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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, May 11, 2010, at 12:30 p.m.

Senate

MONDAY, MAY 10, 2010

The Senate met at 2 p.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

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

Let us pray.

Almighty everlasting God, in Your light we would see life. Open the eyes of our lawmakers so that they can see the path on which You want them to travel. Lord, strengthen them for their daily work and minister to their deepest needs. In their moments of perplexity, fill them with the spirit of Your wisdom so that their decisions will reflect Your guidance. Use our Senators to discover and communicate Your answers to our Nation and world.

We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER 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 10, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Tennessee.

TENNESSEE FLOODING

Mr. ALEXANDER. Mr. President, there is no bigger, no more heart-wrenching, no more inspiring story today than what happened in Nashville in the 48 hours on May 1 and 2, over that weekend, when 2 to 4 inches of rain were expected and up to 17 inches came. As a result of that—from the Opryland Hotel outside Nashville to the Millington naval station near Memphis—all across Tennessee there have been devastating floods.

It is, according to the Weather Service, a 1,000-year rainfall event. I do not know how anybody knows what a 1,000-year rainfall event is—that is a long time—but this was not a 20-year flood or a 100-year flood, this was a 1,000-year rainfall event that overtook the people of Tennessee.

As a result, our Governor, Phil Bredesen, has asked the President to identify 52 counties—from the Nashville area to all the way across our State to the Mississippi River—as disaster areas. The President has responded swiftly. Forty-two of those 52 counties have been designated as disaster areas.

Some people say to me: Well, there has not been so much news about this Tennessee flood. There are two reasons for it. One is, there has been a lot of other news. Greece has been collapsing. A bomber tried to blow up Times Square. There is turmoil over immigration in Arizona. There is the gulf oilspill which threatens to be the worst in history.

But it is important for the American people to know the Tennessee flood last weekend is by far the largest disaster in our country since President Obama came into office, except for the oilspill in the Gulf of Mexico, and it may be that the Tennessee flood affects more people than what is happening in the Gulf of Mexico.

The other reason we have not heard so much about it is this: Tennesseans have been busy cleaning up and helping each other instead of complaining and looting. So people are hurt. Thousands of people are hurt. But they are going

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

about their business helping themselves and helping others in remarkable and inspiring ways.

I have many images from over the last few days of the visits I have made in Tennessee: being at the Bellevue Community Center on Saturday morning, where there were dozens of volunteers in red T-shirts that were headed out in teams to help people in that area whose homes have been devastated; the image of 502 soldiers from Fort Campbell—those are the most deployed soldiers in America—yet the commanding officer gave them a day's leave, and 502 of them formed teams and cleaned up three neighborhoods in Clarksville-Montgomery County.

I spent an hour that same day with Mayor Bowers and Congresswoman BLACKBURN and the team that is responding in Montgomery County, and it is an impressive response. I would say the same for Governor Bredesen of Tennessee and Mayor Dean of Nashville, whose metro services have worked overtime.

This is true all the way across our State to Dyer County—badly hurt; thousands of people have homes damaged there—to the Navy's principal personnel and recruiting station at Millington, just outside Memphis, where the Secretary of the Navy saw personally, on Saturday, the damage that had been done there.

According to the Tennessean, the American Red Cross had recorded more than 1,300 volunteers by Friday. Whole congregations, on Sunday, showed up en masse to help at places such as Cross Point Community Church, which had more than 1,600 members of the congregation on Saturday. Hands-On Nashville saw more than 5,100 volunteers log more than 19,000 hours to help out across the city by Saturday.

Our own church, Westminster Presbyterian Church, in Nashville—we had a lot of people going down to help with Katrina and in Gulfport after those disasters—will be the center for people coming in to help the people in Tennessee. If you go through Nashville today—or other parts of Tennessee, all the way down to Memphis—you will see thousands of front yards littered with damage from the basements of homes.

FEMA has been on the ground from the beginning, and I thank them for their prompt response. Unfortunately, we have worked with them before on tornadoes and other disasters, so they know Tennessee pretty well. By Saturday morning, 16,000 persons in Tennessee had registered with FEMA, and there had already been 750 inspections.

I talked with the sheriff of Montgomery County Saturday night. He was flooded out, but he had been in touch with FEMA. He was already registered. He had arranged for his inspection. He was very well satisfied by that.

Channel 4—Nashville television—had a telethon on Thursday night. Vince Gill and a group of stars raised $2 million in the Nashville area for the victims of the flood. Taylor Swift gave $500,000. Bud Adams of the Titans gave $400,000. So people in large and small ways are pouring out their hearts and their help and their money to help one another.

As we look forward—this is not a time to complain. I did not hear anybody complain this past week. As I said before, maybe that is why there is not so much news about this. But as we look ahead, I want to make sure in the future we make sure we do the best possible job of handling floods, particularly that we have clear and correct information about the rising water, and that we communicate it as broadly as we should.

We have learned how to do that with tornadoes. Using the media, we can tell you whether a tornado is coming across your house in 14 minutes in a remarkable set of cooperation between the National Weather Service and the media broadcasters.

I have asked Chairman BOXER and Ranking Member INHOFE of our committee, the Environment and Public Works Committee, to look at perhaps holding a hearing on how well the Army Corps of Engineers and other Federal agencies and State agencies are delivering accurate, clear information to businesses and individuals who might be hurt by the rising water.

This morning, I flew up to Nashville with a person from Sumner County who was trapped in a Chevrolet Blazer with her 12-year-old son and her husband and nearly killed except they were rescued by emergency services. Another person on the plane lives on a high hill near River Road, and the National Guard helicopters landed four times in her front yard to rescue 50 people who could not get out except in that way.

I have talked with Colin Reed, who is the chief executive officer of the Opryland Hotel, who had to make an evacuation order. They evacuated 1,500 guests rather than risk what happened during Katrina because the water suddenly came into the Opryland Hotel—many people are familiar with that—and the water became 10 feet high. It is still several feet high there. So there is a lot of long-term damage, and I want to make sure we have clear and consistent information.

I would have to add, I thank the Congress for approving my request over the last few years for additional funding to make two of the four dams on the Cumberland River safer. If they had not been made safer, their water levels would have been lower and tons more water would have poured into the Cumberland River, creating millions of more dollars of damages and perhaps taking lives.

I am simply here this morning to say I am very proud of Tennessee, from Nashville to Memphis. There is no bigger, more heart-wrenching, more inspiring story than of these thousands of Tennesseans who have suffered a 1,000-year flood, thousands of whom have losses they understand will not be fully made whole. But they are busy—not looting, not complaining—they are cleaning up and they are helping one another.

As the days go on, I will be meeting with Senator INOUYE and Senator COCHRAN to make certain the Federal accounts that fund FEMA, economic development, the Community Development Block Grant, and other projects and accounts in the Federal Government that respond to natural disasters have enough money in them to meet the Federal part of the responsibility. But so far the President, his Cabinet, and others have been doing very well.

The Governor of Tennessee and the mayors across our State have been doing extraordinarily well. But the people, who are the real heroines and heroes, are the men and women of Tennessee who have been hurt, or their neighbors who have been busy cleaning up and helping one another.

I thank the Acting President pro tempore, and yield the floor.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I thank the Senator from Tennessee for his update on flood damage in Tennessee. The Commonwealth of Kentucky was impacted as well, not quite as severely but in a significant fashion. It was gratifying to get the report from the Senator from Tennessee about the status of the flood damage in his State.

NOMINATION OF ELENA KAGAN

Mr. MCCONNELL. Mr. President, I want to congratulate Solicitor General Kagan on her nomination. Senate Republicans will treat Ms. Kagan with the same courtesy and fairness with which we treated Justice Sotomayor when she was nominated to the Supreme Court last year. The rest of the Republican Conference and I appreciated that at the end of her confirmation process, then-Judge Sotomayor recognized that she had been treated fairly by everyone. Unfortunately, that has not always been the case with Supreme Court nominees of Republican Presidents.

The American people know what they want in a Supreme Court Justice. They want someone who will apply the law fairly and impartially ''without respect to persons,'' as the judicial oath requires. They do not want someone to be a rubberstamp for any administration.

Ms. Kagan is currently a member of President Obama's administration and serves at his pleasure in a position that lasts no longer than the administration itself. By contrast, today she was nominated for a lifetime appointment to the Nation's highest Court. The standard of scrutiny is clearly much higher now. Now we must determine whether someone who is a member of the President's administration will be an independent and impartial jurist on the Nation's highest Court.

The American people also want a nominee with the requisite legal experience. They instinctively know a lifetime position on the Supreme Court does not lend itself to on-the-job training. Of course, one does not need to have prior experience as a judge before being appointed to the country's highest Court, but it strikes me that if a nominee does not have traditional experience, they should have substantial litigation experience. Ms. Kagan has neither, unlike Justice Rehnquist, for instance, who was in private practice for 16 years prior to his appointment as Assistant Attorney General for the Office of Legal Counsel, a job he had at the time of his appointment to the Supreme Court.

But exploring these questions is precisely what the nominations process is all about. Starting today, both parties will begin the process of carefully reviewing Ms. Kagan's brief litigation experience as well as her judgment and her career in academia, both as a professor and as an administrator. Fulfilling our duty to advise and consent on a nomination of this office requires a thorough process, not a rush to judgment. Senate Republicans will have vigorous debate on the importance of equal justice under law. This principle lies at the very heart of our judicial system. We will diligently review Ms. Kagan's record to ensure that she shares this principle and that she possesses the requisite experience to serve on the Supreme Court.

Mr. President, I yield the floor.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. DURBIN. Mr. President, today the Senate will resume consideration of the Wall Street reform legislation. There will be no rollcall votes today. Senators should expect votes in relation to amendments tomorrow morning.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I ask unanimous consent to speak as in morning business.

The ACTING PRESIDENT pro tempore. We are in morning business.

NATIONAL NURSES WEEK

Mr. MERKLEY. Mr. President, in honor of National Nurses Week, I wish to recognize the more than 3 million nurses who work hard day-in and day-out to give patients the care they deserve. Because my wife Mary is a nurse, I have seen firsthand what an enormous impact nurses have on both patients and families. Their compassion and devotion to their patients give families the peace of mind that their loved ones are in good hands. They also play an irreplaceable role in making sure our hospitals and clinics run smoothly. Unfortunately, many nurses are overworked, underpaid, and our hospitals and clinics have trouble retaining them.

Through the Health Care Reform Act Congress passed earlier this year, we made significant strides in addressing many of the challenges nurses face. We expanded the nursing student loan program to help make nursing programs more affordable. We also expanded the nursing loan repayment program and scholarship programs to students who commit to working at an accredited nursing school for 2 years. This will help ensure our nursing schools have the teachers they need to train additional nurses. We invested $1.5 billion over 5 years in the National Health Service Corps scholarship and loan repayment program for primary care providers, including nurses who practice in underserved areas. In addition, we included $50 million in grants for nurse-managed health clinics that offer primary care and wellness services to low-income and uninsured Americans.

While we made good progress easing many of the difficulties nurses face, much more still needs to be done. Nurses play such a crucial role in the delivery of care. We need to provide them with the resources they need to do their jobs.

The nursing shortage also remains a serious issue, especially in hard-hit rural areas. To find commonsense solutions to the problems nurses face, I formed the Senate Nursing Caucus with Senator JOHANNS, Senator MIKULSKI, and Senator SNOWE. I urge all of my colleagues to join the caucus to help strengthen the nursing profession and advance the goals of the nursing community. Together, we will explore ways we can enhance the role nurses play in our health care system and address the nationwide nursing shortage.

I ask my colleagues and my fellow Americans to take a moment during National Nurses Week to show your appreciation to nurses across the country for their hard work, commitment, and dedication to their patients. Their dedication is invaluable to the success of our health care system and, most of all, to the patients who depend on them.

Thank you, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to join my colleague from the State of Oregon in speaking on behalf of nurses across America.

We know that with the baby boom generation, we are going to need more nurses than ever, and with these nurses, we will have the professional medical care we need across this Nation, but we better get busy. We are falling behind. We don't graduate enough nurses now to take care of the anticipated needs, and we have to change that.

Sadly, in many instances we have been poaching nursing talent from other poor nations around the world. Filipino nurses in Chicago play a major role at many hospitals, particularly inner-city hospitals, and nurses from other parts of the world. Many times, the Philippines, for example, generates more medical professionals and expects they will serve overseas, but some places in Africa lose their best medical professionals to higher and more predictable pay in places such as the United States, England, France, and Germany. So we have to reach a point where we are graduating more nursing students each year. Last year in Illinois, 2,000 qualified nursing applicants were turned down because we didn't have the capacity in our nursing schools.

We don't have enough nursing faculty, enough clinical opportunities. We need to really focus on that. So in addition to lauding the nursing profession—I certainly echo my colleague in that regard—we also need to think ahead to make sure we have more nurses when we need them, and that day is going to be fast upon us. So I thank the Senator from Oregon for his words.

FINANCIAL REGULATORY REFORM

Mr. DURBIN. Mr. President, for those who are here following the Senate today, as announced earlier, we are resuming consideration of this bill, and, of course, it is the Wall Street reform bill, the Financial Stability Act. It is over 1,400 pages long.

The Senator from Virginia who is presiding over the Senate now is a member of the Senate Banking Committee. Senator MARK WARNER has worked on this bill, and large sections of it are his handiwork in an effort to try to deal with changes on Wall Street which will protect our economy and make certain we don't relive some of the horror stories we have seen over the last several years, and we all know those stories pretty well.

There was a time not that long ago—about a year and a half ago—when, under the previous President, I was brought into a meeting just a few steps away from the Senate floor with the chairman of the Federal Reserve, Ben Bernanke, and the Secretary of the Treasury, Henry Paulson. They basically sat down in the first meeting and said: We wanted to let you know the largest insurance company in the world, AIG, is about to go broke. When it goes broke, it is going to bring down so many companies and corporations with it that it can literally crater the American economy. At that point, Chairman Bernanke said: So the Federal Reserve is giving $85 billion to AIG Corporation.

There was a moment of silence in the room, and finally someone in the room—I don't remember who it was—had the nerve to ask: Where did you get $85 billion at the Federal Reserve?

Chairman Bernanke said something like: Oh, we have our resources.

Someone asked: Where did you get the authority to give it to a private company?

They said: Well, there was a law passed during the Great Depression which said that if it looks as if the economy is going to crater, the Federal Reserve can step in.

So an obscure law that was over 75 years old and a fund of money most Members of Congress had never seen—since they are a separate agency and don't go through our appropriations process—ended up propping up a company. And it didn't cost $85 billion; I think when it was over it was $180 billion or somewhere in that range. The reason, of course, we couldn't let that company go down was they had literally insured contracts and corporations all around America, that there would be no default. They insured more contracts than they had a reserve to cover. As the contracts started to fail, they didn't have the reserves to back up their promise of insurance.

That was the first meeting. Only a few days later, they asked us to meet again, and I thought, this ought to be equally interesting, and it was. They brought us to a meeting, and Secretary Paulson, the Secretary of the Treasury, said: Now we are seeing, with the failure of Lehman Brothers and other companies, the potential that many large financial institutions in America are also going to fail. Then Secretary Paulson said: So we need a fund of money immediately, by Friday—and this was a Tuesday meeting—we need a fund by Friday of $800 billion to buy the so-called toxic assets, TARP funds, toxic assets relief program.

Again, there was a stunned silence in the room because even those of us in Washington who deal with millions and billions on a regular basis were stunned to get a request for $800 billion in a matter of days.

So the first question that was asked was: Who is going to prepare the legislation that actually asks for the money?

They looked around, and no one had kind of thought of that detail, and we said: We think the White House should. President Bush's White House, with Secretary Paulson, prepared a bill and sent it to us. The bill was exactly three pages long asking for $800 billion. Naturally, many of us thought that was not adequate. We needed to put provisions in there about how the money would be spent, the supervisory authority in Congress, and so forth.

Eventually, it was passed on a bipartisan rollcall. People like myself who voted for it did it out of a feeling of desperation. What else could we do? If we were being told by the financial leaders of our government that our economy was about to fail—we had seen it already in the stock market going down in value, and we knew people were losing their jobs and businesses were failing—we felt this was the only way to try to stop this terrible crisis from becoming much worse.

Well, the toxic assets relief program ended up sending billions of dollars to these struggling financial institutions. They were struggling because they made bad judgments. They bought, created, and sold securities, derivatives, and interest which were, in fact, toxic. They were based on a mortgage market and the premises of that market which turned out to be totally wrong. They had made bad business decisions. Their companies were about to fail.

The Federal Government—make that the taxpayers of this country—was expected to step in and save them, which we did. To show their gratitude for this act of mercy—rescuing them from their own bad works—they declared bonuses for one another. They gave one another bonus checks after the Federal taxpayers bailed them out. Is it any wonder people across this country have a bad taste in their mouth about Wall Street, about the TARP program, about the bonuses? Is it any wonder we are here this week considering a bill to make sure we never relive this financial crisis? It is overdue—long overdue.

We know what this crisis cost us in real human terms. The estimates are that it took $17 trillion out of the American economy—$17 trillion in value—and it hit almost everybody. Anybody with a savings account, a retirement account knows what I am talking about. The value of the account went down 20, 30, 40 percent or more. So your net worth, your nest egg, your retirement plan was diminished because of this recession.

In addition to that, 8 million people are currently unemployed across America, having lost their jobs by this recession, and another 6 million have been unemployed long term and are not trying as hard as they once did. Even though those numbers are getting better—in fact, last week there was a good report—we know it is still serious. There are still too many people out of work because of this recession.

When we tried to bring this bill to the floor 2 weeks ago, we had a tough time. We had three votes Monday, Tuesday, and Wednesday, 2 weeks ago, and they were filibustered from the Republican side of the aisle. They refused to let us bring the bill to the floor.

While the filibuster votes were going on on the floor of the Senate, though, on another stage on Capitol Hill, the Permanent Subcommittee on Investigations of the Homeland Security Committee, chaired by Senator CARL LEVIN of Michigan, was holding a historic hearing and bringing in the top leaders of Goldman Sachs, including its CEO, asking them about their practices that had led to financial difficulties at that company and were being questioned now even in a lawsuit that has been brought by our government against that company.

That display and that testimony was happening at the same time the Republican filibuster to stop this reform bill was going on here on the floor. Finally, several Republican Senators spoke up to their leadership and said: That is it. We want to engage in this debate. We want to get it started. We want to do it in a prompt way.

The filibuster finally broke and we started, nominally, the debate last week. You could count, I think, on one hand all the amendments we considered in that week. We could have done much better. We wasted a lot of time. There are important policy considerations that have to be asked and answered by votes on the Senate floor—some from the Republican side, valid questions, and some from our side. What we are looking for—and I think the American people are looking for—is for the Senate to be the Senate, not just a dead end for debate, to deliberate these issues and cast a vote and move forward.

There was an amendment—of great moment—offered by Senator SHERROD BROWN of Ohio and Senator TED KAUFMAN of Delaware as to whether we should limit the size of financial institutions. They had a very catchy mantra, which was: Too big to fail means too big. They would limit the size of financial institutions so you could not have these big giants dominating the scene. There would be more competition and more financial institutions involved in our economy's business. That amendment failed. It got 31 votes. I was 1 of the 31 who voted for it. I was disappointed, but let's be honest, that amendment had its day in court, on the floor of the Senate. We debated it and a vote was taken.

Now we are moving on to other amendments. Senator SANDERS of Vermont will offer an amendment, probably tomorrow, as to whether there should be an audit of the activities of the Federal Reserve. This is a big amendment and one that is somewhat controversial, but I think we have reached a point where Senator SANDERS is likely to prevail. He came up with a bold idea, and now I think we are going to move toward that idea. The Senate is doing what it is supposed to do. There are other things we need to take up as well.

Senator MCCAIN will offer an amendment about the future of Fannie Mae and Freddie Mac, which are two government-type entities that literally back up the mortgages for most of the homes across America. They are in trouble because so many homes across America are going underwater; that is, the value of the home is lower than the mortgage balance. If that affects one of the homeowners across the country, you can understand that these agencies are going to be in trouble financially. What are we going to do about it? If we eliminate the agencies, the housing market will collapse without this government guarantee. But if there is going to be a government guarantee, how much will the taxpayers be on the line for? It is an important policy issue.

I am glad we are moving into that debate. I wish to offer an amendment on credit cards. Two years ago, we debated credit card reform. At the time, we passed a historic bill that changed some of the rules and gave consumers across America more rights and disclosure when it came to the use of credit cards. If there was one mistake made in that credit reform, it was the argument between the large banks and credit card companies that they could not implement the changes, unless they were given a long lead time before it occurred. They were given that lead time in the bill, and they have used that lead time consistently to raise interest rates on credit cards across America. It was a mistake. We should not have given them that much time. We should have anticipated they would have done the wrong thing during that period of time.

There is another aspect of credit cards I would like to discuss, which I will offer an amendment on, which is the interchange fee. If I reach in my wallet and pull out my credit card at a restaurant in Chicago and use it to pay, I am going to be billed for the cost of that dinner on my monthly bill, and I have to deal with the credit card company about how much interest I would pay on the balance I owe, for example. However, there is another part of the transaction that takes place between the restaurant and the credit card company. If I use a credit card, then the restaurant is going to pay to the credit card company some percentage of the bill for my dinner. It turns out this so-called interchange fee between the retail establishment and the credit card companies has become a serious problem.

Let me give you an illustration. I go to the same restaurant and instead of using a credit card, I pay by check. It used to be done a lot but not much anymore. The restaurant takes your check to their bank and their bank calls your bank, transfers the funds in, and no fee is involved. However, if you use a debit card, which would take the money directly out of my checking account, the same as with my check, it turns out the interchange fee is applied. So many restaurants and retail establishments are saying: Why is it with a check the bank gets no extra money and with a debit card the credit card company gets money. What is that all about? Should it be the same fee as a credit card?

These are legitimate questions that aren't a minor issue. They turn out to be a major issue. I had the CEO of Walgreens contact me last week. He told me that when they look at the expenses of this national chain of drugstores, the No. 1 expense is compensation of employees, personnel costs; No. 2, mortgage and rent payments; No. 3, health insurance; No. 4, interchange fees. It turns out the fees Walgreens pays to credit card companies is the fourth largest item of cost for their business.

Imagine that instead of being Walgreens, a national chain of drugstores, you are a small town store. Let's think it through. How many times have you gone to the cash register and stood behind as somebody handed them a credit card or a debit card for a pack of chewing gum or something even smaller? I saw it at National Airport. After the person left, I said to the person at the cash register: What is the smallest amount anybody has ever put on a credit card here? He said it was 35 cents.

