for 40 to 60 percent of all cases. While there is a safe vaccine for several types of viral hepatitis, no vaccine exists for hepatitis C. It has been identified as one of the most significant preventable and treatable public health problems facing the United States. Clearly we must continue to increase awareness of the disease to prevent new infections, encourage screening and tests, and link those that are infected with the care they need.

It is my hope that awareness efforts throughout the month of May will bring to light the significant and silent health threat of hepatitis, encourage appropriate screening and management of the disease, promote vigilant safety practices in healthcare settings and prevent further transmissions of the disease.

HIV VACCINE AWARENESS DAY

Mr. COBURN. Mr. President, I rise today to express grave concern regarding the misplaced priority of annually deeming this day, May 18, HIV Vaccine Awareness Day. This year marks the 13th annual observance of a day that epitomizes our government's inability to set priorities with the Federal dollars this body is entrusted.

According to the National Institute of Allergy and Infectious Diseases, NIAID, Web site:

> This annual observance is a day to recognize and thank the thousands of volunteers, community members, health professionals, and scientists who are working together to find a safe and effective HIV vaccine. It is also a day to educate our communities about the importance of preventive HIV vaccine research.

As a practicing physician and former cochair of the Presidential Advisory Council on HIV and AIDS, I believe the development of a safe and effective HIV vaccine should be among our Nation's highest health care priorities. HIV/AIDS continues to devastate communities in the United States and around the world. In the United States, more than 50,000 people become infected with HIV each year. Approximately 40 million people are living with HIV around the world, with more than 5 million new infections each year. To date, more than 25 million men, women and children are believed to have died from AIDS worldwide.

Unfortunately, we have not yet developed an effective HIV/AIDS vaccine—nor are we close. At a time when our national debt is approaching $13 trillion and patients suffering from HIV/AIDS are being put on waiting lists for life-saving drug treatments, we simply cannot afford to misspend $1 million a year to make people aware of a nonexistent vaccine.

Furthermore, this well-intentioned propaganda campaign is being funded at the expense of HIV vaccine research itself. Regardless of the intentions, the unfortunate fact is that finite resources intended for HIV vaccine research are being siphoned away for a project without any potential scientific benefit. With no effective vaccine likely anytime soon, it seems silly, or worse, to waste funding that could be much better spent on research or scientific investments that could one day lead to a vaccine.

The discovery of a vaccine or cure, after all, would be the best way to thank the researchers and volunteers. As every cent counts in this endeavor, it is unconscionable that precious dollars are being squandered by NIAID's well intentioned but unnecessary public relations campaign.

Between 2001 and 2005, NIH spent more than $5.2 million on this ''HIV vaccine awareness'' campaign, not including staff time or travel expenses. It is reasonable to assume that the federal government continues to waste over $1 million annually on HIV vaccine awareness, despite the fact that no vaccine exists and scientists believe that it is unlikely that a HIV vaccine will be developed anytime soon.

Some of the HIV Vaccine Awareness Day events supported in the past include various lunch and dinner receptions, a fashion show in Massachusetts, a bar night in Tennessee, a bar event and entertainment contest in Washington, and other gatherings and media events. Clearly, this awareness campaign serves no obvious public health or scientific value.

There is no doubt, however, that development of an HIV/AIDS vaccine should be a national priority. HIV/AIDS continues to devastate communities in the United States and around the world. At least 56,000 Americans become infected with HIV each year. More than 33 million people are living with HIV around the world, with more than 2.5 million new infections each year. To date, more than 20 million men, women and children are believed to have died from AIDS worldwide.

The development of a safe and effective HIV vaccine should be among our Nation's highest health care priorities. It imperative that not a single dollar of the Federal funds set aside for the development of an effective HIV vaccine is wasted.

This year, Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases, NIAID, highlighted what he called ''significant progress in HIV vaccine research during the past year.'' The study he referred to was a clinical trial in Thailand finding a vaccine to be 31 percent effective at preventing HIV infection. Unfortunately, the results of this study have been found to be statistically insignificant and the findings of the study have received much skepticism. This latest clinical trial is the latest in a long line of promising but unsuccessful attempts at creating an HIV/AIDS vaccine.

Dr. Fauci in recent years has conceded publicly that no one has been very close to developing a vaccine that would prevent infection. Over the past 5 years, in fact, two large clinical trials of HIV vaccines have failed to demonstrate efficacy of the candidate being tested. The disputed Thailand trial aside, this is still the case today.

Most scientists involved in AIDS research believe that an HIV vaccine is further away than ever and some have admitted that effective immunization against the virus may never be possible, according to a survey conducted released in 2008.

A poll of scientists reflects the declaration made at a NIH ''summit meeting'' in 2008 that was ''tantamount to an admission that almost no progress has been made in the search for an AIDS vaccine in the past 25 years and that something close to new start is necessary.'' The government scientists announced that ''more of their budget needs to be spent on basic lab research and less on testing the current crop of vaccines, none of which has proved useful in human trials.'' In light of these failures and daunting prospects, Dr. Fauci pledged to re-evaluate the use of all $1.5 billion his agency spends on AIDS noting that ''we are going to have to justify what we are doing.''

Dr. Anthony Fauci has noted that while Federal funding for the National Institutes of Health, NIH, continues to increase, it will not increase as quickly as it has the past decade, and as a result, NIH must concentrate on more promising research. Fauci said the heads of NIH institutes such as his had been told to reexamine the entire research portfolio to ensure ''the most bang for the buck.'' The AIDS vaccine candidates that don't show early results in clinical trials could be shut down, he said.

That may mean cutting back some AIDS vaccine research even though virtually all health experts agree a vaccine will be the only way to stop the pandemic of a virus that is incurable, always fatal and that continues to spread worldwide and in the U.S.

As I have done in the past, I am sending a letter today to the Secretary of Health and Human Services to inquire about this misuse of funds. It is my sincere hope that the Department of Health and Human Services will cease spending Federal dollars on this misplaced priority and reinvest these HIV/AIDS dollars into actual research or care.

Mr. President, I ask unanimous consent to have printed in the RECORD my letter dated May 18, 2010, to Secretary Kathleen Sebelius.

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

U.S. SENATE
Washington, DC, May 18, 2010.

Hon. KATHLEEN SEBELIUS,
Secretary, Department of Health and Human Services, Washington, DC.

DEAR SECRETARY SEBELIUS: As a practicing physician and former co-chair of the Presidential Advisory Council on HIV and AIDS, I believe the development of a safe and effective HIV vaccine should be among our nation's highest health care priorities. HIV/AIDS continues to devastate communities in the United States and around the world. In the United States, more than 50,000 people become infected with HIV each year. To date, more than 25 million men, women and children are believed to have died from AIDS worldwide.

During this time of fiscal restraint when our nation is faced with an approximately $13 trillion national debt and over 1,000 individuals on waiting lists for life-saving HIV/AIDS drug treatments, we must be careful that not a single dollar that could pay off this debt or serve some other vital service—such as developing an HIV vaccine—is diverted for less important purposes.

According to the National Institute of Allergy and Infectious Diseases (NIAID) website, May 18, 2010 marks the thirteenth annual HIV Vaccine Awareness Day: ''This annual observance is a day to recognize and thank the thousands of volunteers, community members, health professionals, and scientists who are working together to find a safe and effective HIV vaccine. It is also a day to educate our communities about the importance of preventive HIV vaccine research.''

In addition to my concern that these funds are diverted from the more important goals of developing a vaccine or providing care to patients in need, HIV Vaccine Awareness Day has been marked by specific examples of wasteful spending. In the past, related expenditures have included various lunch and dinner receptions, a fashion show in Massachusetts, a bar night in Tennessee, a bar event and entertainment contest in Washington, and other gatherings and media events.

Would you please provide:

(1) The total amount of federal funding that was spent to promote ''HIV Awareness Day'' in 2010 and for each fiscal year since its inception in 2001, including staff time and travel costs;

(2) If this event is planned for next year please, an estimate of its likely cost;

(3) A list of all organizations that received funding from NIAID as part of ''HIV Vaccine Awareness Day'' since its inception and a description of the activities performed with these funds; and

(4) The total amount NIH has spent on actual HIV vaccine research in each year from fiscal year 2001 through 2010.

Thank you for your attention to this request. I look forward to a prompt reply.

Sincerely,
SENATOR TOM COBURN, MD.

ADDITIONAL STATEMENTS

REMEMBERING MARGARET JOAN MORGAN FOLEY

• Mrs. BOXER. Mr. President, I ask my colleagues to join me in honoring the memory of Margaret Joan Morgan Foley. Mrs. Foley passed away on May 9 at her home in Visalia. She was 87 years old.

Margaret Foley was born in Dawson Springs, KY, on November 5, 1922. After obtaining her registered nursing license at the age of 21 from the Salem School of Nursing, she enlisted in the U.S. Army in the fall of 1943. During World War II, she would serve in the Philippines and Nagasaki, Japan.

Upon her return home, Mrs. Foley settled in Los Angeles where she worked as a surgical nurse at Saint Luke's Hospital. During this period, she met and married James Foley. A person of remarkable character and determination, Mrs. Foley was undeterred by a bout with tuberculosis that required a 23-month stay at a sanitarium in Altadena, as she fought valiantly to full recovery and continued her education at the University of Southern California.

In 1955, the Foleys moved north to Tulare, where Mr. Foley accepted a job as a reporter for the Tulare Advance-Register. Spurred on by a lifelong passion to improve the education, health and welfare of children and the poor, Mrs. Foley generously lent her time and considerable talents to a number of important community causes; the Parent Teacher Association, the Tulare Mental Health Advisory Board, Tulare County Legal Services, Tulare County Health System Agency, and the Porterville State Board Hospital.

In 1969, Mrs. Foley resumed working as a part-time nurse at Kaweah Delta District Hospital. For the next 21 years, she successfully served as a nursing supervisor for neonatal care and eventually becoming the perinatal manager for the hospital until her retirement in 1990.

Mrs. Foley continued her commitment to help those who are less fortunate during her retirement. In 1990, she was elected to the Kaweah Delta Health Care District Board of Directors. For the next 20 years, she would leave an indelible impact on the board through her tenures as its secretary, vice president, and president. As someone who was always willing to lend a helping hand, she also served on the College of the Sequoias Nursing Advisory Committee, the Good Samaritan Board, and as a staff nurse at the Good News Clinic. Mrs. Foley embodied the best ideals of volunteerism and public service.

A person of great warmth and humility, Mrs. Foley was admired by those who knew her for her kindness, compassion and decency. She was the inaugural recipient of the Tulare County Bar Association Liberty Bell Award in 1976, the 1980 Visalia Chamber of Commerce Woman of the Year, 1983 College of the Sequoias Nursing Faculty's Nurse of the Year and, most recently, the 2006 Rose Ann Vuich Ethical Leadership Award, a well-deserved and prestigious award that celebrates excellence and integrity in public service.

Margaret Foley devoted most of her life to making a positive impact on the lives of others. Mrs. Foley's generously gave her boundless compassion and precious humanity to uplifting and empowering those who are most often neglected in our society: the young and the poor. Mrs. Foley has left behind a legacy of service and the admiration of those whose lives she touched over the years. She will be dearly missed.

Mrs. Foley was preceded in death by her husband Jim; her parents William Roderick and Florence Pugh Morgan; two brothers, Roderick William and John Paul Morgan; and a sister Ann Trader Schweiger. She is survived by her children, James and his wife Penelope Applegarth; John and his wife Anne Bird; Morgan and his wife Sandra Platt; Sara Foley Fox and her husband Michael; and Patricia Foley Teaford and her husband Elliott; seven grandchildren; and two brothers, William Radtke and James Trader.•

TRIBUTE TO UNDERSHERIFF VALERIE HILL

• Mrs. BOXER. Mr. President, I am honored to recognize undersheriff Valerie Hill as she retires from the Riverside County Sheriff's Department. Undersheriff Hill, the highest ranking female in law enforcement in Riverside County, has served the people and the county of Riverside for over 30 years.

When Undersheriff Hill joined the Riverside County Sheriff's Department in 1977, she was assigned patrol duties in Lake Elsinore and later worked in the Riverside and Moreno Valley stations. As a sergeant, she served in Corrections and also at the Moreno Valley station. Over the course of her career she has had many other assignments within the Sheriff's Department. As assistant sheriff she was responsible for Corrections Division, Court Services and CAL-ID. Her numerous assignments over the past 30 years have given her the opportunity to become actively involved in the changes occurring in Riverside County.

Undersheriff Hill was the department's first female hostage negotiator, first female field training officer, first female assistant sheriff, and first female undersheriff. She was also one of two individuals instrumental in the development of the Special Enforcement Team (S.E.T.), which is a highly successful enforcement team in Moreno Valley.

Believing that community service extends beyond her duties in the department, Undersheriff Hill serves on numerous boards and committees, which include: Operation SafeHouse (board president), Riverside Area Rape Crisis Center (2006 and 2007 board president), Southern California Jail Managers Association (2006 president), YWCA (Evening of Achievement chairperson), and is an active member of the Kiwanis Club of Riverside. She volunteers two Sunday evenings a month through her church at a ''hot meal'' program that feeds the needy. She believes ''We make a living by what we get but, we make a life by what we give.''

Undersheriff Hill was honored by the YWCA in 2002 as a Woman of Achievement and in 2004 by the Inland Empire Magazine as a ''Woman Who Makes a Difference.'' In 2005 she was presented the Gold Key Award by Soroptimist International and in 2007 she was presented the Lifetime Achievement Award by the Law Enforcement Appreciation Committee (LEAC).

It is my pleasure to recognize Undersheriff Valerie Hill as she prepares to retire from the Riverside County Sheriff's Department, though I hope she continues her fine service to her community.●

TRIBUTE TO ADMIRAL THAD W. ALLEN

● Ms. MURKOWSKI. Mr. President, today I wish to talk about the U.S. Coast Guard and to recognize the 39 years of exemplary service, dedication and leadership that ADM Thad W. Allen has given to the U.S. Coast Guard and the Nation.

Since 1790, the U.S. Coast Guard has been America's Maritime Guardian; the sentinel of the sea, determined to protect the safety and security of the maritime industry. As a multimission military service, the U.S. Coast Guard is unlike any other military branch in the world. The Coast Guard is the fifth branch of the U.S. Armed Forces, the largest component of the Department of Homeland Security, a member of the National Intelligence Community, and the lead U.S. representative at the International Maritime Organization. The Coast Guard is the Nation's oldest, continuous seagoing service and has fought in every major armed conflict the Nation has faced. The service embodies their motto—Semper Paratus—Always Ready. Here to protect and serve; ready to rescue, the Coast Guard routinely is at its best when weather conditions are at their worst. Coast Guard servicemen and women throughout the Nation routinely exhibit selfless sacrifice and enduring service, traits that are exuded by their Commandant, ADM Thad Allen.

Throughout his long and distinguished career, those who have been able to observe and admire Admiral Allen's devotion to the Coast Guard, have been nothing short of inspired by his honesty, integrity, determination, and calming influence even in the face of an impending disaster. We all remember the leadership that Admiral Allen demonstrated as he led the Coast Guard in efforts to secure ports along the Atlantic seaboard after the September 11, 2001 terrorist attacks. Several years later, Admiral Allen was again in the national spotlight while serving as the principal Federal official for the response and recovery efforts in the wake of Hurricanes Katrina and Rita. Through his leadership and the heroic efforts of the men and women of the Coast Guard, over 33,500 gulf coast residents were rescued from their rooftops and flood homes, which included the rescuing of 24,135 people that were saved from eminent peril and the evacuation of 9,409 medical patients to safety. Most recently, Admiral Allen was selected by the Obama administration to be the national incident coordinator, a role that makes him responsible to oversee the Federal response to the Deepwater Horizon oilspill in the Gulf of Mexico.

I have been fortunate enough to work with Admiral Allen on so many issues, including one we are both passionate about, the Arctic. Through his leadership and direction, the Coast Guard is evaluating their role in the Arctic and providing the strongest voice for the strategic and geopolitical importance of the region. Through his astute mind and unrelenting commitment to the betterment of this Nation, Admiral Allen has been an unwavering champion for an expanded U.S. role and presence in the Arctic. While many will argue that as ice recedes in the Arctic, so do the dangers and a Coast Guard presence in the region is not needed. Unfortunately the opposite is true. As the Arctic ice recedes, more commercial shipping, cruise ships and energy companies are increasing their presence, and as a larger contiguous zone and exclusive economic zone are revealed as the ice recedes, the more the jurisdiction of the Coast Guard expands. Admiral Allen, while not engaging in the debate surrounding climate change, clearly understands that more ice-free ocean in the Arctic region means more area that the Coast Guard is responsible for in the Arctic. By championing the National Security Presidential Directive on the Arctic, Admiral Allen was able to host a trip of Bush administration officials to the Arctic so that they were able to see and understand first-hand the conditions and operational challenges that exist in this vast and remote region.

It has been a great honor to have served alongside Admiral Allen and the Coast Guard during his time as Commandant. I have no doubt that he will continue to serve this Nation as a private citizen after his retirement from the service. He has left the Coast Guard on more sound and stable footing than he found it and has been the reassuring face of so many historic events. I, along with the Coast Guard and the Nation, will surely miss him. In the fine tradition of the sea-going services, I wish him ''Fair Winds and Following Seas.''●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

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–5866. A communication from the Administrator of the Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Olives Grown in California; Increased Assessment Rate'' (Docket Nos. AMS–FV–09–0089; FV10–932–1 FR) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5867. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''a-[p-(1,1,3,3-Tetramethylbutyl)phenyl]-w-hydroxypoly(oxyethylene); Time-Limited Exemption from the Requirement of a Tolerance'' (FRL No. 8824–3) received in the Office of the President of the Senate on May 14, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5868. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''a-(p-Nonylphenol)-w-hydroxypoly(oxyethylene) Sulfate and Phosphate Esters; Time-Limited Exemption from the Requirement of a Tolerance'' (FRL No. 8826–3) received in the Office of the President of the Senate on May 14, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5869. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Steel for Military Construction Projects'' (DFARS Case 2008–D038) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Armed Services.

EC–5870. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases from Federal Prison Industries'' (DFARS Case 2008–D015) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Armed Services.

EC–5871. A communication from the Director of Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Government Rights on the Design of Department of Defense Vessels'' (DFARS Case 2008–D039) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Armed Services.

EC–5872. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the Authorization for Validated

End-User Applied Materials China, Ltd.'' (RIN0694–AE86) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5873. A communication from the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Letter of Authorization'' (RIN0648–AX93) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5874. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments'' (RIN0648–AY30) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Commerce, Science, and Transportation.

EC–5875. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Protected Resources, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants: Threatened Status for the Puget Sound/Georgia Basin Distinct Population Segments of Yelloweye and Canary Rockfish and Endangered Status for the Puget Sound/Georgia Basin Distinct Population Segment of Bocaccio Rockfish'' (RIN0648–XF89) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Environment and Public Works.

