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Senate

The Senate met at 10 a.m. and was called to order by the Honorable JEANNE SHAHEEN, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

Eternal God, our only hope, our help in times of trouble, lead our Senators to use their power and influence with faithfulness. May Your word rule in their hearts, as they are led by Your wisdom. Lord, help them to seek Your will and see it clearly. May they work out the issues that divide them, as they strive to serve the welfare of our Nation and world. Empower our lawmakers to not become so familiar with Your customary daily blessings that they lose the sense of expectancy for Your special interventions in the complex challenges they face.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JEANNE SHAHEEN 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 4, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEANNE SHAHEEN, a Senator from the State of New Hampshire, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, following leader remarks, we will be in a period of morning business for 60 minutes. The majority will control the first half hour and the Republicans will control the final 30 minutes. Following morning business, we will resume consideration of the Wall Street reform legislation. The Senate will recess from 12:30 until 2:15 today to allow for the weekly caucus meetings.

FINANCIAL REGULATORY REFORM

Mr. REID. Madam President, I applaud and commend my friend, the distinguished chairman of the Banking Committee, Senator CHRIS DODD, for the bill we have on the floor. I also express my appreciation for the work done by the chair of the Agriculture Committee, Senator BLANCHE LINCOLN. The work of these committees is the bill on which we are working, offering amendments to this most important piece of legislation. The bill that is now before the Senate is a strong bill. I again express my appreciation to the two chairs for the good work they have done.

This bill will hold Wall Street accountable and put consumers in control. It ends taxpayer bailouts and guarantees taxpayers will never again be forced to bail out reckless Wall Street firms by creating a way to liquidate failed firms without taxpayer money. That is going to be underlined and underscored with an amendment that is first up, the Boxer amendment, which indicates that is, in fact, the case. It ends too big to fail with strict new capital and leverage requirements to prevent firms from growing too big to fail. It brings sunlight and transparency to shadowy markets.

It was really a revelation to me to read a book entitled ''The Big Short'' by Michael Lewis, who wrote the book that was made into a movie and received an Academy Award, ''The Blind Side.'' This book is good. It indicates to anyone who reads it the shadowy markets which are now in existence and which we are trying to stop. This legislation will stop them by bringing in sunlight and transparency, where Wall Street executives make gambles that threaten the entire economy.

The legislation reins in CEO pay by giving shareholders a nonbinding vote on excessive compensation. It, again, brings this into the light. It protects community banks and streamlines bank supervision to create clarity and accountability. It protects a dual banking system that supports community banks and protects consumers in many different ways. It puts a new cop on the beat, creates an independent agency with broad authority to monitor firms for abusive practices, and we allow intervention to protect consumers.

An important provision the American public will easily identify with: it guarantees clear information in plain English and ensures consumers get the information they need to shop for mortgages, credit cards, and other financial products, that it will be in English they can understand. There are no more abusive practices. It protects consumers from hidden fees, abusive terms, and deceptive practices. It also protects against Bernie Madoff-type scams. It is a strong piece of legislation.

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

There will be efforts made to make it even stronger with amendments on our side. We hope Republicans will join with us in passing this legislation. There are some who have said that by the time this bill gets off the floor, a significant majority of Senators will vote for it. I hope that is the case.

I also hope we don't get locked into something that appears to be the order of the Congress around here; that is, everything has to have 60 votes. I can't speak for everyone, but I will certainly do everything within my power to tell my Senators, let's just have 50-vote margins. Why do we need to have 60 votes on everything we do around here? It makes it so much more difficult. I believe it is unnecessary.

I hope we can move forward and get this legislation done. We have to finish it by next week. We will finish it one way or the other by next week. We have to do that. We have so much more to do. We have the expiring provisions of the tax extenders. Unemployment benefits will expire at the end of this month. We have the doctors, and we have to take care of them. That is a commitment we made, all of us, Democrats and Republicans—that we would take care of the doctors with the SGR. We were able to pass, with pay-go, a 5-year fix. They have a 10-year fix on the House side. But we have to take care of these doctors. They deserve that. We have to do that before the end of this month. There are other important issues we would like to deal with. We have small business we would like to deal with. There are many good things we can do there that have partisan agreement, and we can move forward.

I hope we can move quickly on this legislation. I hope there can be some work with the two managers to move this legislation along, the two initial managers, Senators DODD and SHELBY, who will manage most of this bill. When we get into the derivative section, Senators LINCOLN and CHAMBLISS will be managing that part.

RECOGNITION OF THE MINORITY LEADER

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

NYC TERROR SUSPECT

Mr. MCCONNELL. Madam President, Americans were happy to learn this morning that late last night Federal and local officials in New York City apprehended the man they believe to have attempted a terrorist attack in Times Square on Saturday.

I join all Americans in thanking the law enforcement officials who worked around the clock these past two days. It looks like they got their man, and we are grateful for their efforts on our behalf.

It is my understanding that the suspect, a naturalized American citizen, is a native of Pakistan and that he traveled there at some point in the past year. Hopefully the appropriate officials are using this opportunity to exploit as much intelligence as he may have about his overseas connections and any other plots against Americans either here or abroad.

But this is very good news, and again, we want to thank those who work so hard to keep us safe and to protect us from ongoing threats. As I said yesterday, this plot is a reminder to all of us of the need for constant vigilance and to never drop our guard.

KENTUCKY FLOODING

I would also like to say a word about the flooding in Kentucky.

Last night Governor Beshear said he would seek a major disaster declaration from the President to help recover from the devastation wrought by a round of weekend storms and collateral flooding, and I will be sending a letter to the President today in support of Kentucky's request for a major disaster declaration which would provide direct Federal logistical support and cost sharing assistance to mitigate the effects of the flooding.

Emergency declarations have been made in 48 counties throughout the Commonwealth, and that number is likely to increase as recovery efforts continue. Tragically, four people have been confirmed dead as a result of flooding in Madison, Barren, Allen, and Lincoln Counties.

My office has been in contact with the Governor's office, and we will do all we can to assist him. It is my understanding that Governor Beshear has spoken with the President about the situation and that FEMA is already working with State authorities in Kentucky to render assistance.

Our prayers are with the victims of the flooding in both the Commonwealth and in her sister State of Tennessee and our gratitude goes out to the first responders and emergency personnel rendering aid to the impacted communities.

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. BROWN of Ohio. I ask unanimous consent that the order for the quorum call be rescinded.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

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

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that Senator KAUFMAN, the cosponsor of our Wall Street reform amendment, and I be permitted to speak for up to 20 minutes.

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

FINANCIAL REGULATORY REFORM

Mr. BROWN of Ohio. Madam President, we all agree our financial system should never again be on the brink of total collapse. We all agree we must never again allow Americans to fall victim to the unconscionable recklessness and unbridled greed we have seen over the last decade. No longer should a no-show regulatory attitude rob Americans of their jobs, of their homes, of their retirement savings, of their credit ratings, and the list goes on and on. We all agree American taxpayers should never again have to foot the bill for bailouts to the very firms whose cowboy attitudes got us into this mess in the first place.

So how do we put a stop to the madness that left our economy in a shambles? We stop it in its tracks. That means hard decisions. It means decisive action. It means doing more than taking action when we recognize the symptoms of collapse. It doesn't mean waiting until it is too late and too many people suffer. It means eliminating the ingredients of collapse.

Chairman DODD's bill is strong. It sets the stage for recognizing trouble, and it helps use regulatory tools to reverse it.

Senator KAUFMAN and I think we owe it to the American people to take one more significant step. We need to take action now so trouble never has the chance to brew. That means taking on the financial institutions that are too big to fail and doing that now and doing that in this bill.

Former FDIC Chair William Isaac said these institutions are ‘‘too big to manage and too big to regulate.’’ Senator KAUFMAN and I want to do more than monitor banks that must be bailed out if they gamble themselves into a corner. We want to put a hard limit on the size of these behemoth banks so they don't control so much of our economy that, come crisis time, we have to save them; we have to bail them out to save the economy. We want to limit their size so they can't back taxpayers into a corner, where it is either help them or hurt ourselves. We don't want that obsequent choice. We think that should be a concern whether it comes through acquisition or organic growth. Certainly, risk is the biggest problem, but size is almost as big a problem, and together they can spell disaster. Our measure only affects the six largest megabanks.

As this chart shows—and I have cited it often in recent weeks—the assets of these six banks, the assets of the largest six banks in the United States 15 years ago was 17 percent of gross domestic product. The total assets of the six largest banks today are 63 percent of gross domestic product. Seventeen percent of gross domestic product 15 years ago, six largest banks, 63 percent of gross domestic product today. These banks have $9 trillion—that is $9,000 billion—in assets.

Research shows that a bank's size stops providing benefits to its customers once it reaches approximately $100 billion. So we can get all the economies of scale in a bank with $100 billion—$100,000 million. Those are large banks, $100 billion banks. You can get the economies of scale with $100 billion banks. You don't need a $1½ trillion bank.

I have heard some argue that smaller banks are actually less stable than larger banks. Evidence shows, though, that larger banks actually exhibit greater risk due to the higher volatility of their assets and their activities. Look what happened in the last 2 years. The simplest, most effective way to manage this risk is to spread it out, to have several modestly sized institutions instead of a few giant ones. But the risk in the financial system is clearly collecting in a few gigantic banks.

This chart shows the industry concentration in top bank holding companies. When Gramm-Leach-Bliley passed in 1999, the five biggest banks had 38 percent of the assets of the financial industry. Today they hold 52 percent. So we can add up all the community banks in my State—and there are dozens and dozens of them and they serve the communities well—you can add up all the regional banks in my State; you can add up KeyBank and Fifth Third and Huntington and 1st Mariner—all the regional banks—and when we do that all over the country, these five banks still have most of the assets. Five banks have 52 percent of the assets.

I know some people think it is too late—the horses are out of the barn—and we can't go back to a time when we had a group of 15 modestly sized banks, as opposed to 6 gargantuan banks. We allowed big financial firms to merge into giant ones, and that led to a $4 trillion bailout. In the last few decades, the banking industry has become so concentrated it no longer functions as a competitive market. Since 1990, the 20 largest financial firms have increased their control of banking assets. They once controlled 35 percent. They now control 70 percent. Some firms are now 30 percent, 40 percent, in some cases, larger than they had been before the crisis.

So what does it mean? We are twiddling our thumbs as Wall Street, once again, places our Nation at risk.

Former Fed Chairman Alan Greenspan said:

> In 1911, we broke up Standard Oil. So what happened? The individual parts became more valuable than the whole. Maybe that's what we need to do.

This is Alan Greenspan, who clearly has never come down on this side on issues such as this.

President Franklin Roosevelt investigated and imposed structural regulations on utilities through the Public Utility Holding Company of 1935. That worked for the prosperity of business, and it worked for the prosperity of the country as a whole.

In 1984, the court split AT&T into a group of regional Bells. That worked for business. That worked for the country as a whole.

In all these cases, size was detrimental to the marketplace. Now these megabanks have grown so large they control the fate of our economy.

The large banks have effectively become huge securities and derivatives trading operations grafted on top of commercial banks. Right now they are using their trading businesses, and they are neglecting their lending businesses. Ask people in Hanover. Ask people in Mansfield. Ask people in Toledo or Shelby, OH. Ask small businesses, and they will tell you they simply can't get the credit they need for manufacturing and other kinds of small businesses.

These large banks have too often put a virtual freeze on lending to small businesses, despite receiving a taxpayer bailout. Three of the largest banks slashed their SBA lending by 86 percent from 2008 to 2009. In Ohio, SBA-backed loans went from 4,200 in 2007 to 2,100—cut in half—in 2009.

I have heard from manufacturers and entrepreneurs, from energy startups and mom-and-pop operations, from small business owners to the local corner store operator, all part of the middle class who are struggling to get the credit they need to hire their workers.

Our amendment simply says too big to fail is too big.

We are going to call up the amendment sometime this week. Senator KAUFMAN is one of many cosponsors who played a major role in crafting this legislation.

I yield to Senator KAUFMAN.

Mr. KAUFMAN. I thank the Senator. I think Senator BROWN has given a presentation that is perfect and that explains this. I am just going to make a few points. I gave a speech on the floor yesterday, if anybody is interested in more detail.

Let's look at some charts that kind of take what Senator BROWN says and slices and dices it in a slightly different way.

This is the average assets relative to gross domestic product of U.S. commercial banks. Would anybody like to guess when Glass-Steagall was repealed? How about right about here. I don't know if my colleagues have seen the charts. One of the reasons I thought there was a housing bubble is, if you look at the charts on the housing industry in America, the price of housing in this country from 1990 until about 2003 was just like that and then it went right through the roof. This is a very bad sign in anything. The fact that our banks are operating this thing is truly scary.

Let me show my colleagues another chart. This is average assets relative to GDP. This is the concentration of the U.S. banking system. Does that chart look familiar? Let me tell my colleagues the worst thing about this. This does not include what we did during the meltdown, when we took Washington Mutual and pushed it into JPMorgan Chase, when we took Merrill Lynch and pushed it into Bank of America, and when we took Wachovia and pushed it into Wells Fargo. That doesn't even include this. We can only imagine where this line would be now. I have to get the chart updated. This is incredible. Of course, the red line is when we passed Glass-Steagall.

So the clear indicator is Glass Steagall. In 1929, we had a credit meltdown in this country. Our forbears on this very floor said we have to do something about it. We have to pass laws, not go back to the regulators who didn't serve us well over the last 8 years—no, no. We have to pass laws. So we passed Glass-Steagall that not only said you can't be a commercial bank and an investment bank under the same roof—which, when I was in school, we learned was one of the basics for our success and why we went 60 years without a bank panic, which we had all through the 19th century and right up to 1929.

We should not have investment banks and commercial banks under the same roof. Commercial banks should be there to protect the small investor, the small depositor, make sure it is safe, and that is why we gave it guaranteed FDIC insurance. We never thought we would have FDIC insurance for an organization that had investment banking in it.

Commercial banking should be a low-risk, basically low-return business. That is what we wanted. That is what the vast majority of Americans have at their local bank. It should not be included under the same roof as an investment banking operation that is high risk, high return. We could have had this argument 5 years ago, and I would have said: Oh, that is a good argument. Let's talk about it. Let's see what happened and how we got to where we are.

The other sentiment we hear, just to expound on some of the points made by my colleague from Ohio: We can't break up the banks. You don't understand, TED. We need these banks to compete internationally.

Let me get one thing straight. Do my colleagues know what we are going to do under our bill if Brown-Kaufman passes? We are going to ask Citigroup to go back to what they were in 2003. Was Citigroup competing internationally in 2003? I think they were. So we are not saying we are going to take them apart. All we are trying to do is get them back to what they were.

Goldman Sachs. The balance sheet of an investment bank such as Goldman Sachs will be scaled down from $850 billion to a more reasonable level of above $300 billion or around $450 billion. That sounds pretty draconian, right? We are asking them to go from $850 billion down to $450 billion. Would anybody like to guess what Goldman Sachs' assets were in 2003? Would you believe $100 billion? We are allowing them to grow to 3½ to 4 times the size they were in 2003.

One of the people who didn't do real well during this last crisis was Alan Greenspan. He is the one who said self-regulation works. He said a whole lot of other things, but he said two very important things regarding where we are right now. One of them is the quote Senator BROWN used: Too big to fail is too big. This is Alan Greenspan. This is not some populist in bib overalls, with a pitchfork in the middle of the streets raising his hands. This is Alan Greenspan.

I have to read this. You have to believe this. The next time somebody tells you we need these banks to compete and they need economies of scale, listen to what Alan Greenspan says:

For years the Federal Reserve had been concerned about the ever larger size of our financial institutions.

Alan Greenspan:

Federal Reserve research has been unable to find economies of scale in banking beyond a modest-sized institution.

There is a fellow named Andrew Haldane, who is the executive director of the Bank of England. Do my colleagues know what he says the size is? He says $100 billion. That is what Haldane says. I commend everybody to read his report. It is very good. Just realize right now we have banks in this country that are $2 trillion and Haldane says $100 billion. Greenspan says we can't find economies of scale beyond a modest-sized institution.

Alan Greenspan:

A decade ago, citing such evidence, I noted that megabanks being formed by growth and consolidation are increasingly complex entities that create the potential for unusually large systemic risks in the national and international economy should they fail.

That is exactly what Senator BROWN and I have been saying and what a number of us have been saying about where we are. But this is Alan Greenspan:

Regrettably, we did little to address the problem.

I just hope 2 years from now—I will not be here—somebody on the floor will not be saying: Regrettably, in 2010, we did little to address this problem.

This seems, to me, to be so incredibly complex but at the same time so incredibly simple. I just ask my colleagues, every time someone says something about the Brown-Kaufman bill, MARIA CANTWELL and JOHN MCCAIN's bill or the bill being offered by Senator LEVIN and Senator MERKLEY, ask this question when they start laying out the problems: Are our banks too big, No. 1; and No. 2, are they too big to fail?

I thank the Chair.

Mr. BROWN of Ohio. Madam President, I thank the Senator from Delaware.

It is so clear, first of all, that the Dodd bill is a huge step, a good step, a solid bill in reforming Wall Street.

It is what we ought to do. There will be three or four major chances. One of them is the amendment Senator KAUFMAN and I are working on. There will be three or four major votes coming up to strengthen the bill. There will be efforts—particularly from my colleagues on the other side of the aisle—to weaken the bill. There are clearly many people in this institution who want to do the work of Wall Street, and Wall Street has always been their benefactor. The big banks are their allies. They may do their bidding on the Senate floor. There will be efforts to strengthen the bill, such as Merkley-Levin, and some of the work we do with derivatives.

Let me close and put a bit of a human face on this. This is technical stuff. When you look at these charts that we put up and what happened with the size of these banks—again, I cite this number that astounds me every time I think about it: Only 15 years ago, the largest 6 banks in the country had assets of 17 percent of GDP. Today, it is 63 percent of GDP—some $9 trillion. Those are astounding numbers.

Let me shift and put a bit of a human face on what this means. I want to share two quick letters, one from someone in Columbus, and one in Lorain. Joann, from Franklin County, says this:

As a small family-owned business owner, I'm trying to find help to keep our business open. Our 20 employees and their families count on us to continue operating. They will end up unemployed and looking for work if we can't keep money flowing.

They cannot get the kind of credit they need from these banks.

My neighbor had to close her business; she cut prices, selling everything she could. Now she works two part-time jobs. The building her store was in sits empty. Banks didn't help her either.

The banking industry is responsible for the economic crash. They should be assisting businessowners. Keeping us in business means jobs. Shutting us down is not helping the economy recover.

Senator KAUFMAN and I don't want retribution from the banks. We want the banks to pull their load and start treating small businesses and consumers more fairly. They should be assisting businesses.

Barbara, from Lorain County, west of Cleveland, says this:

Please stand up for the working folk of the middle class. As a law-abiding taxpayer, I believe that it is time for fiscal integrity of the U.S. bankers.

We are holding on to our jobs and homes by a thread. There are also many people in Lorain County out of work and businesses continue to close their doors.

I'm sure that there is no one single, simple solution, but holding the bankers responsible for what happened in our financial [industry and our country], but it is necessary to help remedy the financial crisis that most of us are in.

Please support law-abiding people by demanding integrity of the banking industry. We are depending on you.

There are many people in my State of Ohio, and also in Dover and Wilmington, DE, in the banking industry. When institutions get this large—when six institutions have this kind of economic power in our system, we know that even someone as conservative as Alan Greenspan says that is a problem for our economy, risk is a big problem, size is a problem. This amendment will affect only the six largest banks in the country. They will operate better and more efficiently, and probably more profitably, if they are a little bit smaller. This addresses that issue.

Mr. KAUFMAN. Madam President, I have a comment. I see common cause here with the other side of the aisle. When I talk to colleagues on the other side of the aisle, it is not just the small businesses, it is the small banks that get hurt by these massive banks. I am a market guy. I am a free market guy. It is one of the things that made this country great. There are two things, democracy and our capital markets. We almost lost our capital markets in 2008. We cannot afford to risk that again. I look to the markets to tell me. Do people think these six banks are too big to fail? What does the market say? Not me or some industry. See what the market says about too big to fail.

Dean Baker and Travis McArthur, of the Center for Economic and Policy Research, compared the borrowing costs of the 18 largest banks, all of which have over $100 billion in assets, to smaller banks, which make up the vast majority of banks in America. They estimated that the effect of government subsidy, because of the implicit guarantee that they are too big to fail—and this is what the market says, not me or Senator BROWN—guess what. It results in a 70-to 80-basis point borrowing advantage for smaller banks, resulting in lower borrowing costs, equaling approximately $34 billion over smaller banks. Right now these big banks, because the market says they are too big to fail, don't worry, ABC down on the corner, they give them a rate. But when it comes to the 6 big banks, they give them 70 to 80 basis points less because they know they can fail.

The ACTING PRESIDENT pro tempore. The 20 minutes of the two Senators has expired.

Mr. KAUFMAN. I thank the Chair.