When you look at the interchange fees, it turns out that the retailer loses money on that sale. Most of these involve a flat fee that is certainly more than the profit they are going to make on a 35-cent or even a $5 sale and a percentage of the actual item that is charged to the credit card. I would say, when you look at this circumstance, you can understand why some smaller businesses want to say there will be a minimum amount you can charge—not 35 cents but obviously something where they are not losing money. They will lose money if somebody uses a credit card under the current interchange fees.

The major card companies currently—Visa and MasterCard—prohibit companies that accept their credit cards from establishing a minimum amount that can be charged. They are going to make money, and they are not going to give the retail establishments that kind of opportunity.

Of course, they also prohibit that company—that small retailer—from saying: I get a better deal on the interchange fee from Visa than MasterCard, so I will favor Visa. They used to say: If you go to the Olympics, so and so is the official credit card of—they can say that, but the retailer cannot say that. If you own a restaurant and say: I prefer this credit card or that credit card, you violate the agreements of the credit card companies.

With this amendment, we are trying to establish that the fees charged to retailers for debit card usage at their establishments will be reasonable and proportional. It will be monitored by the Federal Reserve, which has that responsibility when it comes to credit card charges for consumers. So there is some parallel thinking here. The Federal Reserve will look at both sides—the retail establishment as well as the retail customer—in terms of the reasonable fees that can be charged by credit card companies.

Secondly, we eliminate the prohibition against what I consider to be competitive practices, where you would say you cannot use a credit card or a debit card at my establishment if your bill is less than $5 or something of that nature. That is currently prohibited, but it would not be under my amendment. This amendment has the support of some of the largest retailers and small businesses in America. Thousands have come to me and said: Please give us a fighting chance with the credit card companies. They are killing us. I cannot tell you how many speeches have been made on the floor of the Senate—on both sides of the aisle—about small businesses. We believe—I think both parties believe—if we are going to come out of this recession, it will be because of the strength and recovery of small business. This amendment is the No. 1 priority of small businesses across America. I wish to bring this amendment to the floor for a debate and a vote.

My colleagues can decide, do they want to come down on the side of retail establishments and small business or on the side of the credit card companies? Some will say: Wait a minute, what about community banks, the small banks that issue credit cards too? We specifically exempt them when it comes to this question of debit cards. If your establishment has less than $1 billion in assets—your bank—you will not be subject to this regulation. We are going after the largest banks that make the largest amount of money out of this, not the smalltown banks with local credit cards. We are trying to make this focused and fair and help small businesses.

On Friday, I went to a press conference at a supermarket in downtown Chicago. Potash Brothers have been around for decades, and it is a great success story of a family that came and opened a store. They have two or three and they are well liked and respected. They came and testified at this press conference about what they are going through, the struggle they have to make it as a small business in downtown Chicago—a supermarket that has to pay these high fees to the credit card companies. All they are asking is that the fees be fair.

We know that with the use of a credit card, the credit card company runs a risk that you would not pay off the balance. With the debit card, it comes out of your checking account or it doesn't. There is not a big risk factor involved.

Many people don't realize the size of this credit and debit card involvement in today's economy. Those cards are rapidly replacing cash and checks. There are over 1 billion credit and debit cards in the United States. In a nation of 300 million, that is more than three cards per person in the United States. Last year, Americans conducted $1.7 trillion in transactions on credit cards and $1.6 trillion on debit cards.

Credit cards and debit cards are now used in more than half of all retail sales in America, and the number is growing. Yet while paying with plastic may be a convenience for some, it turns out to be a real problem for small businesses. That is why this amendment is so important—to give small businesses a fighting chance. Individual businesses have no chance against the giants. Visa and

MasterCard control about 80 percent of all the credit and debit cards in the United States. About $50 billion in interchange fees were collected in 2008, and about 80 percent of that money went to 10 big banks—the ones we think should be the subject of this requirement that the fees be reasonable and proportional, based on the amount of work that is being done.

It is no surprise these 10 banks hate the Durbin amendment like the Devil hates holy water. They cannot wait to see it defeated on the floor. I wish to debate it on the floor on behalf of retailers and small businesses across America, and I would like my colleagues to have a chance to join me in this effort. I don't think it is unreasonable. The big banks will try to stop this amendment from coming to the floor, but I will fight for it, and we are going to put people on record on how they want to vote on this issue. This will be the first time interchange fees will be taken up, to my knowledge, in the history of the Congress. It is about time. It is a major part of our economy. I think a fair and reasonable fee for the use of credit and debit cards is something we should stand behind and unreasonable charges should be basically prohibited based on the regulation of the Federal Reserve.

I will be offering that amendment this week. Those who want to cosponsor it are welcome to.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

FINANCIAL REGULATORY REFORM

Mr. SESSIONS. Mr. President, I wish to make a few remarks about the financial regulation bill, the Restoring American Financial Stability Act. Certainly, we need to take some steps to deal with the catastrophe we have gone through—the damage and destruction, and the financial mismanagement that has been wreaked on us and from which people are still suffering today.

This crisis exploded in the fall of 2007. It was centered in the housing market and home loans. The question people ask and should ask is: How did it happen? Did Congress know about it? Why didn't Congress do something about it?

There is a false myth out there—many have heard it—that somehow this crisis was a product of Ronald Reagan and his disciple George Bush because they did not believe in regulations, they opposed regulations, deregulation is what caused this and more regulations would have prevented it. And so to the rescue, this myth says, come Democratic colleagues and President Obama with more new regulations that are going to fix the problem.

I believe good regulations can be helpful. Anybody who has lived in the world and been in businesses and governments knows there are bad regulations that drive people crazy every day, that drive up the cost of products, that costs jobs in America, and that should not be on the books. The question is: How do we have a good regulation or a bad regulation?

Let me focus for a second on a critical component of the fundamental problem, which was the housing market, and how our government-sponsored entities, Fannie Mae and Freddie Mac, came to be responsible for half of the housing loans in America—50 percent of the housing market. How did they get involved in that, and how was this the big factor in the economic destruction we suffer?

Fannie Mae, Freddie Mac, the Federal Housing Administration, and the Veterans Administration backed 96.5 percent of home loans in the first quarter of 2010. It used to be you went to your bank and they loaned you the money. If they did not think you were creditworthy, you did not get the money. Some people would complain, but a lot of times people were saved from very unwise decisions because their banker correctly intuited they were not going to be able to make these payments, there was too much risk because they had a better perspective on who could be successful in paying off the loans.

Before Freddie and Fannie collapsed in 2008, they owned or guaranteed $5.2 trillion in mortgages and mortgage-backed securities, almost half of their $12 trillion market. Prior to that, Freddie and Fannie were leveraged at twice the rate at Bear Stearns which failed. In other words, they had half the real capital for the loans they made, as did Bear Stearns, which failed.

Because of this improvident policy, Freddie and Fannie have cost the taxpayers $126 billion. That is an incredible sum of money. Fannie Mae reported a $72 billion loss for 2009; Freddie Mac reported a $22 billion for 2009; and it came in last week asking for another $10 billion.

CBO, our Congressional Budget Office which analyzes these costs, projects Fannie and Freddie will ultimately cost the taxpayers $389 billion. But that amount is not on the government's books. Because of the way our books are managed, these two institutions are supposed to be somehow quasi-private and thus not affecting the government Treasury. But they did affect the government Treasury.

I asked the question at the beginning: How did it happen? What did Congress know and did not know, and why did Congress not act? These are good questions. I am pushing back a little bit. I am not going to continue to have all this talk that somehow Ronald Reagan is responsible for this crisis.

Let me read a letter. I do not think a lot of people paid much attention to it at the time, but it was very real. I remember reading from it in debate during that time. It is a letter to my colleague from Alabama, Senator RICHARD SHELBY, who was chairman of the Banking Committee. It is dated March 31, 2008, from the Board of Governors of the Federal Reserve System, signed by none other than Alan Greenspan, Chairman of the Federal Reserve.

Remember, at this time, Senator SHELBY and Republicans had become concerned about the health of Freddie and Fannie. They realized they were overleveraged and presented great risk. This was 2004, about 3 years before the collapse occurred. Senator SHELBY felt something should be done about it. My Republican colleague offered legislation to do something about it. This is what Alan Greenspan wrote:

> Thank you for requesting the views of the Federal Reserve Board on the legislation you have proposed to improve the supervision and regulation of government-sponsored enterprises.

That is GSEs, that is Freddie and Fannie.

> As I stated in my testimony of February 24, the Congress needs to create a GSE regulator with authority on a par with banking regulators, with a free hand to set appropriate capital standards, and with a clear process sanctioned by the Congress for placing a GSE in receivership.

It had begun to dawn on them that these GSEs could go into receivership. They were so overleveraged. They were on the verge of collapse. That is what he wrote to Senator SHELBY in early 2004.

He goes on to say, and this language is dramatic:

> To fend off possible future systemic difficulties, which we assess as likely if current trends continue unabated, preventive actions are required sooner rather than later.

Isn't that a dramatic statement, ''To fend off possible systemic difficulties''? Did we not have the whole system go into a spin and we are still suffering from it and may for years to come?

Then he goes on to say:

> The Board believes your proposed legislation makes substantial progress toward meeting these objectives.
>
> With regard to the receivership issue, the Board continues to believe that the Congress needs to clarify the circumstances under which a GSE can become insolvent and, in particular, the resulting position—both during and after insolvency—of the investors that hold GSE debt. The process must be clear before it is needed. Leaving the matter unresolved, as it is under current law, only heightens the prospect that a crisis would result in an explicit guaranteeing of GSE debt. In this area, too, your proposal makes substantial strides.

It is basically an endorsement of Senator SHELBY's efforts. Not basically, it is a flat out endorsement. He goes on to say:

> With regard to capital, the Board continues to believe that determining the suitable amount of capital for GSEs is a difficult and technical process, and, that a regulator should have a free hand in determining both

the minimum and risk-based capital standards for these institutions. Your proposal, which gives the new regulator more discretion in these areas, is an important improvement in this respect.

This was an endorsement by the Federal Reserve Board of Senator SHELBY's efforts to reform. What happened? Senator SHELBY brought it up in the Banking Committee, and it passed the committee on a straight party-line vote. All Republicans voted for increased regulations, increased accountability, increased capitalization of Freddie and Fannie, and every Democrat on the committee voted against it.

When it got to the floor, it was subject to a 60-vote filibuster. It was clear the Democrats had sent word they were not going to support it, and there was no prospect of passing the bill. Although he bill passed in committee, it never actually passed the Senate floor.

I want to say the idea that the only greed, the only mismanagement was with private bankers is not accurate. There was plenty of that. I have no grief to bear for the big guys on Wall Street. They rolled the dice. I voted against their bailout and I do not believe they should have been bailed out at all. They should have suffered the consequences. We would probably be better off today economically because we would have taken the hit and gotten it out of our system. We can dispute that. All I can say is there are other areas of greed and mismanagement.

But currently, 96 percent of home loans are backed by government institutions—Fannie, Freddie, VA, the Housing Administration. Who is to say they are always perfect? We know, as Senator MCCAIN has pointed out in his amendment to this legislation that is before us today, that we can still do more about it.

Since 96 percent of housing mortgages are now backed by government institutions, why does this legislation not deal with it? Why does it not? It completely sidesteps the issue. Why? Because we would have to deal with how to score and add to our debt another $400 billion. Is that one reason?

Is another reason because Freddie and Fannie have been so powerful politically that they have been able to fend off the oversight they should have been subjected to from the beginning? Is it a belief somehow because they are quasi-government institutions that they can do no wrong, that only private industries and institutions can do wrong?

I don't know exactly why all of this is so, but it is not dealt with, and it should be dealt with. Senator MCCAIN's legislation will deal with it. He made a speech Thursday in which he delineated the history of how this all occurred. I thought it was very valuable insight. Americans should know about this. When the government comes in and allows politics and governmental policy to override financial reality, then we can get in trouble. If you order agencies or agencies are willing to make bad loans because they think that somehow it is good policy, do people think nobody is going to have to pick up the tab some day in the future? I am afraid they are.

The situation we are in arose from the fact that richly paid GSE executives and their political supporters had no skin in the game on the loans they were making. They were getting their salaries, and they kept getting their salaries even when it became clear the firms were mismanaged and heading for disaster and were going to be bailed out by the American taxpayers. They operated recklessly and they, I believe it is fair to say, were the precipitating cause, frankly, of the collapse of the financial markets; if not the cause, one of the primary causes of it. It is unbelievable and improper that when we propose legislation to restore America's financial stability, we don't fix the Freddie and Fannie problem.

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

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

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

Mr. SESSIONS. The Wall Street Journal wrote that ''reforming the financial system without fixing Freddie and Fannie is like declaring a war on terror and ignoring al-Qaida.''

Fannie and Freddie were at the center of it. They were a cause of it. They need to be reformed, and I am disappointed that the one thing this government should be doing, which is fixing these quasi-government agencies, is not occurring.

I thank the Chair, and I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

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

The legislative clerk read as follows:

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

Pending:

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

Sanders/Dodd modified amendment No. 3738 (to amendment No. 3739), to require the nonpartisan Government Accountability Office to conduct an independent audit of the Board of Governors of the Federal Reserve System that does not interfere with monetary policy, to let the American people know the names of the recipients of over $2,000,000,000,000 in taxpayer assistance from the Federal Reserve System.

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

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

The legislative clerk proceeded to call the roll.

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

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

SENATOR BOB BENNETT OF UTAH

Mr. DODD. Mr. President, I want to share a few thoughts, if I may, for a minute or so on the pending matter before us. But before I do that—and at a later time I will speak at greater length about this—I want to express my regrets over the decision made in Utah over the weekend regarding BOB BENNETT, our colleague.

I have served with BOB for 18 years. We have been on the Banking Committee together during that time. Obviously, we have differences of opinion on a lot of policy questions. In fact, the majority of policy questions we have had our differences on. But at critical moments, BOB BENNETT was always someone you could talk to, someone you could approach with an idea or an issue.

He went through a tough battle over the last number of weeks and did not prevail in his convention over the weekend in Utah. But I want to express to him and Joyce how much this institution will miss them in the coming year. He is a thoughtful, considerate individual. He is deliberate in his views and accessible when it comes to others' ideas. In my view, it will be a loss for the institution that he will not be back. That is coming from a Democrat on this side of the aisle.

I realize there is a contest coming up, but I didn't want the day to begin or end without expressing my disappointment over the results in Utah. I know that is probably not appropriate for Democrats, making comments about Republican races, but BOB BENNETT is one fine U.S. Senator, and he has played an invaluable role, a critical role at critical junctures over the last number of years that I have served with him.

Now, Mr. President, I want to make some comments about the bill before us. It has been nearly 7 weeks since the Banking Committee approved legislation to reform Wall Street. It has been more than 3 years since our committee began work on this very important topic. It was in January or early February of 2007 that I became chairman of the Banking Committee for the first time, and, obviously, the news even at that early date was about the mortgage foreclosure issue.

A lot of work has gone on in the Banking Committee. We have literally had dozens and dozens of hearings and meetings with people on how best to address this economic decline that we have suffered—with 8½ million jobs being lost and 7 million homes in foreclosure. In fact, over the weekend there was a report that nearly 4 million households are severely delinquent on their mortgages, and 250,000 homes have been seized—are in foreclosure—since the first 3 months of this.

Even though we have 4 million homes delinquent on their mortgages, which is the largest backlog since the crisis began, there is some positive news on job creation—290,000 jobs in the month of April, which is 121,000 more jobs created in the first few months of the year than were anticipated. We are clearly seeing an economy that seems to be improving. But when we have 4 million homes that are underwater, we also realize we are far from out of this difficulty, particularly if you are a working family.

We also, of course, saw last Thursday a market decline of 1,000 points in almost 17 minutes. The Presiding Officer and I, in fact, talked about this over the weekend, and I appreciate his insights and observations on the matter as someone who spent time working in this field before getting involved in public life. There are a number of ideas emerging as to how this happened, and my hope is that as early as next week our Banking Committee will have an informal meeting with people from the Securities and Exchange Commission and the Commodity Futures Trading Commission, as well as others, to hear what they think happened and what steps they are taking to minimize that event from occurring again.

Then, of course, over the weekend we had the stories emerging about Europe and the Euro and what was occurring in Greece and other nations in danger of going to default because of the huge debt problems that exist. Tomorrow morning, our committee will be briefed by the Federal Reserve as well as the Secretary of the Treasury on exactly what plans have been put in place in Europe.

I do not want to dwell on either of those points at this juncture except to make this point. Here we have an event totally unrelated to mismanagement of investment banks or financial institutions in the case of a market decline as precipitous as we saw Thursday and events that are beyond the borders of our own nation that will have an impact at home. We are told this is not going to have any kind of severe impact—at least we don't believe it will at this juncture. But we do live in a highly sophisticated, computerized world with this flash trading, as it is called—''high frequency trading,'' as it is referred to—where literally within microseconds buyers and sellers are matched up. What the system doesn't accommodate for is panic, unfortunately, and apparently the circuit breakers necessary in market-wide exchanges to minimize these kinds of events when they occur and also events that occur in a small country in the Mediterranean—such as Greece or Portugal or Spain or other countries—where their debt situations pose risks globally.

So what is critically important, in my view, is, while our legislation before us it not going to stop crises from occurring, what we try to do is provide our government with the necessary tools so we can respond when crises occur. No one can stop the rain from coming. It will happen. It will happen again and again. What you can do, however, is make sure the roof is going to be solid enough so it doesn't leak or that you are not going to be in a situation where, when things break down in the next crisis, no matter how modest it may be, it endangers the job creation as we saw in this country—as we are today seeing massive losses occurring, retirement accounts declining. The value of homes has gone down some 30 percent in the last several years. Again, there are some indications that things are improving here at home, and we welcome that news. But if you are one of those 8.5 million who lost a job or home or if you are a retiree who watched your savings disappear overnight, as many did in this country, then this positive news, while it is welcome, is hardly any relief to you.

So it is critically important because we are in no better shape today despite advances and the progress we have made on this bill. If something were to happen tonight or tomorrow in our own country or something happened elsewhere that would have the contagion effect, it is called, to spread here or elsewhere, we have not yet passed this legislation. We don't have any more provisions in place than we did in the fall of 2008 when the problems exploded. While we have written strong provisions in this bill that never would allow an institution to become too big to fail, the fact is that has only been adopted in a bill that has yet to be passed in this body, yet to be reconciled with the language from the other Chamber in this Congress and to be signed into law by the President.

It is important that we get this job done. We have had a good debate up until now. With the guidance of our leadership, we will begin tomorrow to consider some amendments, allowing for some adequate debate—hopefully not too long on each of these ideas. And there are a lot of ideas we have, both Democrats and Republicans. We can have our votes on these matters and either include them or exclude them on the legislation. But we need to get this job done, I hope this week—at the very latest, the end of this week—so we can work with the other body and resolve the differences and get this legislation to the President.

I would be the last one to suggest that what we have written here takes care of every imaginable situation. It doesn't at all. What it does is it ends too big to fail and puts in place a consumer protection bureau that has never existed before in our Nation so that average citizens might have some redress when a mortgage broker or company takes advantage of them. We try to put in place an early warning system so when matters like those that happened in Europe or other places occur, we can respond to them early and adequately so they don't explode and expand to affect everyone else in economy. We also deal with some of these exotic instruments that were totally unregulated and operated in the shadow economy of our Nation.

There are other provisions in the bill, but those are the four at least major goals. As I said a moment ago, I know there are other circumstances people wanted to accommodate in this legislation. But, as my colleague from New Hampshire pointed out the other day, some of these other issues are so complex, they will need adequate study, and trying to sort of hurl them into this bill or eliminate things without any alternative being proposed is not exactly the wise way to be dealing with matters as important as the financial sector of our Nation.

I am grateful to our colleagues for what they have done already. As many have pointed out, this has been a worthwhile process. It has taken a long time considering the implications—none of us, obviously, want to have the so-called unintended consequences. No matter how good we think our ideas are, we need to make sure what we are doing is not going to provoke its own set of difficulties.

We have to finish our work on this legislation, not just in recognition of what has happened but in preparation for what may happen next. As we have seen in recent days, the shocks to our system are as inevitable as rainfall. Throughout Europe, as we have seen, countries are bracing for the effects of the Greek crisis, effects which respect no boundaries and offer no safe haven for anyone. Right here at home, our market stumbled, as we saw last week with our stock market tumbling hundreds of points before righting itself.

Again, as I made reference to a moment ago, the rain is coming, but we need to fix our roof so we don't all suffer as a result of the inevitability of rain. The issues raised by the crisis in Greece and last week's stock market scare require our attention—and they have it.

I have asked Senator JACK REED of Rhode Island, who chairs the subcommittee dealing with the Securities and Exchange Commission, to prepare for hearings on the stock market issue so we can get to the bottom of what happened.

As I mentioned, our staff is working to ensure our government does its part to help contain the crisis in Europe—at least to watch it and determine whether there are any spillover effects. But these events are reminders that our work on this legislation must look through the windshield at the crises to come, not just in the rearview mirror at the one from which we are now just emerging. They are a further reminder that our work does not end with this legislation.

I urge my colleagues to join us in making a final push to get this bill done so we can move on to those other emerging issues. When we do, we can face these challenges with the knowledge that we have strengthened our financial system; that although we cannot prevent crises from occurring, we can prepare for them so their effects are not felt by ordinary Americans to the extent they have been in the last number of years. That is all we are really trying to do. I always get uneasy when I hear authors of bills claim they are going to solve every problem known to mankind in that issue area. We are not, unfortunately. We do the best we can under the circumstances.

Again, last Thursday's and the weekend's events are a constant reminder that we live in an ever-shrinking world and we are affected by events far beyond our shores. It is not just because some company did something wrong. It can happen far away and yet have implications here. But we need to make sure the next generation will have tools on hand so they can spot problems early on and take steps to minimize their effects here at home when they occur. That is the goal of this bill. It is not an insignificant one; it is an important one.

I thank my colleagues. They have been extremely constructive and thoughtful over the last week or so. We had a good weekend. A lot of people stepped forward, and we were able to work out some language that I think will allow various provisions to be adopted. More work needs to be done, but I am confident we can achieve that goal.

I would be remiss if I didn't acknowledge once again my thanks to the Presiding Officer, a new Member of this body and the banking committee but he has made invaluable contributions to this product. While not a chairman of even a subcommittee yet, he has acted as a very senior Member in many ways because of the knowledge he has brought to this discussion and debate. That has been, as I said, invaluable to this chairman of the committee, and I thank him personally for his efforts in that regard.

I see my friend and colleague from Maine, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, I rise today to speak on behalf of an amendment I filed to direct regulators to impose tough risk- and size-based capital standards on financial institutions as they grow in size or engage in risky business practices. I am pleased to offer this amendment on behalf of Senator SHAHEEN and myself.