EC–5876. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of California; Legal Authority'' (FRL No. 9152–6) received in the Office of the President of the Senate on May 14, 2010; to the Committee on Environment and Public Works.

EC–5877. 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 ''Coordinated Issue: Supervisory Goodwill'' (LMSB–4–1109–042) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Finance.

EC–5878. 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 ''Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act'' (RIN1545–BJ46) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Finance.

EC–5879. 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 ''Applicable Federal Rates—May 2010'' (Rev. Rul. No. 2010–12) received in the Office of the President of the Senate on May 17, 2010; to the Committee on Finance.

EC–5880. 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 ''Transitional Guidance for Taxpayers Claiming Relief Under the Military Spouses Residency Relief Act for Taxable Year 2009'' (Notice No. 2010–30) received in the Office of the President of the Senate on May 17, 2010; to the Committee on Finance.

EC–5881. A communication from the Secretary of Health and Human Services and the Attorney General, transmitting, pursuant to law, an annual report relative to the Health Care Fraud and Abuse Control Program for fiscal year 2009; to the Committee on Finance.

EC–5882. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Japan for the manufacture of AN/VPS–2 RADARs and associated equipment; to the Committee on Foreign Relations.

EC–5883. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to the United Kingdom in support of the sale of one C–17 Globemaster III aircraft in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–5884. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to the United Kingdom for repairs, improvements, modifications, and modernization efforts associated with the WAH–64 Apache helicopters in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–5885. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act'' (RIN0991–AB66) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–5886. A communication from the Acting Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' (29 CFR Part 4022) received in the Office of the President of the Senate on May 13, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–5887. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–383, ''Uniform Emergency Volunteer Health Practitioners Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–5888. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–394, ''Department of Parks and Recreation Capital Construction Mentorship Program Temporary Amendment Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–5889. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–395, ''Neighborhood Supermarket Tax Relief Clarification Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–5890. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–396, ''Anti-Graffiti Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–5891. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–397, ''Bonus and Special Pay Clarification Temporary Amendment Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–5892. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–400, ''OTO Hotel at Constitution Square Economic Development Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

H.R. 3250. A bill to designate the facility of the United States Postal Service located at 1210 West Main Street in Riverhead, New York, as the ''Private First Class Garfield M. Langhorn Post Office Building''.

H.R. 3634. A bill to designate the facility of the United States Postal Service located at 109 Main Street in Swifton, Arkansas, as the ''George Kell Post Office''.

H.R. 3892. A bill to designate the facility of the United States Postal Service located at 101 West Highway 64 Bypass in Roper, North Carolina, as the ''E.V. Wilkins Post Office''.

H.R. 3951. A bill to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the ''Roy Rondeno, Sr. Post Office Building''.

H.R. 4017. A bill to designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the ''Ann Marie Blute Post Office''.

H.R. 4095. A bill to designate the facility of the United States Postal Service located at 9727 Antioch Road in Overland Park, Kansas, as the ''Congresswoman Jan Meyers Post Office Building''.

H.R. 4139. A bill to designate the facility of the United States Postal Service located at 7464 Highway 503 in Hickory, Mississippi, as the ''Sergeant Matthew L. Ingram Post Office''.

H.R. 4214. A bill to designate the facility of the United States Postal Service located at 45300 Portola Avenue in Palm Desert, California, as the ''Roy Wilson Post Office''.

H.R. 4238. A bill to designate the facility of the United States Postal Service located at 930 39th Avenue in Greeley, Colorado, as the ''W.D. Farr Post Office Building''.

H.R. 4425. A bill to designate the facility of the United States Postal Service located at 2-116th Street in North Troy, New York, as the ''Martin G. 'Marty' Mahar Post Office''.

H.R. 4547. A bill to designate the facility of the United States Postal Service located at 119 Station Road in Cheyney, Pennsylvania, as the ''Captain Luther H. Smith, U.S. Army Air Forces Post Office''.

H.R. 4624. A bill to designate the facility of the United States Postal Service located at 125 Kerr Avenue in Rome City, Indiana, as the ''SPC Nicholas Scott Hartge Post Office''.

H.R. 4628. A bill to designate the facility of the United States Postal Service located at 216 Westwood Avenue in Westwood, New Jersey, as the "Sergeant Christopher R. Hrbek Post Office Building".

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment and an amendment to the title:

H.R. 4840. A bill to designate the facility of the United States Postal Service located at 1979 Cleveland Avenue in Columbus, Ohio, as the "Clarence D. Lumpkin Post Office".

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 2874. A bill to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the "Roy Rondeno, Sr. Post Office Building".

S. 2945. A bill to designate the facility of the United States Postal Service located at 1210 West Main Street in Riverhead, New York, as the "Private First Class Garfield M. Langhorn Post Office Building".

S. 3012. A bill to designate the facility of the United States Postal Service located at 2-116th Street in North Troy, New York, as the Martin G. "Marty" Mahar Post Office.

S. 3013. A bill to designate the facility of the United States Postal Service located at 216 Westwood Avenue in Westwood, New Jersey, as the "Sergeant Christopher R. Hrbek Post Office Building".

S. 3200. A bill to designate the facility of the United States Postal Service located at 23 Genesee Street in Hornell, New York, as the "Zachary Smith Post Office Building".

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. CARDIN:

S. 3382. A bill to authorize the Secretary of the Interior, through the Coastal Program of the United States Fish and Wildlife Service, to work with willing partners and provide support to efforts to assess, protect, restore, and enhance important coastal areas that provide fish and wildlife habitat on which Federal trust species depend; to the Committee on Environment and Public Works.

By Mr. DeMINT:

S. 3383. A bill to temporarily prohibit the United States loans to the International Monetary Fund to be used to provide financing for any member state of the European Union, and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. JOHNSON:

S. Con. Res. 63. A concurrent resolution expressing the sense of Congress that Taiwan should be accorded observer status in the International Civil Aviation Organization (ICAO); to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 632

At the request of Mr. BAUCUS, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 632, a bill to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly.

S. 781

At the request of Mr. ROBERTS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 781, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 1137

At the request of Mr. FEINGOLD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1137, a bill to amend the Elementary and Secondary Education Act of 1965 to establish a Volunteer Teacher Advisory Committee.

S. 1445

At the request of Mr. LAUTENBERG, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1445, a bill to amend the Public Health Service Act to improve the health of children and reduce the occurrence of sudden unexpected infant death and to enhance public health activities related to stillbirth.

S. 1619

At the request of Mr. DODD, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1619, a bill to establish the Office of Sustainable Housing and Communities, to establish the Interagency Council on Sustainable Communities, to establish a comprehensive planning grant program, to establish a sustainability challenge grant program, and for other purposes.

S. 1966

At the request of Mr. DODD, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1966, a bill to provide assistance to improve the health of newborns, children, and mothers in developing countries, and for other purposes.

S. 2885

At the request of Ms. LANDRIEU, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 2885, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide adequate benefits for public safety officers injured or killed in the line of duty, and for other purposes.

S. 3036

At the request of Mr. BAYH, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Colorado (Mr. BENNET) were added as cosponsors of S. 3036, a bill to establish the Office of the National Alzheimer's Project.

S. 3078

At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 3078, a bill to provide for the establishment of a Health Insurance Rate Authority to establish limits on premium rating, and for other purposes.

S. 3178

At the request of Mr. BROWN of Ohio, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3178, a bill to amend the Workforce Investment Act of 1998 to provide for the establishment of Youth Corps programs and provide for wider dissemination of the Youth Corps model.

S. 3184

At the request of Mrs. BOXER, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 3184, a bill to provide United States assistance for the purpose of eradicating severe forms of trafficking in children in eligible countries through the implementation of Child Protection Compacts, and for other purposes.

S. 3262

At the request of Mr. MENENDEZ, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 3262, a bill to amend the Internal Revenue Code of 1986 to provide that the volume cap for private activity bonds shall not apply to bonds for facilities for the furnishing of water and sewage facilities.

S. 3325

At the request of Mr. BEGICH, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 3325, a bill to amend title 38, United States Code, to authorize the waiver of the collection of copayments for telehealth and telemedicine visits of veterans, and for other purposes.

S. 3326

At the request of Ms. CANTWELL, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 3326, a bill to provide grants to States for low-income housing projects in lieu of low-income housing credits, and to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of the low-income housing credit, and for other purposes.

S. 3335

At the request of Mr. COBURN, the names of the Senator from Wyoming (Mr. ENZI), the Senator from South Dakota (Mr. THUNE) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. 3335, a bill to require Congress to establish a unified and searchable database on a public website for congressional earmarks as called for by the President in his 2010 State of the Union Address to Congress.

S. 3357

At the request of Mr. LAUTENBERG, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of S. 3357, a bill to establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, and for other purposes.

S. 3359

At the request of Mr. THUNE, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 3359, a bill to amend title 38, United States Code, to provide for annual cost-of-living adjustments to be made automatically by law each year in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

S. 3366

At the request of Mr. LAUTENBERG, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 3366, a bill to prohibit individuals from carrying firearms in certain airports buildings and airfields, and for other purposes.

S. 3376

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 3376, a bill to authorize to be appropriated $950,000,000 for each of the fiscal years 2012 through 2015 to carry out the State Criminal Alien Assistance Program.

S.J. RES. 29

At the request of Mrs. FEINSTEIN, the names of the Senator from Minnesota (Ms. KLOBUCHAR) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S.J. Res. 29, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

At the request of Mr. MCCONNELL, the names of the Senator from Arizona (Mr. KYL), the Senator from Oklahoma (Mr. COBURN) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S.J. Res. 29, supra.

S. RES. 452

At the request of Mr. JOHANNS, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. Res. 452, a resolution supporting increased market access for exports of United States beef and beef products to Japan.

S. RES. 502

At the request of Mr. WYDEN, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of S. Res. 502, a resolution eliminating secret Senate holds.

AMENDMENT NO. 3738

At the request of Mr. SANDERS, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of amendment No. 3738 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3740

At the request of Mr. SANDERS, the names of the Senator from Virginia (Mr. WEBB) and the Senator from Oregon (Mr. MERKLEY) were added as cosponsors of amendment No. 3740 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3809

At the request of Mr. INOUYE, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 3809 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3883

At the request of Ms. SNOWE, the names of the Senator from Illinois (Mr. BURRIS) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of amendment No. 3883 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3884

At the request of Ms. CANTWELL, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of amendment No. 3884 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3892

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mrs. MURRAY) and the Senator from New Hampshire (Mrs. SHAHEEN) were added as cosponsors of amendment No. 3892 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3920

At the request of Mr. HARKIN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 3920 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3931

At the request of Mr. MERKLEY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 3931 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3951

At the request of Mr. MENENDEZ, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 3951 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3956

At the request of Ms. LANDRIEU, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 3956 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3978

At the request of Mr. JOHNSON, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of amendment No. 3978 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4027

At the request of Mrs. MCCASKILL, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of amendment No. 4027 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4028

At the request of Mrs. MCCASKILL, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of amendment No. 4028 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4034

At the request of Mr. CORKER, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of amendment No. 4034 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4051

At the request of Mr. BOND, his name was added as a cosponsor of amendment No. 4051 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4053

At the request of Ms. STABENOW, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of amendment No. 4053 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 63—EXPRESSING THE SENSE OF CONGRESS THAT TAIWAN SHOULD BE ACCORDED OBSERVER STATUS IN THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

Mr. JOHNSON submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 63

Whereas the Convention on International Civil Aviation, signed in Chicago, Illinois, on December 7, 1944, and entered into force April 4, 1947, approved the establishment of the International Civil Aviation Organization (ICAO), stating ''The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to . . . meet the needs of the peoples of the world for safe, regular, efficient and economical air transport'';

Whereas, following the terrorist attacks of September 11, 2001, the ICAO convened a High-level Ministerial Conference on Aviation Security that endorsed a global strategy for strengthening aviation security worldwide and issued a public declaration that ''a uniform approach in a global system is essential to ensure aviation security throughout the world and that deficiencies in any part of the system constitute a threat to the entire global system,'' and that there should be a commitment to ''foster international cooperation in the field of aviation security and harmonize the implementation of security measures'';

Whereas, on January 22, 2010, the Secretary General of the ICAO stated, ''The attempted sabotage of Northwest Airlines Flight 253 on December 25, 2009 is a vivid reminder that security threats transcend national boundaries and can only be properly addressed through a global strategy based on effective international cooperation.'';

Whereas the Taipei Flight Information Region, under the jurisdiction of the Republic of China (Taiwan), covers an airspace of 176,000 square nautical miles and provides air traffic control services to over 1,350,000 flights annually along 12 international and 4 domestic air routes;

Whereas over 174,000 international flights carrying more than 35,000,000 passengers travel to and from Taiwan annually, reflecting its importance as an air transport hub linking Northeast and Southeast Asia;

Whereas a total of 30 airlines, 23 of which are foreign-owned, provide scheduled flights to Taiwan;

Whereas airports in Taiwan handle more than 1,580,000 metric tons of air cargo annually;

Whereas Taiwan Taoyuan International Airport was ranked in 2009 by the Airports Council International as the world's 8th and 18th largest airport by international cargo volume and number of International passengers, respectively;

Whereas exclusion from the ICAO since 1971 has impeded the efforts of the Government of Taiwan to maintain civil aviation practices that comport with evolving international standards, due to its inability to contact the ICAO for up-to-date information on aviation standards and norms, secure amendments to the organization's regulations in a timely manner, obtain sufficient and timely information needed to prepare for the implementation of new systems and procedures set forth by the ICAO, receive technical assistance in implementing new regulations, and participate in technical and academic seminars hosted by the ICAO;

Whereas, despite these impediments and irrespective of its inability to participate in the ICAO, the Government of Taiwan has made every effort to comply with the operating procedures and guidelines set forth by the organization;

Whereas, despite this effort, the exclusion of Taiwan from the ICAO has prevented the organization from developing a truly global strategy to address security threats based on effective international cooperation, thereby hindering the fulfillment of its overarching mission to ''meet the needs of the peoples of the world for safe, regular, efficient and economical air transport'';

Whereas the United States, in the 1994 Taiwan Policy Review, clearly declared its support for the participation of Taiwan in appropriate international organizations, in particular, on September 27, 1994, with the announcement by the Assistant Secretary of State for East Asian and Pacific Affairs that, pursuant to the Review and recognizing Taiwan's important role in transnational issues, the United States ''will support its membership in organizations where statehood is not a prerequisite, and [the United States] will support opportunities for Taiwan's voice to be heard in organizations where its membership is not possible'';

Whereas section 4(d) of the Taiwan Relations Act (22 U.S.C. 3303(d)) declares, ''Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.''; and

Whereas ICAO rules and existing practices have allowed for the meaningful participation of noncontracting countries as well as other bodies in its meetings and activities through granting of observer status: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) meaningful participation by the Government of Taiwan as an observer in the meetings and activities of the International Civil Aviation Organization (ICAO) will contribute both to the fulfillment of the ICAO's overarching mission and to the success of a global strategy to address aviation security threats based on effective international cooperation;

(2) the United States Government should take a leading role in gaining international support for the granting of observer status to Taiwan in the ICAO for the purpose of such participation; and

(3) the Department of State should provide briefings to or consult with Congress on any efforts conducted by the United States Government in support of Taiwan's progress toward observer status in the ICAO.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4063. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4064. Mr. MENENDEZ (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, and Mr. JOHNSON) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4065. Mr. MENENDEZ submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4066. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4067. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4068. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4069. Mrs. GILLIBRAND submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4070. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4071. Mr. CARPER (for himself, Mr. BAYH, Mr. JOHNSON, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4072. Mr. GRASSLEY (for himself and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4073. Mr. ENZI (for himself, Mr. SHELBY, and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4074. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3962 submitted by Mr. MERKLEY (for himself, Ms. KLOBUCHAR, Mr. SCHUMER, Ms. SNOWE, Mr. BROWN of Massachusetts, Mr. BEGICH, Mrs. BOXER, Mr. DODD, Mr. KERRY, Mr. FRANKEN, and Mr. LEVIN) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4075. Ms. LANDRIEU (for herself, Mr. DODD, and Mr. KERRY) submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4076. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4077. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4078. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4079. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4080. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4081. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4082. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4083. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4084. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4085. Mr. HARKIN (for himself, Mr. SANDERS, Mr. WHITEHOUSE, Mr. UDALL, of New Mexico, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4086. Ms. CANTWELL (for herself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4087. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4088. Mr. BAYH submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4089. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4090. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4091. Mr. JOHNSON (for himself, Ms. LANDRIEU, Mr. BURRIS, Mr. BROWNBACK, Ms. MURKOWSKI, Mr. CRAPO, Mr. ROBERTS, Mr. COBURN, Mr. TESTER, Mr. BROWN of Ohio, Mr. NELSON of Nebraska, Mr. CARDIN, and Mr. BENNETT) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4092. Mr. CHAMBLISS (for Mrs. LINCOLN) submitted an amendment intended to be proposed by Mr. CHAMBLISS to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4093. Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4094. Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4095. Mr. NELSON of Florida (for himself and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4096. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4097. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4098. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4099. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4100. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4101. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4102. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4103. Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4104. Mr. MENENDEZ (for himself, Mr. BAYH, and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4105. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4106. Mr. MERKLEY submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4107. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4108. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4109. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4110. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4111. Ms. STABENOW submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4112. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4113. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4114. Mr. DORGAN proposed an amendment to amendment SA 4072 submitted by Mr. GRASSLEY (for himself and Mrs. MCCASKILL) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

TEXT OF AMENDMENTS

SA 4063. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 30, between lines 11 and 12, insert the following:

(3) ADDITIONAL VIEWS.—In the annual report required by paragraph (2)(M), the Secretary shall provide additional views, which shall include—

(A) whether the Secretary agrees with the recommendations of the Council and the views of the Council on the financial markets and potential emerging threats;

(B) if the Secretary disagrees with any aspect of the report of the Council, the Secretary's own views, analysis, and recommendations; and

(C) recommendations regarding whether there should be changes made to the laws and rules in place at the time at which the annual report is delivered to Congress to promote the integrity, efficiency, and stability of the United States financial markets or a determination from the Secretary that the laws and rules in place at the time at which the annual report of the Council is delivered to Congress are optimal to achieve the integrity, efficiency, and stability of the United States financial markets.

SA 4064. Mr. MENENDEZ (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, and Mr. JOHNSON) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 372, between lines 2 and 3, insert the following:

SEC. 343. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by inserting after section 114 (12 U.S.C. 4713) the following:

''SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) ELIGIBLE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'eligible community development financial institution' means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

''(2) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term 'eligible community or economic development purpose'—

''(A) means any purpose described in section 108(b); and

''(B) includes the provision of community or economic development in low-income or underserved rural areas.