Mr. BROWN of Ohio. We yield the floor.

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

Mr. DURBIN. Madam President, I thank my colleagues for raising this important issue pending on the floor of the Senate, this major piece of legislation, the Financial Stability Act. Of all the many amendments that will be offered, this is clearly a game changer. I am supportive of this amendment even though I know some of my friends in the banking industry won't be happy with it. They are talking about dealing with the concentration of wealth and of economic power to a level that can literally bring the economy down. That is what we went through, leading into this recession. That is what led to massive taxpayer bailout and that is what the Brown-Kaufman amendment addresses foursquare. I commend them for their leadership on the amendment.

IMMIGRATION

I want to speak to an issue that is timely in light of recent news events. Ninety-nine years ago, a boat pulled into the harbor in Baltimore, MD, which came over as a passenger ship from Germany. Down the gangplank walked three individuals—my grandmother, my uncle, my aunt, and my mother, who was 2 years old, in the arms of my grandmother. They had come from Lithuania to the United States. When they arrived, none of them spoke English. My grandmother carried a slip of paper with her, which had the words ''East St. Louis, Illinois'' written on them, because she knew that is where her husband was and that was her destination. I cannot imagine how they navigated themselves onto a train to East St. Louis to meet my grandfather, but they did it. I am sure there were people standing by that gangplank in Baltimore watching these foreigners coming in, saying: Oh, my God, not more of those people.

It has been a natural reaction in this Nation of immigrants that we look at newcomers as perhaps new problems. Those who are here and lucky enough to be in America have historically been critical of new immigration. That is nothing new in American history.

But what has happened in Arizona in the last several weeks has taken this to a different level. The passage of the law in Arizona, in my mind, is not only unjust but unconstitutional. The Arizona law requires police officers to check the immigration status of any individual if they have ''reasonable suspicion'' that he or she is an undocumented immigrant. How will police determine whether there is reasonable suspicion that someone is undocumented? The law doesn't tell them. Law enforcement experts say it is likely that they are going to look for those who appear to be Hispanic.

Under this law, any undocumented immigrant can be arrested and charged with a State crime solely on the basis of their immigration status, and it is a crime for a legal immigrant to fail to carry their documents at all times. One out of three people legally living in Arizona are Hispanic. We understand the anxiety they have over a law that would at least lead to the suspicion that they may be illegal and be challenged as they go about their daily business in a perfectly legal way.

Here is what the Arizona Daily Star newspaper said about the new law:

> The measure would turn legal residents into police targets, as well as those who are here illegally. It would foment racial profiling of Hispanics.

Phil Gordon, mayor of Phoenix, the largest city in the State, said this of the new Arizona law, signed by Governor Brewer:

> It unconstitutionally co-opts our police force to enforce immigration laws that are the rightful jurisdiction of the Federal Government.

Here is the reality: There are 450,000 undocumented immigrants in Arizona. Law enforcement clearly doesn't have the time to stop, prosecute, or remove anything near that number. Making undocumented immigrants into criminals will simply drive many of them farther into the shadows. When we look at this law, I also like to look at it from the viewpoint of those in law enforcement in Arizona. I have read their quotes. They feel this is an unnecessary, at least an indefensible, burden being placed on them. I have read that one chief of police in a small town in Arizona said: I am not going to be going out and stopping people on the streets and seeing if they are gathering on the street corner. My job is to fight crime. I thought that is why they hired me. If I want to keep this community safe, I cannot spend a lot of time checking the papers of people walking down the street.

In 2005, there was a law passed in the House of Representatives known as the Sensenbrenner amendment, which was a step in the wrong direction as well. It made it a felony for anybody to provide services or assistance to undocumented immigrants. I have some friends in Chicago who run a home for battered women. It is in the Pilsen neighborhood, which is a Hispanic neighborhood. They literally ran the risk of being charged with a Federal felony by allowing somebody to come through their door, a woman who had been beaten by her husband, perhaps carrying a child, offering them any help or protection made them unfortunately subject to being arrested under the Sensenbrenner amendment. I offered an amendment on the floor of the Senate to remove this and even in a Republican-controlled Senate, I was successful. My colleagues believed, as I did, that this went too far.

I believe the Arizona law goes too far. This is not the first time that we have gone too far and have moved back to a more moderate position. In 1982, there was a Texas law passed that said elementary schools could refuse entry to undocumented children.

In the landmark Supreme Court decision of Plyler v. Doe, the Supreme Court struck down that Texas law. At the time, Chief Justice John Roberts was a lawyer in the Justice Department, and he criticized the Justice Department for not supporting the Texas law.

It has been 23 years since Plyler v. Doe was decided. As a result, millions of children have received an education and become citizens. They are doctors, soldiers, policemen, and others who contribute to our society every day. Imagine what would have happened if that Texas law had been allowed to stand and was the law of the land. I asked John Roberts, during his confirmation hearing to the Supreme Court, if that law that was struck down was settled law in America. He would not answer. It leaves some question on what would happen if this law comes before his Court.

Arizona faces serious law enforcement challenges. There is intolerable violence on Arizona's border with Mexico because of drug cartels. The reality is, it is the American appetite for narcotics that is fueling the drug war in Mexico. It is American money and guns flowing south of the border that has created the situation, and we need to be more honest about it as well. But it is a fact, and it is dangerous. I can understand why the people of Arizona would feel some trepidation and real concern about that.

Last month, Robert Krentz, an Arizona rancher, was murdered near the border with Mexico. To say violence is not part of the scene in Arizona is unrealistic and unfair.

In March of 2009, I held a hearing in the Senate Judiciary Committee on Mexican drug cartels. I invited Terry Goddard, Arizona's attorney general, to testify about the situation in Arizona. He told me this:

> Sophisticated, violent, highly organized criminals . . . are smuggling drugs, human beings, guns, and money across the border and are using unimaginable violence to protect and grow the criminal enterprise. Law enforcement officers in the State of Arizona have been on the front lines of the efforts to combat one of the most serious organized crime threats of the 21st century.

If the Arizona law is wrong, what is the right answer? I think, in the framework of the bill that we brought before Members of the Senate, considered last week, there are three elements to it. First, we have to do everything in our power to police our border, make sure we have the right technology and people, and that we are doing everything to stop the flow of illegal immigration into the United States. Those who say ''seal the border first'' are setting an impossible standard. Imagine, if we set a standard that said seal Interstate 95 so that no vehicle passing over that interstate will be carrying illegal narcotics or guns. Well, there are tens of thousands of vehicles and people passing legally between the U.S. and Mexico every day, and amidst this legal flow is an illegal flow. We need to find a way to reduce that.

The second part of that bill, the framework, would say that the lure of America is the lure of jobs. Let us establish a Social Security card with biometric identification so that it clearly shows whether a person is legal. I think that is a step in the right direction.

Third is to deal not with amnesty but setting up a process where they would have to work their way and prove their way into legal status. It will never be automatic. It would not be unconditional.

The trouble we have is that many of those who say the Federal laws have broken down and we do not have a good immigration law are unwilling to stand up and join us in writing a new law.

I invite all of my friends on the other side of the aisle to join with the Democrats in writing a good immigration law. Doing nothing is not an option. It invites more laws such as those in Arizona which, unfortunately, are going to have results which I do not think are consistent with our values in this country.

I urge my colleagues to join me in supporting the framework. I hope they will also consider cosponsoring the DREAM Act, a bill which I introduced many years ago—and Senator DICK LUGAR is my cosponsor—which says those brought to America—undocumented, who finish school, no criminal record, who are willing to finish 2 years of college and serve in our military—will have a chance to become legal in the United States of America. It is a step in the right direction. It was not a step 99 years ago when my 2-year-old mother came to this country. Thank goodness she did. Thank goodness I am here today to tell the story.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, are we in morning business?

The ACTING PRESIDENT pro tempore. Yes.

FINANCIAL REGULATORY REFORM

Mr. ALEXANDER. Madam President, the business before the Senate this week is financial regulation reform. It is hard to pick what the business should be this week. There is so much going on that is of great concern to so many of us.

We have a briefing this afternoon on the dimensions of the oilspill in the Gulf of Mexico.

Those of us in Tennessee are deeply concerned about the 1,000-year rain—an event that only happens every 1,000 years or so, according to some of the engineers in the Army Corps—that has wreaked havoc on middle Tennessee and which is beginning now to hurt west Tennessee.

Also, we have the Arizona immigration debate, which the distinguished Senator from Illinois was discussing a little earlier.

We have a new START treaty the President has asked us to consider.

Just around the corner, we have a nomination coming for a vacancy on the Supreme Court of the United States which will dominate, as it should, the attention of this body for 2 or 3 months or so until it is thoroughly considered.

Of course, the American people would like for us to focus on jobs.

I have great respect for the Democratic Governor of Tennessee who was quoted in the Wall Street Journal yesterday saying the following:

> ''If I have 100 conversations with people, 95 of them will be about jobs and none of them will be about cap-and-trade and none of them will be about bank reform,'' said Tennessee Gov. Phil Bredesen, a conservative Democrat, in an interview.

That is according to the Wall Street Journal. Financial regulation reform is the current topic and financial regulation is important. The importance of it is that this is a country that produces, year in and year out, about 25 percent of all the money in the world. We sometimes forget how privileged we are in our standard of living. We are just about 5 percent of the people of the world, but 25 percent of the wealth of the world is created here. It is because entrepreneurs have an advantage. They can create new jobs one right after the other.

Our well-being is not measured by the number of jobs we lose. It is measured by the difference of jobs we create and the number of jobs we lose. The problem we have right now is we are not creating enough new jobs in the United States of America. We need to focus on doing that.

One aspect of that is the kind of system of financial regulation we have. All of us were appalled by some of the hi-jinks on Wall Street that helped lead us to the great recession in which we find ourselves and for which we had to take extraordinary action. The purpose of the financial regulation bill should be to minimize the possibility of those [Wall Street] hi-jinks occurring again, but at the same time, to leave an environment in the United States where we can create the largest number of good, new jobs. When I say ''we,'' I do not mean the government. We have had too much attention on creating government jobs.

The one place the stimulus has worked is Washington, DC. Salaries are up here. There are more jobs here. The place where the stimulus is not working is out across the country where, if we continued with the economy over the next year at the rate of growth it had in the first quarter, which was 3.2 percent, we are told the unemployment rate at the end of the year will still be about 9 or 10 percent. Why? Because we are not creating enough new jobs in the private sector.

As we deal with financial regulation, we must be careful to leave an environment in which we can continue to create jobs, which is why there are five major issues that have come toward us. I heard someone on television this morning say: There go the Republicans. They want to slow down the financial regulation bill. They cannot agree on it in the Senate.

What we want to do—especially after the health care debate—is provide some checks and balances to make sure we have a good bill.

These are the issues that are before the American people on this bill: Is there a Washington takeover of Main Street lending? Community banks, credit unions, plumbers, and dentists say there may be. We need to make sure there is not.

The last thing we need to do is make it harder to get a loan in Nashville or Manchester or Knoxville or San Antonio. Because if you cannot get a loan, you can't hire a person, you can't invest in something, and you can't create a new job, and the economy does not move. That is the first issue: Is there a Washington takeover of Main Street lending.

The second issue: What about this czarina or czar? What about this person the President would appoint to be in charge of millions of transactions in the consumer bureau? Unlike our other independent agencies, this person would barely be accountable to the President and would not be accountable to the Congress. Doesn't that lead to the possibility that this person could write some rules and regulations unaccountably and might make the same sort of mistake we made when we encouraged people to buy houses who could not afford to pay for them—which most agree is the principal event that led us into the great recession that we now have? And that nearly led us into another depression, which brings us to the third issue: Why are we not dealing with the big housing agencies? Fannie Mae and Freddie Mac have about as much debt outstanding as the United States does, and we taxpayers implicitly guarantee their debt.

In the health care debate, it was said: We do not add to the national debt with this bill. But we did not include doctors—we did not include paying doctors in the health care bill. That would be about like my going to the Congressional Budget Office and saying: Tell me how much it is going to cost to run the University of Tennessee for the next 10 years, and the Congressional Budget Office might say to me: With or without the professors? If I wanted a low-ball number, I would say: Oh, give me a number without paying the professors.

That is what we got in the health care bill. We left out $200 billion or $300 billion. The President's budget says it is $371 billion over the next 10 years because we assumed that we would not increase pay for doctors to serve Medicare patients, which would create for them a 21-percent cut in pay. And for those Medicare patients, it begins to create a health care bridge to nowhere because no doctors are going to see them if they are not properly reimbursed.

We are doing the same thing in financial regulation reform when we leave out Fannie Mae and Freddie Mac. Why are we leaving them out? It is not because they didn't make a contribution to the big recession we are in. Everyone agrees they did. The Democrats are leaving them out because if Democrats put them in, we would have to deal with the $200 billion, $300 billion or $400 billion cost in the current year. According to the Wall Street Journal today, the Congressional Budget Office says the deficit would be about $291 billion bigger in 2009. So, Congress is going to put them in the drawer or put them under the table or act like they aren't there, and say to the American people: Hooray, we fixed financial regulation, but we're not dealing with housing? When we fix financial regulation without addressing Fannie Mae and Freddie Mac it's like not paying doctors when we pass a comprehensive health care bill. That is a third issue.

There are a couple more issues. One is the so-called derivatives issue. The so-called derivatives issue is a complicated issue for many people, but the head of the Federal Deposit Insurance Corporation says the bill before us may actually create less regulation for these complicated transactions rather than more. This is an area in which we want to make sure we do not make a mistake.

Then there is the so-called big bank bailout provision. Most Americans don't want a provision in the law that allows or encourages big banks to take risks that cause them to fail and take the rest of us down with them. So, the point of our debate ought to be to make sure in our financial regulation reform that we don't provide incentives for big banks to take imprudent risks that will cause them to fail and hurt us because they are so big.

How are we making progress on this issue? As the Republican leader has said, we have Goldman Sachs and Citibank that have said they like the bill. I would say there are a number of people worried about the bill. I am hearing from community banks, credit unions, auto dealers, dentists, furniture retailers, plumbers, and candy companies with concerns.

A New York Times article says: ''Senate Financial Bill Misguided, Some Academics Say.'' That was yesterday. A Professor at MIT says, '' . . . we need to proceed about this in a much more deliberate and rational and thoughtful way.'' That is what we would like to do.

A professor at New York University says leaving out Fannie Mae and Freddie Mac from the discussion is ''outrageous.''

FDIC Chairman Sheila Bair warns against new curbs on bank trading that I just mentioned.

My point is that this is an opportunity for us on the Republican side and those on the Democratic side to take an important piece of legislation—not such a visible piece of legislation today because we have issues from immigration to the oilspill to the flooding in Tennessee—vastly important for our country and work together to make it better.

Some progress, I understand, is being made on one of the five provisions. That is the too-big-to-fail provision. We will see what Senator SHELBY has to say on that. But that still leaves the question of whether we ought to have an independent czarina or czar. That still leaves the question of whether we are dealing properly with derivatives. That still leaves the question of whether we ought to leave out of a financial reform bill the two great housing agencies that are just sticking there in front of us like a sore thumb, reminding us we have not done our job if we don't include them. And of great importance, why can't we simply have a provision in the bill that eliminates any possibility that we have a Washington takeover of Main Street? It is not the business of this bill to make it harder to extend and get credit up and down Main Street America.

Madam President, I ask unanimous consent to have printed in the RECORD a series of articles.

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

[From the New York Times, May 3, 2010]

SENATE FINANCIAL BILL MISGUIDED, SOME ACADEMICS SAY

(By Andrew Ross Sorkin)

As Democrats close in on their goal of overhauling the nation's financial regulations, several prominent experts say that the legislation does not even address the right problems, leaving the financial system vulnerable to another major crisis, Binyamin Appelbaum and Sewell Chan report in The New York Times.

Some point to specific issues left largely untouched, like the instability of capital markets that provide money for lenders, or the government's role in the housing market, including the future of the housing finance companies Fannie Mae and Freddie Mac.

Others simply argue that it is premature to pass sweeping legislation while so much about the crisis remains unclear and so many inquiries are in progress.

''Until we understand what the causes were, we may be implementing ineffective and even counterproductive reforms,'' said Andrew W. Lo, a finance professor at the Massachusetts Institute of Technology. ''I understand the need for action. I understand the need for something to be done. But what I expect from political leaders is for them to demonstrate leadership in telling the public that we need to proceed about this in a much more deliberate and rational and thoughtful way.''

Senate Republicans echoed some of these concerns as they delayed debate on the legislation last week. Democrats agree that significant issues remain to be addressed. But they say that the government must press forward in responding to the problems that already are clear.

The bill, which was introduced by Christopher J. Dodd, chairman of the Senate Banking Committee, would extend oversight to a wider range of financial institutions and activities. It would create a new agency to protect borrowers from abuse by lenders, including mortgage and credit card companies. And it seeks to ensure that troubled companies, however large, can be liquidated at no cost to taxpayers.

A diverse group of critics, however, say the legislation focuses on the precipitators of the recent crisis, like abusive mortgage lending, rather than the mechanisms by which the crisis spread.

Gary B. Gorton, a finance professor at Yale, said the financial system would remain vulnerable to panics because the legislation would not improve the reliability of the markets where lenders get money, by issuing short-term debt called commercial paper or loans called repurchase agreements or ''repos.''

The recent crisis began as investors nervous about mounting subprime mortgage losses started demanding higher returns, then withholding money altogether. The government is now moving to prevent abusive mortgage lending, but Mr. Gorton said investors could just as easily be spooked by something else.

The flight of investors is the modern version of a bank run, in which depositors line up to withdraw their money. The banking industry was plagued by runs until the government introduced deposit insurance during the Great Depression. Professor Gorton said the industry had now entered a new era of instability.

''It is unfortunate if we end up repeating history,'' Professor Gorton said. ''It's basically tragic that we can't understand the importance of this issue.''

Treasury Secretary Timothy F. Geithner agreed in April testimony before the House Financial Services Committee that ''more work remains to be done in this area,'' but he said that regulators could address the issue without legislation. The government plans to require lenders to hold larger reserves against unexpected losses and to require that they keep money on hand to meet short-term needs.

David A. Skeel Jr., a corporate law professor at the University of Pennsylvania, said it would be a mistake for Congress to leave the drafting of these standards to the discretion of regulators.

''Regulators working right now will be tough,'' Professor Skeel said. ''But we know from history that as soon as this legislative moment passes, the ball is going to shift back into Wall Street's court. As soon as the crisis passes, what inevitably happens is that the people that are paying the most attention are the banks.''

A second group of critics say the government helped to seed the crisis through its efforts to increase home ownership, including the role of Fannie Mae and Freddie Mac in buying mortgage loans to make more money available for lending. The companies are now owned by the government after incurring enormous losses on loans that borrowers could not afford to repay.

Lawrence J. White, a finance professor at New York University, said it made no sense to overhaul financial regulation without addressing the future of federal housing policy. He said he was trying to find the strongest possible words to describe the omission of Fannie Mae and Freddie Mac from the legislation.

''It's outrageous,'' he finally said.

Republicans have repeatedly criticized the administration for advancing legislation that does not address the companies' future. The Obama administration says drafting a new housing policy is on its agenda for next year.

Other critics warn that the proposed legislation would insert the government deeply into the financial markets, creating new distortions and seeding future crises. They say the focus of financial reform should instead be on increased transparency.

Andrew Redleaf and Richard Vigilante, hedge fund managers who started warning investors in 2006 that a housing crisis was inevitable, proposed a minimalist version of reform in their recent book ''Panic.'' They want to require all financial institutions, including investment banks and hedge funds like their own, to disclose, at least once a week, every position in tradable securities.

''The Dodd bill is almost entirely irrelevant,'' Mr. Vigilante said in a telephone interview. ''All it does is strengthen what we've had for years,'' a system that depends on judgments made by regulators behind closed doors.

Proponents of the legislation say that it significantly expands transparency, for example by requiring many derivatives contracts to trade in public view. But they say that the government also needs to expand the scope of its oversight because the worst excesses that led to the crisis began and flourished at nonbank financial institutions that were not subject to federal regulation.

The most basic critique comes from Professor Lo and others who say that Congress is moving too quickly. The origins of the crisis remain a subject of intense controversy. Investigations continue to unearth surprising information. The Financial Crisis Inquiry Commission, a bipartisan panel created by Congress, is not scheduled to report until December. Why not wait, they ask, until the targets are clearer?

Phil Angelides, the chairman of the inquiry commission and a Democrat, says that the problems raised by the crisis will not be solved in one stroke and that he supports the Democratic push to begin the process soon.

But the critics point to the words of Nicholas F. Brady, a former Treasury secretary who led the bipartisan investigation into the 1987 stock market crash: ''You can't fix what you can't explain.''

[From the Washington Post, May 4, 2010]

DERIVATIVES-SPINOFF PROPOSAL OPPOSED AS PART OF OVERHAUL BILL

(By Brady Dennis)

A dramatic proposal that could force banks to spin off their derivatives businesses, potentially costing them billions of dollars in revenue, has run into opposition on multiple fronts as the Senate prepares to take up legislation to remake financial regulations.