Our amendment is aimed at addressing the too-big-to-fail problem at the root of the current crisis by requiring financial firms to have adequate amounts of cash and other liquid assets to survive financial crises without turning to the taxpayers for a bailout. It is critical to our ability to avoid future crises that this amendment be adopted.

I am very pleased that the FDIC Chairman, Sheila Bair, has strongly endorsed our amendment. In a recent letter to me, Chairman Bair called this proposal:

> . . . a critical element to ensure that U.S. financial institutions hold sufficient capital to absorb losses during future periods of financial stress. With new resolution authority, taxpayers will no longer bail out large financial institutions. This makes it imperative that they have sufficient capital to stand on their own in times of adversity.

Chairman Bair also noted the importance of ensuring that bank holding companies and large nonbanks are held to the same capital and risk standards that are applied to insured banks in order to protect against excessive leverage that could destabilize our financial system. As Chairman Bair put it, ''The amendment accomplishes this goal simply and directly.''

It makes no sense that capital and risk standards for our Nation's largest financial institutions are more lenient than those that apply to small depository banks, when the failure of larger institutions is much more likely to have a broad economic impact. Yet that is currently the case. We must give the regulators the tools to end and the direction to address this problem. If financial firms, including bank holding companies, were required to meet stronger capital standards, they would be far less likely to fail and to trigger the kind of cascade of economic harm we have been experiencing since 2008.

The Collins-Shaheen amendment directs Federal regulators to impose minimum leverage and risk-based capital requirements on banks, bank holding companies, and those nonbank financial firms identified by the new Financial Stability Oversight Council for supervision by the Federal Reserve. Neither current law nor the bill before us requires regulators to adjust capital standards for risk factors as financial institutions grow in size and engage in risky practices.

The current Senate financial regulatory reform bill also does not require regulators to apply minimum capital and risk measures across financial institutions, as would be required by our amendment. As the FDIC Chairman has noted about the current financial crisis, ''Far from being a source of strength to banks . . . holding companies became a source of weakness, requiring financial support.''

She went on to caution that ''they should not be allowed to operate under consolidated capital requirements that are numerically lower and qualitatively less stringent than those that apply to insured banks.''

Our amendment would tighten the standards that would apply to larger financial institutions by requiring them to meet, at a minimum, the standards that already apply to small banks. This only makes sense. If a small bank fails, the FDIC can close down that bank over a weekend, allow it to operate, avoid a run on the bank, and deal with it in an orderly way. But if a large bank holding company fails, it is so interconnected in our economy that it sets off a cascade of dire economic consequences. That was the point that the chairman of the Banking Committee was just making. We live in such an interconnected global financial system now.

So, from my point of view, a view that is shared by the Chairman of the FDIC, it is only prudent for us to empower the regulators to impose, at a minimum, the same kinds of capital and leverage requirements and restrictions that apply to small insured banks.

I ask unanimous consent that the letter from Chairman Bair be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Ms. COLLINS. I had the privilege of serving the people of Maine as a financial regulator for 5 years about 20 years ago. This is an issue about which I care deeply and am committed to helping forge a solution to, so that never again can the problems and the excesses of Wall Street have such dire consequences for Main Street.

Increasing capital requirements as firms grow provides a disincentive to their becoming too big to fail in the first place, and ensures an adequate capital cushion in difficult economic times. Our amendment directs the regulators to establish capital standards that take size and risk into account.

Our amendment strengthens the economic foundation of large financial firms, increases oversight and accountability, and helps prevent the excesses that contributed to a deep recession that has cost millions of Americans their jobs.

Let me conclude by thanking the chairman of the Banking Committee and the ranking member of the Banking Committee and members such as the Presiding Officer and Senator CORKER and Senator GREGG for their work on this very complex issue. More than a year ago I introduced a financial regulatory reform bill. I had the pleasure of discussing the bill with the chairman of the Banking Committee, and I am pleased with much of what is in his bill at this point in the debate.

I hope we can continue to make further changes, such as the amendment I have proposed with Senator SHAHEEN, but I do want to salute the members of the Banking Committee. I know this is enormously complex and, at times, a thankless task. But it is so important. In fact, I argued that we should have dealt with financial regulatory reform last year. I think it is that important to the future of our economy. We realize we were operating with regulatory black holes that allowed, for example, trillions of dollars of credit default swaps to develop with no one having oversight or visibility as far as their impact on the financial market.

They were not regulated as insurance, even though I personally believe they act as an insurance product, nor were they regulated by the banking regulators. The creation of the Council of Regulators in this bill has not received a great deal of discussion, but I think it is one of the most important provisions in this reform, and it is one that has widespread bipartisan support. It was the key feature of the bill I introduced last year. I have discussed it with the Presiding Officer as well.

I personally still believe we need an independent chairman of that council rather than the Secretary of the Treasury. I think we need to broaden the makeup of the council to include some State regulators so that the insurance area is covered, and State securities administrators, since they play such a critical role. I think those State regulators should be brought on to the council in a nonvoting capacity given the constitutional issues. But that council is absolutely critical. I think we should add the regulator for credit unions to that council. What we want is a council with as broad an overview as possible, bringing together everyone who has a role so we do not have these regulatory gaps, these black holes developing in the future, and so that we can bring the collective wisdom of these officials to the table.

So that is an example of a provision of this bill that I think is extraordinarily important. But perhaps because it does have widespread support, it has not generated much discussion on this floor. So I wanted to mention that and salute the committee for what I think is a provision that is going to make a real difference in preventing the kinds of problems we saw that triggered the recession of 2008.

I also want to commend Senator LEVIN and Senator COBURN for their work on the Permanent Subcommittee on Investigations, the Senate's premiere investigative subcommittee which is part of the Homeland Security Governmental Affairs Committee which Senator LIEBERMAN and I have the privilege of leading. They have given us great insight into the role of everyone from sloppy mortgage brokers and bankers who threw underwriting standards out the window and made loans that never should have been made to people who could not possibly repay them.

They have looked at the role of credit rating agencies that also did not perform in the way we would like. They have looked at the role of investment banks such as Goldman Sachs. We need to take the lessons we have learned, the great depth of knowledge in this body, and work together in a bipartisan way. That is what we have been doing in the last couple of weeks.

In closing, let me just say, we have made a lot of progress. I am confident we can get there. Let's not pull the plug on this debate prematurely. There are a lot of amendments that are good-faith amendments that are still out there. Let's work through them and continue to strengthen and improve this bill which has so many excellent features to it.

At the end of the day, I hope we can vote on a bill that will command the support of 70 Members of this body. I would like it to be all 100, but let's aim for 70. In doing so we can demonstrate to the American people that we can come together and work on an issue that really matters—matters to our economy, to the American homeowners, to our small businesses, to anyone who has a retirement account. It matters to every American.

I yield the floor.

EXHIBIT 1

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, May 7, 2010.

Hon. SUSAN M. COLLINS,
Ranking Minority Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR COLLINS: I am writing to express my strong support for your amendment number 3879 to ensure strong capital requirements for our nation's financial institutions. This amendment is a critical element to ensure that U.S. financial institutions hold sufficient capital to absorb losses during future periods of financial stress. With new resolution authority, taxpayers will no longer bail out large financial institutions. This makes it imperative that they have sufficient capital to stand on their own in times of adversity.

During the crisis, FDIC-insured subsidiary banks became the source of strength both to the holding companies and holding company affiliates. Far from being a source of strength to banks as Congress intended, holding companies became a source of weakness requiring federal support. If, in the future, bank holding companies are to become sources of financial stability for insured banks, then they cannot operate under consolidated capital requirements that are numerically lower and qualitatively less stringent than those applying to insured banks. This amendment would address this issue by requiring bank holding companies to operate under capital standards at least as stringent as those applying to banks.

The crisis also demonstrated the dangers of excessive leverage undertaken by large nonbanks outside of the scope of federal bank regulation. Notable examples included the excessive leverage of the largest investment banks during the run-up to the crisis, and the extremely high leverage of Fannie Mae and Freddie Mac. To remedy this and prevent regulatory gaps and arbitrage, large nonbank financial institutions deemed to be systemic must be held to the same, or higher, capital standards as those applying to banks and bank holding companies. Again, the amendment accomplishes this goal simply and directly.

Finally, and more broadly, the crisis identified the dangers of a regulatory mindset focused exclusively on the soundness of individual banks without reference to the "big picture." For example, an individual overnight repo may be safe, but widespread financing of illiquid securities with overnight repos left the system vulnerable to a liquidity crisis. A financial system-wide view requires regulators, working in conjunction with the new Financial Services Oversight Panel, to develop capital regulations to address the risks of activities that affect the broader financial system, beyond the bank that is engaging in the activity.

We at the FDIC remain committed to working with you towards a stronger financial system. This amendment will be an important step in accomplishing this goal.

If you have further questions or comments, please do not hesitate to contact me or Paul Nash, Deputy for External Affairs.

Sincerely,

SHEILA C. BAIR,
Chairman.

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

Mr. DODD. Before my friend and fellow New Englander leaves the floor, let me thank her for her comments, but also let me thank her for this whole notion of leverage and capital standards as well. It is something we feel equally strongly about.

We have provisions in the bill, but anything can be strengthened. We are very interested in the idea that the Senator from Maine and Senator SHAHEEN have brought to the table, and invite, at this moment, their staff and others to get with ours and take a look and see if we cannot—and I will talk to Senator SHELBY as well because it is important.

There has been some debate, and I go back and forth in this regard. I have always resisted the idea that the Senate should set accounting standards. We have had some times in the past on stock options—I recall a few years ago the debate was whether we would set the accounting standard on stock options.

I thought there was a very persuasive argument made by the industry that pointed out that we should probably consider them as a tool to attract, particularly, startup companies. But as attracted as I was to their ideas, I did not want to open the box of beginning to set accounting standards in Congress. We have competency here, but sometimes we get beyond our competency.

The issue was sort of the same on capital leverage, that we have to have stronger leverage and capital standards. The debate is, should we actually set the leverage here or do we say we want strong standards and defer to our regulators to determine exactly what that standard ought to be? Clearly, we need to have better leverage and better capital standards. If we do not, these large institutions—my colleague from Maine is absolutely correct in this regard, that we will end up then having these institutions that are interconnected. If we do not demand greater accountability through that requirement, then we expose ourselves to the very kinds of things we are seeing elsewhere.

So I thank her for this, and over the next day or so let's see if we can take a look at the Senator's amendment and adopt it as well. I thank her for her ideas as well on the oversight council we have crafted. Actually, many of us like the idea of having an independent chair. We had this debate.

The Secretary of the Treasury was not my first choice, the independent chair—but as my colleague from Maine knows, having chaired committees, when you are trying to get a committee to agree on something, the idea is the one that prevailed—having the Secretary of the Treasury was the one that prevailed, as the Presiding Officer will recall in those discussions. But, clearly, as to the idea of having the credit unions, the Senator makes a lot of sense. It is a major part of our economy, and having the State regulators at least represented at that table makes sense to me as well.

So maybe before this is over we can accommodate some of those additional ideas. But I thank the Senator immensely for her contribution, and I appreciate, as well, that she understands how long and arduous this has been to get to the best we can. When we have 100 of us here dealing with something of this magnitude, it is harder to put that together. But we are getting there. And I agree with her that we ought to be able to finish. It does not mean we are going to satisfy everyone, and it cannot go on forever, but we certainly ought to accommodate as many different ideas as we can and make our judgments on them to include them in the bill.

I thank her immensely for her contribution.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, as the debate over Wall Street enters a pivotal stage, we should ask ourselves, what is financial regulatory reform about? We all agree that one of the main objectives of the legislation is to ensure taxpayers will no longer be forced to bail out or subsidize financial institutions that engage in risky behavior. That means ending so-called too big to fail. Unfortunately, the legislation we are now considering does not mention the two institutions that have come to epitomize too big to fail. I am referring to the two government-sponsored enterprises, the so-called GSEs, Fannie Mae and Freddie Mac, which are currently in Federal conservatorship. The egregious behavior of these two institutions has rippled throughout the entire commercial banking sector and our economy as a whole.

Let's recall how central the two GSEs were to the housing bubble. Fannie and Freddie represent the dangers of what former American Enterprise Institute president Chris DeMuth has described as ''fusion enterprise,'' or the ''intermingling of politics and power with finance and commerce.'' This is a perverse business model that allows companies to reap enormous private profits while enjoying either implicit or explicit public backing. It is the model that enabled Fannie and Freddie to inflate the subprime mortgage bubble.

For years some of my colleagues and I have urged this Chamber to impose stronger regulations on Fannie and Freddie. As chairman of the Senate Republican Policy Committee, I authored several papers on the threats posed by the size of their mortgage-backed securities portfolios. I was particularly concerned that the government's implicit guarantee of these institutions permitted them to operate without adequate capital, to assume more risk than competing financial institutions, and to borrow at a below-market rate of interest. Of course, that is just what happened. Smaller companies got crushed while Fannie and Freddie engaged in increasingly risky lending with the backing of the Federal Government. Wall Street understood how it worked. So when Fannie and Freddie wanted these toxic loans, the mortgage markets would produce them. Between 2004 and 2007, Fannie and Freddie became the largest buyers of subprime and Alt-A mortgages. And although these two institutions had their own dedicated regulator, the Office of Federal Housing Enterprise Oversight still allowed the situation to spiral out of control. Fannie and Freddie made mortgages available to too many people who could not afford them. That easy credit fueled rapidly rising home prices. As prices rose, so did also the demand for even larger mortgages, so Fannie and Freddie looked for ways to make even more mortgage credit available to borrowers with a questionable ability to repay.

By 2008, the two GSEs held nearly $5 trillion in mortgages and mortgage-backed securities. They were overleveraged and too big to fail. It was a textbook example of moral hazard on a massive scale. ''Worst of all,'' M&T Bank CEO Robert Wilmers recently wrote in the Wall Street Journal, ''are the tracts of foreclosed homes left behind by households lured into inappropriate mortgages by the lax credit standards made possible by Fannie Mae and Freddie Mac.''

Congress would have done well to support a bill adopted by the Banking Committee in 2005 under then-Chairman Shelby. The bill would have established a new regulator for Fannie and Freddie and given that regulator authority to make sure the GSEs maintained adequate amounts of capital, had adequately liquidity and reserves, properly managed their interest rate risk, and controlled their asset investment portfolio growth. But the legislation was filibustered. Its opponents included then-Senator Obama.

As American Enterprise Institute scholar Peter Wallison, who has written extensively on this topic, concluded:

> If legislation along the lines of the Senate committee's bill had been enacted in that year, many, if not all, the losses that Fannie and Freddie have suffered, and will suffer in the future, might have been avoided.

But, of course, we didn't avoid that fate. And today, Fannie and Freddie continue to impose on the taxpayers while accruing massive debt. In fact, their total debt outstanding, the debt held on their balance sheets or as mortgage security guarantees, is an astounding $8.1 trillion. This is debt that is not reflected on the national balance sheet. Last Wednesday, Freddie Mac announced it will need an additional capital injection of $10.6 billion. That is from the taxpayers. That is after it lost $6.7 billion during the first quarter of this year. In 10 of the last 11 quarters, Freddie Mac has lost a total of $82 billion which is twice the amount it earned over the previous 30 years.

This morning it was reported that Fannie too has asked taxpayers for more money, $8.4 billion, to cover its soaring losses. The combined government loss for both companies now stands at $145 billion, according to the Associated Press. Where will this end? Weren't we supposed to end taxpayer liability for entities too big to fail?

The McCain amendment, which we will be voting on hopefully tomorrow, will provide us with another opportunity to target the problems caused by Fannie and Freddie. The McCain amendment would end the conservatorship within 2 years and place both companies into receivership if they are not viable. It would also reduce the companies' mortgage holdings over the next 3 years, reimpose restrictions on the size of the mortgages they can buy, and force them to pay State and local taxes just as private companies do.

As the Wall Street Journal editorialized Thursday:

> If the housing giants are no longer subsidized, they will become small enough to fail. That means they will stop lending money to people who can't pay them back, and in turn, they will stop endangering taxpayers. This is a genuine anti-bailout vote.

They were referring to the McCain amendment.

Let's be clear. Every day Fannie and Freddie remain in their current form is a day U.S. taxpayers are subsidizing their activities. Financial regulatory reform must include a restructuring of Fannie Mae and Freddie Mac. That is why I urge my colleagues to support the McCain amendment tomorrow and end too big to fail.

I ask unanimous consent to have printed in the RECORD the Wall Street Journal editorial titled ''What About Fan and Fred Reform?'' by Robert G. Wilmers, to which I referred.

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

[From the Wall Street Journal]

WHAT ABOUT FAN AND FRED REFORM?

(By Robert G. Wilmers)

Congress may be making progress crafting new regulations for the financial-services industry, but it has yet to begin reforming two institutions that played a key role in the 2008 credit crisis—Fannie Mae and Freddie Mac.

We cannot reform these government-sponsored enterprises unless we fully confront the extent to which their outrageous behavior and reckless business practices have affected the entire commercial banking sector and the U.S. economy as a whole.

At the end of 2009, their total debt outstanding—either held directly on their balance sheets or as guarantees on mortgage securities they'd sold to investors—was $8.1 trillion. That compares to $7.8 trillion in total marketable debt outstanding for the entire U.S. government. The debt has the implicit guarantee of the federal government but is not reflected on the national balance sheet.

The public has focused more on taxpayer bailouts of banks, auto makers and insurance companies. But the scale the rescue required in September 2008 when Fannie and Freddie were forced into conservatorship—their version of bankruptcy—was staggering. To date, the federal government has been forced to pump $126 billion into Fannie and Freddie. That's far more than AIG, which absorbed $70 billion of government largess, and General Motors and Chrysler, which shared $77 billion. Banks received $205 billion, of which $136 billion has been repaid.

Fannie and Freddie continue to operate deeply in the red, with no end in sight. The Congressional Budget Office estimated that if their operating costs and subsidies were included in our accounting of the overall federal deficit—as properly they should be—the 2009 deficit would be greater by $291 billion.

Worst of all are the tracts of foreclosed homes left behind by households lured into inappropriate mortgages by the lax credit standards made possible by Fannie Mae and Freddie Mac and their promise to purchase and securitize millions of subprime mortgages.

All this happened in the name of the ''American Dream'' of home ownership. But there's no evidence Fannie and Freddie helped much, if at all, to make this dream come true. Despite all their initiatives since the early 1970s, shortly after they were incorporated as private corporations protected by government charters, the percentage of American households owning homes has increased by merely four percentage points to 67%.

In contrast, between 1991 and 2008, home ownership in Italy and the Netherlands increased by 12 percentage points. It increased by nine points in Portugal and Greece. At least 14 other developed countries have home ownership rates higher than in the U.S. They include Hungary, Iceland, Ireland, Poland and Spain.

Canada doesn't have the equivalent of Fannie and Freddie. Nor does it permit the deduction of mortgage interest from an individual's taxes. Nevertheless, its home ownership rate is 68%. Canadian banks have weathered the financial crisis particularly well and required no government bailouts.

This mediocre U.S. home ownership record developed despite the fact that Fannie and Freddie were allowed to operate as a tax-advantaged duopoly, supposedly to allow them to lower the cost of mortgage finance. But a great deal of their taxpayer subsidy did not actually help make housing less expensive for home buyers.

According to a 2004 Congressional Budget Office study, the two GSEs enjoyed $23 billion in subsidies 2003—primarily in the form of lower borrowing costs and exemption from state and local taxation. But they passed on only $13 billion to home buyers. Nevertheless, one former Fannie Mae CEO, Franklin Raines, received $91 million in compensation from 1998 through 2003. In 2006, the top five Fannie Mae executives shared $34 million in compensation, while their counterparts at Freddie Mac shared $35 million. In 2009, even after the financial crash and as these two GSEs fell deeper into the red, the top five executives at Fannie Mae received $19 million in compensation, and the CEO earned $6 million.

This is not private enterprise—it's crony capitalism, in which public subsidies are turned into private riches. From 2001 through 2006, Fannie and Freddie spent $123 million to lobby Congress—the second-highest lobbying total (after the U.S. Chamber of Commerce) in the country. That lobbying was complemented by sizable direct political contributions to members of Congress.

Changing this terrible situation will not be easy. The mortgage market has come to be structured around Fannie and Freddie and powerful interests are allied with the status quo. I recall a personal conversation with a member of Congress who, despite saying he understood my concerns about the two GSEs, admitted he would never push for significant change because ''they've done so much for me, my colleagues and my staff.''

Nonetheless, Congress must get to work on the reform of Fannie Mae and Freddie Mac. A healthy housing market, a healthy financial system and even the bond rating of the federal government depend on it.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. CRAPO. Mr. President, I stand today to discuss the McCain amendment as well. We have had a lot of debate about the financial regulatory legislation before us. A lot of the debate has focused on the content of the bill, with concerns being raised by some such as myself about whether we truly are ending too big to fail and truly are ending bailouts and whether we are going too far in creating yet again a big government response to an issue that needs to have a more effective response rather than more government, a response that will hammer Main Street, not Wall Street, and create yet again another big expansion of government in this Congress. We have seen way too much of that in way too many parts of our economy so far, and some of us are concerned about that.

But what I want to talk about today is what is noticeably absent in the bill; that is, the reform of Fannie Mae and Freddie Mac, our government-sponsored entities—actually, our government-managed entities now—and the fact that these entities are at the core of the financial crisis we are dealing with and yet are not even touched by this legislation.

Americans remain rightly outraged that their tax dollars were used to bail out irresponsible Wall Street firms and auto companies. I have voted against these bailouts, and I have been working with my colleagues to make sure we do not set the stage for yet more government bailouts. The most expensive government bailouts of all, however, will be those of Fannie Mae and Freddie Mac—the largest housing lenders that purchased home loans, packaged them into investments, and then guaranteed them against default.

I think a little history of how we got to where we are is appropriate. Congress chartered Fannie Mae and Freddie Mac to provide access to home financing by maintaining liquidity in the secondary market. According to Peter Wallison of the American Enterprise Institute:

> Their implicit, or assumed, government backing enabled them to drive all competition out of the middle-class housing sector, permitting Fannie and Freddie to acquire over $5 trillion in mortgages, which they either held in portfolios totaling approximately $1.5 trillion or securitized as mortgage backed securities.

Continuing his quote:

> In pursuing their mission to support low and middle-income housing—also called affordable housing—Fannie and Freddie assumed the credit risk on almost 11 million subprime and other high-risk mortgages and contributed substantially to the growth of a housing bubble. When the bubble began to deflate in 2007, they began to suffer huge losses.

But I want to go back and talk a little bit about the history before 2007, when it became evident to everyone what was happening to Fannie Mae and Freddie Mac in our housing markets, because it did not just become known then. As my colleague, Senator SESSIONS, has already mentioned on the floor today in his earlier remarks, the Banking Committee was heavily engaged in reviewing this issue for several years leading up to this, as was the Office of Federal Housing Enterprise Oversight at HUD and the Fed and a number of other analysts.