''(3) GUARANTEE.—The term 'guarantee' means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

''(4) LOAN.—The term 'loan' means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

''(5) MASTER SERVICER.—

''(A) IN GENERAL.—The term 'master servicer' means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

''(B) APPROVAL CRITERIA FOR MASTER SERVICERS.—The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

''(i) loan administration, servicing, and loan monitoring;

''(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

''(iii) managing regional or national originator communication systems and infrastructure;

''(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

''(v) compliance monitoring, investor relations, and reporting.

''(6) PROGRAM.—The term 'Program' means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

''(7) PROGRAM ADMINISTRATOR.—The term 'Program administrator' means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

''(8) QUALIFIED ISSUER.—

''(A) IN GENERAL.—The term 'qualified issuer' means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

''(B) APPROVAL CRITERIA FOR QUALIFIED ISSUERS.—

''(i) IN GENERAL.—The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

''(ii) TERMS AND QUALIFICATIONS.—A qualified issuer shall—

''(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

''(II) provide to the Secretary—

''(aa) an acceptable statement of the proposed sources and uses of the funds; and

''(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

''(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.

''(C) DEPARTMENT OPINION; TIMING.—

''(i) DEPARTMENT OPINION.—Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

''(ii) TIMING.—The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

''(9) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(10) SERVICER.—The term 'servicer' means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

''(b) GUARANTEES AUTHORIZED.—The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

''(1) for eligible community or economic development purposes; or

''(2) to refinance loans or notes issued for such purposes.

''(c) GENERAL PROGRAM REQUIREMENTS.—

''(1) IN GENERAL.—A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

''(2) RELENDING ACCOUNT.—Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

''(3) LIMITATIONS ON UNPAID PRINCIPAL BALANCES.—The proceeds of guaranteed bonds or notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

''(A) community or economic development loans;

''(B) a relending account, to the extent authorized under paragraph (2); or

''(C) a risk-share pool established under subsection (d).

''(4) REPAYMENT.—If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

''(5) PROHIBITED USES.—The Secretary shall, by regulation—

''(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

''(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

''(i) the qualified issuer; or

''(ii) any recipient of amounts from the guarantee of a bond or note.

''(d) RISK-SHARE POOL.—Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

''(e) GUARANTEES.—

''(1) IN GENERAL.—A guarantee issued under the Program shall—

''(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

''(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;

''(C) represent the full faith and credit of the United States; and

''(D) not exceed 30 years.

''(2) LIMITATIONS.—

''(A) ANNUAL NUMBER OF GUARANTEES.—The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

''(B) GUARANTEE AMOUNT.—The Secretary may not guarantee any amount under the Program equal to less than $100,000,000, but the total of all such guarantees in any fiscal year may not exceed $1,000,000,000.

''(f) SERVICING OF TRANSACTIONS.—

''(1) IN GENERAL.—To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

''(2) DUTIES OF PROGRAM ADMINISTRATOR.—The duties of a Program administrator shall include—

''(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

''(B) compliance monitoring;

''(C) bond packaging in connection with the Program; and

''(D) all other duties and related services that are customarily expected of a Program administrator.

''(3) DUTIES OF SERVICER.—The duties of a servicer shall include—

''(A) billing and collecting loan payments;

''(B) initiating collection activities on past-due loans;

''(C) transferring loan payments to the master servicing accounts;

''(D) loan administration and servicing;

''(E) systematic and timely reporting of loan performance through remittance and servicing reports;

''(F) proper measurement of annual outstanding loan requirements; and

''(G) all other duties and related services that are customarily expected of servicers.

''(4) DUTIES OF MASTER SERVICER.—The duties of a master servicer shall include—

''(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

''(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

''(C) monitoring the collection comments and foreclosure actions;

''(D) aggregating the reporting and distribution of funds to trustees and investors;

''(E) removing and replacing a servicer, as necessary;

''(F) loan administration and servicing;

''(G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;

''(H) proper distribution of funds to investors; and

''(I) all other duties and related services that are customarily expected of a master servicer.

''(g) FEES.—

''(1) IN GENERAL.—A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

''(2) PAYMENT.—A qualified issuer shall pay the fee required under this subsection on an annual basis.

''(3) USE OF FEES.—Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

''(2) USE OF FEES.—To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

''(i) INVESTMENT IN GUARANTEED BONDS INELIGIBLE FOR COMMUNITY REINVESTMENT ACT PURPOSES.—Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901).

''(j) ADMINISTRATION.—

''(1) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Secretary shall promulgate regulations to carry out this section.

''(2) IMPLEMENTATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall implement this section.

''(k) TERMINATION.—This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.''.

SEC. 344. TAX EXEMPT STATUS OF CERTAIN BONDS.

(a) NO FEDERAL GUARANTEE.—Subparagraph (A) of section 149(b)(3) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''or'' at the end of clause (iii);

(2) by striking the period at the end of clause (iv) and inserting '', or''; and

(3) by adding at the end the following new clause:

''(v) any guarantee of a qualified community development financial institution bond provided by the Department of the Treasury.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

SA 4065. Mr. MENENDEZ submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE XIV—EMERGENCY LIQUIDITY FUND

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Emergency Liquidity Fund''.

SEC. 1402. PURPOSES.

The purposes of this title are—

(1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity in the community development financial system of the United States;

(2) to ensure that such authority and such facilities are used in a manner that—

(A) promotes access to credit for small businesses;

(B) provides access to jobs, particularly for low and moderate income individuals;

(C) serves investment areas or targeted populations, as those terms are defined under the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(D) provides public accountability for the exercise of such authority; and

(3) to provide grants to eligible entities and the necessary authority to the Secretary of the Treasury to enter into cooperative agreements that—

(A) support small business development;

(B) develop innovative local and regional programs to expand capital access for small businesses; and

(C) support local economic development and business diversification.

SEC. 1403. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term ''eligible community or economic development purpose''—

(A) means any purpose described in section 108(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(B) includes the provision of community or economic development in low-income or underserved rural areas.

(2) ELIGIBLE ENTITY.—

(A) IN GENERAL.—The term ''eligible entity'' included community development financial institutions, as such institutions are described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto.

(B) ADDITIONAL AUTHORITY OF SECRETARY.—The Secretary may further expand participation in any grant program established under this title to include entities other than community development financial institutions, if the Secretary, in his discretion, determines that such other entities meet eligible community or economic development purposes.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

SEC. 1404. AUTHORIZATION TO MAKE COMMITMENTS TO ASSIST ELIGIBLE ENTITIES.

(a) SPECIAL LIQUIDITY FACILITY.—

(1) IN GENERAL.—The Secretary is authorized to establish a special liquidity facility to make and fund commitments and to purchase assets related to eligible community or economic development purposes in accordance with—

(A) the purposes of this title; and

(B) the policies and procedures developed and published by the Secretary.

(2) RULE OF CONSTRUCTION.—Commitments made under paragraph (1) may include grants, loans, loan commitments, equity investments, agreements, and similar contracts or undertakings or a combination thereof.

(b) APPLICATIONS FOR ASSISTANCE.—An application for assistance under this title shall be submitted in such form and in accordance with such procedures as the Secretary shall establish.

(c) MATCHING REQUIREMENT.—Assistance provided to an eligible entity under this title shall be matched with funds from sources other than the Federal Government on the basis of not less than 1 dollar for every 2 dollars provided by the Secretary.

(d) LIMITATIONS.—

(1) ANNUAL NUMBER OF AWARDS.—The Secretary, acting through the special liquidity facility established under subsection (a), shall not issue more than 5 awards of assistance in any calendar year under the authorities established by this section.

(2) AWARD AMOUNT.—In carrying out the requirements of this section, the Secretary, acting through the special liquidity facility established under subsection (a), may not make an award to an eligible entity of less than $50,000,000.

(3) IMPLEMENTATION.—Not later than 1 year after the date of enactment of this title the Secretary shall issue rules and regulations implementing this section.

(e) FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $250,000,000 to carry out this section, to remain available until expended, for fiscal years 2010 through 2014.

SEC. 1405. APPROVAL CRITERIA FOR ELIGIBLE ENTITIES.

(a) IN GENERAL.—The Secretary shall approve an eligible entity for participation in the assistance program established under section 1404 in accordance with the requirements of this section, and such additional requirements as the Secretary may establish, by regulation.

(b) TERMS AND QUALIFICATIONS.—Recipients of amounts under section 1404 shall—

(1) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

(2) provide to the Secretary—

(A) an acceptable statement of the proposed sources and uses of the funds; and

(B) a capital distribution plan for eligible community and economic development purposes that details the following:

(i) Management Capacity, by providing the following:

(I) Experience deploying capital.

(II) Experience raising capital.

(III) Financial capacity and asset management capabilities.

(IV) Program compliance track-record.

(V) Community accountability.

(ii) Capitalization Strategy, by providing the following:

(I) Capital raising experience and track-record.

(II) Experience deploying capital.

(III) Strategy for raising investor capital.

(IV) Relationships with investors.

(V) Prospective sources and uses of capital.

(iii) Business strategy, by providing the following:

(I) Products, services ,and investment criteria.

(II) Community and economic development investment track-record.

(III) Financial projections or projected business activity.

(iv) Community impact, by providing the following:

(I) Ability to target areas of high unemployment.

(II) Ability to support job creation or job retention.

(III) Ability to further community revitalization.

(IV) Ancillary community benefits.

(v) Capacity, by demonstrating the following:

(I) Ability to distribute and utilize 25 percent of amounts received under this title not later than 1 year after receipt of such amounts.

(II) Ability to distribute and utilize 50 percent of amounts received under this title not later than 2 years after receipt of such amounts.

(III) Ability to distribute and utilize 80 percent of amounts received under this title not later than 5 years after receipt of such amounts.

SEC. 1406. BUSINESS-TO-BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—In accordance with this section, the Secretary may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(1) to expand business-to-business relationships between large and small businesses;

(2) to develop innovative local and regional programs to expand access to capital for small businesses;

(3) to provide businesses, directly or indirectly, with online information and a database of—

(A) public sector programs or private companies that are interested in mentor-protege programs or supplier diversity programs; and

(B) State-wide, local, or community-based business development programs;

(4) to collect, analyze, and publish data that tracks the impact of the coalition's programs on revenue and employment at participating businesses, including disadvantaged business enterprises;

(5) to foster communication and collaboration within and among the coalitions; and

(6) to support efforts to enhance the long-term financial stability of employees, the economic viability of communities, and business diversification within locales and regions.

(b) MATCHING REQUIREMENT.—The Secretary may make a grant to a coalition described under subsection (a) only if the grant shall be matched with funds from sources other than the Federal Government on the basis of not less than 1 dollar for each dollar provided by the Secretary under this section.

(c) FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $50,000,000, to carry out this section, including to pay the reasonable costs of administering the grant program established under this section, for each of fiscal years 2010 through 2015.

SEC. 1407. IMPLEMENTATION AND ADMINISTRATION.

(a) GENERAL AUTHORITIES AND DUTIES.—The Secretary shall—

(1) establish minimum standards for approved use of amounts made available under this title;

(2) provide technical assistance to eligible entities receiving amounts under this title;

(3) manage, administer, and perform necessary integrity functions for the grant programs established under this title; and

(4) ensure adequate oversight of the eligible entities that received amounts under this title.

(b) ADMINISTRATIVE FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $15,000,000 to carry out the administrative expenses associated with the grant programs established under title, including to pay reasonable costs of administering such programs. In administering this title and the grant programs established by this title, the Secretary is authorized to use the staff and resources of the Department of the Treasury.

(c) EXPEDITED CONTRACTING.—During the 1-year period beginning on the date of enactment of this title, the Secretary may enter into contracts without regard to any other provision of law regarding public contracts, for purposes of carrying out this title.

(d) TERMINATION OF SECRETARY'S PROGRAM ADMINISTRATION FUNCTIONS.—The authorities and duties of the Secretary to implement and administer this title shall terminate at the end of the 5-year period beginning on the date of enactment of this title.

SEC. 1408. REGULATIONS.

The Secretary may issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this title including, to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this title.

SA 4066. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, strike line 5 and all that follows through page 1291, line 9, and insert the following:

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study and submit a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau determines that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The determination of the Bureau under this subsection shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) RULE OF CONSTRUCTION.—No other provision of Federal law shall be construed to preempt or otherwise affect the applicability of any regulation prescribed by the Bureau under subsection (b).

SA 4067. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, after line 25, insert the following:

SEC. 1077. MANDATORY PREDISPUTE ARBITRATION RULEMAKING.

(a) SECTION 921.—Section 921 of this Act is amended to read as follows:

''SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.

''(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 918, is amended by adding at the end the following:

'''(i) AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'''(1) conduct a rulemaking on the use of agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between such customers or clients and such broker, dealer, or municipal securities dealer that arises under the securities laws or the rules of a self-regulatory organization; and

'''(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.

''(b) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following:

'''(f) AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'''(1) conduct a rulemaking on the use of agreements that require customers or clients of any investment adviser to arbitrate any dispute between such customers or clients and such investment adviser that arises under the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or the rules of a self-regulatory organization; and

'''(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.''

(b) SECTION 1028.—Section 1028 of this Act is amended to read as follows:

''SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

''(a) STUDY AND REPORT.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study and submit a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

''(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau determines that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The determination of the Bureau under this subsection shall be consistent with the study conducted under subsection (a).

''(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

''(d) RULE OF CONSTRUCTION.—No other provision of Federal law shall be construed to preempt or otherwise affect the applicability of any regulation prescribed by the Bureau under subsection (b).''.

SA 4068. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 89, after line 23, insert the following:

(5) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

On page 153, line 4, strike ''and''.

On page 153, line 16, strike the period and insert ''; and''.

On page 153, after line 16, insert the following:

(IV) if the Secretary, in consultation with the Chairman of the Board of Governors, has found that the Corporation must act immediately with regard to the covered financial company (including any covered financial company that is an insurance company) to preserve financial stability, the approval and prior notification referred to in subclauses (II) and (III) shall not be required and the transaction may be consummated immediately by the Corporation, provided that nothing in this subclause shall otherwise modify, impair, or supersede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition).

On page 264, strike line 6, and insert the following:

REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or

On page 264, after line 25, insert the following:

(B) EMERGENCY.—If the Secretary, in consultation with the Chairman of the Board of Governors, has found that the Corporation must act immediately with regard to the bridge financial company (including any bridge financial company that is an insurance company) to preserve financial stability, the approval and prior notification referred to in subparagraph (A) shall not be required and the transaction may be consummated immediately by the Corporation. The preceding sentence shall not otherwise modify, impair, or supersede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition).

On page 296, after line 15, insert the following:

(d) ANTITRUST SAVINGS CLAUSE.—Unless otherwise provided, nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For the purposes of this Act, the term ''antitrust laws'' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

On page 441, after line 12, insert the following:

''(iii) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall be treated as if Board of Governors approval is not required.''.

On page 567, lines 7 and 8, strike '', subject to the requirements of section 5(b)''.

SA 4069. Mrs. GILLIBRAND submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1219, line 25, strike the second period and insert the following: ''.

(7) STUDY AND REPORT ON PAPER STATEMENT CHARGES.—Not later than 6 months after the designated transfer date, the Office of Financial Literacy shall submit a report to Congress—

(A) on the charging of fees for paper copies of statements related to a consumer financial product or service by covered persons under this title;

(B) on the charging of fees for the use of paper checks as payment to financial institutions;

(C) on the impact of the imposition of such fees on financial literacy, particularly among—

(i) the elderly;

(ii) low-income individuals; and

(iii) individuals that lack computer access; and

(D) that includes recommendations on how to ensure that the individuals described in subparagraph (C) are not negatively impacted by the imposition of fees to receive paper statements, including recommendations—

(i) on whether covered persons under this title should be—

(I) prohibited from charging fees for paper statements;

(II) prohibited from automatically enrolling individuals in e-statement or other electronic delivery programs without the express consent of the individual, in the manner described in section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001(c)(1)); and

(III) prevented from charging fees for the use of paper checks as payment; and

(ii) for proposed regulatory or statutory changes to ensure that such individuals are able to access paper copies of financial statements without fees or unnecessary hindrance.

SA 4070. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1304, strike line 10 and all that follows through page 1310, line 16, and insert the following:

SEC. 1036. PROHIBITED ACTS.

It shall be unlawful for any covered person—

(1) to—

(A) advertise, market, offer, or sell a consumer financial product or service not in conformity with this title or applicable rules or orders issued by the Bureau;

(B) enforce, or attempt to enforce, any agreement with a consumer (including any term or change in terms in respect of such agreement), or impose, or attempt to impose, any fee or charge on a consumer in connection with a consumer financial product or service that is not in conformity with this title or applicable rules or orders issued by the Bureau; or

(C) engage in any unfair, deceptive, or abusive act or practice that violates this title or applicable rules or orders issued by the Bureau,

except that no person shall be held to have violated this paragraph solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) knowingly or recklessly to provide substantial assistance to another person in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

SEC. 1037. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term ''consumer protection regulation'' means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States in that State or in State court having jurisdiction over the defendant, to enforce provisions of this title or regulations issued thereunder and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued thereunder with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law, and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to a State-chartered entity.

(2) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), no provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(3) FEE STRUCTURE.—

(A) IN GENERAL.—Neither an attorney general of a State nor a State regulator may enter into a contingency fee agreement for legal services relating to a civil action or other proceeding under this section.

(B) DEFINITION.—For purposes of this paragraph, the term ''contingency fee agreement'' means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

SA 4071. Mr. CARPER (for himself, Mr. BAYH, Mr. JOHNSON, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 1309, strike line 15, and all that follows through page 1325, line 20 and insert the following:

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) ACTION BY STATE AGAINST NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION TO ENFORCE RULES.—

(A) IN GENERAL.—Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association with respect to an act or omission that would be a violation of a provision of this title.

(B) ENFORCEMENT OF RULES PERMITTED.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this title and to secure remedies under provisions of this title or remedies otherwise provided under other law.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this title, including any regulation prescribed by the Bureau under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of enactment of this Act, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) NATIONAL BANK.—The term 'national bank' includes—

''(A) any bank organized under the laws of the United States; and

''(B) any Federal branch established in accordance with the International Banking Act of 1978.

''(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

''(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(b) PREEMPTION STANDARD.—

''(1) IN GENERAL.—State consumer financial laws are preempted, only if—

''(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

''(B) the State consumer financial law is preempted in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

''(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

''(2) SAVINGS CLAUSE.—This title and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

''(3) CASE-BY-CASE BASIS.—

''(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

''(5) STANDARDS OF REVIEW.—

''(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

''(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

''(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

''(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

''(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

''(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

''(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

''(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title or section 24 of Federal Reserve Act (12 U.S.C. 371), a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

''(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(h) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(2) RULE OF CONSTRUCTION.—No provision of this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).''.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

''(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

''Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(i) VISITORIAL POWERS.—

''(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C. (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

''(j) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—The provisions of sections 5136C(i) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.

SA 4072. Mr. GRASSLEY (for himself and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 4073. Mr. ENZI (for himself and Mr. SHELBY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, line 4, strike ''respectively.'' insert the following: ''respectively.