Obama administration officials, industry groups, banking regulators and lawmakers from both sides of the aisle have taken aim at the measure proposed by Sen. BLANCHE LINCOLN (D–AR), chairman of the Senate agriculture committee.

Their main objection: If a central goal of regulatory overhaul is to make financial markets more transparent and accountable, Lincoln's provision would have the opposite effect. Barring banks from trading in derivatives would force those lucrative business into corners of the market where there's even less oversight, critics warn.

''If all derivatives market-making activities were moved outside of bank holding companies, most of the activity would no doubt continue, but in less regulated and more highly leveraged venues,'' Federal Deposit Insurance Corp. Chairman Sheila C. Bair wrote in a recent letter to lawmakers.

She said that Lincoln's measure could push $294 trillion worth of derivatives deals beyond the reach of regulators. If some FDIC-insured banks simply transferred this type of business to affiliated firms, it could still pose a danger because the affiliates would not be required to set aside as much capital as banks to cover losses from derivatives trading, Bair said.

She added that a possible unintended consequence of the legislation ''would be weakened, not strengthened, protection of the insured bank and the Deposit Insurance Fund, which I know is not the result any of us want.'' She said this danger exists because financial troubles at an affiliate could in times of crisis threaten the bank. Some administration officials share Bair's worry that the provision could undermine the goal of making derivatives trading less opaque.

''You'd rather make sure that it's regulated,'' said one administration official, who spoke on the condition of anonymity because the matter has not been resolved. ''The whole principle of [regulatory] reform is not to push things into dark corners.''

Federal Reserve officials expressed their reservations to Lincoln's staff members when they were working with their counterparts from the Senate banking committee to combine legislation passed by each panel. The agriculture and banking committees both have had a traditional interest in derivatives, which originated decades ago with trading in farm products.

In a memo, Fed officials said that forcing banks to separate derivatives trading from banking operations would ''impair financial stability and strong prudential regulation of derivatives,'' ''have serious consequences for the competitiveness of U.S. financial institutions'' and ''be highly disruptive and costly, both for banks and their customers.''

Lincoln has stood by her proposal, which has garnered support from consumer advocates, saying she wants to protect bank depositors from risky trading activities. ''It ensures banks get back to the business of banking,'' said Courtney Rowe, Lincoln's spokeswoman.

But other lawmakers have raised concerns.

''As we try to put in place new rules around derivatives, we don't want to push the whole derivatives market offshore,'' Sen. Mark Warner (D–VA) said recently on the Senate floor.

Sen. Judd Gregg (R–NH) said Monday that Lincoln's measure would not only push derivatives transactions offshore but would constrict credit to Main Street businesses that benefit from the ability to hedge against changes in asset prices.

''This is a real job killer. It would cause contraction in the economy,'' Gregg said. ''It's really a poor idea, and it has no purpose, in my opinion, that's constructive. It's just a punitive exercise aimed at Wall Street.''

Amendments aimed at killing the Lincoln provision are likely to emerge as lawmakers begin this week to consider dozens of changes to the financial overhaul bill, according to congressional sources.

[From the Wall Street Journal, May 4, 2010]

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 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 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 in 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.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

GULF COAST OILSPILL

Mr. LEMIEUX. Madam President, I come to the floor of the Senate to talk about not only the environmental but economic disaster that has happened in the Gulf of Mexico.

Yesterday, I had the opportunity to fly over the scene of the spill from the Deepwater Horizon rig along with my colleagues Senator SESSIONS, Senator SHELBY, and Congressman JEFF MILLER who represents Florida's First Congressional District.

What we saw was pretty startling. As we flew out over the ocean, we saw the beginning of a spill. At first, it looked like a sheen, something one might see with gasoline laying on a concrete floor at a gas station. But as we got closer to where the Deepwater Horizon oil platform was located before, where it fell into the water, we began to see these great bands of orange, rust-colored oil that streaked across the Gulf of Mexico. We began to see small clumps of what looked like tar.

As we got closer to the scene of the incident, those small clumps turned into what I would describe as large pads of tar that floated to the surface.

We saw the new rigs that are being set up to start the drilling to do escape drilling to allow for the pressure to be taken off the spill where it is located now. We saw some of the cleanup vessels. There were about 10 vessels out there. We understand there are close to 100 involved in the total containment of this spill.

What is concerning to me—and I know is concerning to many Members of Congress—is what could happen, what might happen next. There are a lot of folks working very hard in the Coast Guard and the government. We met with Captain Pullen at the Mobile training facility for the Coast Guard, who briefed us on what is going on so far.

If we do not get this wellhead to stop leaking oil into the ocean, estimated at 5,000 barrels a day—we don't know how much is leaking. It could be less than that; it could be a lot more. If we do not stop the wellhead from leaking, we are going to have a lot bigger problem. This area has grown every day since April 21 when we had this disaster. It is measured by the size of States. First, it was Rhode Island, then it was Delaware. It is growing bigger and bigger.

When the storms subside, as they are doing now, that sheen is going to spread out even further. It certainly is going to likely impact my State of Florida and our beaches and our commercial fishermen and our recreational fishermen. There is cause for great concern.

The reason I come to the floor today is to make this point. There are those who are casting blame on British Petroleum. There are those who are casting blame on the government. There will be time for that. Whether the government has done a proper job of getting on this problem from day one, as we are hearing; whether British Petroleum properly worked along with the folks who ran this rig, the Transocean folks; whether they made mistakes—certainly, mistakes were made—there will be time for us to evaluate that. What we must do now is spend all of our energy and efforts stopping the leak from this well because if we don't, we may see an oilspill that is the entire expansion of the Gulf of Mexico. We may see oil that not only hurts the gulf coast of Florida, Mississippi, Alabama, Louisiana, and Texas, but we potentially could see this oil go around the southern part of Florida, into the Everglades, into Florida Bay, into the Thousand Islands area—not to mention the coast on the western side of Florida, come up on the Atlantic side and get in the Gulf of Mexico and come all the way up the coast.

I am here to urge that all my colleagues support the administration and BP and everyone else who is working on this to stop the leak we have now. To me, it is the most important thing.

There were obviously issues of negligence that caused this disaster to happen in the first place. The questions of whether the Federal Government did everything it should have done in the beginning days when this happened will have to be answered, and folks are going to have to come before our committees to answer those questions. But right now, we have to stop this leak and we have to have an increased sense of urgency of stopping that leak and containing the oil.

We are putting this dispersant in now at the site of the wellhead. That is apparently having some good effect. BP has also been able—as we learned yesterday from Captain Pullen at the Mobile station—to close one of the hydraulic fail-safe valves. We know it wasn't fail-safe, but at least some of that has been closed, which is stopping, we hope, in some way the amount of oil going into the Gulf of Mexico. There is a crisis now, but the crisis to come could be far worse if we do not stop the leak from the wellhead.

DANGEROUS TIES BETWEEN VENEZUELA AND IRAN

Mr. President, over the last 6 months, we have seen two more attempts that we know of against the United States from terrorist attacks—most recently at Times Square. Thanks to the vigilance of some New Yorkers and the fine work of the New York Police Department, a bombing was stopped. We also remember that on Christmas day, when Abdulmutallab tried to blow up a plane over the skies of America, thankfully, that bomb did not explode. These are very dangerous times.

I continue to come to the floor to say that we not only need to pay attention to the east, where this danger is stemming from, but we also have to pay attention to the south. We have to continue to pay attention to Venezuela and the dangerous ties between Venezuela and Iran. I have come to the floor to speak about the fact that Hezbollah and Hamas are now in Iran. We know a Spanish judge has accused Venezuelan authorities of conspiring with the ETA, a radical group in Spain, to assassinate the President of Colombia. We know Venezuela is collaborating with the FARC, the narcoterrorist group, which is bringing in drugs and destabilizing all of Central America all the way up into Mexico. We know of this dangerous situation. We know there are flights now between Venezuela and Iran through Syria that don't go through the normal customs procedures, where folks get off the plane in Venezuela and who knows where they go. We also know now that Iran has sent shock troops to Venezuela. We have also heard of a foiled attempt from a company called VenIran—presumably Venezuela-Iran—to ship alleged tractor parts to Venezuela that turned out to be explosive materials.

I come to the floor today to update this continuing story and to begin to bring, hopefully, the focus of this Congress and this administration on the gathering storm that is Venezuela and its contacts with Iran. It is not only that there are now shock troops from Iran in Venezuela, but we see the Chinese Government giving $20 billion to Venezuela for derivative—future—potential to purchase oil, apparently. So lots of questions need to be asked, and we need answers from this administration about a focus on Venezuela. Hugo Chavez is a dangerous man, and the continued attempts by the Venezuelan regime to work with Cuba to spread disharmony throughout the region, to try to bring other Latin American countries along with his strong-man tactics, are cause for concern.

I will conclude with this, Mr. President. Two weekends ago, I had the opportunity to go to the Joint Interagency Task Force in Key West, FL, where tremendous work is done by the Coast Guard, the Navy, the FBI, DEA, and all sorts of other agencies to interdict drug trafficking from South America, Central America, into the United States. We know Venezuela is allowing flights to go over its country from Colombia to bring those drugs into Central America. We know how violence comes from those drugs, and we are seeing the destabilization of Mexico because of it. We also know there are semisubmersible craft—minisubmarines, if you will—that ride just below the water that are being used by drug traffickers out of Colombia, with the support of Venezuela, to bring large amounts of cocaine into the United States. Those same craft could be used to deliver a weapon of terror.

This administration and the world have to focus not just on Iran but on the dangerous ties between Iran and Venezuela.

Mr. President, with that, I yield the floor. I see my friend and colleague from Tennessee is here to speak.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Tennessee is recognized.

FINANCIAL REGULATORY REFORM

Mr. CORKER. Mr. President, before my time to speak today, there were some comments made by the junior Senator from Delaware, but before getting to that, I did want to mention that I hope very soon the administration will work closely—and I am sure they will because I know they are very understanding of what has happened in Tennessee—with those who are dealing with the obvious disaster underway in our State. We have people who have lost their lives, people who have lost their homes, and people who have lost their life's work. I appreciate so much the work our Governor has underway, and the many mayors, especially the mayor of Nashville but also mayors across our State. I appreciate the response all of them have given in coming to the aid of our citizens there. Again, I know this administration will begin to work very closely with them in that same regard, and I thank them in advance.

But I came to speak specifically today about the comments of my friend from Delaware regarding the fact that because large institutions in this country have a funding advantage over some of the smaller institutions, we ought to break them up.

I certainly have concerns about some of the situations we get ourselves into when a large institution gets into trouble. I don't think that having 100 Senators here on the floor arbitrarily deciding what size a financial institution ought to be or when it should be broken up is necessarily the right approach. What I do think is a better approach—and I think this bill attempts to do this but doesn't quite get it right—is to ensure that if an institution fails, it actually fails; the shareholders of the company know they are going to be out of their entire investment; the creditors know what is going to happen. The bill attempts to do that, and my sense is that Senator SHELBY and Senator DODD are working together—and I think may actually have come to an agreement—on a way to close some of the loopholes that exist in this bill.

What I would suggest to my friend from Delaware is just to support those efforts because I think if that occurs—and my sense is it will, based on the conversations I have had—what will happen very quickly is the credit rating agencies in this country—and they have already indicated this to be the case, not that they have been stellar, certainly in these last couple of years or the last 4 years—many of them are beginning to look at these large institutions in a different way because they believe we may pass legislation here on the floor that says that if they fail, they actually go out of business. That creates a situation where that moral hazard doesn't exist; where people, in essence, loan money or give credit or invest in these larger institutions at rates that are less than what might be the case for smaller institutions.

The best way we can sort of level the playing field is to ensure that if a big company fails, it fails. Again, I think we are on the verge of getting that solved. There will be many people on my side of the aisle—and by the way, I respect this position very much—who think the only way to do that is through bankruptcy, and they are talking about either an 11(f) section of the code or a section 14 of the Bankruptcy Code, where highly complex financial holding companies would go into bankruptcy if they fail. By the way, I think we should do everything we can to strengthen that.

At the same time, I think—certainly in the interim, anyway—we need a resolution mechanism so that we know that if a large company fails, we have a mechanism to liquidate it. It may be that you need both tools. Maybe you let the resolution provision sunset after the bankruptcy laws are completed and fixed in such a way that it works for a large, highly complex bank holding company.

But, again, what I would say to my friend, the Senator from Delaware, is—and I certainly love his passion on this issue—the best way we can get that level playing field is to ensure these large institutions fail when they fail, and that will change that funding level he is talking about. As a matter of fact, we are given regulators in this bill, if it passes in its form right now.

I sure hope we make lots of changes because I cannot support the bill as it is today. But the bill actually addresses capital levels. As institutions become larger and more risky, additional capital requirements are required, which automatically drives up the cost of funding. There is a section Senator WARNER and I worked on called contingent capital, where the regulators can actually cause these institutions to have contingent capital, where if a creditor has loaned money to an institution and this institution gets in trouble, that turns to equity, so it is a buffer. Again, I think the cost of that is going to be more expensive than most credit that would be given to an institution such as this.

So, again, I think the best way to deal with organizations that are large in this country is to deal with the many tools that exist in this bill that need to be improved, no doubt, and hopefully, over the course of the next 2 weeks, will be improved. But that is a much better solution than just arbitrarily having 100 Senators saying: Well, if you are X part of our GDP, you have to be taken down to size.

I wish to reiterate, as I did last week on the floor, that our country has by far the largest gross domestic product in the world. We dwarf everybody. Yet we have no banks in the top 5 in the world; we have 2 banks in the top 15. So I am not sure that as we work on globalization and as we hope to ship goods and deal with people around the world, that our best solution is to handicap the ability of our companies that work in that way and create great jobs in this country shipping goods across the world. I am not sure it is in our best interest to look at arbitrarily deciding what size a financial holding company should be.

Mr. President, I appreciate being able to speak to this issue. I do hope over the course of the next couple of weeks that we can make significant changes in the consumer title. I am hearing from people all across the State of Tennessee—ordinary citizens who wake up daily and who do things that are outside the financial sphere, at least they believe they are—who are very concerned about the reach of our consumer protection agency as it is outlined in this bill; the fact that it is unfettered, that there is no board in any way to control it, the fact that there is no Federal preemption, the fact that there will be 50 State attorneys general now dealing with our national banks, the fact that this consumer entity has the ability to be involved in underwriting loans. You can imagine some of the problems that have occurred through CRA recently. Think about this: It would be CRA on steroids.

So those are some issues I do think we need to address in this bill and I hope we will address in this bill. And I hope we will realize that this country has an overexpansive government that reaches out unnecessarily into their lives.

In closing, again, I applaud the efforts the Senator from Connecticut and the Senator from Alabama have underway to fix this resolution title in such a way that we all know that if a firm fails, it is going to go out of business. I think that will adequately address the concerns the junior Senator from Delaware brought up earlier about these big firms, in some cases, having funding advantages. I think once the public understands these firms can go out of business, just like any other entity, that will change. I think we are already seeing that through early indications with credit rating agencies and others that are looking at these entities.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

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

The assistant legislative 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.

Reid (for Boxer) amendment No. 3737 (to amendment No. 3739), to prohibit taxpayers from ever having to bail out the financial sector.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I will be brief at this point.

First, let me thank the leadership and my colleagues, Democrats and Republicans, for allowing us to get to this point. Now we are on the bill after all this time.

I didn't hear all the comments of my friend from Tennessee, but clearly we are making an effort to reach agreement where we can on some of the critical issues. Senator SHELBY and I and our staffs have worked very hard over the weekend to try to come to closure on the resolution title of the bill, title I and title II, that Senator CORKER spent so much time working on. We thought we had done a pretty good job, but there is always room for improvement to satisfy the interests people have to make sure taxpayers will never be exposed. My hope is we will be able to present that, Senator SHELBY and I, to our colleagues to be able to close that issue and move on to the other areas of the bill that people have interests in.

We have a number of amendments that I believe should be relatively noncontroversial—either bipartisan amendments that Senators want to offer dealing with the Federal Trade Commission or dealing with the consumer title. There are a number of amendments on which we have already reached some agreement. My hope is we could have some understanding—obviously, I want to wait until Senator SHELBY comes over—that we could enter a time agreement, a brief one, on the Boxer amendment. We have all talked about the Boxer amendment, so maybe, hopefully, we could have that vote when we come back from our respective caucus luncheons.

I hope at some point shortly thereafter, Senator SHELBY and I will offer a proposal dealing with the resolution titles of the bill to close that. I am told Senator TESTER and Senator HUTCHISON have an amendment, which sounds pretty good to us, dealing with some issues involving assessments on small banks that we agree with.

I know Senator SNOWE and some others have amendments which we have worked on as well which we think are helpful to agree to.

Senators HUTCHISON and ROCKEFELLER on the Federal Trade Commission, we have reached agreement on that as well. There are a number of issues which I would like to at least deal with here where we have consensus.

Then, obviously, there are going to be some areas and amendments that will come up that are controversial, that will require a good debate on the floor—hopefully, not an endless one but debate on those matters. I wish to get to those soon. I know my colleagues who have those ideas wish to be heard, and I certainly wish to give them the opportunity to do so. My hope is we will reach time agreements and have up-or-down votes on them. That is the way this institution is supposed to operate. We can avoid filibusters and those who want to extend the debate, even though they are not happy with the amendment and don't like the outcome. I think we serve our interests well if, with the exception of those that deserve some sort of attention like that, the overwhelming majority of these issues ought to be debated and voted up or down and move on to the next set of issues.

In the meantime, we try to work on ones that we know are coming along to see if we can't reach consensus as we have on a number of these items.

That is sort of the game plan as I see it, but I obviously am not going to make any unanimous consent requests regarding time agreements until my colleague from Alabama is here in order to agree with that, but my hope is to offer such unanimous consent proposal that on the Boxer amendment we reach a time certain fairly quickly. Again, it is a three-line amendment that I think everyone has had a chance to hear us discuss over the last couple days. That goes to the heart of what Senator CORKER was talking about; that is, to emphatically state taxpayers not be exposed to the costs of any institution that fails and is wound down, either through resolution or more likely through bankruptcy—there is not taxpayer exposure. Since we all agree on that and the language is rather clear, my hope is we could spend a few minutes talking about it, making that point and vote and then move on to these other matters, seeking time agreements where appropriate.

That is how we will proceed. I have talked to the leader. Obviously, we do not have an endless amount of time for this debate and this subject matter, but my hope is, over the next week or two, to conclude, starting early, staying a little later in the evening than we normally do, even, if necessary, spending some time on the weekend. I know that is not normally done here, but, again, to get to the finish line on this bill is going to take some time, given the numbers of amendments people have on which they would like to be heard, in order to meet the goals of the leadership to complete our work on this bill and move to the other items that must be debated in this Chamber, aside from the financial services reform.

We have a lot of work to do in the coming 2 weeks on this matter. My hope is, people will bring their amendments early to us, to Senator SHELBY and to myself or our committee members, let us look at them and work on them. Where we can accept or modify them, we will try to do so; where we cannot, provide the time so we can have a debate and vote on your ideas. That is where we stand.

I have a number of requests for time. I am not going to make any unanimous consent requests for these, but a number of Members have asked for some time to speak today either on amendments they are going to be proposing or on the bill itself. I have that list. I will try to accommodate those Members, when I can, this afternoon. Again, the first order of business would be on the Boxer amendment.

Let me just say about that amendment, that again, the language of the Boxer amendment is rather straightforward. I read it the other day. It is a very brief amendment and very clear. It says:

At the end of title II add the following.

At the end of the resolution title, which is an elaborate title we spent months working on so as to make sure we would get it right; that is, the presumption is bankruptcy and, in the most painful alternative, a resolution but one that you would not like to take at all. It is bankruptcy, putting these companies out of their misery and the country out of its misery without exposing the taxpayers to the cost. The managers all get fired under our bill. They are gone. Not only do they not get bonuses, they don't have a job having done what they did. The shareholders lose, so shareholders have to pay more attention to what is happening to their companies of which they are owners. Creditors also take tremendous hits in this proposal as well.

Senator BOXER has offered some very straightforward language, almost an exclamation point at the end of title II. I will read the amendment because it only takes about a minute to do so. She says:

LIQUIDATION REQUIRED.—All financial companies put into receivership under this title shall be liquidated.

If there was any doubt about the provisions—sentence No. 2.

No taxpayer funds shall be used to prevent the liquidation of any financial company under this title.

A very clear, declarative sentence.

(b) RECOVERY OF FUNDS.—All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company, or shall be the responsibility of the financial sector, through assessments.

Then:

(c) NO LOSSES TO TAXPAYERS.—Taxpayers shall [again, shall] bear no losses from the exercise of any authority under this title.

Again, it is very straightforward, a very clear amendment, one that basically incorporates the views shared by all 100 Members of this body.