Senator SESSIONS quoted a letter. I believe it was from then-Chairman Greenspan of the Fed, who noted we needed to put focus on Fannie and Freddie then—this was back in the 2004 to 2005 timeframe—and that if we did not establish much tighter regulatory control over Fannie and Freddie, their excesses were going to create systemic risk that would put the taxpayer in extreme jeopardy.

The committee itself focused very heavily on this same dynamic. In May of 2006, we had established legislation that would have, had it been able to be passed on the floor of this Senate, created a strong, new regulator for Fannie Mae and Freddie Mac and begun the process of setting the right capital standards and the right regulatory environment in which we could control this excessive growth and set the process in place for us to take Fannie Mae or Freddie Mac into receivership or into trust if they eventually failed, as it began looking as if they would.

The Office of Federal Housing Enterprise Oversight completed a multiyear special examination of Fannie Mae and issued a report describing OFHEO's findings and recommendations in May of 2006. OFHEO found the following:

Fannie Mae senior management promoted a false image of the enterprise as one of the lowest risk financial institutions in the world.

A large number of Fannie Mae's accounting policies and practices did not comply with generally accepted accounting principles.

Fannie Mae had serious problems of internal control, financial reporting, and corporate governance, resulting in Fannie Mae overstating reported income and capital.

Between 1998 and 2004, Fannie Mae senior management deliberately and intentionally manipulated accounting to hit earnings targets so that senior management maximized the bonuses and other executive compensation they received.

Fannie Mae's board of directors failed to be sufficiently informed, to act independently of its chairman and other senior executives, and to exercise the requisite oversight over the enterprise's operations.

And then the final finding of the report: Despite rapid growth and changing accounting and legal requirements, Fannie Mae senior management did not make investments in accounting systems, computer systems, other infrastructure and staffing needed to support a sound internal control system, proper accounting, and GAAP-consistent financial reporting.

Again, as a result of these findings and of an increasing awareness of the threat that was being posed by the excesses at Fannie Mae and Freddie Mac, the Banking Committee, on which I served then and still serve, developed legislation to address these very excesses and to create the kind of regulatory structure in which we could control these problems.

Along with 26 of my colleagues, in May of 2006 I signed a letter to then-majority leader Bill Frist and to the chairman of the Banking Committee then, Senator RICHARD SHELBY. In the letter, we stated:

> We are concerned that if effective regulatory reform legislation for the housing-finance government sponsored entities is not enacted this year—

Remember, this is 2006—

> American taxpayers will continue to be exposed to the enormous risk that Fannie Mae and Freddie Mac pose to the housing market, the overall financial system, and the economy as a whole. Therefore, we offer you our support in bringing the Federal Housing Enterprise Regulatory Reform Act (S. 190) to the floor and allowing the Senate to debate the merits of this bill, which was passed by the Senate Banking Committee.

I might note that when we debated this bill back in 2006, it came out on a straight party-line vote from the Banking Committee—all the Republicans voting for it, all the Democrats opposing it.

As history shows us, we never were able to get that bill to the floor because although we had 55 Republican votes, it takes 60 votes to move legislation on the floor of the Senate in the face of filibusters, and that bill was filibustered. We were not able to get the additional support to get it past the filibuster.

I would like to quote from a recently written editorial about this chapter of the Fannie Mae-Freddie Mac history. Peter Wallison, in an April 20, 2010, editorial in the Wall Street Journal, wrote:

> One chapter in this story took place in July 2005, when the Senate Banking Committee, then controlled by the Republicans, adopted tough regulatory legislation for the GSEs on a party-line vote. . . . The bill would have established a new regulator for Fannie and Freddie and given it authority to ensure that they maintained adequate capital, properly managed their interest rate risk, had adequate liquidity and reserves, and controlled their asset and investment portfolio growth.
>
> These authorities were necessary to control the GSEs' risk-taking, but opposition by Fannie and Freddie—then the most politically powerful firms in the country—had consistently prevented reform.

He goes on to say:

> The date of the Senate Banking Committee's action is important. It was in 2005 that the GSEs—which had been acquiring increasing numbers of subprime and Alt-A loans for many years in order to meet their HUD-imposed affordable housing requirements—accelerated the purchases that led to their 2008 insolvency. If legislation—

And this is the key part of the editorial—

> along the lines of the Senate committee's bill had been enacted in that year, many if not all the losses that Fannie and Freddie have suffered, and will suffer in the future, might have been avoided.

What happened was the bill was stalled. Fannie and Freddie collapsed. When it became evident the losses were going to occur, there was a rush on the floor of the Senate to get back to that bill, and in 2008 the bill passed—after the horse was out of the barn. At least, though, we did get it passed in 2008, and Fannie and Freddie were taken into conservatorship.

Where are we now? The Congressional Budget Office has estimated that in the wake of the housing bubble and the unprecedented deflation in housing values that resulted, the government's cost to bail out Fannie Mae and Freddie Mac will eventually reach $381 billion. As we talk on this floor about bailouts, this is the biggest bailout of all. It exceeds, in fact, all of the other bailouts together, by far. Yet it is unlimited. I mean that literally.

Last Christmas Eve, in what was considered by many to be a Christmas Eve taxpayer massacre, the Treasury Department announced it was lifting the $400 billion loss cap on these two companies, creating a potentially unlimited liability and effectively providing the full faith and credit of the government to support their debt.

To date, the Federal Government has already provided about $126 billion to $130 billion to Fannie and Freddie. As I just indicated, the Congressional Budget Office estimates that will ultimately top $380 billion, and many believe that is a conservative number—direct taxpayer bailouts that are not even mentioned in this bill.

It reminds me of the fight back in 2005 when we were trying to get the legislation to reform Fannie and Freddie passed then, and here we are knowing what we need to do—seeing these bailouts, knowing the American taxpayers want those bailouts to stop—and we are being resisted in trying to bring an amendment just to add Fannie Mae and Freddie Mac—GSE—reform to the bill.

Last week, Freddie Mac announced it had lost $8 billion, as others on the floor have just said, in the first quarter and has requested another $10.6 billion to add to this mounting bailout.

As the government has pledged more and more money to cover these companies' losses, it has assured the public that planning is underway for overhauling these firms so that the bailouts will end. In December, the administration said it expected to release a preliminary report on how to remake Fannie and Freddie around February 1. But February 1 has come and gone, and no plan has been provided, and now we are being told it will be another year before the government proposes how to restructure these firms. Eighteen months after they were seized to prevent their collapse, the companies remain wards of the state in what has become the single costliest component of bailouts in our financial system.

In September of 2008, the Federal Housing Finance Agency placed Fannie Mae and Freddie Mac into that conservatorship I talked about, which allows the regulator to establish control and oversight of a company to put it in a sound and solvent condition. Since being placed in conservatorship, Fannie Mae and Freddie Mac have actually become a bigger part of the market, which will make reform of them even more difficult. Last quarter, Fannie Mae and Freddie Mac were responsible for funding two-thirds of all U.S. home loans. That is primarily because there is nobody else able to play in the markets these days, except for these government—now completely government—controlled and financed entities. When you add in the Federal Housing Administration, the U.S. Government is behind 96.5 percent of all loans.

What we have seen here is literally another government takeover. We have seen the government take over in the health care industry. We have seen the government take over in the auto industry. We have seen the government takeover of AIG and the insurance industry. We have seen the government take over in multiple parts of our financial industries and a greater government takeover being proposed in this bill. Yet we have the literal government control and management of Fannie Mae and Freddie Mac going unabated and unaddressed in the legislation that is before us.

What does the legislation do?

The longer Fannie Mae and Freddie Mac are allowed to operate in their current role—as political rather than business entities—the greater the financial losses will be for taxpayers and, frankly, the greater the risk they will simply continue endlessly in government control and government management, with the government managing yet one other big part of our economy perpetually.

That is why the McCain amendment requires the current conservatorship of the companies to end in the next 2½ years and begin the process of shrinking their portfolios. If the companies are not viable at the end of that period, they would be placed into receivership, which is a form of bankruptcy restriction.

Without a hard deadline, I am very concerned Congress will not act and, just like back in 2005, we will find gridlock here in the Senate stopping us from moving forward and be left with a nationalized Fannie Mae and Freddie Mac.

The amendment would also reestablish the $200 billion cap and accelerate the 10-percent reductions of the mortgage portfolios, effectively requiring the companies to shrink those portfolios by holding a combined $100 billion from their current levels. This will also limit the losses taxpayers will face as a result of the blank check given by the administration in lifting all caps on December 24 of last year.

It also includes Fannie Mae and Freddie Mac as a part of the Federal budget as long as either institution is under conservatorship or receivership. This is going to show the American people the true picture of how much of our national debt has increased by the bailout of these institutions.

As an aside here, as most people probably did not realize, the Senate Budget Committee recently acted on a proposed budget for the Congress this year. We were supposed to have declared and created a budget for us to operate under months ago, but because of, I think, an unwillingness to literally put it out there—how much money this government is spending—the committee and the Senate have not acted on a budget yet. But the Budget Committee actually did finally act on one. I didn't vote for it. It is more spending—trying to spend ourselves into prosperity again as the last budget was—but at least we acted.

In that Budget Committee process, I brought forth an amendment to require that Fannie Mae and Freddie Mac debt be added to our national debt calculations. Why would I do that? According to the Congressional Budget Office Director Douglas Elmendorf:

> After the U.S. Government assumed control in 2008 of Fannie Mae and Freddie Mac, two Federally-chartered institutions that provided credit guarantees for almost half—

and by the way, as I indicated, now it is two-thirds—

> of all the outstanding residential mortgages in the United States, the Congressional Budget Office concluded that the institutions had effectively become government entities whose operations should be included in the Federal budget.

So here we have the Director of the Congressional Budget Office saying we run these companies, we are financially backing these companies, we should at least include them in our budget.

The purpose of my amendment then—and the same language that is in this amendment on the floor today—is to include in the debt calculations of the budget resolution the debt obligations of Fannie Mae and Freddie Mac. This allows the American people to see a true picture of how much our national debt has been increased by the bailout of these institutions. At the end of calendar year 2009, per the financial statements, those figures are $774 billion for Fannie Mae and $781 billion for Freddie Mac, for a total of $1.555 trillion of debt. That is debt the United States holds today that is not being disclosed to the American public as part of our debt because of our interesting budget procedures.

To put into perspective how large these entities are, their combined total books of business are nearly $5.5 trillion. The Congressional Budget Office has estimated that in the wake of the housing bubble and the unprecedented deflation in housing values that resulted, the government's cost to bail out Fannie Mae and Freddie Mac, as I indicated earlier, will eventually reach $381 billion, and that estimate may be too optimistic.

I also already mentioned that last Christmas Eve the Treasury lifted the cap. We actually had a cap so that the taxpayer was at least protected at $400 billion. Last Christmas Eve—and I told my colleagues earlier some called it the ''Christmas Eve Taxpayer Massacre''—Treasury lifted that cap so there now is no limit to the amount of debt we will assume and pay for as taxpayers as a result of this bailout of Fannie Mae and Freddie Mac. According to a January 2010 CBO background paper entitled ''CBO's Budgetary Treatment of Fannie Mae and Freddie Mac,'' CBO:

> believes that the Federal Government's current financial and operational relationship with Fannie Mae and Freddie Mac warrants their inclusion in the budget.

By contrast, the administration has taken a different approach by continuing to treat Fannie Mae and Freddie Mac as outside the Federal budget, recording and projecting outlays equal to amounts of any cash infusions made by Treasury into the entities.

The Office of Management and Budget of the U.S. Government fiscal year 2011 states:

> Under the approach in the budget—

This is the President's budget—

> all of the GSEs' transactions with the public are nonbudgetary because the GSEs are not considered to be government agencies.

So we have the administration saying they are not considered to be government agencies, and, therefore, we aren't going to consider their debt and their financing, and we have the Congressional Budget Office saying they should be. CBO has included the GSEs in its budget baseline, but does not include the debt in its calculations because of their narrow view of how to calculate the Federal debt.

In light of all these facts, I think it is evident that we need to have transparency and we need to start telling the American people exactly what it means, that we have taken Fannie Mae and Freddie Mac into receivership, and that we are not going to put their finances in the Federal budget.

Going back to what the amendment we are debating here today does, in addition to putting Fannie Mae and Freddie Mac in the budget, it establishes a Senate-confirmed special inspector general within the Government Accountability Office with responsibility for investigating and reporting to Congress on decisions made with respect to the conservatorships of Fannie Mae and Freddie Mac, and this special inspector general would provide quarterly reports to Congress. There is no one politically accountable to the public for the operation of these multitrillion-dollar entities since the President has yet to nominate anyone to officially run the Federal Housing Finance Agency and the Office of Special Inspector General. The office of the Special Inspector General for the Troubled Asset Relief Program has done a good job to inform the public and Congress about TARP, and we should follow this model with Fannie Mae and Freddie Mac. It is not credible to say we are protecting the taxpayer and fixing mortgage financing and do nothing about Fannie Mae and Freddie Mac.

Let me conclude by reading from a couple of editorials. If you scan the news today about this issue, you will see editorials across this country. I think one of them said ''the silence on this issue is deafening.'' Others have said there is a huge hole in the legislation. The title of another one: ''Congress Remains Missing In Action on Two Key Causes of the Financial Crisis.''

I wish to read from one of the Wall Street Journal editorials on May 6 of this year. In part it says:

> One sign that the White House financial reform is less potent than its advertising claims is that it doesn't even attempt to reform the two companies at the heart of the housing mania and panic—Fannie Mae and Freddie Mac. So we are glad to see that yesterday GOP Senators John McCain, Richard Shelby, and Judd Gregg introduced a Fannie and Freddie reform amendment.

Going on, it says:

> The Financial Crisis Inquiry Commission spent yesterday focusing on financial leverage using Bear Stearns as an example. But Fannie Mae and Freddie Mac were twice as leveraged as Bear and much larger as a share of the mortgage market. Fan and Fred owned or guaranteed $5 trillion in mortgages and mortgage-backed securities when they collapsed in September of 2008.

This is a quote that has been read on the floor before, but it is exactly applicable.

Again, quoting the editorial:

Reforming the financial system without fixing Fannie and Freddie is like declaring war on terror and ignoring the al-Qaida. Unreformed, they are sure to kill the taxpayers again. Only yesterday—

this was on May 6—

Freddie said it had lost $8 billion in the first quarter—

which I have already mentioned.

Going on to another editorial, this one also in the Wall Street Journal by Robert Wilmers—and I quote just a part of it:

At the end of 2009, their total debt outstanding—either held directly by their balance sheets or as guarantees on mortgage securities they'd sold to investors—was $8.1 trillion. That compares to $7.8 trillion in total marketable debt outstanding for the entire U.S. Government. The debt has the implicit guarantee of the federal government but is not reflected on the national balance sheet.

The public has focused more on taxpayer bailouts of banks, auto makers and insurance companies. But the scale of the rescue required in September 2008 when Fannie and Freddie were forced into conservatorship—their version of bankruptcy—was staggering. To date, the federal government has been forced to pump $126 billion into Fannie and Freddie. That's far more than AIG, which absorbed $70 billion of government largess, and General Motors and Chrysler, which shared $77 billion. Banks received $205 billion, of which $136 billion has been repaid.

Fannie and Freddie continue to operate in the red, with no end in sight. The Congressional Budget Office estimated that if their operating costs and subsidies were included in our accounting of the overall deficit—as properly they should be—the 2009 deficit would be greater by $291 billion.

The point is simple. This bill is alleged to be focused on trying to solve the problem of bailouts. We will hear Senators on this floor say day in and day out that this bill will end bailouts and stop too big to fail. Yet the two largest enterprises which were at the core of the financial crisis are exempt from the provisions of the legislation. They are not even mentioned in the legislation. Apparently, they are too big to fail, because we in this Senate will not put them into a track of being resolved properly.

As I indicated earlier, I am concerned that the same outcome is going to happen now that happened back in 2005 and 2006 when we tried before their collapse to put some restraint into place, and that we will not act, the net result of which will be that we will, in effect, nationalize Fannie and Freddie and have a huge portion of our Nation's mortgage market be run by the government.

The McCain amendment will simply give us a track to move forward to stop that result from happening, and I encourage all of my colleagues to consider strongly supporting this amendment. If we don't, then I don't think we can honestly call this a bill that truly ends the bailouts in our country.

Thank you very much, Mr. President.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRANKEN. 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. FRANKEN. Mr. President, I rise to speak again on the problem of credit rating agencies and the inherent conflicts of interest that drive the industry. The underlying Wall Street reform bill takes some steps in the right direction, but I believe we can go much further in addressing the fundamental problem—the opportunity to shop around for the highest rating.

Currently, a bank that issues a security can shop its product around to one of the three biggest credit rating agencies—all three of them—seeking out the highest possible rating. The credit rating agency promising the highest rating will get hired. This process ensures that the credit rating agency will not just be evaluating the risk of the financial product, it will be weighing its own business interests when offering up a rating. If the agency hands out a AAA rating, the customer will come back again; the banks will come back again. That incentive affects the ultimate rating the product receives. This ratings shopping leads to major conflicts of interest, and it was one of the major causes of the financial meltdown.

You have probably heard of something in our court system called forum shopping. It is when an attorney seeks out the judge who will be most sympathetic to the case. If a prosecutor is bringing a case against a defendant for drunk driving, that prosecutor might negotiate with the court clerk to get the judge known for being tough on drunk drivers. You can imagine the problems forum shopping has created and the corruption it has bred.

The courts have identified forum shopping as a practice that manipulates outcomes and undermines public confidence in the courts. Given these problems, the courts have sought out ways to reduce forum shopping. In fact, the majority of Federal courts now use some variation of a random drawing to match cases with judges, though each district court has discretion to make its own specific rules. Accommodations can be made for particular circumstances. For example, a subset of qualified judges can be set aside for particularly complex criminal cases, and the caseload of each judge can be taken into account. But overall, the primary selection method in most Federal courts is a rotating assignment system.

This rotating assignment system is used in my home State of Minnesota. New York, the home State of Senator SCHUMER, who is joining me on this amendment, also uses a rotating system. The use of a rotating assignment system limits opportunities for forum shopping, increases public confidence in the court system, and reduces corruption.

Let's return to the problem of credit rating agencies. I have filed an amendment that seeks to reduce the conflicts of interest inherent in the issuer-pays model. In this model, issuers of financial products have incentives to shop around for the best ratings possible. In order to retain business, credit rating agencies will issue ratings high enough to keep issuers coming back, as I said. The system incentivizes high ratings, not accurate ratings.

The same solution used to address forum shopping in the courts can also be applied to reduce ratings shopping in the credit rating industries. My amendment allows for the same types of discretion awarded to individual district courts.

A court can develop special provisions for the assignment of particularly complex cases. My amendment would allow a new credit rating agency board to designate certain ratings agencies as being qualified to rate the most complex products. A court can take into account the existing caseload of a particular judge. My amendment allows the board to take into account the institutional and technical capacity of credit raters.

The rotating assignment model used in the court system can be used in the rating system. It hasn't eliminated every problem, but it has gone a long way to reduce the corruption and conflicts of interest in selecting judges for particular cases.

My amendment will not eliminate every problem facing the credit rating agency industry, but it will go a long way toward reducing ratings shopping. Ratings shopping is the root of the problem, and it is what allows issuers to bargain with credit raters. If a credit ratee knows the issuer cannot simply walk away and turn to another rating agency, there is no pressure to issue a high rating just to retain the business transaction.

My amendment will not reduce competition, nor does it seek to put any rating agency out of business—quite the opposite. My amendment actually will increase and incentivize true competition. By allowing a board to assign more work to credit raters producing accurate ratings and assign less work to those producing inaccurate ratings, the market will finally reward accuracy and no longer reward ratings inflation, which was the case during this whole fiasco and what led to it. It is only by limiting ratings shopping and adjusting the market's incentives that we will finally have credit rating agencies in which the public can have faith.

The Wall Street reform bill includes many important provisions addressing the credit rating agency problem, such as increased disclosures and improved postrating surveillance, but I believe it doesn't get to the root of the problem. When the stability of such a significant part of our economy is based, for better or worse, on the accuracy of these ratings, we can't take any more chances.

I thank Senator SCHUMER and Senator NELSON for helping me lead this reform and Senator WICKER, who has recently joined our effort. I also appreciate that Senators JOHNSON, WHITEHOUSE, BROWN, MURRAY, MERKLEY, BINGAMAN, LAUTENBERG, SHAHEEN, CASEY, and SANDERS support this approach and have joined as cosponsors. I look forward to other colleagues joining us, and, ultimately, I hope this bipartisan amendment will be taken up and passed by the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. 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. MCCONNELL. Mr. President, I am going to proceed for a few moments on my leader time.

The PRESIDING OFFICER. The Senator is recognized.

TREATMENT OF TERRORISTS

Mr. MCCONNELL. Mr. President, we continue to learn more about the terrorist who attempted to kill scores of innocent Americans in Times Square earlier this month.

The President's assistant for counterterrorism, John Brennan, now says Faisal Shahzad was working on behalf of the Pakistan Taliban, or TTP, all along.

What this event and the aftermath have shown is that the administration has what can most charitably be described as an evolving strategy on dealing with captured terrorists.

This was perfectly clear over the weekend when Attorney General Holder said in reference to the Times Square bomber that America is ''now dealing with international terrorists,'' and this may require changes to when and how terrorists are issued Miranda warnings.

Now dealing with international terrorists? I remind the Attorney General that we have been very much at war with international terrorism for a long time and that we face threats in this war from those who attacked us on 9/11, al-Qaida's associated groups, those who attack our troops every day in Afghanistan and Iraq, the man who tried to blow up a plane over Detroit on Christmas, and men such as the one who plotted to maim and kill Americans in Times Square.

Once the administration realizes this, a lot of other questions will become a lot clearer. Unfortunately, the administration seems too often to have a trial-and-error approach.

On Guantanamo, they tried to close it and realized it was not that easy. On the question of the proper venue for trials, they announced they would try 9/11 mastermind Khaleid Sheikh Mohammed in New York City and then realized maybe that was not a good idea. When it came to the Christmas Day bomber, they treated him like a common criminal and then realized that might not have been the best route either.

Now, after learning the Times Square bomber is actually a tool of the Pakistani Taliban, they are wondering out loud again if they should revisit their approach to administering Miranda warnings.

Let's make it easy for the Attorney General. Every terrorist—every single one of them—every terrorist should be treated like one.

In the first months of the administration, the President signed Executive orders ending the CIA's interrogation program, demanding the closure of Guantanamo within a year, and essentially putting the Attorney General in charge of the war on terror.