(s) CONSUMER PRIVACY.—Notwithstanding any other provision of this Act, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of the consumer.

SA 4074. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3962 submitted by Mr. MERKLEY (for himself, Ms. KLOBUCHAR, Mr. SCHUMER, Ms. SNOWE, Mr. BROWN of Massachusetts, Mr. BEGICH, Mrs. BOXER, Mr. DODD, Mr. KERRY, Mr. FRANKEN, and Mr. LEVIN) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 9, line 7, insert ''private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) and'' after ''premium for''.

SA 4075. Ms. LANDRIEU (for herself, Mr. DODD, and Mr. KERRY) submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title X, add the following:

SEC. ___. SMALL BUSINESS CONSULTATION.

(a) SMALL BUSINESS ADVISORY BOARD.—

(1) ESTABLISHMENT REQUIRED.—The Director shall establish a Small Business Advisory Board, which shall be responsible for advising and consulting with the Bureau regarding the effects of actions by the Bureau on small businesses. The Small Business Advisory Board may provide information on emerging practices in consumer financial products or services, including regional trends, and other matters of interest to small businesses.

(2) MEMBERSHIP.—In appointing the members of the Small Business Advisory Board, the Director shall seek representation of the interests of small businesses operating in various markets for consumer financial products and services, including depository institutions, credit unions, and non-depository institutions.

(3) MEETINGS.—The Small Business Advisory Board shall meet from time to time, at the call of the Director, but not less frequently than 4 times in each year.

(4) COMPENSATION AND TRAVEL EXPENSES.—Members of the Small Business Advisory Board who are not full time employees of the United States shall—

(A) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Small Business Advisory Board, including travel time; and

(B) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

(b) CONSIDERATION OF IMPACT ON SMALL BUSINESSES.—

(1) ANALYSIS.—When conducting an initial regulatory flexibility analysis or final regulatory flexibility analysis, as required under chapter 6 of part I of title 5, United States Code (commonly referred to as the ''Regulatory Flexibility Act'') regarding compliance burden on small entities, the Bureau shall provide a description of any increase in the cost of credit to small entities projected as a result of the proposed or final rule, as applicable, and any significant alternatives to the proposed or final rule which would accomplish the stated objectives of applicable statutes and which would minimize any increase in the cost of credit to small entities.

(2) REVIEW PANELS.—

(A) IN GENERAL.—If the Bureau prepares an initial regulatory flexibility analysis for a proposed rule, the Bureau, after publishing notice of the proposed rulemaking, shall follow the procedures specified in section 609(b) of title 5, United States Code, as if the Bureau were a covered agency.

(B) CONSIDERATION OF REVIEW PANEL REPORT.—The Bureau shall consider the report of the review panel issued under this paragraph and include in the adopting release of the final rule a description of the basis for any determination by the Bureau concerning any issues raised by the panel and any issue concerning the cost of credit to small entities, as required in paragraph (1).

(C) DEADLINE.—Notwithstanding any other provision of chapter 6 of part I of title 5, United States Code, the report of the review panel shall be submitted not later than 90 days after the date on which the Bureau notifies the Chief Counsel of Advocacy of the Small Business Administration concerning the proposed rule, and the Bureau may proceed with its rulemaking if such report is not timely submitted.

SA 4076. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1455, after line 25, insert the following:

SEC. 1077. OVERSIGHT OF EFFORTS TO REDUCE MORTGAGE DEFAULTS AND FORECLOSURES.

(a) DEFINITIONS.—In this section—

(1) the term ''heads of appropriate agencies'' means the Secretary of the Treasury, Comptroller of the Currency, the Board of Governors, the Corporation, the National Credit Union Administration, the Council, the Director of the Bureau, the Office of Financial Research, the Federal Housing Finance Agency, and a representative of State banking regulators selected by the Secretary;

(2) the term ''mortgagee'' means—

(A) an original lender under a mortgage or the holder of a residential mortgage at the time at which that mortgage transaction is consummated;

(B) any affiliate, agent, subsidiary, successor, or assignee of an original lender under a mortgage or the holder of a residential mortgage at the time at which that mortgage transaction is consummated;

(C) any servicer of a mortgage; and

(D) any subsequent purchaser, trustee, or transferee of any mortgage or credit instrument issued by an original lender;

(3) the term ''Secretary'' means the Secretary of Housing and Urban Development;

(4) the term ''servicer'' means the person or entity responsible for servicing of a loan (including the person or entity who makes or holds a loan if such person or entity also services the loan); and

(5) the term ''servicing'' has the meaning given the term in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)).

(b) MONITORING OF HOME LOANS.—

(1) IN GENERAL.—The Secretary, in consultation with the heads of appropriate agencies, shall develop and implement a plan to monitor—

(A) conditions and trends in homeownership and the mortgage industry, in order to predict trends in foreclosures and to better understand other critical aspects of the mortgage market; and

(B) the effectiveness of public efforts to reduce mortgage defaults and foreclosures.

(2) REPORT TO CONGRESS.—Not later than 1 year after the development of the plan under paragraph (1), and each year thereafter, the Secretary shall submit a report to Congress that—

(A) summarizes and describes the findings of the monitoring required under paragraph (1); and

(B) includes recommendations or proposals for legislative or administrative action necessary—

(i) to increase the authority of the Secretary to levy penalties against any mortgagee, or other person or entity, who fails to comply with the requirements described in this section;

(ii) to improve coordination between public and private initiatives to reduce the overall rate of mortgage defaults and foreclosures; and

(iii) to improve coordination between initiatives undertaken by Federal, State, and local governments.

(c) NATIONAL DATABASE ON DEFAULTS AND FORECLOSURES.—

(1) IN GENERAL.—The Secretary, in consultation with the heads of appropriate agencies, shall develop recommendations for a national database on mortgage defaults and foreclosures that—

(A) provides information to Federal regulatory agencies on—

(i) mortgagees that generate home loans that go into default or foreclosure at a rate significantly higher than the national average for such mortgagees;

(ii) the factors associated with such higher rates; and

(iii) other factors and indicators that the Secretary determines are critical to monitoring the mortgage markets; and

(B) provides information to Federal, State, and local governments on loans, delinquencies, defaults, foreclosures, deeds in lieu of foreclosure, short sales, and sheriff sales that—

(i) is not otherwise readily available;

(ii) would allow for a better understanding of local, regional, and national trends; and

(iii) helps improve public policies that reduce defaults and foreclosures.

(2) CONSIDERATIONS.—In developing the recommendations under paragraph (1), the Secretary shall take into consideration privacy concerns and legal issues relating to such concerns, including the advisability of establishing rules relating to access, including public access, to information obtained under subsection (d).

(3) REPORT TO CONGRESS ON NATIONAL DATABASE.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains—

(A) the recommendations developed under paragraph (1);

(B) an estimate of the cost of maintaining the database described in paragraph (1); and

(C) a reasonable timetable with a deadline by which a national database on mortgage defaults and foreclosures shall be established by the Secretary.

(d) PROVISION OF DATA.—

(1) DATA REPORT REQUIRED.—Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the heads of appropriate agencies, shall issue final rules that require each mortgagee or servicer that originates or services not fewer than 100 loans in the prior calendar year (or any other person that the Secretary determines can effectively provide the data described in paragraph (2)) to submit a report to the Secretary not less frequently than once each quarter that contains data the Secretary determines are necessary to carry out this section.

(2) CONTENTS OF REPORT.—Each report submitted under paragraph (1) shall contain data that—

(A) for each loan, use the identification requirements that are established under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) for data reporting, including—

(i) the date of origination;

(ii) the agency code of the originator;

(iii) the respondent identification number of the originator; and

(iv) the identifying number for the loan;

(B) describe the characteristics of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including—

(i) the loan-to-value ratio at the time of origination for each mortgage on the property; and

(ii) the type of mortgage, such as a fixed-rate or adjustable-rate mortgage; and

(C) include the performance outcome of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including—

(i) whether such home loan was in delinquency at any point in such 12-month period; and

(ii) whether any judicial or non-judicial foreclosure was initiated on such home loan during such 12-month period;

(D) are sufficient to establish for each home loan that at any point during the preceding 12 months had become 60 or more days delinquent with respect to a payment on any amount due under the home loan, or for which a judicial or non-judicial foreclosure was initiated, the interest rate on such home loan at the time of such delinquency or foreclosure;

(E) include information relating to foreclosures, including—

(i) the date of all foreclosures initiated by the mortgagee or servicer; and

(ii) the combined loan-to-value ratio of all mortgages on a home at the time foreclosure was initiated;

(F) for a home loan that is in foreclosure, include information on all actions, including loan modifications, taken to mitigate or resolve the problem that led to the initiation of foreclosure and all actions undertaken prior to initiation of a foreclosure to resolve a delinquency or default;

(G) identify each home loan for which foreclosure was completed in the preceding 12 months, including—

(i) foreclosures initiated in such 12-month period; and

(ii) the date of the foreclosure completion; and

(H) include any other information that the Secretary determines is necessary to carry out this section.

(3) COMPLIANCE PLAN AND REPORT.—The Secretary, in consultation with the heads of appropriate agencies, shall—

(A) develop a plan to monitor the compliance with the requirements established in this subsection; and

(B) submit to Congress a report on such plan.

(4) ESTABLISHMENT OF NATIONAL DATABASE.—The Secretary shall establish a national database on mortgage defaults and foreclosures by the deadline established in the report to Congress required by subsection (c)(3) and shall provide public access to such database or portions thereof, subject to the Secretary making reasonable efforts to ensure that such public disclosure adequately addresses privacy, confidentiality, or legal rights under Federal or State law that may reasonably be raised.

(e) CONSOLIDATED DATABASE.—Not later than 6 months after the establishment of the national database described in subsection (d)(4), the Federal Financial Institutions Examination Council, or any successor thereto, shall create a consolidated database that establishes a connection between the data provided under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and the data provided under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2010 through 2014.

SA 4077. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 384, strike line 1 and all that follows through page 387, line 3 and insert the following:

SEC. 407. FAMILY OFFICES.

(a) IN GENERAL.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking ''or (G)'' and inserting the following: ''; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)''.

(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term ''family office'' shall provide for an exemption that—

(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act; and

(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices.

SEC. 408. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a) of the of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) TREATMENT OF MID-SIZED INVESTMENT ADVISERS.—

''(A) IN GENERAL.—No investment adviser described in subparagraph (B) shall register under section 203, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 203.

''(B) COVERED PERSONS.—An investment adviser described in this subparagraph is an investment adviser that—

''(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

''(ii) has assets under management between—

''(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

''(II) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title.''.

SEC. 409. CUSTODY OF CLIENT ASSETS.

SA 4078. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 384, strike line 1 and all that follows through page 385, line 15.

On page 385, line 16, strike ''**409**'' and insert ''**407**''.

On page 386, strike line 10 and all that follows through page 387, line 2 and insert the following:

SEC. 408. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a) of the of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) TREATMENT OF MID-SIZED INVESTMENT ADVISERS.—

''(A) IN GENERAL.—No investment adviser described in subparagraph (B) shall register under section 203, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 203.

''(B) COVERED PERSONS.—An investment adviser described in this subparagraph is an investment adviser that—

''(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

''(ii) has assets under management between—

''(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

''(II) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title.''.

On page 387, line 3, strike ''**411**'' and insert ''**409**''

On page 387, line 13, strike ''**412**'' and insert ''**410**''.

On page 388, line 4, strike ''**413**'' and insert ''**411**''.

On page 388, line 16, strike ''**414**'' and insert ''**412**''.

On page 389, line 3, strike ''**415**'' and insert ''**413**''.

On page 390, line 1, strike ''**416**'' and insert ''**414**''.

SA 4079. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 71, strike lines 15 through 23 and insert the following:

(1) IN GENERAL.—

(A) AUTHORITY.—To assist the Office in assessing financial stability or otherwise carrying out the functions described in this subtitle, the Director may require, by subpoena, the production of the data requested under subsection (a)(1) and section 154(b)(1), upon a written finding by the Director that—

(i) such data is required to carry out the functions described under this subtitle;

(ii) attempts to obtain such data without the use of a subpoena have been unsuccessful; and

(iii) the Office has coordinated with such agency, as required under section 154(b)(1)(B)(ii).

(B) CONSIDERATIONS.—The Director shall take into consideration the burden imposed by the request of the Director under subparagraph (A).

SA 4080. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1089, strike line 6 and all that follows through **''SEC. 973.''**

SA 4081. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the

United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1235, line 10, before the semicolon insert ''and shall certify that the costs of the rule will not be borne by the consumer''.

SA 4082. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1242, between lines 14 and 15, insert the following:

(7) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not have access to, or obtain copies of, any personally identifiable financial information relating to a consumer contained in the financial records of any covered person from a disclosure of such information by the covered person to the Bureau, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person to the Bureau; or

(ii) as may be specifically permitted or required under other provisions of law, and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978 to a disclosure by a covered person subject to this subsection, the covered person shall be treated as if it were a ''financial institution'', as that term is defined in section 1101 of that Act (12 U.S.C. 3401).

SA 4083. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, strike line 1 and all that follows through page 489, line 13, and insert the following:

(2) the term ''insured depository institution'' does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(3) the term ''proprietary trading''—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the Federal banking agencies may determine) of such institution, company, or subsidiary;

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments by or on behalf of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

(4) the term ''sponsoring'', when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations and modifications of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(3) EXCEPTION.—Notwithstanding paragraph (1), an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company may sponsor or invest in a hedge fund or a private equity fund, if—

(A) such institution, company, or subsidiary provides trust, fiduciary, or advisory services to the fund;

(B) the fund is sponsored and offered in connection with the provision of trust, fiduciary, or advisory services by such institution, company, or subsidiary to persons who are, or may be, customers or clients of such institution, company, or subsidiary;

(C) such institution, company, or subsidiary—

(i) does not acquire or retain an equity, partnership, or ownership interest in the fund; or

(ii) acquires or retains an equity, partnership, or ownership interest, if—

(I) on the date that is 12 months after the date on which the fund is established, the equity, partnership, or ownership interest is not greater than 10 percent of the total equity of the fund; and

(II) the aggregate equity investments by such institution, company, or subsidiary in the fund do not exceed 5 percent of Tier 1 capital of such institution, company, or subsidiary;

(D) such institution, company, or subsidiary does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), except on terms and under circumstances specified in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1);

(E) the obligations of the fund are not guaranteed, directly or indirectly, by such institution, company, or subsidiary any affiliate of such institution, company, or subsidiary; and

(F) such institution, company, or subsidiary does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4084. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 502, strike lines 4 through 14.

On page 502, between lines 15 and 16, insert the following:

(a) JOINT RULEMAKING.—

(1) DEFINITION OF TERMS.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules further defining the terms ''swap'', ''security-based swap'', ''swap dealer'', ''security-based swap dealer'', ''major swap participant'', ''major security-based swap participant'', and ''eligible contract participant'' and such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly prescribe rules defining the term ''swap'' or ''security-based swap'' to include transactions that have been structured to evade this title.

(2) TRADE REPOSITORY RECORD KEEPING.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(3) CAPITAL AND MARGIN.—

(A) Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules imposing capital and margin requirements under the respective provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934 for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants for which there is not a prudential regulator.

(B) Notwithstanding any other provision of this title, prudential regulators, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules imposing capital and margin requirements under the respective provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934 for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants for which there is a prudential regulator.

(4) BOOKS AND RECORDS.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

(5) JOINT RULEMAKING UNDER THIS TITLE.—

(A) COMPARABLE RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(B) CONSULTATION WITH THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Prior to prescribing jointly any rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consult with the Board of Governors of the Federal Reserve System.

(6) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraphs (1), (2), (3), or (4) of subsection (a) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.

(7) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products similarly.

(8) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this title shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

(9) JOINT INTERPRETATION.—Any Commission interpretation of, or guidance regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

On page 502, line 15, strike ''**REVIEW OF**'' before ''**REGULATORY AUTHORITY**''.

On page 502, line 16, strike ''(a)'' and insert ''(b)''.

On page 502, line 17, insert ''subsection (a) and'' after ''provided in''.

On page 505, line 7, strike ''(b)'' and insert ''(c)''.

On page 506, strike line 23 and all that follows through ''any other'' on page 507, line 2, and insert the following:

(3) PROHIBITION ON CERTAIN FUTURES ASSOCIATIONS.—Notwithstanding any other

On page 507, strike line 14 and all that follows through page 508, line 2.

On page 508, line 3, strike ''(c)'' and insert ''(d)''.

On page 508, line 8, strike ''(a)'' and insert ''(b)''.

On page 508, line 9, strike ''(b)'' and insert ''(c)''.

On page 509, line 24, strike ''(a)(4) or (b)'' and insert ''(b)(4) or (c)''.

On page 510, line 8, strike ''(d)'' and insert ''(e)''.

On page 510, line 9, strike ''(b) and (c)'' and insert ''(c) and (d)''.

On page 511, line 3, strike ''(e)'' and insert ''(f)''.

On page 511, lines 3 and 4, strike ''(b) and (c)'' and insert ''(c) and (d)''.

On page 511, line 4, insert '' and including subsection (a)'' before '', the Commodity''.

On page 511, line 11, strike ''(f)'' and insert ''(g)''.

On page 511, strike line 20 and all that follows through page 512, line 2.

On page 524, line 6, insert ''issued pursuant to subsection (a)(3)(A)'' after ''other Commission''.

On page 524, lines 11 through 12, strike '', including an order or orders issued under subsection (a)(3)(A),''.

On page 528, lines 11 and 12, strike '', security futures product,''.

On page 528, strike lines 13 through 15.

On page 528, line 16, strike ''(iii)'' and insert ''(ii)''.

On page 528, line 16, strike ''(iv)'' and insert ''(iii)''.

On page 528, strike line 20 and all that follows through ''Act.'' on page 529, line 2.

On page 529, line 19, strike '', security futures product,''.

On page 529, strike lines 20 through 22.

On page 529, line 23, strike ''(III)'' and insert ''(II)''.

On page 530, line 1, strike ''(IV)'' and insert ''(III)''.

On page 530, strike line 5 and all that follows through ''Act.'' on line 13.

On page 530, lines 20 and 21, strike '', security futures product,''.

On page 530, strike line 22 and all that follows through page 531, line 3.

On page 531, line 5, strike ''(iv)'' and insert ''(ii)''.

On page 531, line 5, strike ''(IV) (as so redesignated)'' and insert ''(III)''.

On page 531, line 8, strike ''a semicolon'' and insert the following: ''the following: '; or' ''.

On page 531, line 11, strike ''; or'' and insert a period.

On page 531, strike line 12 and all that follows through ''Act.'' on line 15.

On page 548, lines 9 and 10, strike '', leverage contract authorized under section 19,'' and insert ''or''.

On page 548, line 11, insert ''traded on or subject to the rules of a board of trade designated as a contract market under section 5 or 5f'' after ''product''.