Maybe there is someone who disagrees. If they do, I don't know who they are. Every Senator I heard address this issue agrees with what Senator BOXER is suggesting with this very important language. It is not a sense-of-the-Senate resolution. This is statutory language in the bill. My hope is, unless people want to have an elaborate discussion about it, it seems pretty straightforward. I would like the first vote to be an amendment on which we can all come together as we begin our debate in this Chamber. Not all amendments are going to end up that way, but on this one I think there is clarity and we ought to get behind it and demonstrate our willingness to say, without any equivocation whatsoever: The taxpayers will not be exposed to the kind of charges and costs that they were in the fall of 2008.

I will sit and wait for Senator SHELBY to come over and, in the meantime, 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. UDALL of Colorado. I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 3778

Mr. UDALL of Colorado. Mr. President. I rise to speak about a bipartisan amendment, No. 3778, which Senator LUGAR and I have filed based on our bill, the Fair Access to Credit Scores Act of 2010. This amendment has wide and growing support, both with consumer groups and legislators of all political persuasions. I thank Senators BOND, BROWN of Massachusetts, BROWN of Ohio, HAGAN, LEVIN, LIEBERMAN, MCCASKILL, and SHAHEEN who are also sponsors of this amendment.

Our amendment takes a commonsense yet significant step toward putting consumers back in control of their finances by offering Americans annual access to their credit score when they access their free annual credit report.

I wish to clarify, because this is important. A credit report tells consumers what outstanding credit accounts they have open, such as student loans, credit cards, even, perhaps, a car or a home loan. Unfortunately, it tells Americans little else. One's credit score, on the other hand, which our legislation makes available, has the critical information consumers need to know. A credit score affects consumer interest rates, monthly payments on home loans, and could be the difference between whether a child is able to afford college. Credit scores even affect the consumer's ability to buy a car, rent an apartment, and get a phone or even Internet service.

In 2003, Congress enacted legislation requiring the three major consumer credit reporting agencies to provide a free annual credit report to consumers. This law, known as the FACT Act, was an important step in ensuring financial records of American consumers are accurate. However, since that time, many of my constituents have been misled to believe they have free access to their credit score, when what they have is free access to a credit report. So we have the score versus the report. Even thoughtful lawmakers in Congress do not realize American consumers ultimately have to buy access to their credit score.

To be clear, banks and lenders can easily obtain these scores while consumers cannot. That simply is not fair. We have all seen the frequent television commercials or Internet advertisements which claim to offer consumers free access to their credit score. Unfortunately, consumers are often disappointed to learn they only have access to their credit report, not the critical information they need to judge their own creditworthiness, their score. In the most troubling cases, consumers often believe they are signing up to get a free credit score, only to find out later that they unwittingly signed up for a costly monitoring service that could cost nearly $200 a year.

In considering reforms to hold Wall Street accountable and rein in their shady dealings, we believe Congress should also work to protect consumers from other unscrupulous financial practices. When there is a deal that often seems too good to be true, many Americans ask themselves: What is the catch. There certainly is a catch in this instance. The problem is that Federal law tacitly supports it by directing consumers to credit rating agencies under false pretenses. We all know consumers want their score, but it is the last thing they receive. We are literally sending Americans every day into a fine print trap.

I am not surprised the credit reporting agencies and their lobbyists have been hard at work over the last several days perpetuating fine print arguments in opposing our amendment. They even claim credit scores belong to them, not the consumers whose livelihoods depend on them. Would a doctor say that someone's blood pressure reading is their information, not the patient's? These agencies have also been circulating a document opposing our effort because, according to them, it would not provide consumers any greater benefit than already available. Something is up. They oppose our bill because it does not offer consumers enough benefits.

This is precisely the kind of misleading information included in their advertisements, as we see here in this photograph. This snapshot does not fully reflect the deception in this particular ad. It does picture a squirrel directing consumers to one of the Web sites claiming to offer a free credit score. But there is more to the story. While it patently seems to offer a free score, this credit reporting agency requires consumers to enter their credit card information and registers them for a costly credit monitoring service. We have to look closely at the top of the ad to read the fine print that actually tells consumers the real story. They have to subscribe to the company's service to receive the actual credit score.

Members have probably seen this commercial which tells a sad story about an individual whose poor credit score landed him in a dead-end job. If only he had access to his credit score, the ad explains with a catchy jingle, he would have been able to take action and improve his credit and his quality of life. Again, we have to look closely to read the fine print. If the consumer goes to this site, they once again have to enter their credit card information and register for a service costly of nearly $200 a year.

It says:

Free credit score and report with enrollment in Triple Advantage.

Ironically, these credit reporting agencies are walking the halls of Congress telling Members that our bill is somehow ''unfair and unfounded.'' They want to protect a Federal law that has given them a monopoly on this information and continues to direct unwitting consumers their way. We agree, those of us who have sponsored this legislation, with these credit reporting agencies that a credit score is important information. Perhaps their misleading ads have convinced consumers they need to know this information. However, luring hard-working Americans into a costly credit monitoring service is simply not fair, especially when Federal law nudges consumers in their direction.

We have all come to the floor this week from both sides of the aisle explaining what we want to do to protect consumers and do what is right for Main Street. We have a chance to right this wrong here and now, this week. Put simply, this amendment accomplishes what the television commercials and their fine print caveats have deceptively claimed for years—the offer of a free credit score. That is why the Consumer Federation of America, the Consumers Union, and a wide range of consumer advocates support this legislation. While free access to a consumer's credit score is only a small part of the larger reforms needed, it addresses one of the fundamental inequities that pervades the current financial system. Put simply, our one-sided marketplace today is often rigged to benefit large financial institutions at the expense of hard-working Americans struggling to support their families and save for retirement.

If we want to empower Americans to reclaim their financial health, we have to start with a dose of transparency.

When so much is at stake, this amendment is a small step that will help restore balance and give Americans the tools they need to take back control of their personal finances.

My strong hope is that we will be able to vote on this important amendment in order to restore an even greater dose of fairness to consumers in my state of Colorado and all around the Nation.

I urge and request that each one of my colleagues support its passage.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, briefly, let me say to my colleague, I appreciate his efforts in this regard. He and Senator LUGAR and others have worked on it. They are absolutely right. People ought to have a right to know what their credit scores are. They are critical when it comes to that home mortgage. The interest rate that one pays, the downpayment they are required to meet, are all linked to what the credit score is. We have seen in the past how credit scores can actually be very different than what they should be. When people have had to fight for years to get a credit score restored because of identity theft, all sorts of things can happen. We had a hearing not too many years ago on this issue where the theft of identity requested in a person running wild with some credit cards. The individual who had his credit cards stolen then spent years trying to rehabilitate his own name and reputation because of what had happened and could never get access to his credit scores except that every financial transaction he went to engage in, he paid an awful price because the credit scores were obviously low, in light of the fact that people had stolen his cards and had run up huge debt. So in, everything else he was involved in where an interest rate was involved, his family paid a price for it.

Aside from having the knowledge of what it is, the ability to correct it as well is something we have spent a lot of time on. There is hardly an American citizen at one point or another who hasn't run into this difficulty. Today, in an era when so much of our well-being depends upon our credit scores, how we are rated, this becomes a critical point. People ought to know, what is my credit score, so they can either strengthen it or understand why they are being charged the various rates they are.

I commend my friend from Colorado and Senator LUGAR. He mentioned others who are on the bill with him as well. I thank him for raising it. In the coming days, my hope is we will be able to provide some time to further debate it, if he so desires, and maybe get agreement to adopt the amendment.

Mr. UDALL of Colorado. I thank the Banking Committee chairman for his interest in this bipartisan amendment. I take to heart his comments on the importance of having access to one's credit score. We all have access to our credit reports. Those are important. But frankly, one ought to understand what is in their credit report. It is the loans, the financial obligations and liabilities one has. It is much harder to get one's credit score. We hear a lot about financial literacy, about taking control of one's own destiny when it comes to their financial future. This would be an important tool to have in the hands of consumers.

The agencies and the institutions that develop these scores are saying, as I said, that this is unfair and unfounded. But they have found, frankly, when they made the credit reports available on a one-time basis annually for free, it actually created more traffic and more business. I predict that when you get your score that one time each year for free, you will want to check over time on that score, and that will create additional business for these companies. Much like when I to go my ATM, I am always curious about the flow in and out of my checking account. Sometimes I check the last ten transactions. That results in a little bit of income stream to the bank. I don't resent that because I have the information at hand. When I was given the opportunity to have that information initially, that triggered a greater interest in being more financially engaged.

This is common sense. Its bipartisan support shows there is widespread support for this idea. I thank the chairman again for his interest and support.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 3737

Mrs. BOXER. Mr. President, I am delighted to be here this morning. I am anxious to get started on voting on amendments so we can tackle the issue of Wall Street reform. We have to keep an eye on what happened to our economy, because Wall Street had no reasonable regulation. Markets were operating in the dark. There was very little fiduciary responsibility involved. There was all of this gambling with credit default swaps and CDOs. I am reading a book called ''The Big Short.'' If anyone wants to try to understand what happened, read that. It is unbelievable what happened with derivatives, all operating in the dark.

I wish to say to Senator DODD how much I appreciate the work he has put into this bill. To put it simply, what the bill does is it ends taxpayer bailouts, flat out. That is why I was shocked when Members of the Senate on the other side of the aisle came down to the Senate floor and started criticizing the bill, saying it didn't end taxpayer bailouts, when that is what it does. That led me to think I would like to work with Senator DODD on an amendment that clarifies this main point in the bill.

Senator DODD and his staff—and I worked with the Obama administration on it as well—said let's sit down and work it out. So we have a very strong amendment here that is not a sense of the Senate; it is real law. It is strong law. I hope it passes. I say to my friend Senator DODD I hope this passes by a huge number of votes. What we do here is summed up in part C:

Taxpayers shall bear no losses from the exercise of any authority under this title.

This isn't saying they shouldn't bear a loss; it says taxpayers shall bear no loss. They shall bear no loss. The rest of it basically says: No company is going to be kept alive in this bill with any taxpayer money. If a company is in trouble and they need to be liquidated, then the funds that are used will be recovered from the disposition of assets of such financial company or shall be the responsibility of the financial sector, through assessments.

It is very similar to FDIC. As we know, when we put our hard-earned dollars into the bank, we are covered now up to $250,000 because there is an insurance program which is paid for via an assessment on the banks. It is called the FDIC, and we all know because we worry about that. If there was anything that was learned from the Great Depression, it is that there was a run on the banks, and guess what. The banks were out of money. People literally lost their world. So after those years a long time ago, FDIC insured. It is very important.

We are doing the same thing here. We are saying that if there is a liquidation required of some of these hot-shot firms that continue to gamble, that continue to take risks and something goes wrong, they are not going to be kept alive, they are going to be put to sleep and the money that is expended to do that will come from the financial sector itself, and taxpayers, again, shall bear no losses from the exercise of any authority under this title.

What else does the Dodd bill do? It ends taxpayer bailouts and, with my amendment, that is going to be even clearer. It puts a cop on the beat for consumers. Why is this important? Because the people who were trampled upon during the whole Wall Street crisis were middle-class families who depended on these big firms to protect their pension funds, to protect their assets that they might have had in mutual funds. Instead, all of that went out the window.

We need to also have a cop on the beat to look at credit card companies and the kinds of things they do that harm our people.

The third thing is it brings disclosure to dark markets. The bill eliminates loopholes that allow reckless speculative practices to go unnoticed, and it brings real regulation to the derivatives markets and the shadow banking system that grew up around it. These kinds of instruments, as they are called—derivatives—they are based on—let's take an example of a bunch of mortgages that are packaged together and sold. Somebody came up with the great idea: Well, maybe we should take insurance against them going broke, and they played both sides of it. They had derivatives on derivatives on derivatives. The house of cards came down. We want disclosure for these dark markets; otherwise, the regulators simply don't know what is going on.

Risky behavior on Wall Street will be curbed. There are strict new capital and borrowing requirements as financial companies grow in size and complexity. There are restrictions on proprietary trading, which means a bank trading for their own interests. We had circumstances where a bank was telling its customers to buy a stock or a bond and they were shorting. They were making a bet that it would go down while they were selling it to people and saying, Oh, it has a great future. There is something so unfair about this and, frankly, corrupt about this. Where is the fiduciary responsibility? How do you go out and tell your best customers: Hey, this is good. We are going to go forward. Buy this. Then they go back to their office and short it so they can make money on it collapsing. There is something very wrong with that. We have lost our way. They have lost their way.

We have protection against securities market scams, improvements at the FTC, where we will have the Office of Credit Rating Agency that will strengthen the regulation of credit rating agencies, many of which failed to correctly rate risky financial products. My colleagues know that Moody's is one example, Standard & Poor's is the other. They said, Oh, this is a AAA. These assets that are based on all of these mortgages, this is a AAA, feel comfortable with it, when they knew, frankly, it wasn't. It was a conflict of interest. They were getting paid by the people who wanted them to come out and say they were rated AAA. There is something awful about this. If we cannot trust a rating agency, how are we going to know what we want to buy for our portfolio? I don't care if you are a very small investor or an institutional investor, an investor who is investing say for a pension company that you work for. I think we have to have even greater oversight over these rating agencies than is in the bill. I applaud what is in the bill. I am going to be offering something that holds these people accountable. Again, if my colleagues read the book I am reading, they realize how the people who work at these rating agencies were doing the bidding of those who wanted to get a AAA rate.

So we end taxpayer bailouts in this bill. The Boxer amendment is going to ensure that is so clearly stated. We put a cop on the beat for consumers. We bring disclosure to these formerly dark markets. We curb risky behavior on Wall Street because we require them to have more capital, less gambling. We create an early warning system with a financial stability oversight council to make sure we see trouble coming before it hits. We protect against securities market scams by going after these rating companies and saying, Hey, you have a responsibility to be honest when you rate an instrument; it shouldn't be rated a certain way because the person who is paying you wants it rated a certain way. That should be criminal.

I think it is going to be very clear as we get into this bill.

I am a little surprised it is taking so long. I say to Chairman DODD, I am a little surprised it is taking so long to get a vote on the simplest amendment of them all.

Let's put this chart back up. What is the problem here? If people want to talk about making this stronger, let's talk, but don't hold us up. I would ask my friend, do we have any agreement yet on voting on the Boxer amendment, which is so clear? Here it is on one board. This is the whole amendment. Do we have an agreement yet?

Mr. DODD. Mr. President, if my colleague will yield.

Mrs. BOXER. I will yield.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I have read the amendment so many times I could almost recite it verbatim. It is only four sentences. As I understand it, I don't hear any objection to it whatsoever. Someone recently said can't we just accept it. I said I think my friend from California would like to have a vote on it and she has a right to a vote. So, again, my hope is, frankly, we could have an agreement to cast a vote on this at 2:15 when we return from the respective caucus lunches. I am waiting to hear from my Republican friends and colleagues because obviously I can't make a unanimous consent without them being in the room.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I wish to thank my colleague. I would say the reason I think it is important to have a vote is because for days and days and days, my friend, the Senator from Connecticut, and my friend, the Senator from Virginia, were down on this floor defending this bill and making it clear that this would finally put an end to too big to fail; that, in fact, taxpayers are not going to be on the hook. We are going to wind these companies down and they are going to have to be gone. They are going to go to sleep. They are going to be gone. They are going to be liquidated, and then taxpayers are going to be made whole. This is clear.

Our colleagues on the other side were all over national television. I don't know how many times they said this bill is ensuring that there will be more taxpayer bailouts. That is why I wrote this. It seems to me a little odd that we are waiting and waiting. Since our friends say they want an amendment such as this, why don't we get started.

There are lots of amendments on both sides of the aisle, some of which will make this bill stronger, in my opinion, and some of which will make this bill weaker, in my opinion. We will do what the Senate does. We will debate these issues. I know my friend is waiting. It seems to me that if we are going to this crisis—and I ask to show the charts—we cannot sit around here day after day and waste time.

These are some of the headlines we had: ''Economy In Crisis.'' ''What Now?'' ''Tax Problems.'' ''This Is A Nightmare.''

This is what we saw.

We have another chart that shows the headlines.

''U.S. Consumer Sentiment Decreases to 28-year Low.'' ''Jobs, Wages Nowhere Near Rock Bottom yet.''

What a mess.

''Wall Street Crash Leaves New Yorkers In The 'Eye Of The Hurricane.' ''

This is just a smattering of these headlines.

We have some more to share:

''Where Do We Go From Here?'' ''Nightmare On Wall Street.''

This is what the country went through. I know we want to forget it. We never want to have it happen again, but we can't wish it away. ''Nightmare On Wall Street.'' ''Where Do We Go From Here?''

Today we are ready to answer the question. No more nightmares and no more taxpayer bailouts, and no more gambling.

Will this bill solve every single problem? No. There will be people who think something else up. But here is the good news about this bill: It puts a cop on the beat, so any of these new ideas that come to the forefront—these new instruments, these new derivatives—will finally be under the watchful eye of a consumer regulatory agency that has only one thing on its plate: protecting consumers from the rip-offs and the gambling and the callous disregard for morality that we saw on Wall Street.

So I say to my friends on the other side: Let's go. Let's do this. Let's get started. Let's have the Senate work its will, and let's be able to tell the people of this country that in a bipartisan fashion, we took a stand against the nightmare on Wall Street and we basically said those days are gone and we will get back to sensible rules of the road.

I will close with this. A lot of us I think were interested in watching the Kentucky Derby, a few minutes of the most exciting sport. I thought to myself as I watched that there are rules of the road in this sport. It is all about gambling. People out and out gamble. There is no hiding it.

They just go out and gamble. They put the dollars on the horse they choose. But there are rules of the road. You can't have a horse running that has been drugged. You cannot do that. You cannot have a jockey in the race who uses foul play to knock over another jockey or run in a fashion that would disqualify him. So even in a sport like horseracing, which is out-and-out gambling, there are rules of the track, rules of the road.

It seems to me that on Wall Street, where you are dealing with the life savings and the hopes and dreams of our people, our businesses, and our children, that there need to be reasonable rules of the road and no more taxpayer bailouts. Let's get started and vote aye on the Boxer amendment and make this bill even better. It is a terrific bill, but we can make it even better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I commend my colleague from California who has been patient and has done a good job. I describe her statutory language as sort of the exclamation point in this. As the amendment reads, the very first line—and, again, I don't have to read it—at the end of this title includes the following. So it is at the end of the title. It is complicated to get this right, so we have a winding down and a disposition in receivership and bankruptcy in these institutions.

In case anybody had doubts about what the language does, the amendment says the word ''shall'' in every sentence. There are no ''mays.'' The taxpayer ''shall'' not be exposed. There ''shall'' be liquidation. It is very clear what we are trying to achieve. I know nobody objects.

We are on the bill. We ought to be able to start on a positive note. We are going to have times of significant division and debate on this bill coming up. I thought it might be worthwhile for the American public to witness a Senate that can actually, as it begins debate, do so with some unanimity. That doesn't happen with great frequency, but to start on that basis makes sense to me.

I hope our colleagues will agree with that conclusion and allow this amendment to be voted on as soon as we come back from our caucuses and then move to other amendments, hopefully, where there is agreement, demonstrating again that we are not fighting every single issue with each other. There is a lot of agreement about what ought to be in the bill.

Mrs. BOXER. I thank my colleague. The reason I did this, frankly, was because the other side seemed to be misunderstanding what this bill did. So I was hopeful that they would just say: Terrific; now it is clear. No losses to taxpayers—''taxpayers shall bear no losses from the exercise of any authority under this title.''

I understand Senator KYL said yesterday this was a sense of the Senate. It is clear. It is not a sense of the Senate: liquidation required, recovery of funds, taxpayers shall. There is no ''should.'' It is real. So that is why I am hopeful that if we can get started with a bipartisan vote, it will make the life of our chairman a lot easier because at least we would come forward with something on which we can stand together.

I thank the Senator so much for working with me to make sure this is clear as a bell. As the Senator says, bills are complex. And people say: Why is this bill 800 pages? Well, it is complicated because we have to amend language in so many parts of the Federal law. But this is clear. We sum it up. We sum up the title in this way.

I am excited about voting on this. I will be back after the luncheon hour to—if I need to—make the case again—not that my colleague hasn't done it for me, but I want to lift a little bit of the burden off his shoulders.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I commend the Senator from California for her amendment. As one of the people who was charged by the chairman to work on this section of how we make sure we put appropriate barriers to firms getting too large and barriers to firms being too big to fail, and should they fail, making sure taxpayers are never on the hook again, I think the amendment of the Senator from California adds that emphasis. We took the chairman's charge at his word.

This is an area where there was complete bipartisan agreement. I had the good fortune of working with my friend and colleague, the Senator from Tennessee, on this issue. We put a strong preference in the bill toward bankruptcy as the normal process, and even put into place a new series of requirements for large firms—particularly internationally significant firms—to come forward to the regulators and describe how they can unwind themselves through an orderly bankruptcy process, that being the normal process. But in the event, as we saw in 2008, there may be times, even with the best laid plans, when you may reach a level of crisis that would require resolution, if there is resolution, it should not be propping up firms the way we did it in the fall of 2008. The resolution should be a death knell for any firm that is put into that process. It should be something any logical management team or series of shareholders would want to avoid at all costs.