More than a year after these Executive orders were signed and after several failed terrorist attacks on the homeland, the administration finally—finally—seems to realize the war on terror is not a simple matter of law enforcement. A clear and forceful strategy is needed just as much at home as it is needed abroad.

Republicans have been saying this all along. It is time the administration decides on a strategy that recognizes the implications of the war we are in and the dangers we face, not only abroad but right at home.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I wish to take a few minutes, if I may. I listened with some interest this afternoon, as I did last week, to my colleague and friend from Arizona talk about his amendment regarding government-sponsored enterprises, specifically Fannie and Freddie. I wish to respond to some of those comments and some comments today about these two agencies and their value, their present condition, and what needs to be done.

First, there is a little revisionist history in all of this that seems to be important. In 2005, the House Financial Services Committee, under the leadership of Mike Oxley, a Republican from Ohio, chairman of the committee, passed bipartisan legislation dealing with Fannie Mae and Freddie Mac. Senate Democrats picked up that proposal. It stalled in the committee over here despite support for it. The Republican-controlled committee then passed a bill. They never filed it, never brought it up for a vote on the floor of the Senate in 2005.

I became chairman of the Banking Committee in 2007. As the Presiding Officer will recall, when he arrived in 2008, we had a significant number of hearings and discussions about Fannie and Freddie. In the summer of 2008, the Banking Committee passed a comprehensive overhaul of the regulations of Fannie and Freddie, including establishment of a tough new regulator, the FHFA, limited portfolio holdings of Fannie and Freddie, and we increased their capital requirements. The authority to put Fannie and Freddie into receivership was also adopted. We required internal controls and risk management and reviving and approving new products.

The committee voted 19 to 2 on a very strong bipartisan basis in the summer of 2008, and overwhelmingly on the floor, this body supported those efforts by a vote of 72 to 13. That was in the summer and fall of 2008.

When I hear the comments being made that nothing has been done about Fannie and Freddie—Mike Oxley tried and failed. I cannot repeat on the floor of the Chamber the words Mike Oxley used to describe the minority's handling of reform when he was accused later of not having an effective reform package. The Republican chairman of that committee had very strong language to describe the failure of our Republican friends to pick up his efforts, his bipartisan efforts, in 2005. As I say, in 2008, by a vote of 72 to 13, this body adopted the committee's recommendations—adopted 19 to 2 in the Banking Committee—to put strong regulations over Fannie and Freddie. So that is as a backdrop.

I will be the first to recognize that more needs to be done, clearly, in terms of coming up with a whole new financing structure for the housing market. There is no doubt about that. But as my colleague from New Hampshire has pointed out—and while it wasn't part of the whole reform package included in this 1,400-page bill because it probably would have doubled the size of this legislation—the issue is far too complex at this juncture to include those kinds of reforms in this bill. That is not to suggest they do not need to be done, but it will take a separate undertaking, it seems to me and most who have looked at it, to decide what is that alternative idea.

So when we have the McCain amendment, as in the Ensign amendment the other night, I would urge my colleagues to vote against it. All their amendments do is to get rid of Fannie and Freddie. There is no alternative idea here. The McCain amendment says that in 24 months you have to get rid of Fannie and Freddie. Well, that is a nice idea, but what are the implications if we get rid of it?

Today, 97 percent of all mortgages are backed by Fannie and Freddie. If you want to see interest rates go up, if you get rid of the only entity that is purchasing these mortgages today—and that is Fannie and Freddie, by and large—who will purchase them? If they are not purchased, what happens to interest rates and home values? If you think the market took a plunge last Thursday, adopt the McCain amendment. It is a reckless amendment. There is no alternative whatsoever included in that proposal.

Let me identify the three major problems with it, aside from the fact it doesn't offer any alternative whatsoever as to how we end up with a financing mechanism for housing in this country. Remember, we are the only Nation on the face of the planet today that provides a 30-year, fixed-rate mortgage for homeowners. It is the reason why we have had a relatively high percentage of our population in home ownership. It also is the single largest wealth creator for most families—home ownership—not to mention the value it is to a family, a neighborhood, a community.

When people have an equity interest—when they can accrue equity over time—it leads to long-term financial security, retirement security, and it has made a difference in how middle-income families have been able to afford a higher education for their children. All these benefits accrue. No other Nation on Earth provides that kind of stability and long-term security that we have in the housing market, and it doesn't happen miraculously. It happens because we have had a financing mechanism that has provided for that kind of assurance at a relatively low cost.

So when you look at the amendment, it severs all Federal involvement with these mortgage securitization, government-sponsored enterprises within 24 months. That is the McCain amendment. Before people jump on board with what a great idea this is, consider the implications and then be prepared to explain them when they happen. There is no reform here. It just gets rids of something without replacing it with anything, except somehow the private market is going to pick up. There is no private market for that today, and we need an alternative idea. Some have mentioned a public utility concept, others have mentioned various other ideas, all of which we have listened to. But, frankly, there is a lot of debate about what that alternative ought to be.

So to draft a bill to take in all these other ideas for housing, frankly, as the Senator from New Hampshire has said, was far too complex, given all the other challenges we are faced with in this legislation, to try to deal with too big to fail, consumer protection, finally getting some clarity and regulation over exotic instruments, providing some long-term radar system, as we describe it, to identify problems as they emerge, whether in Greece or someplace else, not to mention all the other provisions, dealing with underwriting standards, capital requirements, leverage, and all the rest. This bill is 1,400 pages, not to mention the bill passed out of the Agriculture Committee, which adds, of course, a whole other title VII to the bill.

So when you consider what is in here, I hope my colleagues will be careful before they jump on what is a politically charged issue and understand what the implications may be if it is adopted. The McCain amendment, as I said, is reckless, it is poorly thought out, it poses significant risk to the housing markets that have only recently begun to stabilize, by the way. We are seeing just in the last few weeks that finally prices are beginning to move up in the housing area, new stakeholders are occurring, and things are beginning to move in the right direction.

You can say a lot of things, but if you don't have stability in the housing market, this recovery will not occur. It is a critical component of recovery and to pull the rug out from underneath this particular effort right now would be a major blow to our economy and I think would set us back on our heels at the worst possible moment. As I said earlier, major reforms to the housing financing system are clearly necessary. I will be the first to acknowledge that—all should. As we can't go back to the system of the past and the status quo of the GSEs under Federal conservatorship—by the way, Fannie and Freddie are under conservatorship because of our 2008 legislation—it is untenable. We can't continue with that, and we need to replace it, but such changes must be thoughtful and deliberate.

In the near term, we must ensure that changes affecting the Federal role in Fannie and Freddie do not jeopardize the fragile economic recovery. Over the long term, we must be careful in structuring the housing financing system in a way that guarantees continued mortgage liquidity with minimum economic disruptions.

The McCain amendment falls short in several respects. First of all, it imposes significant risk to our economic recovery. Some 95 to 97 percent of mortgage originations are currently backed by the Federal Government—95 to 97 percent, the vast majority of this coming through Fannie and Freddie. The McCain amendment would cause significant uncertainty among investors and GSE-issued mortgage-backed securities, threatening the primary source of mortgage credit that we have at this time. Pull away the credit we have, what replaces it? In this amendment, nothing, without offering any alternative sources of liquidity. Such a precipitous drop in mortgage liquidity could severely threaten this fragile recovery we are presently feeling.

Second, the McCain amendment fails to ensure sufficient mortgage credit would be available in the future. Private securitization of the GSEs account for, as I said, some $9 trillion of the $14 trillion in total outstanding mortgages in the United States today. With the future of private securitization highly uncertain—in fact, that is a mild statement given the present economic circumstances—policymakers seeking to reform the housing financing system must ensure that the system of the future will provide sufficient liquidity to meet the mortgage needs of all Americans. The McCain amendment would eliminate existing sources of mortgage liquidity while remaining silent on the more difficult question of how to replace them.

So you may not like what you have here, but you are replacing it with nothing. What are the alternatives to go to in the housing market?

Thirdly, the McCain amendment neglects to replace the public purposes served by GSEs. The GSEs were poorly run, but they clearly served a number of public purposes, such as making the 30-year fixed-rate mortgage broadly available for American home buyers. This does not go to the question of the underwriting standards. That was a disaster with unregulated brokers and mortgage companies. But putting aside that question, which we address—and there are other ideas on how to further address the underwriting requirements—there is the idea that the average family in this country could purchase and have a chance to get in that starter home, to put them on the pathway to home ownership and all that means to families—what it has meant to our country to make that available, not just to the affluent and the well-heeled but to families even at the lower end of the economic spectrum—to have that kind of job that could provide that income to support a mortgage; what it means to be able to say to your family: We own our home. This is where we live. We have a vested interest in our community, in our neighborhood.

You can talk to anyone about social policy and home equity interest in a neighborhood, and it changes a neighborhood. It makes a difference. So when you start stripping away, pulling out the rug from underneath the financing scheme for doing this today, the mechanism for doing it, then you undermine the very ability to have that long-term, stable mortgage that a family can count on. Watching their equity grow, under normal circumstances, makes such a difference. It is why this economic disaster we have been through over the last couple years is so harmful.

I said earlier there are 4 million homes today that are underwater—4 million of them underwater—and 250,000 homes in the first 3 months of this year have been seized because of the economic conditions. So housing is critical. It is where this crisis began because of the shoddy underwriting requirements that are out there and luring people into subprime mortgages. By the way, that is the alternative. When you strip away the financing mechanism, what you are left with is subprime lending. That is what goes on, luring people into those circumstances.

So, Mr. President, you are entitled to your own opinion but not your own facts in this debate. The fact is, there was an effort in 2005, led by a Republican chairman in the housing committee in the House, and he has some very choice words for those who suggest that effort wasn't real to make a change here. I regret deeply that Mr.

Oxley didn't prevail in his ideas here in the Senate. He passed it in the House, but it was squashed over here.

Then, in 2008, as I said, by votes of 19 to 2 and 72 to 13 on the floor of this Chamber, we did pass legislation that provided for a comprehensive overhaul of the regulation of Fannie and Freddie. It made a substantial change, but far more needs to be done. I acknowledge that, clearly. But let's not, in the face of that acknowledgment, strip away that ability in this bill, within 24 months, without replacing it with anything, putting our economic recovery at great risk. I predict to you, as certain as I am standing here, if the McCain amendment were to pass, that is the outcome, count on it, in my view.

So I caution my colleagues, despite the political mantra associated with all this, we are in a very delicate time. It is very important that we use our heads and carefully deliberate on how we are moving. By a vote of 59 to 35, we rejected the Ensign amendment last week. It was the right outcome. If we reverse that vote tomorrow or in the next day—whenever the McCain amendment comes up—and we will have a side-by-side amendment, by the way, to explain what the committee is doing further and what needs to be done to get us on the right track so people can be supportive of some alternative ideas here—then I think we will set ourselves back.

In light of what has happened in Europe over the weekend, still may unfold here, right now we don't need to be sending messages to the markets without any alternative ideas in place as to how to come up with a housing finance system that is as worthy of the very people who counted on that ability to have that fixed-rate mortgage, to watch their family prosper and grow and become stable, as this has over the years.

I know others want to be heard on probably other matters, but this is a very important issue, and my hope is my colleagues will pay careful attention to this and not succumb to the temporary temptation to follow because there are some groups out there that have never liked this anyway. They have never liked the idea of this program. Clearly, as I say, reforms are needed.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Oregon.

Mr. MERKLEY. Mr. President, I am honored to rise to address the Volcker amendment, which I am pleased to be able to cosponsor with my colleague and friend who is now presiding over the Senate. I thank Senator LEVIN for the outstanding job he has done in shining the light on the need for financial reform through his Permanent Subcommittee on Investigations.

I also wish to thank Senator DODD for shepherding this important financial reform and bringing such a significant and solid bill to the floor of the Senate, and I thank him for working with several of us to strengthen the approach proposed in the Volcker amendment. I look forward to having a chance to present that on the floor and appreciate very much Senator DODD's support.

The goal of our financial system is to efficiently aggregate and allocate capital. That is sometimes done through banks that make loans, and that is sometimes done through pools of investors who put their money together and ask managers to find the highest return. But these two functions of lending and high-risk investing, although both critical to the capital system of aggregating and allocating our dollars, are in fact very different. This Volcker amendment is all about creating the right balance between these two so they work collectively to make a more efficient, stronger financial system rather than working at odds with each other.

This bill has three components. The first is to get high-risk trading out of our banks on which families and small businesses depend. The second is to establish higher capital requirements for high-risk investing or hedge funds. The third is to eliminate conflicts of interest, conflicts of interest that have proceeded to undermine the integrity of our securities system.

I want to try to give kind of an analogy so we can all get our hands around these functions; that is, to try to imagine you are collecting fireworks. Fireworks are a wonderful thing, and you might want to have them for the Fourth of July or for New Year's. But you do not store them in your living room because, if they were to accidentally go off, you would burn down your house. The fireworks in this example is your high-risk investing, and your living room represents the lending depository banks that power up our economy by making their loans in our communities to our businesses and our families.

To continue that analogy, you would want those fireworks stored not only not in your living room but not in any of the bedrooms of your house or any of the other rooms. You would want them stored out in your shed, in this case outside the bank holding company, so if the high-risk investments do explode or go down you don't burn down your house. This leads to the second part of the Volcker amendment which says, while you are storing them in your shed, you should make it more fire resistant. Maybe that means putting in a sprinkler system or some other system. That is the second part. But the third part is to say those who design and sell the fireworks should not simultaneously be developing and designing fuses designed to fail and then taking bets that the fireworks would go off prematurely. This is a conflict-of-interest issue on which recent hearings have shined such a bright light.

Turning, then, to this high-risk trading and the challenges it presented to our financial system, what I am putting up right now is a chart that shows the impact of high-risk trading on the meltdown that occurred in 2008 and 2009. We have Lehman Brothers that lost $30 billion in trading; Merrill Lynch lost $20 billion in trading; Morgan Stanley over $10 billion; JPMorgan Chase over $10 billion, Goldman Sachs over $4 billion, and Bank of America over $7 billion. High-risk trading primarily on mortgage securities and derivatives of those securities blew a hole through almost every major Wall Street financial investment institution.

I do not think anyone should, in light of these facts, be able to say that high-risk investing has nothing to do with the current crisis. It has pretty much everything to do with it, and that is why the Government stepped in to provide financial relief to these firms—huge amounts of money. Lehman Brothers went down because we didn't step in to assist them. Merrill Lynch basically was saved by being purchased by Bank of America which had a tremendous bailout; that is, $45 billion. Morgan Stanley got $10 billion in TARP funds; JPMorgan Chase, $25 billion; Goldman Sachs, $10 billion; and, of course, the list goes on.

This high-risk investing does not belong in our lending depository institutions. A bank that has access to the discount window of the Fed, a bank that has access to insured deposits, deposits insured by Uncle Sam, that bank should not be diverting those funds into the temptation of high-risk investing. Similarly, they should not be proceeding to allow the high-risk investing to blow up the lending side of a financial organization.

The risk of an investment house going down is certainly higher during a recession. It is very high in a severe recession. That is just the time we need banks to be able to continue lending, to not let lending seize up.

I can tell you, back home in Oregon business after business has come forward and said: Our credit line was cut in half or we went to refinance a commercial loan and the bank said we will not do it because the value has dropped or we can't make any more loans in that sector or perhaps we can't make any more loans at all because we have reached our leverage limits.

Lending seized up in America, and it is a key factor in prolonging this recession. These are the reasons that, if you want to have high-risk investing with the money from pools of investors—that is an important part of the capital allocation but do it at a safe distance from the lending depository function.

The second piece of this—and back to my analogy that this is when you put the high-risk investing in the woodshed—is that you also make the woodshed more resilient, and that is enabling the regulators to say that as an investment house becomes more systemically significant those regulators can raise or will raise the capital requirements necessary so that the leverage decreases as the firms become larger. This greatly reduces the chance that an investment house will go down during a recession or go down because of bad loans because they are putting up more capital against those investments.

I want to come to the third part, the conflict-of-interest provisions. They will also be addressed at greater length by my colleague. By the way, I ask unanimous consent Senator LEVIN be allowed to follow directly behind me.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MERKLEY. Mr. President, he will elaborate on these provisions, but I want to put up my third chart because at the hearings my colleague had focused attention on a real challenge. Through those hearings some have observed that Goldman Sachs has become an ''iconic image of bankers with conflicts of interest.'' Let me try to again address that.

If you are selling fireworks, you should not be in the business of designing bad fuses to put on those fireworks and then betting the fireworks will go off accidentally or, as another person has put it, if you are selling cars, you should not be selling cars without brakes and taking out insurance on the owners. That fundamentally undermines the integrity of the market, whether it is the fireworks market or car market. But those are analogies for our financial market.

Integrity is so important. International capital flows to systems with integrity. It was after the Great Depression that we established reforms on Wall Street that led to decades in which the international community saw the American markets as the best organized, best policed safe place—no scams or minimal scams—that they could put their money.

We want Wall Street to be able to continue to attract and aggregate and allocate that capital. That is an essential function.

I note that this group of three commonsense reforms on this chart, going back to these three pieces—getting the high-risk trading out of the banks, increasing the capital requirements for investment firms that become systemically significant, and ending the conflicts of interest in securities—these commonsense reforms have a lot of support.

In addition to Senator LEVIN, I thank 15 cosponsors who have jumped in to join this effort: Senator BROWN, Senator KAUFMAN, Senator SHAHEEN, Senator FEINSTEIN, Senator CASEY, Senator BILL NELSON, Senator BURRIS, Senator BEGICH, Senator INOUYE, Senator WHITEHOUSE, Senator MCCASKILL, Senator MARK UDALL, Senator MIKULSKI, Senator SANDERS, and Senator TOM UDALL. I encourage my colleagues on both sides of the aisle to consider jumping in to support these commonsense reforms.

I note also that the supporters for this amendment include Paul Volcker; they include John Reed, the former chair and CEO of Citibank; they include the Independent Community Bankers of America, who recognize that community banks do better if the Wall Street system has integrity in allocating capital. The Main Street Alliance of Small Businesses supports this amendment, the AFL/CIO supports it, Americans for Financial Reform, and a dozen other organizations.

I also note that a group has solicited support online. Here I have 25,000 individuals from across the country, all 50 States, who sent this petition to the Senate. This is from the Progressive Change Campaign Committee, and these 25,000 citizens say:

The big Wall Street banks gambled away our money on a reckless housing bubble and then insisted we spend more money bailing them out. We need you to support the Merkley-Levin proposal to end this risky gambling and other conflicts of interest.

I conclude by saying we have a responsibility, following this great recession we are in now, to redesign the rules of the road for Wall Street, to increase integrity, to increase transparency, to decrease the conflicts of interest, and to make it work in the most efficient possible way. It is with that spirit these three commonsense proposals have been laid out.

It has been a privilege to partner with the Presiding Officer, Senator CARL LEVIN, in this effort.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, first, let me commend the Presiding Officer. Senator MERKLEY has been an avid leader in doing something significantly important to end the role of proprietary trading, which is something that helped create a housing bubble, expanded that bubble, and the bubble burst and helped to sink this economy. This amendment we are offering is aimed at trying to rein in the excesses of those proprietary trades. It does it in a way which makes a lot of sense. A lot of work went into it.

The Banking Committee, Senator DODD, his staff, our staffs, and many other staffs and people outside of this body have worked very hard to make sure this will be a practical amendment. It is. I am proud to cosponsor it with the Presiding Officer, Senator MERKLEY, who has been such a great leader.

As recent hearings that I chaired at the Permanent Subcommittee on Investigations demonstrated, many things caused the financial crisis that started the recession that we are climbing out of. But up and down the financial system—upstream, from mortgage brokers hustling dubious mortgages, to Wall Street firms downstream that sliced and diced securities, betting on those risky mortgages—there were failures and mistakes piled on top of plain old-fashioned fraud.

At its heart, the financial crisis is a story of extreme greed and excessive risk. In the pursuit of ever larger profits, financial institutions took on ever-increasing risk while ignoring the danger that risk represented. When their bets failed and the risks came crashing down upon them, the financial system teetered on the brink of collapse. The economy plunged into what has become known as the great recession. Millions of Americans lost their jobs and homes, and taxpayers had to spend hundreds of billions of dollars to keep things from getting even worse. We cannot allow a repeat.

The bill from Senator DODD is a huge step in avoiding that repeat. We simply must never again allow Wall Street firms seeking to boost their bottom lines, borrowing millions, or billions in this case, of dollars, making risky bets and risky trades, pocketing the winnings when their bets go well, and going to taxpayers for salvation when the bets go south. That is surely true of what is known as proprietary trading.

Too often, before and during the crisis and even today, financial institutions trade financial instruments often using large amounts of borrowed money to make risky bets for their own benefit, not on behalf of their clients.

Today, Senator MERKLEY and I, along with our cosponsors, are introducing an amendment to Senator DODD's financial regulatory reform bill that seeks to limit the damage these proprietary transactions can inflict on our economy and end the conflicts of interest which too often accompany them.

I ask unanimous consent that Senator JACK REED be added as a cosponsor of our amendment.

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

Mr. LEVIN. Proprietary trading brings high amounts of risk directly into the financial infrastructure and has repeatedly and severely damaged the financial system. It was a large part of the banking collapse of 1929, which is why Glass-Steagall restrictions separating investment banks from commercial banks were enacted. In 1998, as Glass-Steagall was being weakened, proprietary trading in complex derivatives left the major Wall Street banks facing billions in losses. The Federal Reserve organized the first massive bailout of a too big to fail nonbank, Long-Term Capital Management. And in our current crisis, proprietary trading in subprime securities and derivatives was the critical factor in the failure of major Wall Street firms in 2008.

By April 2008, the Nation's largest financial firms had suffered $230 billion in losses based on their proprietary trading. And by the end of 2008, the taxpayers were forced to put up hundreds of billions of dollars in TARP funds to avoid the collapse of our economy. Lehman Brothers is one example. In 1998, it had "only" $28 billion in proprietary holdings. By 2007, its proprietary holdings had soared to $313 billion. When the values of these holdings declined in 2007 and 2008, Lehman Brothers lost $32 billion, its losses exceeded its net worth, and by September 2008, the firm had collapsed in the largest bankruptcy in history.

Senator MERKLEY and I propose an amendment that addresses these issues in the following ways:

First, commercial banks and their affiliates would be barred from high-risk proprietary trading. The risk to the federal deposit fund is simply too great to allow commercial banks to gamble as they can today.

This prohibition will not inhibit these institutions from serving their customers. Our amendment expressly permits carefully specified client-based transactions. That means that banks, through their broker-dealer affiliates, could buy or sell securities and other instruments as requested by clients. Those affiliates can also, for example, act as underwriter for a client issuing new stocks or bonds, provided those transactions are not allowed to endanger the safety and soundness of the bank.