On page 551, strike line 24 and all that follows through page 552, line 14.

On page 552, line 15, strike ''(E)'' and insert ''(D)''.

On page 554, line 14, strike ''(F)'' and insert ''(E)''.

On page 557, line 20, strike ''define—'' and all that follows through ''the term'' on line 21, and insert ''define the term''.

On page 557, line 21, strike ''; and'' and insert a period.

On page 557, strike lines 22 through 24.

On page 563, line 25, after the first period, insert the following:

''(i) REGULATION OF SWAPS AS SECURITIES UNDER FEDERAL AND STATE LAW.—Nothing in this section or this Act shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements, as such agreements are defined in section 3(a)(79) of the Securities Exchange Act of 1934, and security-based swaps.''.

On page 565, line 17, strike ''and (g)'' and insert ''(g), (j), and (k)''.

On page 565, line 22, strike ''and (f)'' and insert ''(f), and (i)''.

On page 566, line 1, insert ''by their terms'' before ''to registered''.

On page 566, line 7, after the first period insert the following:

''(f) EXCLUSION FOR SECURITIES.—Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to any security other than a security-based swap.''.

On page 567, line 8, strike ''5(b)'' and insert ''5b''.

On page 616, line 15, strike ''books and records'' and insert ''information (including information on a real-time basis)''.

On page 616, line 18, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 617, between lines 15 and 16, insert the following:

''(ii) foreign financial regulatory authorities;''.

On page 617, line 16, strike ''(ii)'' and insert ''(iii)''.

On page 617, line 17, strike ''(iii)'' and insert ''(iv)''.

On page 629, line 15, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 631, between lines 10 and 11, insert the following:

''(ii) foreign financial regulatory authorities, as defined in section 3(a)(52) of the Securities Exchange Act of 1934;''.

On page 631, line 11, strike ''(ii)'' and insert ''(iii)''.

On page 631, line 12, strike ''(iii)'' and insert ''(iv)''.

On page 642, line 3, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 646, lines 16 and 17, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 647, lines 12 and 13, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 647, line 23, insert '', in consultation with the prudential regulators,'' after ''Commission''.

On page 650, lines 24 and 25, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 651, lines 24 and 25, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 652, lines 24 and 25, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 676, line 7, before the period insert ''taking into consideration the impact of public disclosure on market liquidity''.

On page 676, line 20, strike ''and''.

On page 677, line 2, strike the period and insert ''; and''.

On page 677, between lines 2 and 3, insert the following:

''(iii) make available to the Securities and Exchange Commission, upon request, all information, including a complete audit trail, relating to transactions in security-based swap agreements (as such term is defined in section 3(a)(79) of the Securities Exchange Act of 1934).''.

On page 714, line 10, strike ''amended—'' and all that follows through ''by striking'' on line 11, and insert ''amended by striking''.

On page 714, line 12, strike the semicolon and insert a period.

On page 714, strike lines 13 through 23.

On page 714, line 25, strike ''amended—'' and all that follows through ''by striking'' on page 716, line 1, and insert ''amended by striking''.

On page 715, line 2, strike the semicolon and insert a period.

On page 715, strike lines 3 through 23.

On page 717, line 9, insert ''or any agreement, contract, or transaction in one or more securities'' after ''security''.

On page 751, between lines 11 and 12, insert the following:

''(II) the Securities and Exchange Commission;''.

On page 751, line 12, strike ''(II)'' and insert ''(III)''.

On page 751, line 16, strike ''(III)'' and insert ''(IV)''.

On page 751, line 21, strike ''(IV)'' and insert ''(V)''.

On page 752, line 1, strike ''(V)'' and insert ''(VI)''.

On page 752, line 3, strike ''and'' after ''jurisdiction;''.

On page 752, line 4, strike ''(VI)'' and insert ''(VII)''.

On page 752, line 4, strike the period and insert ''; and''.

On page 752, between lines 4 and 5, insert the following:

''(VIII) a foreign financial regulatory authority.''.

On page 752, line 7, strike ''described in clause (i)'' and insert ''described in subclauses (I) through (VI) of clause (i)''.

On page 752, line 11, after the period insert the following: ''Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.''

On page 761, line 24, strike ''standards'' and insert ''principles''.

On page 767, line 18, insert ''(without regard to paragraph (47)(B)(x) of such section)'' after ''Exchange Act''.

On page 768, line 4, insert ''or single obligor on a loan'' after ''a security''.

On page 768, line 4, insert ''or obligors on loans'' after ''securities''.

On page 768, line 9, insert ''or obligor'' after ''issuer''.

On page 769, line 5, strike ''references,'' and insert ''reference or''.

On page 769, beginning line 6, strike '', or settles through the transfer'' and all that follows through ''other option'' on line 16 and insert ''a government security''.

On page 769, line 17, strike ''(D) MIXED SWAP.—The term'' and insert the following:

''(D) MIXED SWAP.—

''(i) IN GENERAL.—The term''.

On page 770, between lines 6 and 7, insert the following:

''(ii) RULE OF CONSTRUCTION.—A security-based swap shall not constitute, nor be construed to constitute, a mixed swap solely because the obligations or rights of 1 party to the swap agreement are defined by reference to 1 or more interest rates or currencies.

''(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term 'index' means an index or group of securities, including any interest therein or based on the value thereof.''.

On page 775, strike lines 7 through 19.

On page 776, after line 25, insert the following:

(c) CONFORMING AMENDMENTS TO GRAMM-LEACH-BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended in the material preceding paragraph (1), by striking ''Except as'' and all that follows through ''that—''and inserting the following: ''Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—''.

On page 776, line 1, strike ''(b)'' and insert ''(c)''

On page 777, line 1, strike ''(c)'' and insert ''(d)''.

On page 780, line 3, insert '', in each place that such terms appear'' before the semicolon.

On page 783, lines 5 through 6, strike '', subject to the requirements of section 5(b)''.

On page 783, line 8, insert ''registered'' before ''clearing agency''.

On page 786, line 14, strike ''accepted'' and insert ''approved''.

On page 789, line 22, strike ''listed'' and insert ''accepted''.

On page 790, line 15, strike ''authorize'' and insert ''authorizes''.

On page 790, line 16, strike ''list'' and insert ''accept''.

On page 794, line 9, strike ''from'' and insert ''for''.

On page 809, strike line 14 through 16, and insert the following:

''(k) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a clearing''.

On page 810, strike lines 3 through 18.

On page 832, line 5, strike ''as described in paragraph (68) of section 3(a)''.

On page 833 lines 18 and 19, strike ''or narrow-based security narrow-based security index''.

On page 834, line 1, strike ''narrow-based security''.

On page 834, line 3, strike ''and''.

On page 834, between lines 3 and 4, insert the following:

''(ii) any security or group or index of securities the price, yield, value or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap; and''.

On page 834, line 4, strike ''(ii)'' and insert ''(iii)''.

On page 834, line 4, strike ''security-based swap and any''.

On page 834, line 6, strike ''narrow-based security''.

On page 834, line 7, insert ''described under subparagraph (B)(ii)'' after ''securities''.

On page 834, line 13, strike ''or narrow-based security index''.

On page 834, lines 18 and 19, strike ''or narrow-based security index''.

On page 834, lines 20 and 21, strike ''or narrow-based security index''.

On page 843, between lines 8 and 9, insert the following:

''(II) foreign financial regulatory authorities;''.

On page 843, line 9, strike ''(II)'' and insert ''(III)''.

On page 843, line 9, strike ''(III)'' and insert ''(IV)''.

On page 843, lines 11 and 12, strike ''AND IDEMNIFICATION AGREEMENT''.

On page 843, line 15, strike ''(G)—'' and all that follows through ''the security-based'' on line 16, and insert the following: ''(G), the security-based''.

On page 843, line 22, strike ''; and'' and insert a period.

On page 843, strike line 23 and all that follows through page 844, line 2.

On page 853, lines 6 and 7, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 854, lines 5 and 6, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 854, line 18, insert '', in consultation with the prudential regulators,'' after ''Commission''.

On page 857, lines 17 and 18, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 858, lines 15 and 16, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 859, lines 5 and 6, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 859, line 7, strike ''Securities and Exchange'' and insert ''Commodity Futures Trading''.

On page 886, line 4, insert ''or other derivative instrument'' after ''security-based swap''.

On page 886, lines 4 through 5, insert ''or has defined,'' after ''Commission may define,''.

On page 886, line 10, insert ''as the Commission may designate or has designated by rule'' after ''section (d)(1)''.

On page 886, line 14, strike ''(1)'' after ''13(f)''.

On page 886, line 15, strike ''(1)'' and all that follows through ''section (d)(1) of this section'' on line 20 and insert the following:

(1) in paragraph (1)—

(A) by inserting ''(A)'' after ''accounts holding''; and

(B) by inserting ''or (B) security-based swaps or other derivative securities that the Commission may determine or has determined by rule, having such values as the Commission, by rule, may determine'' after ''less than $10,000,000) as the Commission, by rule, may determine.''; and

(2) in paragraph (3), by striking ''section 13(d)(1) of this title'' and inserting ''subsection (d)(1) of this section and of security-based swaps or other derivative instruments that the Commission may determine by rule.''.

On page 892, line 23, strike ''the Commission'' and insert ''Unless the Commission is expressly authorized, the Commission''.

On page 892, line 24, insert ''any provision described in this subsection with respect to subtitle B'' after ''from''.

On page 892, line 24, strike ''the security-based swap provisions''.

On page 893, lines 1 and 2, strike ''except as expressly authorized under the provisions of that Act'' and insert ''with respect to paragraphs 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 79 of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), 17A(l); provided that the Commission also shall have exemptive authority under that Act with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under that Act with respect to swaps, including under section 4(c) of the Commodity Exchange Act''.

On page 893, line 2, after the first period insert the following:

''(d) EXPRESS AUTHORITY.—The Commission is expressly authorized to use any authority granted to the Commission under subsection (a) to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of this title, or of any rule or regulation thereunder, that applies to such person, security, or transaction solely because a 'security-based swap' is a 'security' under section 3(a).''.

On page 548, line 11, insert ''traded on or subject to the rules of a board of trade designated as a contract market under section 5 or 5f, leverage contract authorized under section 19,'' after ''product''.

On page 551, line 5, strike ''subparagraph (D)'' and insert ''other than a security-based swap as described in section 3(a)(68)(D) of the Securities Exchange Act of 1934''.

On page 616, line 2, insert ''**AND SECURITY-BASED SWAPS**'' after ''**AGREEMENTS**''.

On page 616, line 13, insert ''or security-based swaps (as defined in section 3(a)(68) of the Securities Exchange Act of 1934)'' after ''Act)''.

On page 616, line 16, insert ''or security-based swaps'' after ''agreements''.

On page 616, line 18, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 835, strike line 3 and all that follows through page 839, line 12.

On page 887, strike lines 8–25.

SA 4085. Mr. HARKIN (for himself, Mr. SANDERS, Mr. WHITEHOUSE, Mr. UDALL of New Mexico, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. FAIR ATM FEES.

(a) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 904(d)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)(3)) is amended—

(1) in subparagraph (A), by striking the subparagraph heading and inserting the following:

''(A) FEE DISCLOSURE.—'' ;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) REGULATION OF FEES.—The regulations prescribed under paragraph (1) shall require any fee charged by an automated teller machine operator for a transaction conducted at that automated teller machine to bear a reasonable relation to the cost of processing the transaction.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective not later than 6 months after the date of enactment of this Act.

(c) RULEMAKING.—The Bureau shall issue such rules as may be necessary to carry out this section, not later than 6 months after the date of enactment of this Act.

SA 4086. Ms. CANTWELL (for herself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 570, line 21, insert before ''In adopting'' the following: ''Except as provided in paragraphs (3) and (10), any swap that is required to be cleared is unlawful unless the swap is cleared.''.

On page 705, line 19, insert before the period the following: ''unless there is a knowing failure by a party to comply with, or reckless disregard for, the terms and conditions of section 2(f) or regulations of the Commission''.

On page 705, line 20, strike ''No agreement'' and insert the following: ''Unless there is a knowing failure by a party to comply with, or a reckless disregard for, the definition of the term 'swap' under section 1(a) or the requirements of section 2(h)(1), no agreement''.

On page 708, line 17, strike ''and other prudential requirements of this Act,''.

SA 4087. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 20, line 1, strike ''substantially'' and insert ''predominantly''.

On page 20, beginning on line 2, strike ''activities'' and all that follows through line 5, and insert ''financial activities, as defined in paragraph (6).''.

On page 20, line 17, strike ''substantially'' and all that follows through the end of line 20, and insert ''predominantly engaged in financial activities as defined in paragraph (6).''.

On page 21, line 11, strike ''(6)'' and insert the following:

(6) PREDOMINANTLY ENGAGED.—A company is ''predominantly engaged in financial activities'' if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7)

On page 21, line 16, strike ''criteria'' and all the follows through line 22, and insert ''requirements for determining if a company is predominantly engaged in financial activities, as defined in paragraph (6).''.

On page 37, line 3, strike ''(c)'' and insert the following:

(c) ANTI-EVASION.—

(1) DETERMINATIONS.—In order to avoid evasion of this Act, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States based on consideration of the factors in subsection (b)(2);

(B) the company is organized or operates in a manner that evades the application of this Act; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title.

(2) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d), (f), and (g) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(3) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term ''financial activities'' means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and related to the ownership or control of one or more insured depository institutions and shall not include internal financial activities conducted for the company or any affiliates thereof including internal treasury, investment, and employee benefit functions.

(4) TREATMENT AS A NONBANK FINANCIAL COMPANY.—

(A) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

(B) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title.

(d)

On page 37, line 15, strike ''(d)'' and insert ''(e)''.

On page 39, line 3, strike ''(e)'' and insert ''(f)''.

On page 40, line 13, strike ''(f)'' and insert ''(g)''.

On page 40, line 21, strike ''(g)'' and insert ''(h)''.

SA 4088. Mr. BAYH submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 486, strike lines 1 through 12 and insert the following:

(3) the term ''sponsoring''—

(A) when used with respect to a hedge fund or private equity fund, means—

(i) serving as a general partner, managing member, or trustee of the fund;

(ii) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(iii) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name; and

(B) does not include an activity of a banking entity with respect to a hedge fund or private equity fund, if—

(i) the banking entity provides bona fide trust, fiduciary or investment advisory services;

(ii) the fund is sponsored and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, economic partnership interest, or ownership interest in the fund, other than a partnership or ownership interest acquired or retained solely in connection with the provision of bona fide trust, fiduciary, or investment advisory services;

(iv) the banking entity does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

(v) the obligations of the fund are not guaranteed, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity; and

(vi) the banking entity does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4089. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 567, line 8, strike ''5(b)'' and insert ''5b''.

SA 4090. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. STUDY AND REPORT ON A FEDERAL CHARTER FOR NONBANK FINANCIAL SERVICES BUSINESSES.

(a) STUDY REQUIRED.—The research unit established by the Director under section 1013 shall conduct a study on the feasibility of establishing a Federal charter for nonbank financial services businesses that offer credit products and other financial services and products to consumers and small businesses that are unbanked, underbanked, or have low credit scores, low credit ratings, or below average credit histories (in this section, referred to as ''underserved borrowers''), including an analysis of—

(1) common credit products and other financial services and products available to underserved borrowers and the true availability and costs of such products and services to all underserved borrowers;

(2) the true costs and expenses (including loan losses) of creditors in providing credit products and other financial services and products to underserved borrowers;

(3) the merits, both positive and negative, of establishing a Federal charter to enable nonbank financial services businesses to provide reasonable and fair credit products and other financial products and services to underserved borrowers in a manner that is economically viable to nonbank financial services businesses; and

(4) the potential statutory and regulatory framework for establishing a Federal charter for nonbank financial services businesses that could reduce the costs for such businesses to offer and deliver such products and services to underserved borrowers and provide underserved borrowers throughout the Nation with a reasonable and fair opportunity to access credit and other financial services and products, and in turn build their credit scores and histories.

(b) REPORT TO THE BUREAU.—Not later than 1 year after the date of enactment of this Act, the research unit established under section 1013 shall—

(1) provide to the Bureau a report on the results of the study conducted under subsection (a), together with—

(A) a recommendation as to whether or not it would be in the best interests of all underserved borrowers to establish a Federal charter for nonbank financial services businesses to provide credit products and other financial products and services to underserved borrowers; and

(B) a recommendation for the statutory and regulatory framework for such a charter; and

(2) make such report available to the public.

SA 4091. Mr. JOHNSON (for himself, Ms. LANDRIEU, Mr. BURRIS, Mr. BROWNBACK, Ms. MURKOWSKI, Mr. CRAPO, Mr. ROBERTS, Mr. COBURN, Mr. TESTER, Mr. BROWN of Ohio, Mr. NELSON of Nebraska, Mr. CARDIN, and Mr. BENNETT) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 99, line 14, strike ''risks.'' and insert the following: ''risks, except that the Board of Governors may not prescribe standards under this title that limit fully secured extensions of credit by a Federal Home Loan Bank to any member or former member of the Federal Home Loan Bank made in compliance with the regulations of the Federal Housing Finance Agency.''

SA 4092. Mr. CHAMBLISS (for Mrs. LINCOLN) submitted an amendment intended to be proposed by Mr. CHAMBLISS to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title VIII and insert the following:

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the ''Payment, Clearing, and Settlement Supervision Act of 2010''.

SEC. 802. FINDINGS.

Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

SEC. 803. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DESIGNATED ACTIVITY.—The term ''designated activity'' means a payment, clearing, or settlement activity (other than a payment, clearing, or settlement activity that is regulated by the Commodity Futures Trading Commission or the Securities and Exchange Commission) that the Council has designated as systemically important under section 804.

(2) DESIGNATED FINANCIAL MARKET UTILITY.—The term ''designated financial market utility'' means a financial market utility that the Council has designated as systemically important under section 804.

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' means—

(A) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(D) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(E) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(F) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(G) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(H) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(I) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(4) FINANCIAL MARKET UTILITY.—The term ''financial market utility'' means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(5) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

(A) IN GENERAL.—The term ''payment, clearing, or settlement activity'' means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions.

(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term ''financial transaction'' includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;

(vi) swaps;

(vii) security-based swaps;

(viii) foreign exchange swaps and forwards; and

(ix) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;

(ii) the netting of transactions;

(iii) provision and maintenance of trade, contract, or instrument information;

(iv) the management of risks and activities associated with continuing financial transactions;

(v) transmittal and storage of payment instructions;

(vi) the movement of funds;

(vii) the final settlement of financial transactions; and

(viii) other similar functions that the Council may determine.