We put forward a process where it is postfunded. I think reasonable folks can agree on which is the best option. At the end of the day, if there are any funds used to make sure we can unwind this firm in an orderly process so that it doesn't cause any further systemic damage to the overall financial system, and indirectly to the American taxpayer, and if the financial system is shored up by that action, that any costs not recouped—if this firm goes out of business and it is being put out of business, if there are funds expended and they have to be recouped from some source, that source should not be the American taxpayer.

Again, I commend the Senator from California for her efforts with this amendment. It adds that exclamation point. Again, I cannot imagine that my colleagues on the other side, who I know share the same view, do not want to make sure taxpayers will never be exposed again by the mistakes made by Wall Street. I think this amendment is a good place to start this debate, where we have that common cause.

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

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

RECESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:27 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. GREGG. Mr. President, will the Senator yield for a second?

I ask unanimous consent that after Senator BROWN speaks, Senator MIKULSKI be recognized and then I be recognized.

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

The Senator from Massachusetts.

HONORING OUR ARMED FORCES

SERGEANT ROBERT J. BARRETT

Mr. BROWN of Massachusetts. Mr. President, I rise today to say a few words about a hero: Massachusetts Army National Guard SGT Robert J. Barrett who was killed in Afghanistan on April 19. I had the sad honor of attending his funeral this past weekend.

So everyone knows, Robert was on foot patrol south of Kabul when an IED exploded, killing him and injuring eight of his fellow soldiers of 1st Battalion, 101st Field Artillery Regiment. He was 21 years old.

Robert was from Fall River, a city of 90,000 in the southeastern part of Massachusetts. He was a long-time member of the 54th Massachusetts Volunteer Regiment. He geared his life toward helping others, especially veterans.

He was selected for the regiment's honor guard in early 2008 and took part in more than 350 events honoring our fallen soldiers, including marching in the President's inaugural parade a little more than a year ago.

His primary mission in Afghanistan was of the utmost importance. He was training Afghan soldiers so they would be able to stand up and provide security for their own country. Rather than spend his free time relaxing, he gave of his time and knowledge by volunteering at local orphanages and schools. Robert was a shining example of ''selfless service,'' one of the seven Army values.

Before his deployment, Robert wrote several lines that summarized his thoughts about his service and our mission overseas. I wish to take one final moment to read one of his thoughts:

I volunteered to put my life on the line for freedom and country. For my fellow soldiers, for my little girl, for my weeping mother and father. I am going to a land where American freedom is just a dream, a hope, a slow reality. I am an American Soldier.

That was by Robert J. Barrett before he mobilized.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise to speak on the issue of financial services. Before I do, I wish to say to the Senator from Massachusetts, Mr. BROWN, that we in Maryland express our condolences to him and his loss. We have suffered many of our own. We are comrades in arms in this moment of grief. We salute him and respect the family.

Mr. BROWN of Massachusetts. I thank the Senator from Maryland.

Ms. MIKULSKI. Mr. President, I come to the floor today to talk about an issue about which I care very deeply and have fought for all of my life. That is financial services reform.

I am not a Janie-come-lately to this issue. In 1999, I opposed the repeal of the Glass-Steagall Act which led to the crisis we have today. I was one of eight Senators to vote against the repeal of the Glass-Steagall Act which tore down the walls between conventional banking and investment banking. Had that bill been defeated in 1999, we would have not had the crisis that faced us in the last 2 years.

My family, too, has fought over generations to protect consumers and expand access to credit. At the beginning of the old century when the downtown banks would not lend to people such as my family, whom they regarded as on the other side of the tracks, my grandfather, along with other small business people in the area, got together and started a savings and loan to serve that community. They lent to people who did not have access to credit. They lent to small business owners, such as my father, who opened a grocery store. They lent to women, such as my grandmother, who opened a bakery. When tough times came during the Great Depression, this savings and loan wanted to make sure that people would not lose their homes. If you paid a nickel a week on your mortgage, you were current.

I was raised in that sense that financial institutions should be on the side of the people and they should have access to the American dream to buy a home, to start a business.

As a young social worker working in Baltimore's African-American community, I saw, once again, there was no access to credit. The African-American community was sidelined and redlined. What we saw were these local payday vendors who had names such as Happy Harry. Why was Harry so happy? It was because he was charging 18 to 20 percent interest for a loan.

I got together with the people in the community at the parish council and we were able to start a credit union so there would be access to credit and end the scamming and scheming and gouging of those hard-working people.

I continued that fight in the Senate. I helped create a task force in Baltimore to end that scheme and scam. I also worked as the Chair of the Commerce-Justice-Science Appropriations Subcommittee. I made sure in 2009, working with Senator SHELBY and listening to the comments of Senator DODD, that we put extra money in the Federal checkbook so the FBI could come after the financial fraud crowds, the mortgage fraud, the securities fraud.

It sure was not the Securities and Exchange Commission. They were too busy sitting on their wingtips while money was flying out the door with these terrible lending practices.

As we deal with this bill pending before the Senate, the Restoring American Financial Stability Act, I want you to know I support this bill. I have been a reformer and a watchdog all of my life. I have a deep suspicion of how big banks treat the little people and what they do with the little people's money. Time and time again, we see the consequences of loose regulations and wimpy and tepid enforcement. Yes, I said it, wimpy and tepid enforcement.

Time and time again, I voted for more teeth and better regulation and more enforcement. I always wanted to be sure it was Main Street that got access to credit, and I was against the unfair and abusive practices of Wall Street.

Here we are again in this financial situation where we bailed out the big banks. We bailed out the whales, we bailed out the sharks, and we have left the people in the community, the little minnows, to swim upstream and be on their own.

Now is the time to right this reform. Now is the opportunity to pass real financial reform that puts the strongest consumer protections in financial reform and to ensure that the greed of Wall Street does not trump the needs of Main Street.

We need to put government back on the side of the middle class. If we can bail out the banks, how about we make sure we protect the middle class against fraud, duplicity, and gouging? People with limited access to credit are being victimized, abused, and defrauded. It is both a crime and a shame.

Since the people who do it have no shame, maybe we have to make it a crime. In fact, I think we ought to make it a crime. When they get out of their pinstripes and start wearing orange jumpsuits and stand out in the crowd on visiting day, rather than cruising parents' weekends, maybe they will have some remorse, and maybe they will be ready to change the nature of their practices.

When I travel around my State, whether it is in diners or grocery stores, there is anger and frustration in people's voices. They are mad, and they are scared. They have watched Wall Street executives pay themselves lavish salaries while they are worried about their job and being laid off. They have watched Wall Street mortgage brokers profit off irresponsible lending while their husbands work an extra shift to make sure they can make the monthly mortgage payment. And they have watched big firms take very risky gambles with their money without any regulation. It essentially was casino economics. This is why people are mad, and they are losing trust in government. People they counted on to protect them did not.

What infuriates the people of Maryland and of this country and me is there is no remorse by Wall Street about what they did. Nothing about their behavior suggests they have learned or even care what is wrong. Look at what happened with AIG after receiving $170 billion in taxpayer money. They paid themselves $165 million in bonuses. I stood on the floor and said ''AIG'' stands for ''ain't I greedy.''

I do not want to have catchy phrases. I want to have concrete, enforceable, tough regulations. Again, what bothers me is the lack of remorse and a commitment to reform.

Right or wrong, if you are in a 12-step program, people usually say that one of the ways to right those wrongs is to say ''I am sorry'' and mean it. I did wrong and I will never do it again. I want to make amends by making it right.

Not these guys. They need us to have a tough approach to this situation. They say: We will never do anything like that again. Actually they do not even say that.

What we need to do is to make sure we have the strongest regulations. We have an opportunity now to choose between real reform or business as usual. Consumers need protection in regulation to guarantee the safety of their deposits and the availability of basic banking services. Small business needs credit to grow so that they can create a job for themselves and for those in their community. And we need to hold Wall Street accountable. We need to make sure there are no taxpayer bailouts ever again and to ensure when banks take risks, they do it with their own money, not with money out of the deposits of hard-working people.

The bill before us is an excellent bill. It provides a 21st century regulatory framework for the financial system. No more scheming, no more scamming, no more preying.

It is time to pass this bill. There are amendments pending that I think will also help to improve the bill, but I think it is time that we pull the sharks out of the tank, make sure the whales do not crush the little guy, and to make sure that the minnows get a chance and that we have an economy that is swimming.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I wish to speak briefly on the bill that is before us and how I think it can be improved.

First, I congratulate the chairman of the committee, working with the ranking member. I understand they have reached an agreement on how to do the issue of resolution, which addresses the issue of too big to fail, which is a very critical part of this bill. I congratulate them for making that type of initiative. I hope the rumors are true and that such an amendment will address strong too-big-to-fail language so the American taxpayers will not be on the hook for institutions that overextend themselves and take on too much risk but are institutions that are so large it is felt they are too big to fail, that concept will no longer be part of our lexicon, and we will essentially put an end to that. I congratulate the chairman and ranking member.

There are, however, other major issues in this bill that need to be addressed. They are substantial and rather complex. A few that are not even in the bill—for example, how we address Fannie Mae and Freddie Mac. We know that the American taxpayers today are on the hook for somewhere between $400 billion and $500 billion—$400 billion to $500 billion—that we are going to have to underwrite in order to stabilize those two entities on the credits which they have run up which have gone bad and they have purchased. That is serious.

There will be a proposal that comes from our side of the aisle. It will not totally be structured to Fannie and Freddie. It should. I would like to see that. It is too complex to do in this bill. It will at least address some of the core issues that ought to be addressed. For example, we ought to tell the American people upfront and forthrightly how much they owe. It should be put on budget. We ought to put on budget what the obligations are, because they are scoreable, relative to the costs the American taxpayers are going to have to bear to bail out and maintain Fannie and Freddie. It is going to be somewhere around $400 billion to $500 billion additional debt. It is coming. We do not want to talk about it because it affects other debt obligations of this country in a lot of different ways, primarily in crowding out.

Second, the bill has language on underwriting but it is not strong enough. If you want to look at what caused this event at the end of 2008, what caused this traumatic event which almost brought the entire financial system of America down, which almost put us into a depression and put us into a very severe recession, cost a lot of people their jobs—and there are still a lot of people experiencing trauma because of it—there are three or four main causes. I have talked about them before:

One, of course, is that I believe the money was made too easy to get, at too low a price, for too long by the Fed.

Another was the fact that the Congress specifically encouraged and, in fact, forced lenders, for all intents and purposes, to lend to people who couldn't afford the homes they were buying because it became congressional policy to do that.

Another was that people were shopping for the weakest regulators. This is what happened in the derivatives market, and the derivatives were not structured in a way that actually put capital or liquidity or margin behind derivatives.

The fourth and I think probably the most significant was that there was a total breakdown in underwriting standards. In other words, the people who were making the loans on subprime mortgages and on other types of exotic instruments so that people could buy houses who couldn't afford them were making those loans and not looking at the underlying value of the asset, and they weren't looking at the ability of the person to pay back that loan. What they were doing, quite simply, was making the loan because they were going to get a fee for it and then they were going to sell the loan, securitize it. It was going to be chopped up, sent out, and syndicated, and they didn't really care what the loan did because they were basically making a loan for the purpose of making a fee. Those were the one-off lenders.

In the banking industry, you had a complete breakdown. Banks were lending to people they knew couldn't repay when these loans reset, and they knew the value of the asset could only support that loan if there was an appreciation in the market, which was a gamble.

This happens every time we go through one of these events, by the way, one of these real estate-driven recessionary events. It happened in the late 1970s; it happened in the late 1980s when I was Governor of New Hampshire and New England went through a horrific contraction as a result of an expansive effort of lending money in the real estate markets—underwriting standards break down.

There needs to be a clear national definition of what proper underwriting standards are. Senator ISAKSON and I and a number of other people—Senator CORKER—are going to put forward an amendment in that area.

One of the core areas here that needs to be addressed and hopefully will be included in this bill and improve the bill in this area—one area of this bill that simply has to be changed if it is to be effective in doing what it is supposed to do is the language of derivatives.

Most Americans don't understand derivatives. It is understandable. They are complex products. But basically think of it this way: You are on Main Street, and you have a business—usually a fairly large business—and you are making a product. You want to be able to sell that product to somebody at the price you quote that person and make the profit you expected at that quoted price.

But there are a lot of things that affect that product that you can't control. If you are selling it to another country, you can't control what the dollar is going to do in relationship to the currency of that country—for example, if you are selling it to Brazil, whether their currency goes up or down vis-a-vis the dollar. If you enter into a contract today and can't sell your product for 6 months, your whole profit could be wiped out by the market devaluing as relates to that currency. The materials you buy to make that product may change in value or viability. The person you are getting a loan from to allow you to expand your business to build that product may have financial troubles and you may have an issue there or, vice versa, you may have an issue with that person. All of these are things which are usually beyond the ability of the individual who is making the product—and in this case, I am talking about making products—to control.

So there is something called a derivative, which is an insurance item. Basically, someone insures for you over those risks. There is a lot of complexity to this because these insurance items mutate into all sorts of different instruments. They can affect financial instruments, they can affect commodities, they can affect goods, they can affect just plain currencies, but they are critical instruments—derivatives—for making the economic engine work. They are sort of the grease you put in the economic engine to make sure it doesn't seize up, to allow the economic engine to move down the road. They are so critical, in fact, that they are approximately $600 trillion—trillion—of notional value. Notional value is not really what the risk is because there are underlying assets here, but that is a big number—a big number.

So we have to make sure that when we amend the derivatives section of this bill to try to have a stronger derivatives industry, we don't make big mistakes and basically undermine the ability of people to use this type of instrument to get credit and to make the markets work and to create jobs on Main Street because these all tie back to jobs on Main Street. Even if you are not working for the company that uses the derivatives, you are probably working for somebody who does business with a company that does derivatives. In Nashua, NH, there are a bunch of big companies that do derivatives. There are a lot more smaller companies that sell products to those companies on Main Street. So it will affect Main Street if we do this wrong because credit will contract.

The unique advantage America has is that we are the place in the world where, if you have a good idea and you are willing to take a risk yourself and you are an entrepreneur, you can usually get capital and credit to allow you to do that idea, to take that risk and thus create jobs, which is the bottom line for all of us; we want to create jobs. So derivatives play a large role in making that system work. This bill, unfortunately, adopted language which was put forward in the Agriculture Committee which literally undermines the safety and soundness of the derivatives market and, secondly, the ability of America to be a leader in the derivatives market.

Our goal here should be very simple. Our goal should be two steps: One, make our banking and financial system safer, sounder, and a system which will, to the extent we can anticipate it, avoid systemic risk. While doing that, our second goal must be to have a vibrant credit market and capital market and be the primary place in the world where people come to create credit and capital because that gives us a competitive advantage over the rest of the world. That creates jobs here in the United States. Unfortunately, this bill, as structured, doesn't accomplish that. In fact, it undermines that.

A good derivatives reform bill would essentially create an atmosphere where derivatives are more transparent, where the pricing is more transparent, and where there is standing behind the two parties to an agreement on a derivatives contract—assets, liquidity, margin—something that can be turned to should one of the parties fail to perform on the contract. This can be done by creating a reasonable exception for end-use derivatives—those are the ones where you basically have a purely commercial purpose—and if people don't fall into that reasonable exception, then requiring essentially all the other derivatives to go through what is called a clearinghouse.

The clearinghouse becomes basically the situation where the two parties to the contract—there are multiple parties to the contract—essentially put up collateral, margin, liquidity, so that the contracts are supported—the counterparties are supported. The clearinghouse itself also has to be collateralized adequately, capitalized adequately, so that it doesn't become a risk because it is going to be the insurer, basically, of these contracts—all very doable through new regulatory restructure or a modified regulatory restructure.

Then, as these contracts become more standardized or are standardized, they move over to an exchange. A lot of them could do that right now, but some simply can't because their contracts are too customized to move directly to an exchange. But over time, most of them probably will. And that is the way it should be structured.

Unfortunately, in this bill, it is directed that we set up a new process for doing these derivatives by taking basically the market makers in these derivatives—which are the swap desks—and moving them out of the financial institutions into separate institutions. Where this idea came from is hard to fathom because on its face it makes absolutely no sense. I mean, it is so counterproductive to the purpose of making the derivatives market safer, sounder, and more efficient and, as a result, a better market which creates credit in a transparent, fair, effective, and sound way. It is so counterproductive to that on its face, you would think anybody who suggested it would have it immediately pointed out that this doesn't work. But for some reason, it has found its way into this bill.

The practical effect of doing this is that you will create these separate entities. These separate entities are going to have to be capitalized because you have to have capital behind these derivatives desks. That is the whole point. You have to have something standing behind these desks to make them viable so that you don't end up with an AIG. What was the AIG problem? There was nothing behind the derivative contracts except for the name AIG. You don't want to do that again. You want capital.

It is estimated that it would cost $250 billion to set up these separate desks. What does that mean? That means that capital is not going to be available for the creation of credit. You will see an immediate contraction. It is estimated by the industry—and again, this is an industry number, not mine, so you can take it with a grain of salt—that will cause a $¾ trillion contraction in credit. That is Main Street not being able to get credit. Let's even say they have exaggerated. Say it is only going to contract 80 percent. That is still $600 billion to $700 billion of credit that is not available on Main Street to do business, to create jobs, to take risk. It is foolish to do that type of contraction and to set up this structure.

Plus, you have nobody who is going to oversight this as effectively as the people who oversight the present derivative market makers. The FDIC won't be able to get on top of this. The Fed probably will have trouble getting on top of this. You will create a less stable platform from which to view these markets, when the whole purpose of the bill was to make it more stable. It makes absolutely no sense.

This is section 106 in the Agriculture bill. I think it is section 714 in this bill. And you don't have to believe me on this. I mean, two of the major, premier regulatory agencies—which are the fair arbiters here, really; I mean, they are the umpires—have come out in a very unusual way, because they do not usually comment in the middle of a legislative process such as this, and said that this—this is my paraphrasing—is a stupid idea, a counterproductive idea, the type of idea which, if it were to be put in place, would be cutting off your nose to spite your face and we would end up with a less sound system.

Let me read to you from the commentary of the Federal Reserve staff on section 106, which is now, I believe, section 714. Here is what the Federal Reserve staff said about this approach:

> Section 106 would impair financial stability and strong prudential regulation of derivatives; would have serious consequences for the competitiveness of United States financial institutions; and would be highly disruptive and costly, both for banks and their customers.

That is pretty specific. That is pretty damning testimony as to the effect of this language. It is going to reduce our competitiveness because a lot of these derivatives will go overseas. It is going to make it much more difficult to have sound regulatory policy toward derivatives, and it will be highly disruptive and costly not only for the banks but for their customers. That is called Main Street—the people who create the jobs. This is a very inappropriate idea that has been put in this bill.

But don't just rely on the Fed if you are a Fed hater—and there appear to be a number in this body, for reasons I still have trouble fathoming. They must have something against having a sound money policy. But if you don't like the Fed, listen to the FDIC. I don't think anybody around here doesn't give great credibility to the way Sheila Bair, the Chairman of the FDIC, handled the bank crisis. Very honestly, they stepped in, they settled out a lot of major banks, and they did it in a way that was extraordinarily professional. As a result, the markets remained calm, people got their money back, and deposits were not at risk.

This is an agency which has high credibility, and this is what Chairman Sheila Bair has specifically said about this:

> If all derivatives market-making activities were moved outside the bank holding companies, most of the activities would no doubt continue, but in less regulated and more highly leveraged venues.

In other words, be much more risky.

> Such affiliates would have to rely on less stable sources of liquidity which—as we saw during the past crisis—would be destabilizing to the banking organizations in times of financial distress, which in turn would put additional pressure on the insured banks to provide stability.

In other words, bad idea. It undermines the banking industry to do it this way.

Finally: "Thus, one unintended"—actually, this is not finally. The whole letter is three pages long and has a lot of strong points. But the final part I am going to read:

> Thus, one unintended outcome of this provision would be weakened, not strengthened, protection of the insured bank and the Deposit Insurance Fund, which I know is not the result any of us want.

That is pretty specific. So you have the Fed on one side, one of the major regulators, saying this idea doesn't work, it will undermine the structure of the banking industry. You have the FDIC on the other side saying this proposal doesn't work, it is going to undermine the insurance deposit system.

So you do not have to listen to myself or others who pointed out the failure of this section. Listen to these regulators. This section has to be removed from this bill.

There are other things that need to be done in the derivatives areas which would improve the language. For example, once you are on a clearinghouse, you should not be mandated to go directly to an exchange because it simply will not work. There needs to be an intermediary step as standardization and then the best thing to do would be to require regulators to look at these different instruments and then, if they feel they can be standardized, tell the people producing them they can be standardized and then move them over. To unilaterally say everything has to go to an exchange is, I think, going to be counterproductive and again push a lot of business offshore.