Second, we limit proprietary trades at the largest nonbank financial institutions. These institutions would be required to keep enough capital on hand to ensure that they, and not the taxpayers, would cover their trading losses. That would limit the size of their proprietary activities. The regulators overseeing the financial system would be tasked with specifying the capital levels these institutions would be required to maintain, as well as limits on the amount of proprietary trading they could do, in order to protect the stability of the system. These restrictions would address one of the chronic problems that led to the crisis, that of financial institutions borrowing heavily to make their risky trades by leveraging their own funds, and jeopardizing the entire financial system when their risks overcame their own funds.

Third, we would address one of the most dramatic findings of our subcommittee's recent hearings, that of firms betting against financial instruments they are assembling and selling. As our hearing on investment banks showed, Goldman Sachs assembled and sold mortgage-related financial instruments, then placed large bets, for the firm's own accounts, against those very same instruments. In one case highlighted at the hearing, involving risky mortgage-backed securities, a Goldman trader bragged in an email that, although the firm lost $2.5 million when the securities failed, Goldman made $5 million on a bet placed against those very same securities. The conflict of interest prohibition in our amendment is intended to prevent firms that assemble, underwrite, place or sponsor these instruments from making proprietary bets against those same instruments.

Assembling and selling financial instruments to its clients while betting against those same instruments did injury to Goldman's clients. The fact that the firm described these instruments, in its own emails, as "junk," added insult to injury. This isn't market making, bringing together two customers, a buyer and a seller, as Goldman executives claimed during our hearing. This is Goldman Sachs acting as its own secret client, betting against its customers. When members of the subcommittee asked Goldman executives about that conflict of interest, they answered by saying that we just understand, that this is how business is done on Wall Street. We understand all too well how business has been done on Wall Street. And that is why we must end the self-dealing and put a cop back on the beat on Wall Street.

Our amendment would protect depositors and taxpayers from the risk of proprietary trading at commercial banks. It will protect taxpayers from the dilemma of having to pay for Wall Street's risky bets, or watch our financial system disintegrate. And it would protect investors and the financial system at large from the conflicts of interest that too often represent business as usual on Wall Street. It will strengthen protections already in place in the bill before us, and add new ones to guard the stability of a financial system on which our economy and American jobs depend.

Senator MERKLEY and I have worked closely with a number of colleagues, including Senator DODD, as well as officials from the Treasury Department and the Securities and Exchange Commission, to ensure that our legislation would address the problems we seek to address without endangering legitimate market activity and activity on behalf of clients. It has been endorsed by former Federal Reserve Chairman Paul Volcker; business leaders such as John Reed, the former Chair and CEO of Citibank; and major organizations calling for real Wall Street reform, including the Independent Community Bankers of America, Americans for Financial Reform, and the AFL–CIO.

There is nothing wrong with Wall Street firms making a profit. What we oppose is the notion that in seeking such profit, these financial institutions can put depositors, clients, taxpayers, and the very safety of our financial system at risk. What we oppose is conflict of interest. I hope our colleagues will support these commonsense safeguards to strengthen the financial system and our economy.

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

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

Mr. DODD. Madam President, I ask unanimous consent that on Tuesday, May 11, after any leader time, the Senate resume consideration of S. 3217, and debate concurrently the pending Sanders amendment No. 3738 and the Vitter amendment No. 3760; that prior to a vote in relation to each amendment, there be a total debate limit of 80 minutes, with 20 minutes each under the control of Senators SANDERS, VITTER, SHELBY, and DODD, or their designees; that upon the use or yielding back of all time, the Senate proceed to a vote in relation to the Sanders amendment, followed by a vote in relation to the Vitter amendment, with no amendment in order to either amendment.

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

MORNING BUSINESS

Mr. DODD. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

ADDITIONAL STATEMENTS

TRIBUTE TO MARC MORIN

• Mr. GREGG. Madam President, today I wish to recognize Marc Morin of Bow, NH. Since December 20, 2000, Marc has been a member of the New Hampshire Board of Professional Engineers and has ably served as its chairman since July 15, 2004. In August of this year, he will step down from that position, and I would like to take this opportunity to thank him for the professionalism and dedication he has demonstrated over the last 10 years.

The Board of Professional Engineers has the important mission of protecting the public's safety and insuring the State's engineers follow the proper operating rules and regulations. Because of his reputation as an environmental engineer in the private sector, Marc was an excellent choice as board chairman. His educational accomplishments, such as holding a master of science in water resource engineering, underscore his ability to understand and apply the often complex licensing and due process requirements the board must oversee.

My wife Kathy and I have had the pleasure of knowing Marc's wife's family for many years. He has ben a great example of the strong commitment to public service and volunteerism for which New Hampshire is so well known. While his leadership on the

Board of Professional Engineers will be missed, I know we can continue to rely on the insight, sound judgments and guidance he displayed on the board. Thank you Marc!●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on the Judiciary.

(The nomination received today is printed at the end of the Senate proceedings.)

PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION CONCERNING PEACEFUL USES OF NUCLEAR ENERGY—PM–53

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)) (the ''Act''), the text of a proposed Agreement Between the Government of the United States of America and the Government of the Russian Federation for Cooperation in the Field of Peaceful Uses of Nuclear Energy (the ''Agreement''). I am also pleased to transmit my written approval of the proposed Agreement and determination that the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security, together with a copy of an unclassified Nuclear Proliferation Assessment Statement (NPAS) concerning the Agreement. In accordance with section 123 of the Act, as amended by title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277), classified annexes to the NPAS, prepared by the Secretary of State in consultation with the Director of National Intelligence, summarizing relevant classified information, will be submitted to the Congress separately.

The proposed Agreement was signed in Moscow on May 6, 2008. Former President George W. Bush approved the Agreement and authorized its execution, and he made the determinations required by section 123 b. of the Act. (Presidential Determination 2008–19 of May 5, 2008, 73 FR 27719 (May 14, 2008)).

On May 13, 2008, President Bush transmitted the Agreement, together with his Presidential Determination, an unclassified NPAS, and classified annex, to the Congress for review (see House Doc. 110–112, May 13, 2008). On September 8, 2008, prior to the completion of the 90-day continuous session review period, he sent a message informing the Congress that ''in view of recent actions by the Government of the Russian Federation incompatible with peaceful relations with its sovereign and democratic neighbor, Georgia,'' he had determined that his earlier determination (concerning performance of the proposed Agreement promoting, and not constituting an unreasonable risk to, the common defense and security) was no longer effective. He further stated that if circumstances should permit future reconsideration by the Congress, a new determination would be made and the proposed Agreement resubmitted.

After review of the situation and of the NPAS and classified annex, I have concluded: (1) that the situation in Georgia need no longer be considered an obstacle to proceeding with the proposed Agreement; and (2) that the level and scope of U.S.-Russia cooperation on Iran are sufficient to justify resubmitting the proposed Agreement to the Congress for the statutory review period of 90 days of continuous session and, absent enactment of legislation to disapprove it, taking the remaining steps to bring it into force.

The Secretary of State, the Secretary of Energy, and the members of the Nuclear Regulatory Commission (NRC) have recommended that I resubmit the proposed Agreement to the Congress for review. The joint memorandum submitted to me by the Secretaries of State and Energy and a letter from the Chairman of the NRC stating the views of the Commission are enclosed.

I have considered the views and recommendations of the interested departments and agencies in reviewing the proposed Agreement, and have determined that performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the proposed Agreement and urge the Congress to give the proposed Agreement favorable consideration.

My reasons for resubmitting the proposed Agreement to the Congress for its review at this time are as follows:

The United States and Russia have significantly increased cooperation on nuclear nonproliferation and civil nuclear energy in the last 12 months, starting with the establishment of the Bilateral Presidential Commission Working Group on Nuclear Energy and Security. In our July 2009 Joint Statement on Nuclear Cooperation, Russian President Medvedev and I acknowledged the shared vision between the United States and Russia of the growth of clean, safe, and secure nuclear energy for peaceful purposes and committed to work together to bring into force the agreement for nuclear cooperation to achieve this end. The Russian government has indicated its support for a new United Nations Security Council Resolution on Iran and has begun to engage on specific resolution elements with P5 members in New York. On April 8, 2010, the United States and Russia signed a historic New START Treaty significantly reducing the number of strategic nuclear weapons both countries may deploy. On April 13, both sides signed the Protocol to amend the 2000 U.S.-Russian Plutonium Management and Disposition Agreement, which is an essential step toward fulfilling each country's commitment to effectively and transparently dispose of at least 34 metric tons of excess weapon-grade plutonium, enough for about 17,000 nuclear weapons, with more envisioned to be disposed of in the future. Russia recently established an international nuclear fuel reserve in Angarsk to provide an incentive to other nations not to acquire sensitive uranium enrichment technologies. Joint U.S. and Russian leadership continue to successfully guide the Global Initiative to Combat Nuclear Terrorism as it becomes a durable international institution. The United States believes these events demonstrate significant progress in the U.S.-Russia nuclear nonproliferation relationship and that it is now appropriate to move forward with this Agreement for cooperation in the peaceful uses of nuclear energy.

The proposed Agreement has been negotiated in accordance with the Act and other applicable laws. In my judgment, it meets all applicable statutory requirements and will advance the nonproliferation and other foreign policy interests of the United States.

The proposed Agreement provides a comprehensive framework for peaceful nuclear cooperation with Russia based on a mutual commitment to nuclear nonproliferation. It has a term of 30 years, and permits the transfer, subject to subsequent U.S. licensing decisions, of technology, material, equipment (including reactors), and components for nuclear research and nuclear power production. It does not permit transfers of Restricted Data. Transfers of sensitive nuclear technology, sensitive nuclear facilities, and major critical components of such facilities may only occur if the Agreement is amended to cover such transfers. In the event of termination, key nonproliferation conditions and controls continue with respect to material, equipment, and components subject to the Agreement.

The Russian Federation is a nuclear weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Like the United States, it has a ''voluntary offer'' safeguards agreement with the International Atomic Energy Agency (IAEA). That agreement gives the IAEA the right to apply safeguards on all source or special fissionable material at peaceful-use nuclear facilities on a list provided by Russia. The Russian Federation is also a party to the Convention on the Physical Protection of Nuclear Material, which establishes international standards of physical protection for the use, storage, and transport of nuclear material. It is also a member of the Nuclear Suppliers Group, whose non-legally binding guidelines set forth standards for the responsible export of nuclear commodities for peaceful use. A more detailed discussion of Russia's domestic civil nuclear program and its nuclear nonproliferation policies and practices, including its nuclear export policies and practices, is provided in the NPAS and in the classified annexes to the NPAS submitted to the Congress separately.

This transmittal shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Act. My Administration is prepared to immediately begin the consultations with the Senate Committee on Foreign Relations and House Committee on Foreign Affairs as provided in section 123 b. Upon completion of the 30-day continuous session period provided for in section 123 b., the 60-day continuous session period provided for in section 123 d. shall commence.

BARACK OBAMA.
THE WHITE HOUSE, *May 10, 2010*.

MEASURES DISCHARGED

The following bill was discharged from the Committee on Foreign Relations, and referred as indicated:

S.J. Res. 29. A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003; to the Committee on Finance.

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–5766. 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; Restrictions on the Use of Mandatory Arbitration Agreements'' (DFARS Case 2010–D004) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Armed Services.

EC–5767. A communication from the Under Secretary of Defense (Personnel and Readiness), Department of Defense, transmitting, pursuant to law, a report relative to the Foreign Language Skill Proficiency Bonus program; to the Committee on Armed Services.

EC–5768. A communication from the Principal Deputy (Defense Research and Engineering), Department of Defense, transmitting, pursuant to law, a report entitled ''Defense Production Act Annual Fund Report for Fiscal Year 2009''; to the Committee on Armed Services.

EC–5769. A communication from the Chief Counsel of the Fiscal Service, Bureau of Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Securities Held in TreasuryDirect'' (31 CFR Part 363) received in the Office of the President of the Senate on May 7, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–5770. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to the United Arab Emirates; to the Committee on Banking, Housing, and Urban Affairs.

EC–5771. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, a report entitled ''Report on Emergency Technology for Use with ATMs''; to the Committee on Commerce, Science, and Transportation.

EC–5772. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicaid Program; State Allotment for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2009 and Federal Fiscal Year 2010'' (RIN0938–AP90) received in the Office of the President of the Senate on May 5, 2010; to the Committee on Finance.

EC–5773. 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 the United Kingdom for the manufacture of X300 Transmissions, Parts, Components and Accessories to be used in military vehicles in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–5774. 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 amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to South Korea, Qatar, United Arab Emirates, United Kingdom, the Netherlands, Thailand, Chile and Malaysia for the manufacture and sale of the Goalkeeper Gun Mount in the amount of $1,000,000 or more; to the Committee on Foreign Relations.

EC–5775. 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 amendment to a technical assistance agreement for the export of defense articles, including, technical data, and defense services to Afghanistan to support the Global Maintenance and Supply Services, (GMASS), the M777A2 Sustainment, and the Mine Resistant Ambush Protected Vehicle Programs in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–5776. A communication from the Regulations Coordinator, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Health Care Reform Insurance Web Portal Requirements'' (RIN0991–AB63) received in the Office of the President of the Senate on May 3, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–5777. A communication from the Office Manager, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Early Retiree Reinsurance Program'' (RIN0991–AB64) received in the Office of the President of the Senate on May 4, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–5778. A communication from the Executive Analyst, Office of the Secretary, Department of Health and Human Services, transmitting, pursuant to law, (34) reports relative to vacancies in the Department of Health and Human Services; to the Committee on Health, Education, Labor, and Pensions.

EC–5779. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the Food and Drug Administration Advisory Committee Vacancies and Public Disclosures for FY 2009; to the Committee on Health, Education, Labor, and Pensions.

EC–5780. A communication from the Secretary of the Department of Health and Human Services, transmitting, pursuant to law, a report relative to the Comprehensive Tuberculosis Elimination Act of 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–5781. A communication from the Chief of the Trade and Commercial Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Further Consolidation of CBP Drawback Centers'' ((CBP Dec. 10–05) (RIN1651–AA79)) received in the Office of the President of the Senate on May 5, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–5782. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2010–0668); to the Committee on the Judiciary.

EC–5783. A communication from the Department of State, transmitting, pursuant to law, a report relative to the transfer of detainees (OSS Control No. 2010–0666); to the Committee on the Judiciary.

EC–5784. A communication from the Chief of the Strategic Support Section, Federal Bureau of Investigation, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''FBI Criminal Justice Information Services Division User Fees'' (RIN1110–AA26) received in the Office of the President of the Senate on May 5, 2010; to the Committee on the Judiciary.

EC–5785. A communication from the Rules Administrator, Office of General Counsel, Federal Bureau of Prisons, transmitting, pursuant to law, the report of a rule entitled ''Inmate Communication with News Media: Removal of Byline Regulations'' (RIN1120–AB49) received in the Office of the President of the Senate on May 4, 2010; to the Committee on the Judiciary.

EC–5786. A communication from the Chair, U.S. Sentencing Commission, transmitting, pursuant to law, the amendments to the federal sentencing guidelines that were proposed by the Commission during the 2009–2010 amendment cycle; to the Committee on the Judiciary.

EC–5787. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events'' (Notice No. 2010–11) received in the Office of the President of the Senate on May 6, 2010; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

H.R. 3237. A bill to enact certain laws relating to national and commercial space programs as title 51, United States Code, ''National and Commercial Space Programs''.

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. BURR:

S. 3334. A bill to amend the Internal Revenue Code of 1986 to exempt survivor benefit annuity plan payments from the individual alternative minimum tax; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. DEMINT:

S. Res. 519. A resolution expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that the primary safeguards for the legal rights of children in the United States are the Constitutions of the United States and the several States, and that, because the use of international treaties to govern policy in the United States on families and children is contrary to principles of self-government and federalism, and that, because the United Nations Convention on the Rights of the Child undermines traditional principles of law in the United States regarding parents and children, the President should not transmit the Convention to the Senate for its advice and consent; to the Committee on Foreign Relations.

By Mr. BAUCUS (for himself and Mr. TESTER):

S. Res. 520. A resolution honoring the 100th anniversary of the establishment of Glacier National Park; considered and agreed to.

ADDITIONAL COSPONSORS

S. 405

At the request of Mr. LEAHY, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 405, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 428

At the request of Mr. DORGAN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 428, a bill to allow travel between the United States and Cuba.

S. 669

At the request of Mr. BURR, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 669, a bill to amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes.

S. 777

At the request of Mr. BROWN of Ohio, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 777, a bill to promote industry growth and competitiveness and to improve worker training, retention, and advancement, and for other purposes.

S. 783

At the request of Mr. MENENDEZ, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of S. 783, a bill to amend the Outer Continental Shelf Lands Act to permanently prohibit the conduct of offshore drilling on the outer Continental Shelf in the Mid-Atlantic and North Atlantic planning areas.

S. 891

At the request of Mr. BROWNBACK, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 891, a bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.

S. 941

At the request of Mr. CRAPO, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 981

At the request of Mr. REID, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 981, a bill to support research and public awareness activities with respect to inflammatory bowel disease, and for other purposes.

S. 1214

At the request of Mr. LIEBERMAN, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 1214, a bill to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes.

S. 1233

At the request of Ms. LANDRIEU, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 1233, a bill to reauthorize and improve the SBIR and STTR programs and for other purposes.

S. 1589

At the request of Ms. CANTWELL, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1589, a bill to amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

S. 1611

At the request of Mr. GREGG, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1611, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 2747

At the request of Mr. BINGAMAN, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 2747, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 2869

At the request of Ms. LANDRIEU, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 2869, a bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

S. 2885

At the request of Ms. LANDRIEU, the name of the Senator from New York (Mr. SCHUMER) 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 name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 3036, a bill to establish the Office of the National Alzheimer's Project.

S. 3058

At the request of Mr. DORGAN, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. 3058, a bill to amend the Public Health Service Act to reauthorize the special diabetes programs for Type I diabetes and Indians under that Act.

S. 3072

At the request of Mr. ROCKEFELLER, the names of the Senator from North Dakota (Mr. CONRAD), the Senator from Missouri (Mrs. MCCASKILL), the Senator from South Dakota (Mr. JOHNSON) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 3072, a bill to suspend, during the 2-year period beginning on the date of enactment of this Act, any Environmental Protection Agency action under the Clean Air Act with respect to carbon dioxide or methane pursuant to certain proceedings, other than with respect to motor vehicle emissions, and for other purposes.

S. 3165

At the request of Ms. LANDRIEU, the names of the Senator from New Mexico (Mr. UDALL), the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 3165, a bill to authorize the Administrator of the Small Business Administration to waive the non-Federal share requirement under certain programs.

S. 3202

At the request of Mr. LUGAR, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of

S. 3202, a bill to promote the strengthening of the Haitian private sector.

S. 3213

At the request of Mr. LEVIN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 3213, a bill to ensure that amounts credited to the Harbor Maintenance Trust Fund are used for harbor maintenance.

S. 3265

At the request of Mr. MCCAIN, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 3265, a bill to restore Second Amendment rights in the District of Columbia.

S. 3266

At the request of Mr. BENNET, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Oregon (Mr. MERKLEY) were added as cosponsors of S. 3266, a bill to ensure the availability of loan guarantees for rural homeowners.

S. 3305

At the request of Mr. MENENDEZ, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 3305, a bill to amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills, and for other purposes.

S.J. RES. 29

At the request of Mr. MCCONNELL, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor 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 Mrs. FEINSTEIN, the names of the Senator from Maryland (Mr. CARDIN), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of S.J. Res. 29, supra.

S. RES. 511

At the request of Mr. LEAHY, the names of the Senator from New York (Mr. SCHUMER), the Senator from Utah (Mr. HATCH) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. Res. 511, a resolution commemorating and acknowledging the dedication and sacrifices made by the Federal, State, and local law enforcement officers who have been killed or injured in the line of duty.

AMENDMENT NO. 3746

At the request of Mr. WHITEHOUSE, the names of the Senator from Rhode Island (Mr. REED) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of amendment No. 3746 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. 3766

At the request of Mr. DURBIN, the names of the Senator from New York (Mrs. GILLIBRAND) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of amendment No. 3766 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. 3777

At the request of Mr. SCHUMER, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of amendment No. 3777 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. 3799

At the request of Mrs. HAGAN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of amendment No. 3799 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. 3808

At the request of Mr. FRANKEN, the names of the Senator from Vermont (Mr. SANDERS) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of amendment No. 3808 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. 3812

At the request of Mr. HARKIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of amendment No. 3812 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. 3854

At the request of Mr. REED, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of amendment No. 3854 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3879

At the request of Ms. COLLINS, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 3879 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. 3897

At the request of Mr. DORGAN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of amendment No. 3897 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. 3902

At the request of Mr. FRANKEN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of amendment No. 3902 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. 3919

At the request of Mr. CORNYN, his name was added as a cosponsor of amendment No. 3919 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

At the request of Mr. JOHANNS, his name was added as a cosponsor of amendment No. 3919 intended to be proposed to S. 3217, supra.

AMENDMENT NO. 3920

At the request of Mr. HARKIN, the names of the Senator from Nevada (Mr.