(6) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term ''Supervisory Agency'' means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, including—

(i) the Securities and Exchange Commission, with respect to a designated financial market utility that is registered with the Securities and Exchange Commission;

(ii) the Commodity Futures Trading Commission, with respect to a designated financial market utility that is registered with the Commodity Futures Trading Commission;

(iii) the appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act; and

(iv) the Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) MULTIPLE AGENCY JURISDICTION.—

(i) If a designated financial market utility is subject to the primary jurisdictional supervision of more than 1 agency listed in clauses (iii) or (iv) of subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

(ii) If a designated financial market utility is subject to the primary jurisdictional supervision of more than 1 agency listed in clauses (i) through (iv) of subparagraph (A), and such designated financial market utility is registered with either the Commodity Futures Trading Commission or the Securities and Exchange Commission, the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, shall be the Supervisory Agency for purposes of this title. If the designated financial market utility is registered with both the Commodity Futures Trading Commission and the Securities and Exchange Commission, then the agency which oversees the predominance of the payment, clearing, and settlement activities conducted by the designated financial market utility shall be the Supervisory Agency for purposes of this title.

(7) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms ''systemically important'' and ''systemic importance'' mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed by the Council under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency.

(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) EMERGENCY EXCEPTION.—

(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not less than ⅔ of all members then serving, including an affirmative vote by the Chairperson, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT DESIGNATED FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(1) the operations related to the payment, clearing, and settlement activities of designated financial market utilities other than designated financial market utilities for which the Supervisory Agency is either the Commodity Futures Trading Commission or the Securities and Exchange Commission; and

(2) the conduct of designated activities by financial institutions.

(b) RECOMMENDED STANDARDS.—

(1) IN GENERAL.—The Council may recommend risk management standards regarding the operations of payment, clearing, and settlement activities of designated financial market utilities for which the Commodity Futures Trading Commission or the Securities and Exchange Commission is the Supervisory Agency, taking into consideration relevant international standards and existing prudential requirements.

(2) PROCEDURE FOR RECOMMENDATION.—The Council shall consult with the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, and shall provide notice to the public and opportunity for comment for any proposed recommendation under paragraph (1).

(3) CONSIDERATION AND IMPLEMENTATION.—The Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, may impose the standards recommended by the Council under paragraph (1), or shall explain in writing to the Council, not later than 90 days after the date on which it receives the Council's recommendation, why the agency has determined not to follow the recommendation of the Council.

(c) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) or recommended under subsection (b) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(d) SCOPE.—The standards prescribed under subsection (a) or recommended under subsection (b) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that the Board of Governors determines are necessary to achieve the objectives and principles in subsection (c).

(e) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(f) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed by the Board of Governors under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board of Governors.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing privileges as the Federal Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

(1) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide 60-days' advance notice to its Supervisory Agency and the Board of Governors of any proposed change to its rules, procedures, or operations that could, as defined in rules of the Board of Governors, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) TERMS AND STANDARDS PRESCRIBED BY THE BOARD OF GOVERNORS.—The Board of Governors shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board of Governors may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency or the Board of Governors shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board of Governors or the Supervisory Agency has an objection.

(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board of Governors receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board of Governors receives any further information it requests for consideration of the notice.

(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency or the Board of Governors may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board of Governors providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board of Governors, or the date the Supervisory Agency or the Board of Governors receives any further information it requested, if the Supervisory Agency or the Board of Governors notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board of Governors.

(2) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency and the Board of Governors, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board of Governors may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or standards prescribed by the Board of Governors hereunder.

(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

(f) APPLICABILITY.—Nothing in this section shall be applicable to any designated financial market utility for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission. Notwithstanding the previous sentence, nothing in this subsection shall limit or be construed to limit the authority of the Board under section 13(3) of the Federal Reserve Act (12 U.S.C. 343).

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) For a designated financial market utility for which the Supervisory Agency is not the Commodity Futures Trading Commission or the Securities and Exchange Commission, the designated financial market utility's compliance with—

(A) this title; and

(B) the rules and orders prescribed by the Board of Governors under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—For purposes of enforcing the provisions of this section, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board of Governors may at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may dispute the matter by referring the recommendation to the Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Council is unable to resolve the dispute under paragraph (3) within 30 days from the date of referral, the Board of Governors may, upon a vote of its members—

(A) exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency; and

(B) take enforcement action against the designated financial market utility.

(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to believe that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; or

(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the

same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board of Governors shall provide written notice to the designated financial market utility's Supervisory Agency containing a detailed analysis of the action of the Board of Governors, with supporting documentation included.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to make the provisions of subsections (c), (d), (e), or (f) applicable with respect to any designated financial market utility for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The primary financial regulatory agency is authorized to examine a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed by the Board of Governors under this title.

(b) ENFORCEMENT.—For purposes of enforcing the provisions of this section, and the rules and orders prescribed by the Board of Governors under this section, a financial institution subject to the standards prescribed by the Board of Governors for a designated activity shall be subject to, and the primary financial regulatory agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the primary financial regulatory agency was the appropriate Federal banking agency for such insured depository institution.

(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the primary financial regulatory agencies to ensure that the rules and orders prescribed by the Board of Governors with respect to a designated activity under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed by the Board of Governors under this title.

(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the primary financial regulatory agency mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to enforce this title or the rules or orders prescribed by the Board of Governors under this title against a financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution

(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed by the Board of Governors under this title against any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the primary financial regulatory agency to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the primary financial regulatory agency within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the primary financial regulatory agency a reasonable opportunity to participate in the examination.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the primary financial regulatory agency take 1 or more specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the primary financial regulatory agency of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors notifying the primary financial regulatory agency of the Board's enforcement action.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors and the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS DESIGNATED ACTIVITIES.—The Board of Governors and the Council may require 1 or more financial institutions subject to the standards prescribed by the Board of Governors for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors and the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board of Governors with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board of Governors under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity as provided in subsections (a) and (b), the Board of Governors and the Council shall coordinate with the Supervisory Agency for a financial market utility or the primary financial regulatory agency for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors and the Council.

(2) SUPERVISORY REPORTS.—For purposes of the coordination required by paragraph (1), and notwithstanding any other provision of law, the Supervisory Agency, the primary financial regulatory agency, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) IN GENERAL.—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the primary financial regulatory agency in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(2) RULE OF CONSTRUCTION.—Nothing in this section authorizes or shall be construed to authorize the Board of Governors or the Council to prescribe any recordkeeping or reporting requirements on designated financial market utilities for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors, the Council, the primary financial regulatory agency, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information or data relating to such concerns.

(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the primary financial regulatory agency, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to other persons it deems appropriate, including the Secretary, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the primary financial regulatory agency, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data under this section or by permitting the reports or data, or any copies thereof, to be used pursuant to this section.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors or the Council under this section and any materials prepared by the Board of Governors or the Council regarding its assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with its supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

SEC. 810. RULEMAKING.

The Board of Governors and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the authorities and duties granted to the Board of Governors or the Council, respectively, under this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any primary financial regulatory agency, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

SA 4093. Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 296, between lines 15 and 16, insert the following:

(d) REPEAL OF SAFE HARBOR TREATMENT IN THE BANKRUPTCY CODE.—Title 11, United States Code, is amended—

(1) in section 103(a), by striking ''chapter'' and all that follows through ''apply'' and inserting ''chapter, sections 307, 362(n), 557, and 562 apply'';

(2) in section 362—

(A) in subsection (b)—

(i) by striking paragraphs (6), (7), (17), and (27);

(ii) by redesignating paragraphs (8) through (16) as paragraphs (5) through (13), respectively;

(iii) by redesignating paragraphs (18) through (26) as paragraphs (14) through (22), respectively;

(iv) by redesignating paragraph (28) as paragraph (23); and

(v) in the undesignated matter at the end, by striking ''(12) and (13)'' and inserting ''(9) and (10)''; and

(B) by striking subsection (o);

(3) in section 546—

(A) in subsection (e)—

(i) by striking ''101 or'';

(ii) by striking ''101, 741,'' and inserting ''741''; and

(iii) by inserting ''and except in a case under chapter 11 or 15,'' before ''the trustee'';

(B) in subsection (f), by inserting ''and except in a case under chapter 11 or chapter 15,'' before ''the trustee'';

(C) by striking subsections (g) and (j); and

(D) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(4) in section 548(d)(2)—

(A) by striking subparagraphs (C) through (E);

(B) in subparagraph (A), by adding ''and'' at the end; and

(C) in subparagraph (B), by striking the semicolon at the end and inserting a period;

(5) in section 553—

(A) in subsection (a), by striking ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'' each place that term appears; and

(B) in subsection (b), by striking ''Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561, if a'' and inserting ''If a'';

(6) by striking sections 555, 556, 559, 560, and 561 and inserting ''[Repealed].'';

(7) in the table of sections for subchapter III of chapter 5, by striking the items relating to sections 555, 556, 559, 560, and 561;

(8) in section 901—

(A) by striking ''555, 556,''; and

(B) by striking ''559, 560, 561,'';

(9) in section 1519, by striking subsection (f); and

(10) in section 1521, by striking subsection (f).

At the end of title II, add the following:

SEC. ___. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following:

''(43A) The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, that is cleared by or subject to the rules of a clearing organization (as defined in section 201(c)(9)(D) of the Restoring American Financial Stability Act of 2010.''.

(b) LIMITATION ON STAY OF EXERCISE OF CERTAIN CONTRACTUAL RIGHTS.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, if the trustee does not assume or reject a qualified financial contract of the debtor within 3 days after the order for relief, the exercise of any contractual right of any counterparty to such qualified financial contract to cause the liquidation, termination, or acceleration of one or more qualified financial contracts because of a condition of the kind specified in section 365(e)(1), or to offset or net out any termination values or payment amounts arising under or in connection with the termination, liquidation, or acceleration of one or more qualified financial contracts shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. During such 3-day period the trustee shall make a good faith effort to meet all margin, collateral, and settlement obligations of the debtor that arise under qualified financial contracts, other than any such obligation that is not enforceable against the trustee.''.

(c) LIMITATION ON AVOIDANCE OF TRANSFER.—Section 546(j) of title 11, United States Code, is amended to read as follows:

''(j) Notwithstanding any Federal or State law relating to the avoidance of preferential or fraudulent transfers, the trustee may not avoid any transfer of money or other property in connection with any qualified financial contract of the debtor, unless the transferee had actual intent to hinder, delay, or defraud the debtor, the creditors of the debtor, or the trustee.''.

SA 4094. Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 209, line 9, insert before the period the following: '', that is cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D))''.

SA 4095. Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 209, line 9, insert before the period the following: '', that is cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D))''.

On page 296, between lines 15 and 16, insert the following:

(d) REPEAL OF SAFE HARBOR TREATMENT IN THE BANKRUPTCY CODE.—Title 11, United States Code, is amended—

(1) in section 103(a), by striking ''chapter'' and all that follows through ''apply'' and inserting ''chapter, sections 307, 362(n), 557, and 562 apply'':

(2) in section 362—

(A) in subsection (b)—

(i) by striking paragraphs (6), (7), (17), and (27);

(ii) by redesignating paragraphs (8) through (16) as paragraphs (5) through (13), respectively;

(iii) by redesignating paragraphs (18) through (26) as paragraphs (14) through (22), respectively;

(iv) by redesignating paragraph (28) as paragraph (23); and

(v) in the undesignated matter at the end, by striking ''(12) and (13)'' and inserting ''(9) and (10)''; and

(B) by striking subsection (o);

(3) in section 546—

(A) in subsection (e)—

(i) by striking ''101 or'';

(ii) by striking ''101, 741,'' and inserting ''741''; and

(iii) by inserting ''and except in a case under chapter 11 or 15,'' before ''the trustee'';

(B) in subsection (f), by inserting ''and except in a case under chapter 11 or chapter 15,'' before ''the trustee'';

(C) by striking subsections (g) and (j); and

(D) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(4) in section 548(d)(2)—

(A) by striking subparagraphs (C) through (E);

(B) in subparagraph (A), by adding ''and'' at the end; and

(C) in subparagraph (B), by striking the semicolon at the end and inserting a period;

(5) in section 553—

(A) in subsection (a), by striking ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'' each place that term appears; and

(B) in subsection (b), by striking ''Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561, if a'' and inserting ''If a'';

(6) by striking sections 555, 556, 559, 560, and 561 and inserting ''[Repealed].'';

(7) in the table of sections for subchapter III of chapter 5, by striking the items relating to sections 555, 556, 559, 560, and 561;

(8) in section 901—

(A) by striking ''555, 556,''; and

(B) by striking ''559, 560, 561,'';

(9) in section 1519, by striking subsection (f); and

(10) in section 1521, by striking subsection (f).

At the end of title II, add the following:

SEC. ____. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following:

''(43A) The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, that is cleared by or subject to the rules of a clearing organization (as defined in section 201(c)(9)(D) of the Restoring American Financial Stability Act of 2010.''.

(b) LIMITATION ON STAY OF EXERCISE OF CERTAIN CONTRACTUAL RIGHTS.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, if the trustee does not assume or reject a qualified financial contract of the debtor within 3 days after the order for relief, the exercise of any contractual right of any counterparty to such qualified financial contract to cause the liquidation, termination, or acceleration of one or more qualified financial contracts because of a condition of the kind specified in section 365(e)(1), or to offset or net out any termination values or payment amounts arising under or in connection with the termination, liquidation, or acceleration of one or more qualified financial contracts shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. During such 3-day period the trustee shall make a good faith effort to meet all margin, collateral, and settlement obligations of the debtor that arise under qualified financial contracts, other than any such obligation that is not enforceable against the trustee.''.

(c) LIMITATION ON AVOIDANCE OF TRANSFER.—Section 546(j) of title 11, United States Code, is amended to read as follows:

''(j) Notwithstanding any Federal or State law relating to the avoidance of preferential or fraudulent transfers, the trustee may not avoid any transfer of money or other property in connection with any qualified financial contract of the debtor, unless the transferee had actual intent to hinder, delay, or defraud the debtor, the creditors of the debtor, or the trustee.''.

SA 4096. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 370, between lines 13 and 14, insert the following:

SEC. 333. FDIC EXAMINATION AUTHORITY.

(a) EXAMINATION AUTHORITY FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ''whenever the Board'' and all that follows through the period at the end and inserting the following: ''or depository institution holding company whenever the Chairperson or the Board of Directors determines that a special examination of any such depository institution or depository institution holding company is necessary to determine the condition of such depository institution or depository institution holding company for insurance purposes or for purposes of title II of the Restoring American Financial Stability Act of 2010.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1)—

(A) by striking ''based on an examination of an insured depository institution'' and inserting ''based on an examination of an insured depository institution or depository institution holding company''; and

(B) by striking ''with respect to any insured depository institution or'' and inserting ''with respect to any insured depository institution, depository institution holding company, or'';

(2) in paragraph (2)—

(A) by striking ''Board of Directors determines, upon a vote of its members,'' and inserting ''Board of Directors, upon a vote of its members, or the Chairperson determines'';

(B) in subparagraph (B), by striking ''or'' at the end;

(C) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund or of the exercise of authority under title II of the Restoring American Financial Stability Act of 2010, or may prejudice the interests of the depositors of an affiliated institution.'';

(3) in paragraph (3)(A), by striking ''upon a vote of the Board of Directors'' and inserting ''upon a determination by the Chairperson or upon a vote of the Board of Directors'';

(4) in paragraph (4)(A)—

(A) by striking ''any insured depository institution'' and inserting ''any insured depository institution, depository institution holding company,''; and

(B) by striking ''the institution'' and inserting ''the institution, holding company,'';

(5) in paragraph (4)(B), by striking ''the institution'' each place that term appears and inserting ''the institution, holding company,''; and

(6) in paragraph (5)(A), by striking ''an insured depository institution'' and inserting ''an insured depository institution, depository institution holding company,''.

(c) BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

''SEC. 51. BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.

''The Corporation may conduct a special examination of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, if the Chairperson or the Board of Directors determines an examination is necessary to determine the condition of the company for purposes of title II of that Act.''.

(d) ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act is amended by adding at the end the following:

''SEC. 52. ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

''(a) ACCESS TO INFORMATION.—The Corporation may, if the Corporation determines that such action is necessary to carry out its responsibilities relating to deposit insurance or orderly liquidation—

''(1) obtain information from an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010;

''(2) obtain information from the appropriate Federal banking agency, or any regulator of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, including examination reports; and

''(3) participate in any examination, visitation, or risk-scoping activity of an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010.

''(b) ENFORCEMENT.—The Corporation shall have the authority to take any enforcement action under section 8 against any institution or company described in paragraph (1) of subsection (a) that fails to provide any information requested under that paragraph.

''(c) USE OF AVAILABLE INFORMATION.—The Corporation shall use, in lieu of a request for information under subsection (a), information provided to another Federal or State regulatory agency, publicly available information, or externally audited financial statements to the extent that the Corporation determines such information is adequate to the needs of the Corporation.''.

SA 4097. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1006, strike line 17 and all that follows through page 1007, line 2, and insert the following:

(A) by striking paragraph (2) and inserting the following:

''(2) STANDARDS AND OVERSIGHT.—The Commission shall set standards and exercise oversight of the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations, to ensure that the credit ratings issued by the nationally recognized statistical rating organizations have a reasonable foundation.''; and

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SA 4098. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G, as added by this Act, the following new section:

''SEC. 15H. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holder of the security.

''(b) RESTRICTION.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no substantial or material economic purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine whether a synthetic asset-backed security meets the requirements of this section. A determination by the Commission under the preceding sentence is not subject to judicial review.''.

SA 4099. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1028 between lines 4 and 5 insert the following:

''(E) NO RELIANCE ON INADEQUATE REPORT.—A nationally recognized statistical rating organization may not rely on a third-party due diligence report if the nationally recognized statistical rating organization has reason to believe that the report is inadequate.

SA 4100. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 584, line 7, after the first period insert the following:

''(k) CLEARING REQUIREMENTS FOR CREDIT DEFAULT SWAPS.—Subject to the exemption requirements of paragraphs (9) and (10) of subsection (h), all credit default swaps that are swaps shall be cleared pursuant to the requirements of subsection (h)(1).

''(l) BAN ON RISKY UNDISCLOSED NAKED CREDIT DEFAULT SWAPS.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap that establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed jointly by the Commission and the Securities and Exchange Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's position in credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, is the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission and the Securities and Exchange Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as the Commission may prescribe.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as shall be prescribed jointly by the Commission and the Securities and Exchange Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, are the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale credit default swaps that are swaps.

''(2) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a security issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission shall jointly establish and adopt rules, regulations, or order, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

''(3) EFFECTIVE DATE.—This subsection shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission and the Securities and Exchange Commission may require disclosure and reporting of positions and holdings as set forth in this subsection at such earlier date as they may jointly determine.

''(m) PUBLIC REPORTING OF CREDIT DEFAULT SWAPS.—

''(1) IN GENERAL.—Notwithstanding paragraphs (8), (9), and (10) of subsection (h), the Commission and the Securities and Exchange Commission shall jointly adopt rules requiring public reporting by counterparties of all net notional amount of credit default swaps purchased or sold referencing a specific reference entity in an amount greater than 1 percent of the outstanding debt of that reference entity.