But clearly this one section is damaging to our efforts to produce a safer, sounder, more transparent derivatives regime which has adequate liquidity and capital behind it and which keeps America as the primary place to do credit in the world so our entrepreneurs can get credit at a reasonable price, so they can go out and take the risks to create the jobs in America.

I ask unanimous consent to have both these statements printed in the RECORD, and I yield the floor.

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

COMMENTS ON SENATE AGRICULTURE COMMITTEE'S OTC DERIVATIVES BILL

APRIL 24, 2010

1. Section 106 should be deleted.

a. Lending to financial market utilities. Section 106 would prohibit any federal assistance to swap dealers, major swap participants, swap exchanges, clearinghouses and central counterparties. This would appear to override the provision of Title VIII that would allow the Federal Reserve to provide emergency collateralized loans to systemically important financial market utilities, such as clearinghouses and central counterparties, to maintain financial stability and prevent serious adverse effects on the U.S. economy.

i. As systemically important post-trade ''choke points'' in the financial system, it is imperative that these utilities be able to settle each day as expected to avoid systemic problems and allow for a wide range of financial markets and institutions to operate. The failure of a systemically important utility to settle for its markets would not only call into question the soundness of the utility as a critical market infrastructure but could also create systemic liquidity disruptions for one or more markets and potentially other financial market utilities. The increased importance that Title VIII places on central counterparties and central clearinghouses to reduce risk in the financial system necessitates ensuring that short-term secured credit is available to these utilities in times of stress.

b. ''Push-out'' of bank swap activities. Section 106 would in effect prohibit banks from engaging in derivative transactions as an intermediary for customers or to hedge the bank's own exposures.

i. Title VI, which includes the so-called Volcker rule provisions, better addresses the problem of risks from derivatives activities by prohibiting any bank, as well as any company that owns a bank, from taking speculative, proprietary derivative positions that are unrelated to customer needs.

ii. Section 106 would impair financial stability and strong prudential regulation of derivatives; would have serious consequences for the competitiveness of U.S. financial institutions; and would be highly disruptive and costly, both for banks and their customers.

iii. Banks are subject to strong prudential regulation, including capital regulations that take account of a bank's exposures to derivative transactions. The Basel Committee on Banking Supervision has recently proposed tough new capital and liquidity requirements for derivatives that will further strengthen the prudential standards that apply to bank derivative activities. Titles I, III, VI, VII and VIII all add provisions further strengthening the authority of the Federal supervisory agencies to address these risks.

2. The foreign exchange swap exclusion should not be limited to non-exchange-traded non-cleared transactions.

a. The bill permits the Treasury to exclude foreign exchange swaps and forwards from coverage as ''swaps,'' but the exclusion applies only if the transaction is not listed or traded on an exchange or a swap execution facility and not cleared through a derivatives clearing organization. A substantial share of foreign exchange swaps and forwards are entered into using electronic trading platforms. The broad definition of swap execution facility appears to capture these platforms, thereby rendering the Treasury's exemptive authority largely meaningless.

b. Foreign exchange forward and swap transactions should be treated in a way comparable to other physically settled forwards for securities and nonfinancial commodities that are exempted under the bill. Foreign exchange forwards and foreign exchange swaps are delayed purchases and sales in broad and deep cash markets. Prices for foreign exchange are already readily available and transparent and that existing transparency, coupled with the breadth and depth of the foreign exchange markets, makes the foreign exchange markets not easy to manipulate.

3. Core principles for financial market utilities should not be hard-wired in the statute.

a. The bill sets out specific core principles for derivatives clearing organizations, swap execution facilities, and swap data repositories, and would not give the CFTC or SEC leeway to adjust the core principles to reflect evolving U.S. and international standards (as does the Dodd bill).

b. The current international standards for central counterparties are under review for needed changes in light of market developments, particularly in the OTC derivatives market, and are expected to change, thus potentially creating an immediate conflict with the bill.

c. Providing regulatory flexibility would permit changes to the international standards and other future refinements in risk management standards to be addressed. In addition, such flexibility would facilitate the ability of the U.S. regulatory agencies to work together to adopt consistent standards across financial market utilities that perform similar functions.

4. The definition of ''swap data repository'' is overly broad.

a. The definition (''any person that collects, calculates, prepares, or maintains information or records with respect to transaction or positions in or the terms and conditions of, swaps entered into by third parties'') appears to include entities whose purpose is not related to acting as a central record-keeping facility. For example, the definition may sweep in trade comparison services and news organizations that collect trading information.

b. Given its breadth, it will be difficult to apply core principles to such disparate activities and organizations.

5. Data-sharing among regulators is unnecessarily restricted.

a. The bill would require a swap data repository to notify the relevant Commission of any information requests from other regulators and require that those other regulators indemnify the repository and the Commission from any claims stemming from those requests. These provisions restrict access by relevant U.S. regulators to needed data.

b. These restrictions may lead foreign regulators to demand a local repository so that they can have adequate access to the data. Splitting the market data into repositories in different countries will make it significantly more difficult for regulators to get a holistic view of the market.

c. The bill allows swap data to be shared with foreign central banks, but not the U.S. central bank (the Federal Reserve).

6. Prudential regulators should retain their safety-and-soundness enforcement authority over bank swap dealers and major swap participants.

a. Section 131 provides the prudential regulators with authority to enforce the prudential requirements of the Act over bank swap dealers and major swap participants and provides the CFTC with the authority to enforce non-prudential requirements.

b. Although section 133 preserves the prudential regulators' authority under other law, the conforming amendments in section 131 limit the prudential regulators' authority under section 8 of the Federal Deposit Insurance Act over swap dealers and major swap participants.

c. In order to carry out their obligations as safety-and-soundness supervisors over banks, the prudential regulators need to retain their full Federal Deposit Insurance Act enforcement authority over bank swap dealers and major swap participants.

7. The Act should clarify that risk management is part of prudential rules.

a. Section 121 provides that the prudential regulators are to prescribe prudential requirements, including capital and margin requirements, for bank swap dealers and major swap participants. Section 121 also requires swap dealers and major swap participants to establish robust and professional risk management systems.

b. The bill is unclear about which agency should set risk management rules. These rules should be set by the prudential regulator . . .

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, April 30, 2010.

Hon. CHRISTOPHER J. DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. BLANCHE L. LINCOLN,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DODD AND CHAIRMAN LINCOLN: Thank you for reaching out to the Federal Deposit Insurance Corporation for our views on Title VII of the ''Wall Street Transparency and Accountability Act'' contained in S. 3217, the ''Restoring American Financial Stability Act of 2010.'' At the outset, I would like to express my strong support for enhanced regulation of ''over-the-counter'' (OTC) derivatives and the provisions of the bill which would require centralized clearing and exchange trading of standardized products. If this requirement is applied rigorously it will mean that most OTC contracts will be centrally cleared, a desirable improvement from the bilateral clearing processes used now. I would also like to express my wholehearted endorsement of the ultimate intent of the bill, to protect the deposit insurance fund from high risk behavior.

I would like to share some concerns with respect to section 716 of S. 3217, which would require most derivatives activities to be conducted outside of banks and bank holding companies. If enacted, this provision would require that some $294 trillion in notional amount of derivatives be moved outside of banks or from bank holding companies that own insured depository institutions, presumably to nonbank financial firms such as hedge funds and futures commission merchants, or to foreign banking organizations beyond the reach of federal regulation. I would note that credit derivatives—the riskiest—held by banks and bank holding companies (when measured by notional amount) total $25.5 trillion, or slightly less than nine percent of the total derivatives held by these entities.

At the same time, it needs to be pointed out that the vast majority of banks that use OTC derivatives confine their activity to hedging interest rate risk with straightforward interest rate derivatives. Given the continuing uncertainty surrounding future movements in interest rates and the detrimental effects that these could have on unhedged banks, I encourage you to adopt an approach that would allow banks to easily hedge with OTC derivatives. Moreover, I believe that directing standardized OTC products toward exchanges or other central clearing facilities would accomplish the stabilization of the OTC market that we seek to enhance, and would still allow banks to continue the important market-making functions that they currently perform.

In addition, I urge you to carefully consider the underlying premise of this provision—that the best way to protect the deposit insurance fund is to push higher risk activities into the so-called shadow sector. To be sure, there are certain activities, such as speculative derivatives trading, that should have no place in banks or bank holding companies. We believe the Volcker rule addresses that issue and indeed would be happy to work with you on a total ban on speculative trading, at least in the CDS market. At the same time, other types of derivatives such as customized interest rate swaps and even some CDS do have legitimate and important functions as risk management tools, and insured banks play an essential role in providing market-making functions for these products.

Banks are not perfect but we do believe that insured banks as a whole performed better during this crisis because they are subject to higher capital requirements in both the amount and quality of capital. Insured banks also are subject to ongoing prudential supervision by their primary banking regulators, as well as a second pair of eyes through the FDIC's back up supervisory role, which we are strengthening as a lesson of the crisis. If all derivatives market-making activities were moved outside of bank holding companies, most of the activity would no doubt continue, but in less regulated and more highly leveraged venues. Even pushing the activity into a bank holding company affiliate would reduce the amount and quality of capital required to be held against this activity. It would also be beyond the scrutiny of the FDIC because we do not have the same comprehensive backup authority over the affiliates of banks as we do with the banks themselves. Such affiliates would have to rely on less stable sources of liquidity, which—as we saw during the past crisis—would be destabilizing to the banking organization in times of financial distress, which in turn would put additional pressure on the insured bank to provide stability. By concentrating the activity in an affiliate of the insured bank, we could end up with less and lower quality capital, less information and oversight for the FDIC, and potentially less support for the insured bank in a time of crisis. Thus, one unintended outcome of this provision would be weakened, not strengthened, protection of the insured bank and the Deposit Insurance Fund, which I know is not the result any of us want.

A central lesson of this crisis is that it is difficult to insulate insured banks from risk taking conducted by their nonbanking affiliated entities. When the crisis hit, the shadow sector collapsed, leaving insured banks as the only source of stability. Far from serving as a source of strength, bank holding companies and their affiliates had to draw stability from their insured deposit franchises. We must be careful not to reduce even further the availability of support to insured banks from their holding companies. As a result, we believe policies going forward should recognize the damage regulatory arbitrage caused our economy and craft policies that focus on the quality and strength of regulation as opposed to the business model used to support it.

The FDIC is pleased to continue working with you on this important issue to assure that the final outcome serves all of our goals for a safer and more stable financial sector. We hope that a compromise can be achieved by perhaps moving some derivatives activity into affiliates, so long as capital standards remain as strict as they are for insured depositories and banks continue to be able to fully utilize derivatives for appropriate hedging activities.

Please do not hesitate to contact me or have your staff contact Paul Nash, Deputy Director for External Affairs.

Sincerely,

SHEILA C. BAIR.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 3749

Mr. TESTER. Mr. President, I rise today to talk about amendment No. 3749, the Tester-Hutchison amendment.

Before I talk about this amendment, I want to thank Chairman DODD for his work on a very strong Wall Street reform bill. I think his work has been very much appreciated by me and other members of the Banking Committee. I look forward to getting to this bill and making it even stronger and passing it out of this body to the President and into law.

This amendment would lift a burden inappropriately placed on our community banks in this country.

These are the banks that make rural America run. They do not deserve to be left holding the bag for the risky behavior of big banks.

What the Tester-Hutchison amendment does is hold big banks accountable for their actions by basing FDIC deposit insurance premiums on risk.

Our amendment would force big banks to pay their fair share of insurance. And it would fix the lopsided assessment system that we currently have—which unfairly burdens community banks.

The recent turmoil in the financial sector has placed significant strains on the FDIC's Deposit Insurance Fund—the first line of defense and resource tapped to provide assistance to troubled federally insured banks.

Since the beginning of 2008, the FDIC has closed 229 banks, including 7 banks last week. That has left a wake of devastation that has impacted the entire banking system.

Some of the larger failures—including those of IndyMac and Bank United—caused significant destruction. They have left the FDIC's Deposit Insurance Fund depleted and destabilized. In fact, the fund began the year with a negative balance of over $20 billion.

Why is that? We now know that some of these institutions were engaged in risky activities—some far beyond the traditional depository functions.

But, because the FDIC's Deposit Insurance Fund was still based solely on the institution's deposits—rather than assets, the fund wasn't able to take into account the impact that this risky behavior would have on the fund.

In fact, under the current system, community banks pay 30 percent of total FDIC premiums while only holding 20 percent of the Nation's banking assets.

Let me repeat that Mr. President. Under the current system, community banks pay 30 percent of total FDIC premiums while only holding 20 percent of the Nation's banking assets.

Our bipartisan amendment brings some common sense back into the equation.

The FDIC—and the fund—have never faced such troubling times. In light of these failures, the FDIC was forced to make emergency, upfront assessments on all banks to protect the integrity of the Fund.

Montana banks didn't get involved in this risky behavior—they didn't offer subprime mortgages or sell sophisticated financial instruments meant to manipulate markets.

But Montana banks, like community banks around the country, have had to pay the price for the risky behavior of the larger banks that destabilized the fund.

Mike Richter, President and CEO of the State Bank of Townsend in Townsend, MT, tells me that because of the emergency assessments in December, his bank had to prepay 3 year's worth of premiums—3 years.

For the Bank of Townsend, that was a bill of $190,000 on top of the $70,000 that he already paid in 2009 assessments. I am no banker, but I know that is no way to run a business.

When I think about the impact that the community banks have in my State and the role that they play—originating mortgages and providing small businesses and farms with credit—it pains me to see them suffer as a result of the risky activities of larger banks.

That is why I have teamed up with my friend from Texas, Senator HUTCHISON, as well as Senators CONRAD, MURRAY, BURRIS, BROWN of Massachusetts, HARKIN and SHAHEEN in offering this important, bipartisan amendment.

We want to ensure that the FDIC implements a genuine risk-based assessment system to protect the health of the Deposit Insurance Fund and to ensure equity among FDIC-insured institutions.

This amendment builds on the underlying language included in the bill, directing the FDIC to base assessments on assets rather than deposits.

Specifically, the amendment would require the FDIC to implement this change, rather than permitting them to make the change as in the current language.

It also further shifts the assessment base formula to benefit community banks by eliminating ''long term unsecured debt'' as a factor in calculating assessments. And it includes language directing the FDIC to implement risk based assessments for banker's banks and custodial banks which have different structures than traditional banks.

The FDIC has already taken a step forward in recognizing the risks that larger banks pose to the Deposit Insurance Fund, voting to base their emergency assessments on a bank's assets rather than deposits.

The Independent Community Bankers of America also support this amendment. They believe that it will codify these important changes and bring greater equity to the assessment base.

In closing, let me say how much I appreciate all of the work of my colleague from Texas, Senator HUTCHISON, and how much I appreciate the committee's willingness to work with us on this important amendment.

I yield the floor.

Mr. DODD. Will my colleague yield before yielding the floor?

Mr. TESTER. I will.

Mr. DODD. Mr. President, I commend my colleague and friend and our colleague from Texas, Senator HUTCHISON. This is exactly the kind of effort we are trying to achieve in this bill. It is a complicated area of law. I appreciate the work of Senator TESTER and others. I didn't hear all. I gather it is Senator TESTER, Senator HUTCHISON, Senator SCOTT BROWN, Senator HARKIN—you have a list of Democrats and Republicans here who have worked on this amendment to bring it to this point. I support the amendment. I think this is a strong amendment that will require the FDIC, as I understand it—my colleague will correct me—to change how it charges for deposit insurance, which I think makes a lot of sense—from charging each bank's domestic deposits as it does now, to charging its total liabilities, which makes far more sense. This is a great help to community banks across the country, of which Senator TESTER has been a champion since his arrival in the Senate and as a member of our Banking Committee. The change will help ease the burden of FDIC assessments on our community banks by requiring the largest banks in the country to shoulder a little more of the responsibility to rebuild and maintain a sound deposit insurance fund.

The amendment is fundamentally about fairness, which I think is one of its most important features. Community banks, as we all know, have been victims of a severe economic recession brought on by the behavior of major Wall Street firms. This has led to a high rate of community bank failures and a sharp increase in premiums necessary to rebuild the FDIC's insurance fund. Meanwhile, the largest banks have been saved by TARP moneys and other government programs that were necessary, obviously, as we all know, to avoid the economic meltdown and catastrophe we were facing in the fall of 2008.

The change required by this amendment will lead to a far more equitable distribution of the responsibility to maintain a strong deposit insurance fund. It also will free up new resources for smaller banks to lend to households.

So on every front, this amendment is a very positive contribution to this overall bill and one of the real features Members ought to keep in mind as we try to get this bill done. Without this amendment, which I support and want to see included, this will make even additional pressures on our community banks.

I thank both our colleagues, from Montana and Texas, as well as our new Senate colleague from Massachusetts, and Senator HARKIN as well, for their contribution. As soon as we find a window here to bring this up, we wish to see this amendment get adopted and be part of the bill.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. I very much thank Senator DODD. I think he is right. It is about equity. It is about assessing the premiums for the FDIC insurance fund to the banks that pose the most risk. Community banks are not among them. They played by the rules, they have done things right, and they have not tried to manipulate the market. I very much appreciate my colleague's comments and appreciate his support.

Mr. DODD. Mr. President, we have some potential action here. I hope in a few minutes to move along. The amendment of Senator TESTER and Senator HUTCHISON is an amendment I hope we can deal with at some point fairly quickly. Again, it is one of those amendments where we have reached an agreement on both sides. My experience is when you have an agreement such as that, you better move on it.

I know there are others as well. The Boxer amendment I hope we can get up. Senator SHELBY and I have worked on a larger amendment to deal with the too-big-to-fail provisions. Again, all of us want to see language, but let me say in the absence of language, we have reached agreement. Obviously we both need to look at the language of it before we can say that categorically. But I am satisfied, as is, I believe, my colleague from Alabama, that we have reached that agreement on the too-big-to-fail provisions which, with the Boxer amendment, takes that issue completely off the table as far as any further debate goes about title I and title II of the bill.

We have other issues. Senator GREGG mentioned a couple that obviously are going to need some work and some amendments are going to be offered on those. But in my view the sooner we move along on the ones where we have agreement, such as the Tester-Hutchison amendment, and some ideas I believe our colleague from Maine, Senator SNOWE, wants to offer, we will demonstrate, I think once again, that we have the capacity to work with each other to actually advance what we are all trying to achieve, and that is reform of the financial system. My hope is rather shortly we will get to some agreements on time and bring up these efforts and not have another day go by when we are not actually dealing with specific amendments in this bill.

With that, I don't see another Member seeking recognition, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DODD. I ask unanimous consent that the pending Boxer amendment No. 3737 be temporarily set aside and that Senator SNOWE of Maine be recognized to call up two amendments, Nos. 3755 and 3757; that no amendments be in order to either amendment; that upon the conclusion of debate with respect to the Snowe amendments, they be set aside and the Boxer amendment reoccur.

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

The Senator from Maine is recognized.

AMENDMENT NO. 3755 TO AMENDMENT NO. 3739

Ms. SNOWE. Madam President, the pending amendment was set aside. I call up the Snowe amendment No. 3755.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE] proposes an amendment numbered 3755 to amendment No. 3739.

Ms. SNOWE. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To strike section 1071)

Strike section 1071.

Ms. SNOWE. Madam President, I ask unanimous consent that Senator SHAHEEN be added as a cosponsor.

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

Ms. SNOWE. I would like to thank the distinguished chairman of the Banking Committee, Senator DODD, for working with me so constructively, as well as his staff, on these two amendments I am calling up this afternoon. And I thank Senator SHELBY, as well, for agreeing to the substance of these amendments.

I think it is important to address these issues that are so fundamental to so many small businesses across the country. The first amendment I have made pending would reduce cumbersome and unnecessary restrictions on the banking industry that may potentially infringe on Americans' privacy rights and curtail the ability of financial institutions to serve their customers.

Specifically, the underlying legislation contains language that would compel banks to make the following disclosures to the Consumer Financial Protection Bureau: Banks would have to report from each deposit-taking facility, including each individual automated teller machine, a record of the number and dollar amount of the deposit accounts of customers; a geo-coding, by census tract, of the residence or business location of each customer; and a record of whether each customer is transacting commercial or residential business.

This type of detailed reporting imposes a regulatory cost on banks and provides an extraordinarily large amount of data to the Federal Government.

While many have advanced the image of banks as monolithically large entities with tens of thousands of employees spread across the globe, the vast majority of banks are small community-centered institutions. For small community banks, every dollar spent on complying with government regulations is another dollar that cannot be used for customer service or extending credit. While these existing processes may be in place at large banks—and even if not, their procurement would be relatively inexpensive—for a small bank this could have a sizeable impact on their bottom line and prove to be an extremely large regulatory burden.