ENSIGN) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors 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.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 519—EXPRESSING THE SENSE OF THE SENATE THAT THE PRIMARY SAFEGUARD FOR THE WELL-BEING AND PROTECTION OF CHILDREN IS THE FAMILY, AND THAT THE PRIMARY SAFEGUARDS FOR THE LEGAL RIGHTS OF CHILDREN IN THE UNITED STATES ARE THE CONSTITUTIONS OF THE UNITED STATES AND THE SEVERAL STATES, AND THAT, BECAUSE THE USE OF INTERNATIONAL TREATIES TO GOVERN POLICY IN THE UNITED STATES ON FAMILIES AND CHILDREN IS CONTRARY TO PRINCIPLES OF SELF-GOVERNMENT AND FEDERALISM, AND THAT, BECAUSE THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD UNDERMINES TRADITIONAL PRINCIPLES OF LAW IN THE UNITED STATES REGARDING PARENTS AND CHILDREN, THE PRESIDENT SHOULD NOT TRANSMIT THE CONVENTION TO THE SENATE FOR ITS ADVICE AND CONSENT

Mr. DEMINT submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 519

Whereas the Senate affirms the commitment of the people and the Government of the United States to the well-being, protection, and advancement of children, and the protection of the inalienable rights of all persons of all ages;

Whereas the Constitution and laws of the United States and those of the several States are the best guarantees against mistreatment of children in this Nation;

Whereas the Constitution, laws, and traditions of the United States affirm the rights of parents to raise their children and to impart their values and religious beliefs;

Whereas the United Nations Convention on the Rights of the Child, adopted at New York November 20, 1989, and entered into force September 2, 1990, if ratified, would become a part of the supreme law of the land, taking precedence over all State laws and constitutions;

Whereas the United States, and not the several States, would be held responsible for compliance with this Convention if ratified, and as a consequence, the United States would create an incredible expansion of subject matter jurisdiction over all matters concerning children, seriously undermining the constitutional balance between the Federal Government and the governments of the several States;

Whereas Professor Geraldine Van Bueren, the author of the principal textbook on the international rights of the child, and a participant in the drafting of the Convention, has described the ''best interest of the child standard'' in the treaty as ''provid[ing] decision and policy makers with the authority to substitute their own decisions for either the child's or the parents'';

Whereas the Scottish Government has issued a pamphlet to children of that country explaining their rights under the Convention, which declares that children have the right to decide their own religion and that parents can only provide advice;

Whereas the United Nations Committee on the Rights of the Child has repeatedly interpreted the Convention to ban common disciplinary measures utilized by parents;

Whereas the Government of the United Kingdom was found to be in violation of the Convention by the United Nations Committee on the Rights of the Child for allowing parents to exercise a right to opt their children out of sex education courses in the public schools without a prior government review of the wishes of the child;

Whereas the United Nations Committee on the Rights of the Child has held that the Governments of Indonesia and Egypt were out of compliance with the Convention because military expenditures were given inappropriate priority over children's programs;

Whereas these and many other interpretations of the Convention by those charged with its implementation and by other authoritative supporters demonstrates that the provisions of the United Nations Convention on the Rights of the Child are utterly contrary to the principles of law in the United States and the inherent principles of freedom;

Whereas the decisions and interpretations of the United Nations Committee on the Rights of the Child would be considered by the Committee to be binding and authoritative upon the United States should the United States Government ratify the Convention, such that the Convention poses a threat to the sovereign rights of the United States and the several States to make final determinations regarding domestic law; and

Whereas the proposition that the United States should be governed by international legal standards in its domestic policy is tantamount to proclaiming that the Congress of the United States and the legislatures of the several States are incompetent to draft domestic laws that are necessary for the proper protection of children, an assertion that is not only an affront to self-government but an inappropriate attack on the capability of legislators in the United States: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United Nations Convention on the Rights of the Child, adopted at New York November 20, 1989, and entered into force September 2, 1990, is incompatible with the Constitution, the laws, and the traditions of the United States;

(2) the Convention would undermine proper presumptions of freedom and independence for families in the United States, supplanting those principles with a presumption in favor of governmental intervention without the necessity for proving harm or wrongdoing;

(3) the Convention would interfere with the principles of sovereignty, independence, and self-government in the United States that preclude the necessity or propriety of adopting international law to govern domestic matters; and

(4) the President should not transmit the Convention to the Senate for its advice and consent.

SENATE RESOLUTION 520—HONORING THE 100TH ANNIVERSARY OF THE ESTABLISHMENT OF GLACIER NATIONAL PARK

Mr. BAUCUS (for himself and Mr. TESTER) submitted the following resolution; which was considered and agreed to:

S. RES. 520

Whereas Glacier National Park was established as the 10th National Park on May 11, 1910;

Whereas Glacier National Park is part of the Waterton-Glacier International Peace Park, the world's first international peace park;

Whereas Glacier National Park has a total of 25 named glaciers;

Whereas water originating in the park is considered the headwaters of three major drainages;

Whereas Glacier National Park is the core of the ''Crown of the Continent Ecosystem'', one of the country's largest intact ecosystems;

Whereas Glacier National Park encompasses over 1,000,000 acres, 762 lakes, more than 60 native species of mammals, 277 species of birds, and almost 2,000 plant species;

Whereas Glacier National Park's lands hold great spiritual importance to the Blackfeet and the Salish and Kootenai native peoples;

Whereas the Park contains 110 miles of the Continental Divide Trail;

Whereas the Going-to-the-Sun Road in Glacier National Park was completed in 1932 and is a National Historic Civil Engineering Landmark;

Whereas in 1976 Glacier was dedicated a Biosphere Reserve by UNESCO;

Whereas in 1995 Waterton-Glacier International Peace Park was designated a World Heritage Site; and

Whereas Glacier National Park receives approximately 2,000,000 visitors a year: Now, therefore, be it

Resolved, That the people of the United States should observe and celebrate the 100th anniversary of the establishment of Glacier National Park in Montana on May 11, 2010.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3922. Mr. MERKLEY (for himself, Mr. BROWN, of Ohio, Mrs. BOXER, Mr. FEINGOLD, Ms. SNOWE, and Mr. SANDERS) 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 3923. Mr. SCHUMER (for himself, Mr. REID, Mr. AKAKA, and Mr. MENENDEZ) 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 3924. 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 3925. Mr. SHELBY submitted an amendment intended to be proposed to amendment

SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3926. Ms. STABENOW (for herself, Mr. BENNETT, Mr. HATCH, 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 3927. 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 3928. Mr. BENNET (for himself, Mr. TESTER, Mr. ISAKSON, Ms. KLOBUCHAR, Mr. BEGICH, Mr. UDALL, of Colorado, and Mr. LEMIEUX) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3929. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3930. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3931. Mr. MERKLEY (for himself, Mr. LEVIN, Mr. BROWN, of Ohio, Mr. KAUFMAN, Mrs. SHAHEEN, Mrs. FEINSTEIN, Mr. CASEY, Mr. NELSON, of Florida, Mr. BURRIS, Mr. BEGICH, Mr. INOUYE, Mr. WHITEHOUSE, Mrs. MCCASKILL, Mr. UDALL, of Colorado, Ms. MIKULSKI, Mr. SANDERS, Mr. UDALL, of New Mexico, and Mr. REID) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3932. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3933. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3934. Mr. SCHUMER (for himself and 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 3935. 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 3936. 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 3937. Ms. LANDRIEU (for herself, Mr. CHAMBLISS, and Mr. ISAKSON) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3922. Mr. MERKLEY (for himself, Mr. BROWN of Ohio, Mrs. BOXER, Mr. FEINGOLD, Ms. SNOWE, and Mr. SANDERS) 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 stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, strike line 6 and all that follows through the matter following line 2 on page 409, and insert the following:

''(D) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating Covered Agreements;

''(E) to determine, in accordance with subsection (f), whether State insurance measures are preempted by Covered Agreements;

''(F) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and

''(G) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

''(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

''(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as such insurance is determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), and crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

''(e) GATHERING OF INFORMATION.—

''(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—

''(A) receive and collect data and information on and from the insurance industry and insurers;

''(B) enter into information-sharing agreements;

''(C) analyze and disseminate data and information; and

''(D) issue reports regarding all lines of insurance except health insurance.

''(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—

''(A) IN GENERAL.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or information as the Office may reasonably require in carrying out the functions described under subsection (c).

''(B) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, for purposes of subparagraph (A), the term 'insurer' means any person that is authorized to write insurance or reinsure risks and issue contracts or policies in 1 or more States.

''(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

''(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or any affiliate of an insurer, the Office shall coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator, individually or collectively, another regulatory agency, or publicly available sources. Notwithstanding any other provision of law, each such relevant State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

''(5) CONFIDENTIALITY.—

''(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

''(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

''(C) INFORMATION SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State insurance regulators, individually or collectively, through an information sharing agreement that—

''(i) shall comply with applicable Federal law; and

''(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

''(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

''(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

''(f) PREEMPTION OF STATE INSURANCE MEASURES.—

''(1) STANDARD.—A State insurance measure shall be preempted if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

''(A) directly treats less favorably a non-United States insurer domiciled in a foreign jurisdiction that is subject to a Covered Agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

''(B) is inconsistent with a Covered Agreement.

''(2) DETERMINATION.—

''(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Director shall—

''(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

''(ii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable Covered Agreements;

''(iii) provide interested parties a reasonable opportunity to submit written comments to the Office;

''(iv) consider any comments received; and

''(v) consider the effect of preemption on—

''(I) the protection of policyholders and policy claimants;

''(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

''(III) ensuring the integrity and stability of the United States financial system; and

''(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

''(B) SCOPE OF REVIEW.—For purposes of this subsection, the determination of the Director regarding State insurance measures shall be limited to the subject matter contained within the Covered Agreement involved.

''(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

''(i) notify the appropriate State of the determination and the extent of the inconsistency;

''(ii) establish a reasonable period of time, which shall not be less than 90 days, before the determination shall become effective;

''(iii) notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the inconsistency; and

''(iv) cause to be published in the Federal Register notice of the determination and the extent of the inconsistency.

''(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

''(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

''(B) notify the appropriate State.

''(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

''(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

''(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies, and procedures to implement this section.

''(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually or collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

''(j) SAVINGS PROVISIONS.—Nothing in this section shall—

''(1) preempt—

''(A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;

''(B) any State coverage requirements for insurance;

''(C) the application of the antitrust laws of any State to the business of insurance; or

''(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly treats a non-United States insurer less favorably than a United States insurer and in that case only to the extent of the less favorable treatment of the non-United States insurer domiciled in a foreign jurisdiction that is subject to a Covered Agreement;

''(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or

''(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

''(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

''(l) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the insurance industry, any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures), the status of international insurance prudential matters and negotiations, including on standard-setting, and any other information as deemed relevant by the Director or as requested by such Committees.

''(m) STUDY AND REPORT ON REGULATION OF INSURANCE.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Government Accountability Office shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

''(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

''(A) Systemic risk regulation with respect to insurance.

''(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

''(C) Consumer protection for insurance products and practices, including gaps in state regulation.

''(D) The degree of national uniformity of State insurance regulation, including the feasability and costs and benefits of alternative Federal or State actions, such as interstate compacts, that would encourage the States to accomplish the regulatory goal of uniformity that may be identified as being achieved through any proposed Federal regulation of insurance.

''(E) The regulation of insurance companies and affiliates on a consolidated basis.

''(F) International coordination of insurance regulation.

''(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

''(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

''(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

''(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

''(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

''(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

''(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—

''(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

''(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

''(iii) in the case of life insurance companies, the loss of the special status of separate account assets and separate account liabilities; and

''(iv) on the international competitiveness of insurance companies.

''(G) Such other factors as the Government Accountability Office determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

''(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative, administrative, or regulatory recommendations, as the Government Accountability Office determines appropriate, to carry out or effectuate the findings set forth in such report.

''(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Government Accountability Office shall consult with the National Association of Insurance Commissioners, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.

''(n) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

''(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

''(2) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

''(3) COVERED AGREEMENTS.—The term 'Covered Agreements' means a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity after the date of the enactment of the Restoring American Financial Stability Act of 2010 regarding prudential measures applicable to the business of insurance or reinsurance that—

''(A) provides for recognition of other countries' prudential measures with respect to the business of insurance or reinsurance;

''(B) protects insurance consumers in the United States;

''(C) promotes the integrity and stability of the financial system; and

''(D) meets the regulatory goals of the States with respect to the comparable subject matter.

''(4) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

''(5) OFFICE.—The term 'Office' means the Office of National Insurance established by this section.

''(6) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

''(7) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

''(8) UNITED STATES INSURER.—The term 'United States insurer' means—

''(A) an insurer that is organized under the laws of a State; or

''(B) a United States branch of a non-United States insurer.

''(o) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.

''SEC. 314. COVERED AGREEMENTS.

''(a) IN GENERAL.—The Secretary of the Treasury is authorized to negotiate and enter into Covered Agreements on behalf of the United States.

''(b) SAVINGS PROVISION.—Nothing in this section or section 313 shall be construed to affect the development and coordination of United States international trade policy or the administration of the United States trade agreements program. It is to be understood that the negotiation of Covered Agreements under such sections is consistent with the requirement of this subsection.

''(c) REQUIREMENTS FOR CONSULTATION.—

''(1) IN GENERAL.—Before initiating negotiations to enter into a Covered Agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary shall consult with the United States Trade Representative, the relevant Congressional committees, and the insurance commissioners of the States and territories of the United States.

''(2) APPLICATION OF APA.—The initiation of negotiations to enter into a Covered Agreement under subsection (a) and the decision to enter into any such Covered Agreement shall be subject to notice and comment rulemaking under the Administrative Procedures Act.

''(d) ENTRY INTO FORCE.—A Covered Agreement under subsection (a) may enter into force with respect to the United States only if—

''(1) the Secretary has made available for public review by posting in the Federal Register a copy of the final legal text of the Covered Agreement; and

''(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the Covered Agreement is made available for public review under paragraph (1) has expired.''.

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking ''; and'' and inserting a semicolon;

(2) in paragraph (8)(C), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

''Sec. 312. Terrorism and financial intelligence.
''Sec. 313. Office of National Insurance.
''Sec. 314. Covered Agreements.
''Sec. 315. Continuing in office.''.

SA 3923. Mr. SCHUMER (for himself, Mr. REED, Mr. AKAKA, and Mr. MENENDEZ), 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 1248, strike line 22 and all that follows through page 1249, line 10 and insert the following:

(1) COVERED PERSONS.—This section shall apply to any covered person who is not a person described in section 1025(a) or 1026(a).

On page 1255, line 5, strike ''(A) IN GENERAL.—The Bureau'' and insert the following:

''(A) NOTICE.—If the Federal Trade Commission is authorized to enforce any Federal consumer financial law described in paragraph (1), either the Bureau or the Federal Trade Commission shall serve written notice to the other of the intent to take any enforcement action, prior to initiating such an enforcement action, except that if the Bureau or the Federal Trade Commission, in filing the action, determines that prior notice is not feasible, the Bureau or the Federal Trade Commission may provide notice immediately upon initiating such enforcement action.

''(B) COORDINATION.—The Bureau''.

On page 1255, line 10, strike ''(1)(A)''.

On page 1255, line 19, strike ''(B)'' and insert ''(C)''.

On page 1256, line 15, strike ''(C)'' and insert ''(D)''.

On page 1256, line 19, strike ''(D)'' and insert ''(E)''.

On page 1255, line 10, strike ''(1)(A)''.

SA 3924. 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 1522, line 6, strike ''date.'' and insert the following: ''date.

SEC. 1105. FHA MORTGAGE INSURANCE PROGRAMS.

(a) FHA MORTGAGE AMOUNT LIMITS FOR ELEVATOR-TYPE STRUCTURES.—

(1) AMENDMENTS.—Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended—

(A) in section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through the semicolon at the end and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each unit size;'';

(B) in section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through ''; (B)(i)'' and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each applicable family unit size; (B)(i)'';

(C) in section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''family unit not to exceed'' and all that follows through ''design; and'' and inserting ''family unit by not more than 50 percent of the amounts specified in this subclause for each applicable family unit size; and'';

(D) in section 221(d) (12 U.S.C. 1715l(d))—

(i) in paragraph (3)(ii)(I)—

(I) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(II) by striking ''to not to exceed'' and all that follows through ''design;'' and inserting ''by not more than 50 percent of the amounts specified in this subclause for each applicable family unit size;''; and

(ii) in paragraph (4)(ii)(I)—

(I) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(II) by striking ''to not to exceed'' and all that follows through ''design;'' and inserting ''by not more than 50 percent of the amounts specified in this subclause for each applicable family unit size;'';

(E) in section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through ''design;'' and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each applicable family unit size;''; and

(F) in section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through ''sound standards of construction and design;'' and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each applicable family unit size;''.

(b) FHA MORTGAGE AMOUNT LIMITS FOR EXTREMELY HIGH-COST AREAS.—Section 214 of the National Housing Act (12 U.S.C. 1715d) is amended—

(1) in the first sentence—

(A) by inserting ''or with respect to projects consisting of more than four dwelling units located in an extremely high-cost area, as determined by the Secretary'' after ''or the Virgin Islands,'';

(B) by striking ''or the Virgin Islands without sacrifice'' and inserting ''or the Virgin Islands, or to construct projects consisting of more than four dwelling units on property located in an extremely high-cost area, as determined by the Secretary, without sacrifice''; and

(C) by striking ''or the Virgin Islands in such'' and inserting ''or the Virgin Islands, or with respect to projects consisting of more than four dwelling units located in an extremely high-cost area, as determined by the Secretary, in such'';

(2) in the second sentence—

(A) by striking ''the Virgin Islands shall'' and inserting ''the Virgin Islands, or with respect to a project consisting of more than four dwelling units located in an extremely high-cost area, as determined by the Secretary, shall''; and

(B) by striking ''Virgin Islands:'' and inserting ''Virgin Islands, or in the case of a project consisting of more than four dwelling units in an extremely high-cost area as determined by the Secretary, in such extremely high-cost area:''; and

(3) in the section heading, by striking ''AND THE VIRGIN ISLANDS'' and inserting ''THE VIRGIN ISLANDS, AND EXTREMELY HIGH-COST AREAS''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to mortgages insured under title II of the National Housing Act on and after the date of enactment of this Act.

SA 3925. 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 1004, strike line 15 and all that follows through page 1044, line 2, and insert the following:

SEC. 931. REMOVAL OF REFERENCES TO CREDIT RATINGS IN FEDERAL LAW.

(a) COVERED FEDERAL AGENCY.—In this section, the term ''covered Federal agency'' means—

(1) the Commission;

(2) the Corporation;

(3) the Board of Governors;

(4) the National Credit Union Administration;

(5) the Federal Housing Finance Agency; and

(6) the Office of the Comptroller of the Currency.

(b) REVIEW BY COVERED FEDERAL AGENCIES.—Not later than 2 years after the date of enactment of this Act, each covered Federal agency shall—

(1) review all statutes, rules, regulations, forms, and interpretive guidance administered or issued by the covered Federal agency to identify references to the term ''nationally recognized statistical rating organization'';

(2) amend the rules, regulations, forms, and interpretive guidance that the covered Federal agency has identified under paragraph (1) to ensure that the rules, regulations, forms, and interpretive guidance neither require nor promote reliance by persons regulated by the covered Federal agency on credit ratings issued by a nationally recognized statistical rating organization; and

(3) submit to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains recommendations for amendments to any statute that the covered Federal agency has identified under paragraph (1) to ensure that the statute neither requires nor promotes reliance on credit ratings issued by a nationally recognized statistical rating organization.

(c) REVIEW BY COMPTROLLER GENERAL.—

(1) REVIEW REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall—

(A) review all statutes, rules, regulations, forms, and interpretive guidance administered or issued by each Federal agency that is not a covered Federal agency to identify references to the term ''nationally recognized statistical rating organization'';

(B) recommend to each Federal agency that is not a covered Federal agency, and for which the Comptroller General has identified rules, regulations, forms, and interpretive guidance under subparagraph (A), amendments to the relevant rules, regulations, forms, and interpretive guidance to ensure that the rules, regulations, forms, and interpretive guidance neither require nor promote reliance by persons regulated by the Federal agency on credit ratings issued by a nationally recognized statistical rating organization; and

(C) submit to Congress a report that contains recommendations for amendments to any statute that the Comptroller General has identified under subparagraph (A) to ensure that the statute neither requires nor promotes reliance on credit ratings issued by a nationally recognized statistical rating organization.

(2) AMENDMENTS.—Not later than 2 years after the date of enactment of this Act, any Federal agency to which the Comptroller General has made a recommendation under paragraph (1)(B) shall amend any rules, regulations, forms, or interpretive guidance identified by the Comptroller General to ensure that the rules, regulations, forms, or interpretive guidance neither require nor promote reliance by persons regulated by the Federal agency on credit ratings issued by a nationally recognized credit rating organization.

SA 3926. Ms. STABENOW (for herself, Mr. BENNETT, Mr. HATCH, 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 431, strike lines 14 through 20 and insert the following:

(ii) results from—

(I) the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency;

(II) an acquisition of voting shares in a publicly traded holding company of a industrial bank if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert)—

(aa) holds less than 25 percent of the voting shares of the company; and

(bb) has obtained all regulatory approvals required for such change of control under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and any applicable State law; or

(III) an internal reorganization of affiliated entities in which the ownership of the industrial bank, credit card bank, or trust bank is transferred from one affiliate to another after receiving all regulatory approvals required for such change of control under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and any applicable State law.

SA 3927. 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 749, line 17 strike all through page 752, line 11, and insert the following:

''(2) PROHIBITION OF DISCLOSURE OF IDENTITY.—

''(A) IN GENERAL.—Except as provided in paragraph (B) of this subsection, or with the written consent of the whistleblower, the Commission may not disclose the name, identity or identifying information about the whistleblower who has provided information to the Commission.

''(B) NOTICE AND APPLICABILITY TO OTHER GOVERNMENT AGENCIES AND FOREIGN AUTHORITIES.—Whenever the Commission makes a disclosure to other agencies and foreign authorities, it shall provide reasonable advance notice to the whistleblower if disclosure of that person's identity or identifying information is to occur. Any entity that receives such as disclosure shall protect the whistleblower's confidentiality in accordance with this subsection.

On page 990, line 7, strike all through page 993, line 7, and insert the following:

''(2) PROHIBITION OF DISCLOSURE OF IDENTITY.—

''(A) IN GENERAL.—Except as provided in paragraph (B), or with the written consent of the whistleblower, the Commission may not disclose the name, identity or identifying information about the whistleblower who has provided information to the Commission.

''(B) NOTICE AND APPLICABILITY TO OTHER GOVERNMENT AGENCIES AND FOREIGN AUTHORITIES.—Whenever the Commission makes a disclosure to other agencies and foreign authorities, it shall provide reasonable advance notice to the whistleblower if disclosure of that person's identity or identifying information is to occur. Any entity that receives such as disclosure shall protect the whistleblower's confidentiality in accordance with this subsection.

SA 3928. Mr. BENNET (for himself, Mr. TESTER Mr. ISAKSON, Ms. KLOBUCHAR, Mr. BEGICH, Mr. UDALL of Colorado, and Mr. LEMIEUX) 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, insert the following:

TITLE XIII—PAY IT BACK ACT

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Pay It Back Act''.

SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZATION.

Section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)) is amended—

(1) in paragraph (3)—

(A) by striking ''If'' and inserting ''Except as provided in paragraph (4), if'';

(B) by striking '', $700,000,000,000, as such amount is reduced by $1,259,000,000, as such amount is reduced by $1,244,000,000'' and inserting ''$550,000,000,000''; and

(C) by striking ''outstanding at any one time''; and

(2) by adding at the end the following:

''(4) If the Secretary, with the concurrence of the Chairman of the Board of Governors of the Federal Reserve System, determines that there is an immediate and substantial threat to the economy arising from financial instability, the Secretary is authorized to purchase troubled assets under this Act in an amount equal to amounts received by the Secretary before, on, or after the date of enactment of the Pay It Back Act for repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this Act, but only—

''(A) to the extent necessary to address the threat; and

''(B) upon transmittal of such determination, in writing, to the appropriate committees of Congress.''.