''(2) RULEMAKING.—The Commission and the Securities and Exchange Commission may adopt rules setting the public reporting requirement threshold of subparagraph (A) in an amount less than 1 percent and may set a lower reporting requirement threshold for credit default swaps purchased or sold on governmental entities. In adopting rules implementing this requirement, the Commission and the Securities and Exchange Commission shall require counterparties to report both hedged and unhedged positions. The Commission and the Securities and Exchange Commission shall prescribe rules to specify the form, manner, and timing of such reports.

''(3) FURTHER DEFINITION OF TERMS.—For purposes of this subsection, the Commission and the Securities and Exchange Commission shall jointly establish and adopt rules, regulation, or orders in accordance with the public interest, defining the terms 'credit default swap', 'reference entity', 'outstanding debt', 'net notional amount of credit default swaps', and 'governmental entities'.''.

On page 808, line 8, after the first period, insert the following:

''(e) CLEARING REQUIREMENTS FOR CREDIT DEFAULT SWAPS.—Subject to the exemption requirements of paragraphs (9) and (10) of subsection (a), all credit default swaps that are security-based swaps shall be cleared pursuant to the requirements of subsection (a)(1).

''SEC. 3C–1. BAN ON RISKY UNDISCLOSED NAKED CREDIT DEFAULT SWAPS.

''(a) PROHIBITION.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap that establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed jointly by the Commission and the Commodity Futures Trading Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's position in credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, is the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this section, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission and the Commodity Futures Trading Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as the Commission may prescribe.

''(5) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as shall be prescribed jointly by the Commission and the Commodity Futures Trading Commission, that—

''(A) the value of the security-based swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, are the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swap dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale credit default swaps that are security-based swaps.

''(b) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a security issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulations, or order, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

''(c) EFFECTIVE DATE.—This section shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission and the Commodity Futures Trading Commission may require disclosure and reporting of positions and holdings as set forth in this section at such earlier date as they may jointly determine.

''SEC. 3C–2. PUBLIC REPORTING OF CREDIT DEFAULT SWAPS.

''(a) IN GENERAL.—Notwithstanding paragraphs (8), (9), and (10) of section 3C(a), the Commission and the Commodity Futures Trading Commission shall jointly adopt rules requiring public reporting by counterparties of all net notional amount of credit default swaps purchased or sold referencing a specific reference entity in an amount greater than 1 percent of the outstanding debt of that reference entity.

''(b) RULEMAKING.—The Commission and the Commodity Futures Trading Commission may adopt rules setting the public reporting requirement threshold of subsection (a) in an amount less than 1 percent and may set a lower reporting requirement threshold for credit default swaps purchased or sold on governmental entities. In adopting rules implementing this requirement, the Commission and the Commodity Futures Trading Commission shall require counterparties to report both hedged and unhedged positions. The Commission and the Commodity Futures Trading Commission shall prescribe rules to specify the form, manner, and timing of such reports.

''(c) FURTHER DEFINITION OF TERMS.—For purposes of this section, the Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulation, or orders in accordance with the public interest, defining the terms 'credit default swap', 'reference entity', 'outstanding debt', 'net notional amount of credit default swaps', and 'governmental entities'.''.

On page 893, after line 25, insert the following:

SEC. 774. COUNCIL STUDY AND ACTION REGARDING CERTAIN PROHIBITIONS.

(a) IN GENERAL.—

(1) IN GENERAL.—The Financial Stability Oversight Council shall conduct a study of issues involving the purchase and sale of credit default swaps and naked credit default swaps.

(2) RULE OF CONSTRUCTION.—For purposes of this section, a naked credit default swap is a credit default swap entered into by a person that does not own the valid debt instrument or valid debt instruments referenced in the credit default swap or own a valid debt instrument or valid debt instruments of the issuer or borrower, or issuers or borrowers, referenced in the credit default swap, or a similar risk exposure.

(b) MATTERS TO BE ADDRESSED.—The study required under subsection (a) shall address—

(1) the impact of trading of credit default swaps on debt issuers, credit availability, financial markets, and the overall economy of the United States;

(2) the potential uses of naked credit default swaps;

(3) the potential systemic impact of short positions in naked credit default swaps;

(4) existing authority of regulators to address risks to market participants and systemic risk of credit default swaps and naked credit default swaps; and

(5) such other relevant matters as the Council deems necessary or appropriate to address.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, if the Financial Stability Oversight Council agrees by an affirmative vote of the majority of its members then serving to the conclusions and findings of the study required under subsection (a), and to any recommendations for legislative action the Council deems necessary and appropriate based on such conclusions and findings, the Council shall submit such report, together with such recommendations, to Congress.

(d) ACTION BY CHAIRPERSON OF THE COUNCIL.—Following receipt of the report required by subsection (c), and notwithstanding section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934, the Chairperson of the Council may make a written determination suspending, in whole or in part, the prohibitions of section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934.

(e) FINDING BY CHAIRPERSON OF THE COUNCIL.—Based upon the conclusions and findings of the study required under subsection (a), the Chairperson of the Council may make a written determination as provided in subsection (d) only upon a finding that the prohibitions in section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934 would have a material adverse effect on the financial markets and economy of the United States.

(f) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Chairperson of the Council shall submit any written determination made pursuant to subsection (d) to the Committees on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the United States Senate and the Committees on Financial Services and Agriculture of the United States House of Representatives. Any such written determination by the Chairperson of the Council shall not be effective until such determination has been submitted to the appropriate committees of Congress.

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.

''(c) EFFECTIVE DATE.—This section shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission may require any disclosure or reporting of information or data pursuant this section at such earlier date as the Commission may determine.''.

SA 4101. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 484, strike line 16 and all that follows through page 497, line 8, and insert the following:

SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section

23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. 619A. STUDY OF BANK ACTIVITIES.

(a) STUDY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Federal banking agencies shall jointly review and prepare a report on activities that a banking entity may engage in under Federal and State law including activities authorized by statute and by order, interpretation and guidance.

(2) CONTENT.—In carrying out the study under paragraph (1), the Federal banking agencies shall review and consider—

(A) the type of activities or investment;

(B) any financial, operational, managerial, or reputation risks associated with or presented as a result of the banking entity engaged in the activity or making the investment; and

(C) risk mitigation activities undertaken by the banking entity with regard to the risks.

(b) REPORT AND RECOMMENDATIONS TO THE COUNCIL AND TO CONGRESS.—The appropriate Federal banking agencies shall submit to the Council, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate the study conducted pursuant to subsection (a) no later than 2 months after its completion. In addition to the information described in subsection (a), the report shall include recommendations regarding—

(1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States financial system;

(2) the appropriateness of the conduct of each activity or type of investment by banking entities; and

(3) additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments described in subsection (a).

SEC. 619B. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4102. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, strike line 1 and all that follows through page 496, line 2, and insert the following:

(2) the term ''proprietary trading''—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the Federal banking agencies may determine) of such institution, company, or subsidiary, except that the Federal banking agencies may, for the purposes of this subparagraph, exclude from the definition of the term ''insured depository institution'' an institution that functions principally in a trust or fiduciary capacity; and

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal, or in the conduct of regulated insurance investments;

(3) the term ''sponsoring'', when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other similar Government-sponsored enterprises, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(d) INVESTMENTS IN SMALL BUSINESS INVESTMENT COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE THE PUBLIC WELFARE.—

(1) IN GENERAL.—A prohibition imposed by the appropriate Federal banking agencies under subsection (c) shall not apply with respect an investment otherwise authorized under Federal law that is—

(A) an investment in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(B) designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) COVERED TRANSACTIONS.—An insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may not enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with such hedge fund or private equity fund.

(2) AFFILIATION.—An insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if such institution, company, or subsidiary were a member bank and such hedge fund or private equity fund were an affiliate.

(f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR CERTAIN NONBANK FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations of the Council under subsection (g), the Board of Governors shall adopt rules imposing additional capital requirements and specifying additional quantitative limits for nonbank financial companies supervised by the Board of Governors under section 113 that engage in proprietary trading or sponsoring and investing in hedge funds and private equity funds.

(2) EXCEPTIONS.—The rules under this subsection shall not apply with respect to the trading of an investment that is otherwise authorized by Federal law—

(A) in obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(B) in obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other similar Government-sponsored enterprises, including obligations fully guaranteed as to principal and interest by such entities;

(C) in obligations of any State or any political subdivision of a State;

(D) in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(E) that is designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(g) COUNCIL STUDY AND RULEMAKING.—

(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this Act, the Council—

(A) shall complete a study of the definitions under subsection (a) and the other provisions under subsections (b) through (f), to assess the manner in which to implement this section so as to—

(i) promote and enhance the safety and soundness of depository institutions and the affiliates of depository institutions;

(ii) protect taxpayers and enhance financial stability by minimizing the risk that depository institutions and the affiliates of depository institutions will engage in unsafe and unsound activities;

(iii) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(iv) reduce inappropriate conflicts of interest between the self-interest of depository institutions, affiliates of depository institutions, and financial companies supervised by the Board, and the interests of the customers of such institutions and companies;

(v) not raise the cost of credit or other financial services, reduce the availability of credit or other financial services, or impose other costs on households and businesses in the United States;

(vi) limit activities that have caused undue risk or loss in depository institutions, affiliates of depository institutions, and financial companies supervised by the Board of Governors, or that might reasonably be expected to create undue risk or loss in such institutions, affiliates, and companies; and

(vii) appropriately accommodates the business of insurance within an insurance company subject to regulation in accordance with State insurance company investment laws;

(B) shall make recommendations regarding the definitions under subsection (a) and the implementation of other provisions under subsections (b) through (f).

(2) RULEMAKING.—Not earlier than the date of completion of the study required under paragraph (1), and not later than 9 months after the date of completion of such study—

(A) the appropriate Federal banking agencies shall—

(i) jointly issue final regulations implementing subsections (b) through (e); and

(ii) evaluate and consider any recommendations made by the Council pursuant to paragraph (1)(B); and

(B) the Board of Governors shall—

(i) issue final regulations implementing subsection (f); and

(ii) evaluate and consider any recommendations made by the Council pursuant to paragraph (1)(B).

SA 4103. Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the

United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1023, strike lines 12 through 18 and insert the following:

''(ii) the main assumptions and principles used in constructing procedures and methodologies, including—

''(I) qualitative methodologies and quantitative inputs;

''(II) assumptions about the correlation of defaults across obligors used in rating structured products; and

''(III) the 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if such assumptions were proven false or inaccurate, together with an analysis, using concrete examples, of how each of the 5 assumptions impacts the credit rating;

SA 4104. Mr. MENENDEZ (for himself, Mr. BAYH, and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 615, line 18, strike ''all'' and all that follows through line 21, and insert the following: ''or to the registered swap data repositories, as the Commission may by rule prescribe, all information that is determined by the Commission to be necessary for each to perform their respective responsibilities under this Act''.

On page 623, line 12, strike ''In this paragraph'' and insert ''Subject to subparagraph (E), in this paragraph''.

On page 624, line 18, strike ''With'' and all that follows through ''subsection (h),'' on line 22, and insert the following: ''The registered swap data repositories and''.

On page 625, strike line 2, and insert the following: ''swap trading volumes and positions for both cleared and uncleared trades.''.

On page 625, line 3, strike ''With respect'' and insert ''Subject to subparagraph (E), with respect''.

On page 625, line 6, strike ''(10)'' and insert ''(9)''.

On page 630, line 14, insert ''for both cleared and uncleared trades'' after ''swap data''.

On page 637, strike line 17 and all that follows through page 638, line 12.

On page 810, line 22, after the first period, insert the following:

''(m) DUTY OF CLEARING AGENCY.—Each clearing agency that clears security-based swaps shall provide to the Commission or to the registered security-based swap data repositories, as the Commission may by rule prescribe, all information that is determined by the Commission to be necessary for each to perform their respective responsibilities under this Act.

On page 835, line 7, strike ''In this paragraph'' and insert ''Subject to subparagraph (E), in this paragraph''.

On page 836, line 14, strike ''With'' and all that follows through ''section 3C(a),'' on line 18, and insert the following: ''The registered security-based swap data repositories and''.

On page 836, strike lines 23 and 24, and insert the following: ''security-based swap trading volumes and positions for both cleared and uncleared trades.''.

On page 837, lines 3 and 4, strike ''but are subject to the requirements of section 3C(a)(8)'' and insert ''pursuant to section 3C(a)(9)''.

On page 842, line 9, before the semicolon insert ''for both cleared and uncleared trades, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities''.

On page 883, strike line 7 and all that follows through page 884, line 9.

SA 4105. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 621, after line 23, insert the following:

(h) LINKING OF REGULATED CLEARING FACILITIES.—Section 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended to read as follows:

''(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions. In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.''.

SA 4106. Mr. MERKLEY submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title X, insert the following:

SEC. 1111. COMPLIANCE WITH OTHER RULES.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting before section 130 the following:

''SEC. 129B. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A creditor or other person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with consumer credit.''.

SEC. 1112. CONSUMER LEASING ACT OF 1976.

Section 183 of the Consumer Leasing Act of 1976 (15 U.S.C. 1667b) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 183. LESSEE LIABILITY AND LESSOR COMPLIANCE.''; and

(2) by adding at the end the following:

''(d) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—A lessor shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to the lessor in connection with consumer leases.''.

SEC. 1113. ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended by adding at the end the following:

''SEC. 922. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with electronic fund transfers.''.

SEC. 1114. FAIR CREDIT REPORTING ACT.

The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 615 the following:

''SEC. 615A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with consumer reports.''.

SEC. 1115. FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended by inserting after section 812 the following:

''SEC. 812A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with the collection of debt.''.

SEC. 1116. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et. seq) is amended by inserting after section 12 the following:

''SEC. 13. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with settlement services or the servicing of federally related mortgage loans.''.

(b) JURISDICTION.—Notwithstanding section 1096(8) of this Act, section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended to read as follows:

''SEC. 16. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS; JURISDICTION; LIMITATIONS.

''Any action pursuant to the provisions of section 6, 8, 9, or 13 may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 6 and 1 year in the case of a violation of section 8, 9, or 13 from the date of the occurrence of the violation, except that actions brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.''.

SEC. 1117. HOMEOWNERS PROTECTION ACT OF 1998.

The Homeowners Protection Act of 1998 (12 U.S.C. 4901 et. seq) is amended by inserting after section 7 (12 U.S.C. 4906) the following:

"SEC. 7A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

"A servicer, mortgagee, or mortgage insurer shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with private mortgage insurance.".

SEC. 1118. TRUTH IN SAVINGS ACT.

Section 269 of the Truth in Savings Act (12 U.S.C. 4308) is amended by adding at the end the following:

"(c) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—Any regulation promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 regarding disclosures, payment of interest, or periodic statements in connection with accounts within the scope this Act shall be considered a regulation pursuant to this Act.".

SA 4107. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Sec. 154(1)(A) is amended by inserting on page 69, line 4 after the word 'maintain' the following new language, 'within a single electronic database,'.

Sec. 154(b)(1) is amended by striking on page 70 line 3, subparagraph '(C)' and adding the following new subparagraph—

'(C) ADMINISTRATION AND USE OF DATA.—The database described in subparagraph (A) shall—

(i) use accurate data structures and taxonomies to allow for easy cross-referencing, compiling, and reporting of numerous data elements;

(ii) provide for filtering of data content to allow users to screen for events most relevant to identifying waste, fraud, and abuse, such as management changes and material corporate events;

(iii) provide geospatial analysis capabilities; and

(iv) provide for the daily collection of any data necessary to implement this subsection.

'(D) DATA STANDARD.—The Office shall adopt and require a single data standard for the submission of data to the Office by member agencies. The Office shall update the standard as necessary to address changes in technology over time. The standard shall—

(i) be common across all member agencies, to the maximum extent practicable;

(ii) be a widely accepted, non-proprietary, searchable, computer-readable format for business and financial data;

(iii) be consistent with and implement United States generally accepted accounting principles or Federal financial accounting standards (as appropriate), industry best practices, and Federal regulatory requirements; and

(iv) improve the transparency, consistency, and usability of business and financial information.

'(E) TRANSITION AND IMPLEMENTATION.—

(i) TRANSITION.—Not later than 60 days after date of enactment of this subsection, the Office, or the Secretary if a Director has not been confirmed, shall issue a request for proposal for the establishment of the database described in subparagraph (A) and award contract service as required by this subsection.

(ii) IMPLEMENTATION OF DATABASE.—The Office, or the Secretary, if a Director has not been confirmed, shall make operational the database described in subparagraph (A) not later than 180 days after the issuance of request for proposal under clause (i) of this subparagraph.'

(iii) FUTURE MODIFICATIONS.—Modifications to the database following its becoming operational shall be determined by the Office.

Sec. 154(b)(2) is amended by inserting on page 70, line 20 the following subparagraph and reletter accordingly—

(B) The Data Center shall make the database described in subparagraph (1)(A) of this section available to the Comptroller General of the United States and to the Special Inspector General and the Congressional Oversight Panel established under sections 121 and 125 of the Emergency Economic Stabilization Act respectively.'

SA 4108. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Sec. 154(b)(1) is amended by striking on page 70 line 3, subparagraph '(C)' and adding the following new subparagraph—

'(C) DATA STANDARD.—The Office shall adopt and require a single data standard for submission of data to the Office by member agencies. The Office shall update the standard as necessary to address changes in technology over time. The standard shall—

(i) be common across all member agencies, to the maximum extent practicable;

(ii) be widely accepted, non-proprietary, searchable, computer-readable format for business and financial data;

(iii) be consistent with and implement United States generally accepted accounting principles or Federal financial accounting standards (as appropriate), industry best practices, and Federal regulatory requirements; and

(iv) improve the transparency, consistency, and usability of business and financial information.

SA 4109. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 893, after line 25, insert the following:

SEC. 774. CLEARING OF CREDIT DEFAULT SWAPS.

(a) CLEARING OF CREDIT DEFAULT SWAPS UNDER THE COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by this title, is amended by adding at the end the following:

"(k) CLEARING OF CREDIT DEFAULT SWAPS.—

"(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

"(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

"(3) LIMITATION ON SHORT POSITIONS.—

"(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

"(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

"(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

"(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

"(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

"(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

"(C) DETERMINATION OF THE COMMISSION.—

"(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

"(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

"(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

"(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

"(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

"(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(A) EFFECTIVE DATE.—Subject to subparagraph (B), this subsection shall take effect on the earlier of—

''(i) the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010; or

''(ii) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(B) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this subsection is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this subparagraph shall not exceed 18 months.