In addition, the Federal Government's track record when it comes to securing its citizens' privacy data is less than stellar. As we all recall, in May of 2006 the Department of Veterans Affairs lost Social Security numbers and dates of birth of more than 26 million veterans. I cannot imagine what would occur if the sensitive deposit data that banks are required to track under this legislation was inadvertently lost.

The legislation does contain a provision requiring that the personal identities of all customers be removed, but one slip could result in the intimate financial details of bank customers being revealed to unscrupulous computer hackers.

I would note both the Independent Community Bankers Association and the Credit Union National Association are supporting this amendment due to its regulatory burden. I am pleased that we have reached agreement to have it accepted in this legislation.

AMENDMENT NO. 3757 TO AMENDMENT NO. 3739

I ask unanimous consent the pending amendment be set aside, and I call up Snowe amendment No. 3757.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE] proposes amendment No. 3755 to amendment No. 3739.

Ms. SNOWE. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for consideration of seasonal income in mortgage loans)

At the end of section 1031, add the following:

(f) CONSIDERATION OF SEASONAL INCOME.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

Ms. SNOWE. This second amendment would fix an unintended consequence of the Consumer Financial Protection Bureau in the underlying legislation, which would have the effect of choking off access to credit by small business.

According to the February 2010 survey of the National Federation of Independent Business on the state of credit:

. . . 16 percent of all small employers have a mortgage on their residence that helps to finance the(ir) business. . . .

The Small Business Administration's Office of Advocacy has calculated that there are nearly 30 million small businesses in America. Taken together, this means approximately 4.8 million small firms, hardly an unsubstantial number, rely on a home mortgage for their financing.

Many of those small business owners also make loan payments intended to reflect the cashflow of their business models. For example, innkeepers often make larger loan payments during their busier seasons, and farmers and fishermen borrow funds based on their crop or catch cycles.

As brought before the Senate, the underlying bill would prohibit lending products if the Consumer Financial Protection Bureau has a ''reasonable basis to conclude that . . . substantial injury is not outweighed by countervailing benefits to consumers.''

This means if the Consumer Financial Protection Bureau finds that the injury of a loan product is outweighed by the benefit it might create, the Bureau can prevent a financial institution from offering it.

The problem with the manner in which the bill is drafted is that it does not take into account that many entrepreneurs use home mortgage loans with customized repayment terms for business purposes. Accordingly, overzealous regulators could determine that such loans, which are consumer products, are abusive and thereby either prevent or make it extremely difficult for financial institutions to continue offering these types of critical products.

For example, a loan to a borrower with balloon payments in June, July and August and interest-only payments for the rest of the year might look suspicious to the Bureau and be declared abusive. Yet this is exactly how many seasonal firms in Maine and throughout the Nation finance their businesses.

My amendment simply preserves the ability of small business owners to use their homes as collateral and to make payments based on an alternate lending cycle by clarifying that the CFPB must allow banks to offer home loan products with customized payment terms for small businesses.

I originally raised my concern that the underlying bill could inadvertently harm small business lending during meetings with Treasury Secretary Tim Geithner and National Economic Council Chairman Larry Summers. They were both immediately receptive and agreed that the bill, if not altered, could have unintended consequences that would restrain access to capital for small businesses.

The necessity of this amendment is especially critical given the small business credit crisis that continues to plague the Nation. This fact has been underscored by numerous studies including the Federal Deposit Insurance Corporation's survey that found outstanding loan balances have dropped by the largest margin since 1942. Furthermore, the Federal Reserve's April 2010 Senior Loan Officer Opinion Survey shows that only 1.9 percent of banks surveyed had loosened credit terms for small businesses in the past quarter.

While harming small businesses, lack of access to affordable capital also has a ripple effect across the greater economy. In his April 14 testimony before the Finance Committee, Dr. Mark Zandi, the chief economist for Moody's Analytics, stated that ''small business credit (is) key to job creation.''

By preserving financing flexibility for small business owners, this amendment ensures that home equity will remain as a possible means for entrepreneurs to secure funds to start or grow their businesses. With small businesses adding two-thirds of all net new jobs, this provision will help small business owners create jobs, finance their businesses, and help us reduce our current 9.7 percent unemployment rate.

We understand how instrumental small businesses are to job creation. We have to remain deeply concerned that in the last 3 months, we have had static employment growth with a 9.7-percent unemployment rate. Small businesses are the engine that will drive this recovery and will lead us out of a jobless recovery. A jobless recovery is not a true recovery. Anything we do here, particularly on this legislation, that could affect small business's access to capital will certainly infringe upon our ability to promote job creation. I reiterated that this morning in the Finance Committee hearing, where Treasury Secretary Geithner indicated he shared my deep concerns about stagnation when it comes to lending. It is important to improve upon these regulations that are vetted in the underlying legislation.

I appreciate the chairman's effort to be flexible and to address and modify some of these issues and these constraints, and for allowing me to offer these amendments and agreeing to them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my fellow New Englander and colleague for her two amendments. They are very strong and positive contributions to the bill. She raises very worthwhile points. We have a tendency to think of small businesses all operating the same way, and they obviously don't. Particularly, the seasonal businesses have moments of peak activity and then periods when not much happens, whether we are talking about farming or fishing or tourism, other such industries. It was never our intent that they be adversely affected, but the amendment she has offered makes a huge difference in that regard. I thank her. The Consumer Financial Protection Agency to allow mortgages to be made on the basis of seasonal income is of great value.

The second amendment, 3755, on the collection of deposit account data, is a very good suggestion. The last thing we want to do is overburden the regulatory environment. The intentions were sound enough. We have an awful lot of people who go into the sort of nonbank, nontraditional sources of support financially. That was sort of the motivation behind it. Her concern, that this could be burdensome—and the last thing we need is more burdens—is worthwhile. I thank her for her contributions. I support these efforts.

I believe, at the appropriate moment, we can adopt these amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

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

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

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

CONGRATULATING KALAMAZOO CENTRAL HIGH SCHOOL

Mr. LEVIN. Madam President, I come to the floor to congratulate the students, faculty, staff, and parents at Kalamazoo Central High School in Kalamazoo, MI, who learned today that President Obama will deliver the commencement address for their high school next month. It is a tremendous honor to host a President, particularly this President. I am proud not only that Kalamazoo Central High has been accorded this honor but how the school earned it. More than 1,000 schools submitted applications for a competition called Race to the Top Commencement Challenge. This competition encouraged academic excellence and innovation. Evaluators narrowed the contestants down to six who were finalists. Public voting selected the final three, and the White House then announced today that the President had chosen Kalamazoo Central from those three finalists.

I am not going to make any claim that I am unbiased here, but I believe it is meaningful that this Michigan school represents what is possible for a large, urban public school, open to all students. Kalamazoo, similar to many communities in my State, is not without its challenges. The tough economic times have given public educators an extremely difficult task. Kalamazoo has had to cope with the effects of plant closings, corporate mergers, and downsizings that meant administrators have had to do more with less.

But the people of Kalamazoo have not allowed those challenges to stand in the way of excellence. Kalamazoo is the home of the Kalamazoo Promise. Every graduate of the Kalamazoo public schools is entitled to a scholarship covering a portion of their higher education costs at a Michigan public university, up to 100 percent for those who attended Kalamazoo schools from kindergarten through 12th grade. Since the Promise was established, thanks to the generosity of a small group of anonymous donors, more than 90 percent of Kalamazoo High graduates have gone on to college.

This commitment to quality education for all is nothing new to Kalamazoo. In 1873, a small group of property owners, convinced that they did not need to pay taxes to support a public high school, sued the Kalamazoo School Board. In the ''Kalamazoo Case,'' as it became known, the Michigan Supreme Court upheld the establishment of a public high school supported by tax dollars and open to all. The case settled, once and for all, the status of public education in Michigan and has been cited by courts throughout the country where public education has come under attack.

Today's announcement adds to the rich history of public education in Kalamazoo. It is a fitting honor for the students, educators, parents, and citizens of a community that has once again demonstrated its commitment to academic excellence.

I spoke after today's announcement with the principal of Kalamazoo Central High, Von Washington, and offered my congratulations. He told me the news brought cheers and excitement to the high school students and even a few tears as the word spread quickly throughout the entire Kalamazoo community—the justifiably proud community.

So we all look forward to President Obama's visit to Kalamazoo, and I know that a proud city and a proud school will offer both the best in hospitality and an example for other schools to follow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I rise to speak on my amendment with Senator TESTER because we are trying to ensure that safe community banks and large financial institutions are treated equally. I heard Senator TESTER's speech on the floor just a little while ago on our amendment, and I am very pleased we are able to put this amendment forward. I am also pleased the chairman has said he supports my amendment. I think that is a great first step for us, for the chairman to support an amendment, because we all know this bill came to the floor on good faith, the good faith that we would have amendments and we would try to address the legitimate concerns of many in our country, from small businesspeople such as dentists to food manufacturers, as well as community bankers. We don't want—and I know the chairman doesn't want and no one wants—to hurt our economy with financial reform.

I also think I can say we all have a goal of good reform that eliminates some of the things that happened a couple years ago that American taxpayers are paying dearly for right now. We don't want bailouts. We don't want taxpayer-funded bailouts of financial institutions that have taken great risk, and we certainly don't want to hurt our economy, which is not all that great right now, we all must admit. I think that going forward we must address the issues that caused the financial meltdown and stop the misuse of derivatives and get our financial house in order while also protecting our financial house.

So that is what the Hutchison-Tester amendment tries to do. We want to ensure that large banks pay their fair share in deposit insurance premiums and community banks are not over-assessed and, therefore, can continue to provide lending and depository services to creditworthy American families and small businesses. I am very pleased we have a group of cosponsors. Senator TESTER and I are joined by Senator BURRIS, Senator CONRAD, and Senator HARKIN in this amendment.

While much debate has centered on systemic risk and the $50 billion fund to unwind large financial firms, the Hutchison-Tester amendment focuses on bringing parity to the existing FDIC deposit insurance fund. Our amendment will reform the FDIC's assessment base to ensure that banks pay assessments into the deposit insurance fund based on the risk they pose to the banking system.

Currently, the FDIC levies deposit insurance premiums on a bank's total domestic deposits. Unfortunately, domestic deposits are not the best measure to analyze the safety of banks. Financial assets, other than deposits, also create risk in the system but are not considered in determining FDIC assessments. Yet because the system does not charge assessments based on assets, it doesn't fairly assess all the risks in the system.

Community banks with less than $10 billion in assets rely heavily on customer deposits for funding, which penalizes these safe institutions by forcing them to pay deposit insurance premiums above and beyond the risk they pose to the banking system. How? Despite making up just 20 percent of the Nation's assets, these community banks contribute 30 percent of the premiums to the deposit insurance fund. At the same time, large banks hold 80 percent of the banking industry's assets but pay 70 percent of the premiums.

We must fix this inequity. This is a clear imbalance. We must ensure that banks of all sizes pay deposit insurance premiums based on the risk they pose to the system. The Hutchison-Tester amendment will do this by requiring the FDIC to change the assessment base to one which is a more accurate measure—a bank's total assets less tangible capital. This change will broaden the assessment base from $8.5 trillion to $11.5 trillion, and it will better measure the risk a bank poses.

Throughout Senator DODD's legislation, a bright line asset test is used to measure risk to the system. A bank's assets include its loans outstanding and securities held. One need only look back over the last 2 years to realize that assets show a bank's exposure to risk. It wasn't a bank's deposits that contributed to the financial meltdown. Instead, the meltdown was caused by bad mortgages that were packaged up into risky mortgage-backed securities and used to create derivatives. These risky financial instruments, and the large banks which created and held them, were what led to the financial crisis.

Our amendment is especially timely because of the great strains placed on the deposit insurance fund because of the crisis. Numerous banks have failed over the past 2 years, forcing the FDIC to dip more and more into the fund to cover insured deposits of customers.

In February 2009, with the fund already in a precarious state and more failures expected, the FDIC made an unprecedented move and levied a $5 billion special assessment on all insured institutions. Originally, the FDIC intended this assessment to be eight basis points of an institution's domestic deposits.

This assessment stood to penalize community banks by forcing them to pay for the faults of others, despite having nothing to do with the risky practices that caused the crisis and ensuing bank failures. To add insult to injury, community banks would have paid a disproportionate amount based on domestic deposits in the assessment base.

The FDIC had the regulatory authority to broaden its base to total assets. I raised this point with the FDIC following the announcement of their assessment. I was pleased the FDIC listened. They altered their special assessment to a base of total assets less tangible capital.

As a result, the assessment was lowered to 5 percent of assets—a move which ensured that large banks with heavy assets paid an assessment which fairly accounted for the added risk they posed to the banking system. So I applaud Chairman Sheila Bair for making that decision.

However, the broader base was only used one time and the FDIC has now reverted to the traditional annual premium based on domestic deposits assessments. The Dodd bill continues to give the FDIC the authority to continue using this narrow base of domestic deposits.

The Hutchison-Tester amendment will put in place a statute which ensures that we will have the fair assessment. That will be the mandate. There will not be options to create this unlevel playing field between the big banks and the community banks. It just makes sure the community banks will never have to pay a higher portion of the deposit insurance when they have a lower amount of the assets. Our amendment levels the playing field.

Since the beginning of 2008, 229 banks from across the United States have failed, and because of these failures, it has left the deposit insurance fund below the statutory minimum requirement, despite last spring's special assessment. The discouraging state of the fund has led the FDIC to make yet another unprecedented move. The FDIC is requiring its banks to prepay deposit insurance premiums, all due over the next 3 years, by the end of this fiscal year. We must act now to ensure that these prepaid deposit premiums and all premiums in the future are assessed proportionately so banks pay premiums based on the risk they pose.

I ask my colleagues to support the Hutchison-Tester amendment, to bring additional parity between banks on Wall Street and those on Main Street.

I thank my colleagues who have cosponsored the amendment. I thank the chairman for supporting the amendment. This is one step we can take. I would love for the first amendment taken up to be one that would have bipartisan support, and I hope it is overwhelming support, because our community banks did not participate in the financial meltdown and are not at fault. Yet they are paying a much heavier price. But if we ask the small businesspeople in Texas and probably in most parts of the country where are they getting the loans they need for their businesses to continue to operate, it is mostly from community banks. It is the community banks that have stepped forward in this crisis and have done the best they could to make sure that in every way possible we keep our economy growing with small businesses that are the economic engine of America. So I hope we can have a time agreement very shortly and be able to vote on the Hutchison-Tester amendment, and I look forward to working on this bill for the next few weeks.

There are many amendments that I think are quite legitimate that will help this bill to be one that will fix what was bad in our economic system that caused the financial meltdown but at the same time will protect the legitimate uses of the derivatives, the legitimate banking concerns of our community banks, our Main Street banks, our small businesses needs, and certainly not create another new level of government bureaucracy piled on top of banks that are already regulated. I just hope we don't do overkill, as I would say the Sarbanes-Oxley bill did, which was passed in the aftermath of the Enron scandal. Back then I think there was overkill that hopefully we will be able to go back and address so we keep the bad things from happening, while assuring that our economy can go forward and compete not only in the communities across our Nation but globally.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, very briefly, let me thank my colleague from Texas. I already commented when Senator TESTER of Montana spoke, but I will again thank her and the Senator from Montana and others cosponsoring this amendment. It is a very solid contribution to the bill.

Again, I think the idea of considering the total liabilities obviously makes a lot more sense. It alleviates the burden financially on smaller institutions. It adds that larger institutions have a greater capacity to share more equitably in these costs. Whether it is in our State or not, we read accounts of—as we have seen over the last year and a half—small banks having to close their doors. The pressures on the FDIC are mounting. Again, you don't want to keep adding assessments on institutions that are already trying to lend to businesses in their communities, to provide mortgages and the like.

This is a very constructive amendment and a very solid idea to add to the bill. I thank the Senator from Texas and the Senator from Montana and the others involved. As soon as we work out time agreements, hopefully we can conclude and give the Senator from Texas a couple of minutes before we vote. It is exactly the way I want to manage this bill, if I can. There is a lot of commonality and many common interests, and too often the public only sees the fights we have and they don't realize how many issues we agree on. We are making the effort to try to reach agreements with each other. Obviously, it is not as interesting a story when we agree. It is not as exciting as when there is a brawl on the floor over some issue. I appreciate the media's appreciation of the brawls, but my intention is to limit that and get us to the point where we have common interests in putting a good bill together. Senator HUTCHISON's contribution to this amendment does exactly that, just as our colleague from Maine, who talked about her amendment a moment ago. Senator WARNER has also been very helpful in this bill. I see Senator WHITEHOUSE here. He is also interested in the subject matter. I thank my colleague from Texas.

Mrs. HUTCHISON. Madam President, there is certainly one thing we can all agree on, and that is our assessment of the media and what they really like to write about. I hope we can make progress on this bill and do something good for our country and the economy. I think we have the same goals, and if we really work for the next 3 weeks or so trying to get amendments through, that would be great.

Mr. DODD. Madam President, one of the important things about this amendment is this: There will be amendments offered in which we will take things out of the bill or put things in, but this is an idea which has great value as a freestanding idea in many ways. That is why it has great value. This is something we clearly need to do. You can talk about other parts of the bill, but this is an idea that brings value to the bill—significant value, in my view, in light of the economic circumstances we are in. I appreciate this amendment more than kind of a strike something in the bill or modify something. This adds real value to the legislation. I am appreciative of that.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Madam President, I had planned to offer an amendment this afternoon. I have been informed by the managers that the amendment slots are full at the moment. I wish to speak about my amendment and then return to the floor at the earliest opportunity to offer it for a vote.

First, I say to the chairman of the Banking Committee that the bill we are currently debating would do great things to regulate an out-of-control Wall Street, to end the pernicious practice of too big to fail, and to provide for regular consumers an independent financial protection agency to look out for their interests against all the big sharks and lobbyists and lawyers who are ganged up against them on consumer debt. I appreciate the work Chairman DODD and Chairman LINCOLN have done, and I look forward to continuing to work with them on this important piece of legislation.

My amendment is cosponsored by Senators MERKLEY, DURBIN, SANDERS, LEVIN, BURRIS, FRANKEN, BROWN of Ohio, and MENENDEZ, and we are continuing to solicit cosponsorships. We are also receiving endorsements from outside of this body.

The amendment would address an area that is not yet covered by the Wall Street reform bill; that is, runaway credit card interest rates. It would do so not by imposing new restrictions on lending but, rather, by restoring historic State powers—powers that were eliminated in the relatively recent past.

Madam President, when you and I were growing up, a credit card offer with a 20-percent or 30-percent interest rate might have been a matter to bring to the attention of the authorities. Such interest rates were illegal under the laws of most, if not all, of the 50 States. Laws against charging excessive interest rates go much further back than our youth, however. The Code of Hammurabi in the third millennium B.C. limited interest rates. Hindu laws of the second century B.C. limited interest rates. Roman law limited interest rates. So when America was established, there was already a long tradition of protecting citizens against excessive interest rates, and that tradition carried to the founding of the United States of America.

For the first 202 years of our Republic, each State had the sovereign power to enforce usury laws against any lender doing business with its citizens. During those two centuries, our economy grew and flourished, and lenders profited while complying with those laws.

Then, in 1978 came an apparently uneventful Supreme Court case. It was little noticed at the time it was decided. The case was called Marquette National Bank of Minneapolis v. First of Omaha Service Corporation. The Supreme Court there had to determine what the word ''located'' meant in an old statute, the National Bank Act of 1863—whether it meant that the transaction between a bank in one State and a consumer in another State was governed by the law of the bank State or of the consumer State. The resolution was that the term ''located'' referred to the location of the bank and not the location of the consumer. This meant that in a transaction between a bank in one State and a consumer in another, the transaction would be governed by the State in which the bank was domiciled.

Well, it did not take long for the big banks to see the loophole this very narrow decision created. This loophole was never sanctioned by Congress, apparently never intended by the Supreme Court, but it was a significant loophole. It allowed banks to, for the first time in the Nation's history, avoid interest rate restrictions by the States of their consumers. It allowed them to get through that loophole by reorganizing as national banks and moving to States with comparatively weak consumer protection.

Once the banks figured out that loophole, what is called ''a race to the bottom'' ensued. Bank credit card centers moved to States with the worst consumer protections, and in some cases States made their consumer protections even worse in order to attract that business to their State. The result of that is that today the credit card divisions of major banks are based in just a few States. That deal with the bank State causes consumers in all other States to be denied their traditional, historic, lawful protection against outrageous interest rates and fees.

With millennia of interest rate protections behind us and hundreds of years of protection by the sovereign States of our Nation, the current system that has developed since that 1978 decision is the oddity in our history.

My amendment would do nothing more than reinstate the historic, longstanding powers of our sovereign States to protect their citizens against excessive usurious interest rates. Let me be clear about what this amendment would not do. It would not mandate anything. It would not even recommend interest rate caps. It would not impose any other lending limitations. It would just restore to our sovereign States the power they enjoyed for over 200 years from the founding of the Republic—the power to say: Enough. Thirty percent or 50 percent or 100 percent is too much interest to be charged to its citizens.