SEC. 1303. REPORT.

Section 106 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5216) is amended by inserting at the end the following:

''(f) REPORT.—The Secretary of the Treasury shall report to Congress every 6 months on amounts received and transferred to the general fund under subsection (d).''.

SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RECOVERY ACT OF 2008.

(a) SALE OF FANNIE MAE OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 304(g)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(g)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

''(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

''(i) dedicated for the sole purpose of deficit reduction; and

''(ii) prohibited from use as an offset for other spending increases or revenue reductions.''.

(b) SALE OF FREDDIE MAC OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 306(l)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

''(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

''(i) dedicated for the sole purpose of deficit reduction; and

''(ii) prohibited from use as an offset for other spending increases or revenue reductions.''.

(c) SALE OF FEDERAL HOME LOAN BANKS OBLIGATIONS BY THE TREASURY; DEFICIT REDUCTION.—Section 11(l)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1431(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

''(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

''(i) dedicated for the sole purpose of deficit reduction; and

''(ii) prohibited from use as an offset for other spending increases or revenue reductions.''.

(d) REPAYMENT OF FEES.—Any periodic commitment fee or any other fee or assessment paid by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation to the Secretary of the Treasury as a result of any preferred stock purchase agreement, mortgage-backed security purchase program, or any other program or activity authorized or carried out pursuant to the authorities granted to the Secretary of the Treasury under section 1117 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289; 122 Stat. 2683), including any fee agreed to by contract between the Secretary and the Association or Corporation, shall be deposited in the General Fund of the Treasury where such amounts shall be—

(1) dedicated for the sole purpose of deficit reduction; and

(2) prohibited from use as an offset for other spending increases or revenue reductions.

SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.

The Director of the Federal Housing Finance Agency shall submit to Congress a report on the plans of the Agency to continue to support and maintain the Nation's vital housing industry, while at the same time guaranteeing that the American taxpayer will not suffer unnecessary losses.

SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.

(a) REJECTION OF ARRA FUNDS BY STATE.—Section 1607 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 305) is amended by adding at the end the following:

''(d) STATEWIDE REJECTION OF FUNDS.—If funds provided to any State in any division of this Act are not accepted for use by the Governor of the State pursuant to subsection (a) or by the State legislature pursuant to subsection (b), then all such funds shall be—

''(1) rescinded; and

''(2) deposited in the General Fund of the Treasury where such amounts shall be—

''(A) dedicated for the sole purpose of deficit reduction; and

''(B) prohibited from use as an offset for other spending increases or revenue reductions.''.

(b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.—Title XVI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by adding at the end the following:

''SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.

''Notwithstanding any other provision of this Act, if the head of any executive agency withdraws or recaptures for any reason funds appropriated or otherwise made available under this division, and such funds have not been obligated by a State to a local government or for a specific project, such recaptured funds shall be—

''(1) rescinded; and

''(2) deposited in the General Fund of the Treasury where such amounts shall be—

''(A) dedicated for the sole purpose of deficit reduction; and

''(B) prohibited from use as an offset for other spending increases or revenue reductions.''.

(c) RETURN OF UNOBLIGATED FUNDS BY END OF 2012.—Section 1603 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by—

(1) striking ''All funds'' and inserting ''(a) IN GENERAL.—All funds''; and

(2) adding at the end the following:

''(b) REPAYMENT OF UNOBLIGATED FUNDS.—Any discretionary appropriations made available in this division that have not been obligated as of December 31, 2012, are hereby rescinded, and such amounts shall be deposited in the General Fund of the Treasury where such amounts shall be—

''(1) dedicated for the sole purpose of deficit reduction; and

''(2) prohibited from use as an offset for other spending increases or revenue reductions.

''(c) PRESIDENTIAL WAIVER AUTHORITY.—

''(1) IN GENERAL.—The President may waive the requirements under subsection (b), if the President determines that it is not in the best interest of the Nation to rescind a specific unobligated amount after December 31, 2012.

''(2) REQUESTS.—The head of an executive agency may also apply to the President for a waiver from the requirements under subsection (b).''.

SA 3929. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1223, line 8, strike Sec. 1017, and insert the following:

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) OVERALL OPERATING BUDGET.—

(1) IN GENERAL.—Eighteen months after the designated transfer date, and annually thereafter, the Director shall prepare an operating budget for the Bureau. The Director shall submit the budget to the Board of Governors for approval.

(2) BUDGET ITEMIZATION REQUIRED.—The Director shall include in each budget submitted pursuant to paragraph (1) an itemization of the amount of funds necessary to carry out the functions of the Bureau, including any expenditures necessary to address recommendations or findings of material deficiencies by the Comptroller General of the United States.

(b) FEES AND ASSESSMENTS.—

(1) IN GENERAL.—The Bureau shall establish, by rule, assessment schedules, including the assessment base and rates, applicable to nondepository covered persons described in section 1024(a).

(2) NONDEPOSITORY COVERED PERSONS.—The assessments imposed by the Bureau by rules established pursuant to paragraph (1) shall, with respect to covered persons described in section 1024(a), be set to recover the costs of the Bureau in carrying out its supervisory and enforcement responsibilities described in section 1024.

(3) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—To the extent that assessments do not provide funding sufficient to meet the amount subject to the limitation in paragraph (4), funds shall be transferred from the Board of Governors.

(4) LIMITATION.—The assessments imposed by the Bureau by rules established pursuant to paragraph (1) and any funds transferred from the Board of Governors collectively shall not exceed 5 percent of the total operating expenses of the Federal Reserve System, as reported in the Annual Report of the Board of Governors for fiscal year 2006.

(c) FUND ESTABLISHED.—

(1) IN GENERAL.—The Secretary shall establish in the Treasury of the United States, a separate account, to be known as the ''Consumer Financial Protection Fund'' (referred to in this title as the ''CFP Fund''). Fees and assessments collected under this section shall be deposited into the CFP Fund.

(2) RULE OF CONSTRUCTION.—Any amounts deposited into the CFP Fund may not be construed to be Government funds or appropriated monies.

(3) NO APPORTIONMENT.—Any amounts deposited into the CFP Fund shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(4) AVAILABILITY.—Funds in the CFP Fund shall be immediately available to the Bureau and under the control of the Bureau, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities.

(d) FINANCIAL, OPERATING PLANS AND FORECASTS.—

(1) OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(2) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

(A) assets and liabilities and surplus or deficit;

(B) income and expenses; and

(C) sources and application of funds.

(3) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply with Federal financial management systems requirements and applicable Federal accounting standards.

(4) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established under section 3512(c) of title 31, United States Code.

(5) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in this subsection or any jurisdiction or oversight over the affairs or operations of the Bureau.

(e) AUDIT OF THE BUREAU.—

(1) IN GENERAL.—The Comptroller General of the United States shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of the Comptroller General to access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

(2) REPORT.—

(A) REPORT ON ANNUAL AUDIT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection, which report shall—

(i) set forth the scope of the audit;

(ii) include the statement of—

(I) assets and liabilities and surplus or deficit;

(II) income and expenses; and

(III) sources and application of funds;

(iii) include any detailed findings of material deficiencies;

(iv) include such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau; and

(v) be presented, together with recommendations with respect thereto, as the Comptroller General may deem necessary and advisable to improve the business practices of the Bureau or correct any material deficiencies.

(B) COPIES.—A copy of each report submitted under subparagraph (A) shall be furnished to the President and to the Bureau at the time such report is submitted to Congress.

(C) FOLLOW-UP REPORT.—The Bureau shall submit to Congress a report following each annual audit conducted under this subsection that includes a detailed explanation of any recommendations or findings of material deficiencies, together with a corrective action plan, including a timeline, for addressing the findings and recommendations of the Comptroller General.

(3) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General under this subsection. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(f) TRANSITION.—Until such time as an assessment schedule has been established pursuant to this section and the necessary contributions have been deposited into the CFP Fund, the functions assigned under this section to the Bureau shall be funded in accordance with section 1066(c).

(g) LIMITATION ON DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—None of the funds made available under this title shall be used for or to support private litigation or to fund political activities, nor be provided to any—

(A) organization which has been indicted for a violation under Federal law relating to an election for Federal office; and

(B) organization which employs any applicable individual.

(2) APPLICABLE INDIVIDUALS DEFINED.—In this subsection, the term ''applicable individual'' means an individual who—

(A) is—

(i) employed by the organization in a permanent or temporary capacity;

(ii) contracted or retained by the organization; or

(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

(B) has been indicted for a violation under Federal law relating to an election for Federal office.

(h) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (i).

(i) REPORTS REQUIRED.—The Director shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services.

On page 1210, strike line 1 and all that follows through page 1211, line 19.

SA 3930. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, between lines 4 and 5, insert the following:

(s) NO AUTHORITY OVER UNDERWRITING STANDARDS FOR RESIDENTIAL MORTGAGE LOANS.—

(1) RULE OF CONSTRUCTION.—Nothing in this title may be construed as conferring authority on the Bureau to exercise any rulemaking or other authority for matters pertaining to underwriting standards with respect to residential mortgage loans, except as otherwise authorized under section 1024.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term 'residential mortgage loan' means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) the terms ''credit'' and ''dwelling'' have the same meanings as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

On page 1430, strike line 8 and all that follows through page 1440, line 21.

SA 3931. Mr. MERKLEY (for himself, Mr. LEVIN, Mr. BROWN of Ohio, Mr. KAUFMAN, Mrs. SHAHEEN, Mrs. FEINSTEIN, Mr. CASEY, Mr. NELSON of Florida, Mr. BURRIS, Mr. BEGICH, Mr. INOUYE, Mr. WHITEHOUSE, Mrs. MCCASKILL, Mr. UDALL of Colorado, Ms. MIKULSKI, Mr. SANDERS, Mr. UDALL of New Mexico, 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 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.—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, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, 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.—

''(A) IN GENERAL.—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.

''(B) CONTENTS OF STUDY.—Not later than 6 months after the date of enactment of this Act, the Council shall study and make recommendations on implementing the provisions of this section so as to—

''(i) promote and enhance the safety and soundness of banking entities;

''(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 conflicts of interest between the self-interest of banking entities and nonbank financial companies, and the interests of the customers of such entities and companies;

''(v) not unreasonably 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 banking entities and nonbank financial companies, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies; and

''(vii) 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 an affiliated insured depository institution and the United States financial system.

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, in consultation with 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.

''(B) COORDINATED RULEMAKING.—

''(i) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the agencies shall consult and coordinate with each other 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 the banking entities and nonbank financial companies supervised by the Board.

''(ii) COUNCIL ROLE.—The chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—The provisions of this section shall take effect 18 months after the date of adoption of final rules under subsection (b)(2), but not later than 3 years after the date of enactment of this section.

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by other laws or regulations, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, may jointly 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 (i)(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 risks to the banking entity or nonbank financial company.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (i)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies 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 (i)(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 such activities 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 company or the banking entity or the financial stability of the United States.

''(G) 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 company is not directly or indirectly controlled by a United States person.

''(H) 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 company pursuant to section 4(c) (9) or (13) solely outside of the United States, provided that no ownership interest in the hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the company is not directly or indirectly controlled by a company that is organized in the United States.

''(I) Such other activity as the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, jointly determine through regulation, as provided for in subsection (c), would promote and protect the safety and soundness of the banking entity or nonbank financial company 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 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 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; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall issue regulations to implement subparagraph (A) as part of the regulations provided for under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall adopt rules 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 engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall jointly issue regulations as part of the rulemaking provided for in subsection (c) 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 or the Securities and Exchange Commission or Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that is intended to evade the requirements of this section (including through an abuse of any permitted activity), the appropriate Federal banking agency or the Securities and Exchange Commission or Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company to terminate the activity and, as relevant, dispose of the investment; provided that 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.

''(g) LIMITATION ON CONTRARY AUTHORITY.—No activity that is authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law may be engaged in, directly or indirectly, by a banking entity or a nonbank financial company supervised by the Board under such authority or under any other provision of law, if such activity is prohibited or restricted under this section.

''(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit the inherent authority of any Federal agency or state regulatory authority under otherwise applicable provisions of law.

''(i) 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.

''(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.—The terms 'nonbank financial company supervised by the Board' and 'nonbank financial company' mean any United States nonbank financial company or foreign nonbank financial company supervised by the Board under section 113 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, contract of sale of a commodity for future delivery, any option on any such contract, swap, security-based swap, or any other security or financial instrument that the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, may jointly, by rule, determine.

''(5) TRADING ACCOUNT.—For all banking entities and nonbank financial companies covered by this section, the term 'trading account' shall be defined consistent with guidance issued by the Board with regard to financial statements of bank holding companies and shall include any account used for acquiring or taking positions in such items 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, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, may jointly, by rule, determine.

''(6) SPONSOR.—The term to 'sponsor' a fund means to—

''(A) serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner select or control (or having employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.''.

SEC. 619A. STUDY OF BANK ACTIVITIES.

(a) STUDY.—Not later than 18 months after the date of enactment of this Act, the appropriate Federal banking agencies shall jointly review and prepare a report on activities permitted as part of the business of banking under Federal and State law including activities authorized by statute and by order, interpretation and guidance and shall as part of the report review and consider—

(1) the type of activities or investment;

(2) 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,

(3) 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 two 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.

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 necessary to conduct the underwriting, placement, initial purchase, or sponsorship, provided that this subparagraph shall not otherwise limit the application of section 15(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).''.

SA 3932. Mr. DURBIN 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. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

''SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

''(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

''(1) REGULATORY AUTHORITY.—The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction.

''(2) REASONABLE FEES.—The amount of any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction shall be reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(3) RULEMAKING REQUIRED.—The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(4) CONSIDERATIONS.—In issuing rules required by this section, the Board shall—

''(A) consider the functional similarity between—

''(i) electronic debit transactions; and

''(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

''(B) distinguish between—

''(i) the actual incremental cost incurred by an issuer or payment card network for the role of the issuer or the payment card network in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

''(ii) other costs incurred by an issuer or payment card network which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

''(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

''(5) EXEMPTION FOR SMALL ISSUERS.—This subsection shall not apply to issuers that, together with affiliates, have assets of less than $1,000,000,000, and the Board shall exempt such issuers from rules issued under paragraph (3).

''(6) EFFECTIVE DATE.—Paragraph (2) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

''(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.—

''(1) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network.

''(2) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, or credit card.

''(3) NO RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of any form of payment.

''(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) DEBIT CARD.—The term 'debit card'—

''(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means;

''(B) includes general use prepaid cards, as that term is defined in section 915(a)(2)(A) (15 U.S.C. 1693l–1(a)(2)(A)); and

''(C) does not include paper checks.

''(2) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(3) DISCOUNT.—The term 'discount'—

''(A) means a reduction made from the price that customers are informed is the regular price; and

''(B) does not include any means of increasing the price that customers are informed is the regular price.

''(4) ELECTRONIC DEBIT TRANSACTION.—The term 'electronic debit transaction' means a transaction in which a person uses a debit card to debit an asset account.

''(5) INTERCHANGE TRANSACTION FEE.—The term 'interchange transaction fee' means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

''(6) ISSUER.—The term 'issuer' means any person who issues a debit card, or the agent of such person with respect to such card.

''(7) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.''.

SA 3933. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1291, line 15 strike '', **DECEPTIVE, OR ABUSIVE**'' and insert ''**OR DECEPTIVE**''.

On page 1291, line 20, strike '', deceptive, or abusive'' and insert ''or deceptive''.

On page 1292, line 1, strike '', deceptive, or abusive'' and insert ''or deceptive''.

On page 1293, strike lines 3 through 20.

On page 1293, line 21, strike ''(e)'' and insert ''(d)''.

SA 3934. Mr. SCHUMER (for himself and 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 567, lines 7 and 8, strike '', subject to the requirements of section 5(b)''.

On page 727, after line 25, insert the following:

(C) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a derivatives clearing organization shall submit to the Commission for prior approval each proposed new rule, or amendment or interpretation of an existing rule, that materially changes the terms and conditions, as determined by the Commission, of—

(i) admission and continuing eligibility standards for members of and participants in the derivatives clearing organization, including the financial resources required for a member of a derivatives clearing organization;

(ii) management of the risks associated with discharging the responsibilities of a derivatives clearing organization; and

(iii) management of events when members or participants become insolvent or otherwise default on their obligations to a derivatives clearing organization.

On page 728, line 1, strike ''(C)'' and insert ''(D)''.

On page 783, lines 5 and 6, strike '', subject to the requirements of section 5(b)''.

On page 881, between lines 6 and 7, insert the following:

(c) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this title or of the Securities Exchange Act of 1934, and for purposes of clarification, each proposed new rule, or amendment or interpretation of an existing rule, of a registered clearing agency, as that term is defined in section 3(a)(23) of the Securities Exchange Act of 1934, shall be filed with the Securities and Exchange Commission for approval in accordance with section 19(b) of such Act, and shall not become effective unless such approval is obtained, to the extent such proposal, amendment, or interpretation would change, in a manner not provided for under section 19(b)(3)(A) of such Act, as determined by the Commission, the terms and conditions of—

(1) admission and continuing eligibility standards for members of and participants in a registered clearing agency, including the financial obligations of a member of a registered clearing agency;

(2) management of the risks associated with the discharge of the responsibilities of a registered clearing agency; or

(3) management of events when members or participants become insolvent or otherwise default on their obligations to a registered clearing agency.

SA 3935. 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 632, between lines 4 and 5, insert the following:

''(e) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements set forth in subsection (c)(7) and subsection (d)(2) shall only apply to entities from jurisdictions in which a swap data repository is located and only if the Commission determines that such swap data repository does not make all data obtained by such swap data repository available on terms and conditions comparable to those on which a swap data repository registered with the Commission makes data available.''.

On page 632, line 5, strike ''(e)'' and insert ''(f)''.

On page 632, line 16, strike ''(f)'' and insert ''(g)''.

On page 633, line 17, strike ''(f)'' and insert ''(g)''.

On page 634, line 18, strike ''(g)'' and insert ''(h)''.

On page 634, line 24, strike ''(h)'' and insert ''(i)''.

On page 844, between lines 2 and 3, insert the following:

''(6) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements set forth in subparagraph (G) and subparagraph (H)(ii) shall only apply to entities from jurisdictions in which a security-based swap data repository is located and only if the Commission determines that such security-based swap data repository does not make all data obtained by such security-based swap data repository available on terms and conditions comparable to those on which a security-based swap data repository registered with the Commission makes data available.''.

On page 844, line 3, strike ''(6)'' and insert ''(7)''.

On page 844, line 18, strike ''(7)'' and insert ''(8)''.

On page 847, line 1, strike ''(7)'' and insert ''(8)''.

On page 848, line 6, strike ''(8)'' and insert ''(9)''.

On page 848, line 13, strike ''(9)'' and insert ''(10)''.

SA 3936. 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 541, strike line 24 and insert the following:

as a major swap participant.

''(E) CONSULTATION; COORDINATION.—In making a determination under subparagraph (B), the Commission shall consult with the members of the Council, and shall seek to establish standards consistent with standards established by the Securities and Exchange Commission, in determining substantial positions for security-based major swap participants.''.

On page 767, between lines 10 and 11, insert the following:

''(E) CONSULTATION; COORDINATION.—In making a determination under subparagraph (B), the Commission shall consult with the members of the Council, and shall seek to establish standards consistent with standards established by the Commodity Futures Trading Commission, in determining substantial positions for major swap participants.

SA 3937. Mrs. LANDRIEU (for herself, Mr. CHAMBLISS, and Mr. ISAKSON) 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 1273, line 6, insert ''significantly'' after ''extended''.

NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. DORGAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, May 13, 2010, at 9:30 a.m. in room 628 of the Dirksen Senate Office Building to conduct an oversight hearing entitled ''Does Indian School Safety Get a Passing Grade?''

Those wishing additional information may contact the Indian Affairs Committee at (202) 224–2251.

DISCHARGE AND REFERRAL—S.J. RES. 29

Mr. DODD. Madam President, I ask unanimous consent that S.J. Res. 29 be discharged from the Committee on Foreign Relations and be referred to the Committee on Finance.

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

HONORING THE 100TH ANNIVERSARY OF THE ESTABLISHMENT OF GLACIER NATIONAL PARK

Mr. DODD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 520, which was submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 520) honoring the 100th anniversary of the establishment of Glacier National Park.

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

Mr. DODD. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, all without intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 520) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 520

Whereas Glacier National Park was established as the 10th National Park on May 11, 1910;

Whereas Glacier National Park is part of the Waterton-Glacier International Peace Park, the world's first international peace park;

Whereas Glacier National Park has a total of 25 named glaciers;

Whereas water originating in the park is considered the headwaters of three major drainages;

Whereas Glacier National Park is the core of the ''Crown of the Continent Ecosystem'', one of the country's largest intact ecosystems;

Whereas Glacier National Park encompasses over 1,000,000 acres, 762 lakes, more than 60 native species of mammals, 277 species of birds, and almost 2,000 plant species;

Whereas Glacier National Park's lands hold great spiritual importance to the Blackfeet and the Salish and Kootenai native peoples;

Whereas the Park contains 110 miles of the Continental Divide Trail;

Whereas the Going-to-the-Sun Road in Glacier National Park was completed in 1932 and is a National Historic Civil Engineering Landmark;

Whereas in 1976 Glacier was dedicated a Biosphere Reserve by UNESCO;

Whereas in 1995 Waterton-Glacier International Peace Park was designated a World Heritage Site; and

Whereas Glacier National Park receives approximately 2,000,000 visitors a year: Now, therefore, be it

Resolved, That the people of the United States should observe and celebrate the 100th anniversary of the establishment of Glacier National Park in Montana on May 11, 2010.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 94–

201, as amended by Public Law 105–275, appoints the following individuals as members of the Board of Trustees of the American Folklife Center of the Library of Congress: Jean M. Dorton of Kentucky and Margaret Z. Robson of New Mexico.

ORDERS FOR TUESDAY, MAY 11, 2010

Mr. DODD. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. Tuesday, May 11; 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, the Senate resume consideration of S. 3217, Wall Street reform, as provided for under the previous order; and finally I ask unanimous consent that the Senate recess from 12:30 until 2:15 p.m. to allow for the weekly caucus luncheons.

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

PROGRAM

Mr. DODD. Madam President, Senators should expect two rollcall votes to begin at approximately 11:30 a.m. tomorrow. The votes will be in relation to the Sanders and Vitter amendments to the Wall Street reform bill.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DODD. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 6:04 p.m., adjourned until Tuesday, May 11, 2010, at 10 a.m.

NOMINATIONS

Executive nomination received by the Senate:

THE SUPREME COURT OF THE UNITED STATES

ELENA KAGAN, OF MASSACHUSETTS, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, VICE JOHN PAUL STEVENS, RETIRING.