''(5) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

(b) CLEARING OF CREDIT DEFAULT SWAPS UNDER SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C, as added by this title, the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(1) EFFECTIVE DATE.—Subject to paragraph (2), this section shall take effect on the earlier of—

''(A) the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010; or

''(B) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(2) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this section is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this paragraph shall not exceed 18 months.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and ''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

SEC. 775. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

SA 4110. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 515, between lines 11 and 12, insert the following:

(c) PROHIBITION ON PROPRIETARY TRADING.—No insured depository institution, or company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such depository institution or company may purchase or sell, or otherwise acquire or dispose of derivatives, including swaps, security-based swaps, mixed swaps, and security-based swap agreements except in accordance with section 619 of the Restoring American Financial Stability Act of 2010.

(d) STUDY AND REPORT.—

(1) STUDY.—The Financial Stability Oversight Council shall conduct a study of the impact of the prohibitions of this section on the swaps and security-based swaps markets, including the effect of such prohibitions on central clearing and exchange trading of standardized swaps.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, if the Financial Stability Oversight Council agrees by an affirmative vote of the majority of its members then serving to the conclusions and findings of the study required under paragraph (1), and to any recommendations for legislative action the Council deems necessary and appropriate based on such conclusions and findings, the Council shall make such report, together with such recommendations, available to the public.

(e) DETERMINATION AND FINDING.—

(1) DETERMINATION.—Following issuance of the report required under subsection (d) and based upon consideration of the findings and conclusions of the study mandated by such subsection, the Chairperson of the Financial Stability Oversight Council may make a written determination suspending, in whole or in part, the prohibitions of subsection (a) upon the consideration of the recommendations of such report and a finding that the prohibitions in subsection (a) would have a material adverse effect on the financial markets and economy of the United States.

(2) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Chairperson of the Financial Stability Oversight Council shall submit any written determination under this subsection, together with the report required under subsection (d), and any recommendations for legislative actions, to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives. Any such written determination by the Chairperson of the Financial Stability Oversight Council shall not be effective until such determination has been submitted to the appropriate committees of Congress described in the prior sentence.

(f) PRUDENTIAL MATTERS.—If the prohibition established under subsection (a) is suspended, in whole or in part, pursuant to subsection (e), the swaps entity shall conduct its swap, security-based swap, or other activities in compliance with such minimum standards as shall be prescribed in regulations issued by the prudential regulator of such swaps entity as appropriate and which are reasonably calculated to permit the swaps entity to conduct its swap, security-based swap, or other activities in a safe and sound manner and consistent with protecting taxpayers and the financial system of the United States.

(g) RULES.—In prescribing regulations described in subsection (f), the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight of the swaps entity.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring, and controlling risks arising from the swaps entity's operations and activities.

(4) Systems for identifying, measuring, and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in new markets and products.

(h) EFFECTIVE DATE.—Subject to subsection (e), the prohibition established under subsection (a) shall take effect 2 years after the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective.

SA 4111. Ms. STABENOW submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table, as follows:

On page 707, line 19, strike the first period and insert the following:

''(6) RULES, REGULATIONS, AND ORDERS.—Notwithstanding any other provision of law, including any authority granted pursuant to this title or title VII of the Restoring American Financial Stability Act of 2010, the Commission, the Securities and Exchange Commission, or the appropriate Federal banking agencies shall not issue any rule, regulation, or order that would void, terminate, or require the renegotiation, modification, or amendment of any contract or transaction (including any related credit support arrangement) entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

SA 4112. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table, as follows:

On page 1054, between lines 10 and 11, insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4113. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie the table; as follows:

Beginning on page 699, strike line 20 and all that follows through page 704, line 13, and insert the following:

''(A) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. In adopting such rules and regulations, the commission shall consider: (i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and (ii) any previous commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

''(B) LINKED CONTRACTS.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

''(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

''(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

''(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

''(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

''(aa) the information that the foreign board of trade will make publicly available;

''(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

''(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

''(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

''(C) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.''.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting ''or by subsection (e)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) by adding at the end the following:

''(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subparagraphs (A) and (B) of subsection (b)(1).''.

SA 4114. Mr. DORGAN proposed an amendment to amendment SA 4072 submitted by Mr. GRASSLEY (for himself and Mrs. MCCASKILL) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. CLEARING OF CREDIT DEFAULT SWAPS.

(a) CLEARING OF CREDIT DEFAULT SWAPS UNDER THE COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by this title, is amended by adding at the end the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(A) EFFECTIVE DATE.—Subject to subparagraph (B), this subsection shall take effect on the earlier of—

''(i) the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010; or

''(ii) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(B) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this subsection is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this subparagraph shall not exceed 18 months.

''(5) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

(b) CLEARING OF CREDIT DEFAULT SWAPS UNDER SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C, as added by this title, the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(1) EFFECTIVE DATE.—Subject to paragraph (2), this section shall take effect on the earlier of—

''(A) the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010; or

''(B) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(2) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this section is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this paragraph shall not exceed 18 months.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

SEC. 775. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

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 has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, May 25, 2010, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the liability and financial responsibility issues related to offshore oil production, including the Deepwater Horizon accident in the Gulf of Mexico, including S. 3346, a bill to increase the limits on liability under the Outer Continental Shelf Lands Act.

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 should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to Abigail_Campbell@energy.senate.gov.

For further information, please contact Linda Lance or Abigail Campbell.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a hearing on May 18, 2010, at 11 a.m., in room SR–325 of the Russell Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m. in room 106 of the Dirksen Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on May 18, 2010, at 10 a.m., to hold a hearing entitled ''The New START Treaty.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate to conduct a hearing entitled ''ESEA Reauthorization: Supporting Student Health, Physical Education, and Well-Being'' on Tuesday, May 18, 2010. The hearing will commence at 2:30 p.m. in room 430 of the Dirksen Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m.

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

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Human Rights and the Law, be authorized to meet during the session of the Senate, on May 18, 2010, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Drug Enforcement and the Rule of Law: Mexico and Colombia.''

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

TO CLARIFY HEALTH CARE PROVIDED BY THE SECRETARY OF VETERANS AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 5014, which was received from the House and is at the desk.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5014) to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage.

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

Mr. LEVIN. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid on the table, without any intervening action or debate, and that any statements be printed in the RECORD.

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

The bill (H.R. 5014) was ordered to a third reading, was read the third time, and passed.

FEDERAL HIRING PROCESS IMPROVEMENT ACT OF 2010

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 373, S. 736.

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

The assistant legislative clerk read as follows:

A bill (S. 736) to provide for improvements in the Federal hiring process and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Hiring Process Improvement Act of 2010''.

SEC. 2. DEFINITION.

In this Act, the term ''agency''—

(1) means an Executive agency as defined under section 105 of title 5, United States Code; and

(2) shall not include the Government Accountability Office.

SEC. 3. STRATEGIC WORKFORCE PLAN.

(a) IN GENERAL.—

(1) DEVELOPMENT OF PLAN.—Not later than 180 days after the date of enactment of this Act and in every subsequent year, the head of each agency, in consultation with the Office of Personnel Management and the Office of Management and Budget, shall develop a strategic workforce plan as part of the agency performance plan required under section 1115 of title 31, United States Code, to include—

(A) hiring projections, including occupation and grade level;

(B) long-term and short-term strategic human capital planning to address critical skills deficiencies;

(C) recruitment strategies to attract highly qualified candidates from diverse backgrounds;

(D) streamlining the hiring process to conform with the provisions in this Act; and

(E) a specific analysis of the contractor workforce, whether the balance between work being performed by the Federal workforce and the contractor workforce should be adjusted, and the capacity of the agency to manage employees who are not Federal employees and are doing the work of the Government.

(2) INCLUSION IN PERFORMANCE PLAN.—Section 1115(a) of title 31, United States Code, is amended—

(A) in paragraph (5), by striking ''and'' after the semicolon;

(B) in paragraph (6), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(7) include the strategic workforce plan developed under section 3 of the Federal Hiring Process Improvement Act of 2010.''.

(b) HIRING PROJECTIONS.—Agencies shall make hiring projections made under strategic workforce plans available to the public, including on agency websites.

(c) SUBMISSION TO THE OFFICE OF PERSONNEL MANAGEMENT.—Each agency strategic workforce plan shall be submitted to the Office of Personnel Management.

(d) GOVERNMENTWIDE STRATEGIC WORKFORCE PLAN.—Based on the agency plans submitted under subsection (a), the Office of Personnel Management shall—

(1) develop a governmentwide strategic workforce plan updated at least annually to include the contents described under subsection (a)(1) on a governmentwide basis; and

(2) make such plan available to the President, Congress, and the public.

SEC. 4. FEDERAL JOB ANNOUNCEMENTS.

(a) TARGETED ANNOUNCEMENTS.—In consultation with the Chief Human Capital Officers Council, the head of each agency shall—

(1) take steps necessary to target highly qualified applicant pools with diverse backgrounds before posting job announcements;

(2) clearly and prominently post job announcements in strategic locations convenient to, and accessible by, such targeted applicant pools;

(3) seek to develop relationships with targeted and diverse applicant pools to develop regular pipelines for high-quality applicants; and

(4) post job announcements for a reasonable period of time.

(b) PUBLIC NOTICE REQUIREMENTS.—The requirements of subsection (a) shall not supersede public notice requirements.

(c) PLAIN WRITING REQUIREMENT.—

(1) DEFINITION.—In this subsection, the term ''plain writing'' means writing that the intended audience can readily understand and use because that writing is clear, concise, well-organized, and follows other best practices of plain writing.

(2) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act, all job announcements for Federal positions shall be in plain writing in accordance with guidance provided by the Office of Management and Budget.

(d) CONTACT INFORMATION.—Job announcements shall include contact information for applicants to seek further information.

SEC. 5. APPLICATION PROCESS AND NOTIFICATION REQUIREMENTS.

(a) APPLICATION PROCESS.—Not later than 180 days after the date of enactment of this Act and in consultation with the Office of Personnel Management and the Office of Management and Budget, the head of each agency shall develop processes to—

(1) ensure that job announcements are open for a reasonable period of time as determined by the head of the agency to allow applicants from diverse backgrounds time to submit an application;

(2) review and revise the hiring process of the agency to create a streamlined and timely system for hiring decisions;

(3) allow applicants to submit a cover letter, resume, and answers to brief questions, such as questions relating to United States citizenship and veterans status, to complete an application;

(4) allow applicants to submit application materials in a variety of formats, including word processing documents and portable document format;

(5) not require any applicant to provide a Social Security number or any other personal identifying information unnecessary for the initial review of an applicant for a position;

(6) not require lengthy writing requirements such as knowledge, skills, and ability essays as part of an initial application;

(7) not require the submission of additional material in support of an application, such as educational transcript, proof of veterans status, and professional certifications, unless necessary to complete the hiring process;

(8) provide for a valid, job-related assessment process to help identify the best candidates for the position to be filled and which does not place an unreasonable burden upon applicants;

(9) ensure that applicants are given a reasonable amount of time after the closing date of the job announcement to provide additional necessary information; and

(10) include the hiring manager in all parts of the hiring process, including—

(A) targeted recruitment;

(B) drafting the job announcement;

(C) review of the initial applications;

(D) interviewing the applicants; and

(E) the final decisionmaking process.

(b) NOTIFICATION REQUIREMENTS.—

(1) IN GENERAL.—In consultation with the Chief Human Capital Officers Council, the head of each agency shall develop mechanisms under which each applicant for a Federal job vacancy shall receive timely notification of the status of each application or provide the applicant the ability to check on the status of each application.

(2) CONTENTS OF NOTIFICATION.—A notification to an applicant under this subsection shall include—

(A) notice of receipt of an application not later than 5 business days after the application was received by the employing agency;

(B) an explanation of the hiring process and an estimated timeline of the next actions in the process;

(C) notice of the qualification and status of an applicant after all applications for the applicable position have been initially reviewed and ranked;

(D) notice of the qualifications and status of the applicant after all interviews for the applicable position are completed;

(E) for all applicants selected for an interview, notice of the ongoing process if selected, including the process for any needed security clearance or suitability review, not later than the date of the interview; and

(F) notice to nonaccepted applicants that the applicable position is not open not later than 10 business days after the date on which—

(i) the selected candidate has accepted an offer of employment; or

(ii) the job announcement has been cancelled.

SEC. 6. APPLICANT INVENTORY.

(a) IN GENERAL.—Section 3330 of title 5, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

''(e)(1) The Office of Personnel Management shall establish and keep current a comprehensive inventory of individuals seeking employment in the Federal Government.

''(2) The inventory under this subsection shall—

''(A) be made available to agencies for use in filling vacancies;

''(B) contain information voluntarily provided by applicants for employment, including—

''(i) the resume and contact information provided by the applicant; and

''(ii) any other information which the Office considers appropriate;

''(C) retain information for no longer than 1 calendar year;

''(D) not include information relating to—

''(i) the application of the applicant for a specific vacancy announcement; or

''(ii) any other information relating to vacancy announcements; and

''(E) shall provide for a mechanism to allow —

''(i) applicants to update resume, qualifications, and contact information; and

''(ii) agency officials to search information in the inventory by agency and job classification.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the date of enactment of this Act.

SEC. 7. TRAINING.

Not later than 120 days after the date of enactment of this Act—

(1) in consultation with the Chief Human Capital Officers Council, the Office of Personnel Management shall develop and notify agencies of a training program for human resources professionals to implement the requirements of this Act; and

(2) each agency shall develop and submit to the Office of Personnel Management a plan to implement the training program.

SEC. 8. REDUCTION IN THE LENGTH OF THE HIRING PROCESS.

(a) AGENCY PLANS.—In consultation with the Office of Management and Budget, the head of each agency shall develop a plan to reduce the length of the hiring process, which shall include an analysis of the current hiring process performed in accordance with standards established by the Office of Personnel Management.

(b) REQUIREMENTS.—To the extent practical, the plan shall require that each agency fill identified vacancies not later than an average of 80 calendar days after the date of identification of the vacancy.

(c) REPORTS.—Each agency shall submit an annual report to Congress on the average period of time required to fill each job, and whether such jobs are cancelled or reopened.

SEC. 9. MEASURES OF FEDERAL HIRING EFFECTIVENESS.

(a) IN GENERAL.—Each agency shall measure and collect information on indicators of hiring effectiveness with respect to the following :

(1) RECRUITING AND HIRING.—

(A) Ability to reach and recruit highly qualified talent from diverse talent pools.

(B) Use and impact of each hiring authority and flexibility to recruit most qualified applicants, including the use of student internships and scholarship programs as a talent pool for permanent hires.

(C) Use and impact of special hiring authorities and flexibilities to recruit diverse candidates, including veteran, minority, and disabled candidates.

(D) The age, educational level, and source of applicants.

(E) Length of time between the time a position is advertised and the time a first offer of employment is made.

(F) Length of time between the time a first offer of employment for a position is made and the time a new hire starts in that position.

(G) Number of internal and external applicants for Federal positions.

(H) Number of positions filled compared to the specific number in the annual workforce plan of the agency, with specific reference to mission-critical occupations or areas of critical shortage deficiencies.

(I) Number of offers accepted compared to the number of offers made for permanent positions.

(2) HIRING MANAGER ASSESSMENT.—

(A) Manager satisfaction with the quality of the applicants interviewed and new hires.

(B) Manager satisfaction with the match between the skills of newly hired individuals and the needs of the agency.

(C) Manager satisfaction with the hiring process and hiring outcomes.

(D) Mission-critical deficiencies closed by new hires and the connection between mission-critical deficiencies and annual agency performance.

(E) Manager satisfaction with the length of time to fill a position.

(3) APPLICANT ASSESSMENT.—Applicant satisfaction with the hiring process (including clarity of job announcement, reasons for withdrawal of any application, user-friendliness of the application process, communication regarding status of application, and timeliness of hiring decision).

(4) NEW HIRE ASSESSMENT.—

(A) New hire satisfaction with the hiring process (including clarity of job announcement, user-friendliness of the application process, communication regarding status of application, and timeliness of hiring decision).

(B) Satisfaction with the onboarding experience (including timeliness of onboarding after the hiring decision, welcoming and orientation processes, and being provided with timely and useful new employee information and assistance).

(C) New hire attrition.

(D) Investment in training and development for employees during their first year of employment.

(E) Other indicators and measures as required by the Office of Personnel Management.

(b) REPORTS.—

(1) IN GENERAL.—Each agency shall submit on an annual basis and in accordance with regulations prescribed under subsection (c) the information collected under subsection (a) to the Office of Personnel Management.

(2) AVAILABILITY OF RECRUITING AND HIRING INFORMATION.—Each year the Office of Personnel Management shall provide the information submitted under paragraph (1) in a consistent format to allow for a comparison of hiring effectiveness and experience across demographic groups and agencies to—

(A) Congress before that information is made publicly available; and

(B) the public on the website of the Office not later than 90 days after the submission of the information under paragraph (1).

(c) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Director of the Office of Personnel Management shall prescribe regulations directing the methodology, timing, and reporting of the data described in subsection (a).

SEC. 10. REGULATIONS.

(a) IN GENERAL.—Except as provided under section 9(c), not later than 120 days after the date of enactment of this Act, the Director of the Office of Personnel Management shall prescribe regulations as necessary to carry out this Act.

(b) CONSULTATION.—The Director of the Office of Personnel Management shall consult the Chief Human Capital Officers Council in the development of regulations under this section.

Mr. LEVIN. I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 736), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

EXECUTIVE NOMINATION—DISCHARGE AND REFERRAL

Mr. LEVIN. Mr. President, as in executive session, I ask unanimous consent that the Senate now proceed to the nomination of John S. Pistole, to be Assistant Secretary of Department of Homeland Security, Transportation Security Administration, received by the Senate on Monday, May 17, and referred to the Committee on Commerce; that upon the reporting out of or discharge of the nomination the nomination then be referred to the Committee on Homeland Security and Governmental Affairs for a period not to exceed 30 calendars days; after which the nomination, if still in committee, be discharged and placed on the Executive Calendar.

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

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the minority leader, pursuant to Public Law 106–567, appoints the following individual to serve as a member of the Public Interest Declassification Board: William A. Burck of the District of Columbia.

ORDERS FOR WEDNESDAY, MAY 19, 2010

Mr. LEVIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, May 19; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate 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 final half; that following morning business, the Senate resume consideration of S. 3217, Wall Street reform, as provided for under the previous order.

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

PROGRAM

Mr. LEVIN. Mr. President, under the previous order, the cloture vote on the substitute amendment will occur at 2 p.m. As a reminder, the filing deadline for second-degree amendments is 1 p.m. tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. LEVIN. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 9:40 p.m., adjourned until Wednesday, May 19, 2010, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF STATE

HELEN PATRICIA REED-ROWE, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PALAU.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. SCOTT A. VANDER HAMM

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. LLOYD J. AUSTIN III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. DAVID H. HUNTOON, JR.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. WILLIAM E. GORTNEY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) JAMES P. MCMANAMON

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be lieutenant colonel

ADAM H. HAMAWY

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

DAVID S. WELDON