The current system is unfair to consumers, but it is also unfair to local banks—banks that continue to be bound by the laws of the State in which they are located. A small local bank has to play by the rules of fair interest rates. The gigantic national credit card companies can avoid having any rules at all. That is not fair. We need to level the playing field to eliminate this unfair and lucrative advantage for Wall Street banks against our local Main Street community banks.

To make sure lenders cannot find another statute to use to once again avoid State law, my amendment would apply to all types of consumer lending institutions and not just national banks. So no more changing your charter or your means of business to avoid limitations on gouging your customers.

My amendment gives State legislatures ample time to revise their usury statutes if they wish and gives lenders ample time to adjust. The amendment would not go into effect until 1 year after the President signs the bill into law.

In the meantime, it is worth noting that most States' usury laws are around or above 18 percent. Presently, federally regulated credit unions do quite well under a Federal 18 percent interest rate cap. So there should not be a large shock when this amendment goes into effect as law. It is the 30-percent-and-over interest rates that are the recent anomaly, the historic peculiarity, the oddity, and cruelty to consumers that States have traditionally been able to defend against.

We should go back to the historic norm, the way the Founding Fathers saw things under the doctrine of federalism, and close this modern bureaucratic loophole that allows big Wall Street banks to gouge local citizens and compete unfairly with local banks.

I ask my colleagues for their consideration of this amendment and urge them to support it. I think it is a good amendment.

I see the distinguished majority whip on the floor. I yield back my time so that he may speak.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I thank the Senator. I hope to join him as a cosponsor. It wasn't that long ago—the Senator will remember—when we had a debate on the floor about credit card reform. People across America said: There are some things going on with credit cards that aren't fair and right, and we need you to police these credit cards and make sure they don't do outrageous things and charge people unreasonably.

I think we made some progress in the law we passed, but we made one critical error: we gave the credit card companies a long grace period to adjust to the changes. If you will notice, over the last year or so you received notices—I got them at my home in Springfield, IL—from credit card companies saying they were going to raise interest rates on the credit cards before the new law went into effect. My wife saved them and said: Mr. Smart Senator, how did you let this happen? It turned out that we had no control on those interest rates during that period of time and very little after the reform bill.

What the Senator from Rhode Island is challenging us to look at is this: What is a reasonable amount to charge for an interest rate? His decision—and I concur with it—is, let's let each State make that decision.

Thirty-two years ago, the Supreme Court incorrectly removed the authority of States to make that decision. They said: If your credit card company is located in State X, you are bound by the laws of State X when it comes to interest rates for all of your customers across the United States. You don't have to change for a customer living in Arkansas, which has a cap on interest rates, or for a customer living in Illinois. You just take the law of State X and that is the law you apply to your customers.

The Senator from Rhode Island says: Why would we allow that? Why don't we let standards be established by each State? He doesn't dictate the standard—whether it is 5, 10, or 100 percent. That will still be up to the State. He doesn't say it will happen overnight. He gives a year for them to phase it in.

It will also level the playing field for a lot of community banks and local financial institutions in each State bound by State law.

When the community banks in Illinois are doing business with me as a resident of Illinois, there are laws that can apply, and in other States as well. But when it comes to credit cards, they can charge me whatever they want because the States they say they do business in have no rules whatsoever.

The net result of this most people understand. If the interest rates are not regulated, if they literally go to the high heavens, people end up paying enormous sums of money. The penalties involved go through the roof as well.

This is a legitimate issue and a legitimate subject for us to raise. I believe, as the Senator from Rhode Island does, that there is a reasonable level of interest rates where a reputable institution can make a good profit. Beyond that, it turns out to be a trap that a lot of people fall into because they do not realize there is no ceiling whatsoever on the interest rates they are being charged.

There will be other amendments on this financial stability bill. This is one that I think most people will understand completely. The law of your State will determine the interest rate you are going to pay on your credit card, not the law of some other State. I do not think it is an unreasonable amendment. It is a very reasonable one. It reduces the cost for families and businesses and the life they lead, and it gives to each State the authority to decide what that limit will be within each State. For those who argue against Federal control, the Senator from Rhode Island is taking this right back to the local level where the decisions will be made.

I am happy to support his amendment, and I encourage my colleagues to join us in cosponsoring it.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I thank the Senate majority whip for cosponsoring our legislation. I appreciate his support immensely. He has a wonderful way of making things clear and helping people understand how basic and simple and historic this amendment is. It takes us back to the way the country was through the vast majority of its history.

The ''greatest generation'' served in World War II, came home, and went to college and built the society we now live in under these rules. George Washington and his men at Valley Forge served under these rules. The Civil War took place and the Korean war took place under these rules. There are 202 years of solid history behind this issue.

I will close with an appeal to my colleagues to continue to show interest in this legislation, in particular my colleagues on the other side of the aisle. If you believe in States rights, this is a good piece of legislation.

If you believe in States as laboratories of democracy, as centers of innovation, as places where you multiply times 50 the chance of getting the right answer when you allow a little bit of innovation to take place, you should support this legislation.

If you take comfort in more than 200 years of solid American history proving that this is the right way to go, you should support this amendment.

If you want to protect consumers in your State from out-of-State banks that are out of control and have no restrictions on interest rates they can charge your consumers, you should support this amendment.

If you think the Federal Government has too much power and you want the States to have more say about what can take place with its own citizens, you should support this amendment.

I look forward to continuing to push for a vote on this amendment. I think it is an important one.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SCHUMER. 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. SCHUMER. Mr. President, more than 18 months after the collapse of Lehman Brothers put our financial system into a deep freeze, we are at a crossroads in history. We can continue to turn a blind eye to the very real threat that excessive risk taking and reckless deregulation pose to our economy or we can choose to learn from the financial disaster that nearly brought our economy to a screeching halt. I urge my colleagues to choose reform.

We can't wait any longer to take on the challenge of overhauling the rules of the road for our financial system. We have a regulatory system based on the 1930s and 1970s and a financial world in the year 2010. We have an economic imperative to pass a strong set of financial reforms. The shock waves in the real economy that resulted from the financial crisis are still being felt today by the millions of Americans who can't find a job or are facing foreclosure, who can't pay their children's college tuition or have to put off retirement because their savings have been decimated.

We have 9.7 percent unemployment in this country, not because of any reform proposal that has yet to become law but because of an irresponsibility in the financial system and a broken-down financial regulatory system that was last updated in the 1930s and allowed too many firms, and even whole markets, to slip through the cracks. If we do nothing, we will surely find ourselves facing a similar crisis in the not too distant future.

Senator DODD and my colleagues on the Banking Committee have put together a bill with strong forward-looking reforms that make our financial system stronger and more stable so it can return to its fundamental role—helping our economy grow and innovate and create jobs. The bill lays out new rules of the road, fills gaps in our regulations, and protects consumers and investors. Most importantly, by creating a new resolution authority—which I know my colleague from Virginia, who is sitting on the floor here now, has worked very hard on—this bill ensures that taxpayers will never again have to bail out large financial institutions. Firms that fail, will fail, period. There will be no rescue or bailout, only an orderly unwinding that forces stockholders and bondholders to suffer, not taxpayers.

As a New Yorker, I see the connection between Wall Street and Main Street every day. The financial industry is responsible for 500,000 jobs in New York City, and most of them are not the kind of fancy, high-paying jobs you read about or see in the movies. The average salary for these jobs is about $70,000. But I realize the financial system plays a special role far beyond Manhattan. There are many analogies. It is the heart of the economy, the lifeblood, the circulatory system, the engine of the economy or the oil that greases the gears. Whatever image you choose, it is absolutely critical to helping businesses grow and innovate and create new jobs. So our reform must be forward thinking and strong but not punitive or vindictive or vengeful, because that will hurt the whole economy.

With the special status of the financial system come special responsibilities. The industry has reacted to many of the new proposals by arguing that they will kill innovation. But because we can make cars that go 200 miles per hour doesn't mean we shouldn't have speed limits. In general, I think this bill strikes the necessary balance between maintaining an innovative and competitive financial system while ensuring that the recklessness that occurred by some on Wall Street will never again threaten the financial health of Americans on Main Street. Make no mistake about it, these reforms will be good for both Wall Street and Main Street.

The bill will create a financial system where consumers and investors on Main Street can have confidence in the products and services they receive and where they put their money; a financial system focused on getting capital into the real economy, so people can start new businesses and grow their existing ones. At the same time, the certainty and stability that reform will provide will make our financial system even more attractive to investors around the world and will help keep America at the forefront of the world's economy.

I believe this bill will strengthen jobs and income creation in my State of New York, not leak it, because it will make the system stronger. It will make people have more confidence in that system, and money from around the world will flow into New York, which is the capital of the financial system for our Nation and our world.

The bill Senator DODD put together is stronger in many ways than most people expected it to be a couple of months ago. It contains several core reforms that will go a long way toward fixing the problems that crept up in our financial system over decades. The bill would make sure taxpayers never again have to foot the bill when large institutions fail; make sure every large financial institution has a regulator looking over its shoulder to prevent excesses, and a council of regulators looking at risks across the whole system; make sure derivatives—which, when abused, can put the whole system at risk—are traded transparently, at the very least, and on an exchange whenever possible.

I should note this is a huge change from the way the derivatives market works now. We would go from a totally unregulated market to one that is regulated, where regulators know every trade that happens and risks can't build up in the system without anyone knowing better.

The bill will also make sure there are stronger consumer protections to ensure institutions can't take advantage of average Americans in their mortgages, credit cards, or other financial instruments. It would give investors additional power to hold their boards accountable so they are not asleep at the wheel the next time their management is loading up the company with risk.

Like many of my colleagues, however, I believe there are areas of the bill I wish to see improved, and I will continue to work with my colleagues on the floor to do that. First, I wish to see even stronger consumer protection in the financial services area, and I am working with Senators REID and DURBIN and others to strengthen this part of the bill. This is an area where I have worked hard for decades now in Congress, both in the House and Senate. It is clear to me we can't force Congress to pass a new law every time a credit card company figures out a way to skirt the old laws. We need an independent agency whose only mission is to protect consumers, and that agency needs to write and enforce rulings across the board for all financial institutions.

I am sponsoring an amendment to expand the enforcement authority of the Consumer Protection Bureau over all nonbanks, such as payday lenders and rent-to-own companies, to make sure consumers are protected no matter who they rely on for financial services.

In the area of consumers, small companies can rip off consumers just the way large companies can. And while large companies can pose a greater risk to the system as a whole, small companies can pose every bit as great a risk to the individual consumer, and the distinction between the two is faceted and unfair.

I also think the bill could go farther in dealing with credit rating agencies, and I am working with Senator FRANKEN on a proposal that would reduce the conflicts of interest inherent in their current business model. There are other changes I will proposal as well.

In conclusion, we have many tasks in front of us if we are to rebuild the American economy, but a stronger financial system focused on the needs of the real economy is crucial in that effort. There should be no doubt that part of putting us back on the path to prosperity requires instituting smart, thoughtful financial reforms.

Mr. President, I yield the floor.

ENEMY COMBATANTS

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I wish to share a few remarks about the recent arrest of the Faisal Shahzad, the individual who allegedly attempted to detonate a car bomb in Times Square in a plot to kill a lot of Americans.

I have been asked about that incident several times over the last several days, and I think I was incorrect in making comments to reporters and even to friends about the precise legal situation in which we are involved. Let me briefly summarize what I think the current state of the law is, and all of us will then be better able to respond to the questions we may be asked.

The Christmas Day bombing suspect, Umar Farouk Abdulmutallab, as was established pretty quickly, is an unprivileged enemy belligerent and is thus eligible to be tried for his offenses and detained as a person at war against the United States. Mr. Abdulmutallab is an individual who could be held as a prisoner of war, if the military so chooses, for so long as the hostilities continue, just as we did in World War II and every war the United States has been part of. Also, the military would be entitled to try Mr. Abdulmutallab, the Christmas Day bomber, by military commission. That is what we would normally do, and that is what was done in World War II when we caught Nazi saboteurs plotting to blow up targets in the U.S.

I believed the administration made a mistake when they treated Mr. Abdulmutallab as a civilian criminal and provided him Miranda rights and appointed him a lawyer, which we have to do if we are going to treat somebody as a criminal rather than an unprivileged enemy belligerent. I believe firmly that was an error, and the normal procedure should be for these types of individuals to be tried or detained by the military because they are not criminals, they are warriors.

Yesterday's arrest of the Times Square bombing suspect, Faisal Shahzad, raises similar questions. My initial thought was that the Supreme Court has clearly held that a U.S. citizen who has joined the enemy to fight against this country can be designated as an unlawful enemy belligerent and could be detained for the duration of hostilities. That is a fact Abraham Lincoln never had any doubt about when he took people prisoners. I guess George Washington, when there was the Whiskey Rebellion, he never had any doubt he had the ability to attack, destroy, or arrest people when they were at war with the United States. Fortunately, he did not have to go so far, but that is the kind of thing the Supreme Court reaffirmed in Hamdi v. Rumsfeld.

In the Hamdi case, Justice Sandra Day O'Connor, who wrote the opinion, made clear that a citizen who has taken up arms in hostilities against the United States can be designated as an unlawful enemy combatant—''unlawful enemy belligerent'' is the phrase she used—and she wrote the opinion which said:

> There is no bar to this Nation's holding one of its own citizens as an enemy combatant. . . . A citizen, no less than an alien, can be ''part of or supporting forces hostile to the United States or coalition partners'' and ''engaged in an armed conflict against the United States''; such a citizen, if released, would pose the same threat to returning to the front during the ongoing conflict.

That is perfectly sound and perfectly reasonable. She concluded that Mr. Hamdi, who was captured alongside the Taliban in Afghanistan but who was an American citizen, could be detained for the duration of the hostilities authorized by the Authorization for the Use of Military Force that Congress passed, authorizing military force against him in order to keep him from rejoining the enemy.

We have had quite a number of people who have been released from Guantanamo, who have been captured in the process, who have returned to the combat and attacked us. So it is clear that under Hamdi, the administration has the authority to detain the Times Square terror suspect as an unprivileged enemy combatant if he can be linked to our terrorist enemies within the definitions of the Military Commission's Act.

But I want to be clear. There is a distinction: this suspect, unlike the Christmas Day bomber and the 9/11 plotters, cannot be tried via military commission under current law. He can be detained by the military, but not tried by military commission. In previous conflicts, military commissions were used to try civilians who took up arms against the United States in ways that violated the rules of war. For example, Herbert Haupt was one of the Nazi saboteurs who was prosecuted via military commission after plotting to blow up targets within the United States in the early months of World War II. He was a naturalized U.S. citizen, and the U.S. Supreme Court, in the landmark case of ex parte Quirin, allowed the commission to go forward with his trial, and I think he was executed. A number of the people involved in that case—most of those who sneaked into the country by submarine, as I recall, off our coast, to blow up our cities and infrastructure and kill civilians—were tried for being in violation of the rules of law, very much unlike a German soldier who was captured on the battlefield during the Battle of the Bulge. They were detained as prisoners of war throughout the war. Because these people had violated the rules of war they could be tried by a military commission.

But what happened in the Haupt case ex parte Quirin is no longer law. Since 2006, the Military Commissions Act that Congress passed required and made it clear that the military commission trials are only available for alien unprivileged enemy belligerents. Accordingly, the Times Square bombing suspect who appears to be a citizen must be prosecuted, if he is prosecuted and tried at all, in Federal court—if the reports are accurate that he is a citizen.

I want to be sure. I think we have this matter straight. I believe an alien unlawful belligerent who is captured should not be treated like a criminal. They should not be appointed a lawyer that day to tell them don't say anything. They should not be advised of their rights because they are prisoners of war. If their actions amount to a violation of the rules of war, an alien unlawful enemy belligerent can be tried in civilian court, if we choose, or tried by a military commission. But if they are a citizen and they are caught under these circumstances, they can be detained in military custody, but they can't be tried by a military commission. They can only be tried by the civilian courts in civilian trials.

With regard to the matter of Miranda warnings, Miranda is not a constitutional requirement. It was never part of American law until recently—40 years ago, 50 years ago. No nation in the world I think—except perhaps one, I forget which one—provides that you have to warn people they have a right to remain silent. We can ask them questions. They can remain silent. We can't force them to talk, but we don't have to read them the Constitution before we ask them questions. But we do.

So, to me, it makes no sense that we would provide this extra constitutional right to unlawful enemy alien combatants like a Christmas Day bomber. They should be detained by military custody. If they need to be tried, the choice should be made between whether to be tried in civilian courts or military courts. The ability to obtain good intelligence about the operation is more enhanced, in my view, without any doubt—even though sometimes people who are given the Miranda rights talk—but there is no doubt we will have less people talking if they are appointed lawyers and read Miranda rights than if we don't.

Since war is won or lost so often on the question of who has the best intelligence, we should not provide lawyers to individuals who are at war with us and seek to destroy our country and kill innocent men, women, and children.

I think that is the basic state of the law today. I have been a bit confused myself, and I am glad my staff has helped me get correct.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, this week, as the Senate moves forward with consideration of Wall Street reform legislation, I am optimistic that legislation will be passed that reforms our financial system and prevents those who nearly brought down the economy from ever being able to do that again.

As we have heard many times over the last several weeks, the bill creates a mechanism to monitor the economy for nationwide trends and risky patterns that could lead to problems. It establishes a consumer watchdog dedicated to identifying and preventing lending trends that are harmful to consumers. In addition to preventing future bailouts, the bill also requires that most financial speculation be done in the open, while addressing the underlying problem that allowed the banks to go casino-crazy in the first place. It also brings derivatives into a transparent marketplace. I believe all these changes will make the American financial system more transparent, accountable and responsive to future risks.

It has been discouraging to see some Members and special interests opposed to these changes. In fact, I believe it is hard to argue against these reforms with a straight face. Yet those against reforming Wall Street have been doing just that, asserting that making markets fair and transparent will somehow hurt the economy. These reforms will help, not hurt, American consumers, small banks and small businesses.

As I have said before, our community banks in South Dakota, and across the Nation, have acted responsibly. It was the actions of large, interconnected financial institutions that endangered our economy and received Federal bailouts.

This bill eliminates the likelihood that the government would once again be forced to throw billions of dollars at Wall Street or run the risk of bringing down our entire economy.

The community banks in South Dakota, and across the country, are a vital part of our economy, as they reinvest money back into the communities they serve. This legislation will help community banks since it levels the playing field between banks and nonbank financials, such as mortgage lenders.

In addition, the bill fills many regulatory gaps, helping solve the problem of charter shopping, meaning financial institutions will no longer be able to choose the regulator they think will be the friendliest.

I would also like to see the legislation go further in some areas, such as the registration of private equity and venture capital with the SEC, in addition to hedge fund registration.

I also believe the legislation fills important regulatory gaps relating to insurance regulation. This legislation establishes the Office of National Insurance, and gives this office the ability to negotiate international agreements, a task that is currently a struggle for our country in a global marketplace.

These provisions will give us a better picture of what is happening in this national and international industry, something we do not have now. We should resist efforts to take authority away from the Office of National Insurance.

This bill has had substantial input from Republicans and Democrats. As the legislation process moves forward, I hope that bipartisan language on investor protection can be retained, that we can find common ground on national preemption and State AG enforcement, and that additional good ideas from both sides of the aisle can be incorporated into this legislation through the amendment process.

I believe all Members of this body want to support bipartisan legislation to reform Wall Street. But, as we seek bipartisan consensus, we should assess all amendments from a Main Street, commonsense perspective.

South Dakota's small farms, ranches and business operate with transparency and accountability. It is time for that same transparency and accountability to be extended to Wall Street.

Taxpayers, consumers, and businesses across our Nation have been affected by the gambling of Wall Street. The fallout of Wall Street's recklessness has affected all of us, whether it is job loss, foreclosure, loss of retirement funds, or decreased access to a loan or other type of credit.

Nearly 2 years have passed since the financial crisis. It is time to move forward and fix our failed system of financial services regulation.

A young South Dakotan was in my office last week, and said that he thought this bill represents South Dakota values, because he was raised with the value that you should be careful with your money, and even more careful with someone else's money. That is something that Wall Street forgot.

Any legislation that passes this body must make our markets safer, better protect consumers, create a level playing field for industry, and remind Wall Street that our Nation's economy is not something they are free to gamble away.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I just wish to say to my friend how much I appreciate his involvement and support and effort over the past many months that we have worked in this area, since the collapse of our economy back in the fall of—well, it began earlier than that, actually, as we witnessed early in 2007 the mortgage crisis occurring across the country.

Senator JOHNSON has been tremendously helpful and valuable. He is my seatmate on the Banking Committee. We have been sitting next to each other on that committee for the past 3 years and working on these issues together. He brought great value to this debate and discussion, contributed significantly to the product before us, and I wished to thank him for that.

We have some work to do, obviously, in the next number of days on this bill. But it is a good bill. I appreciate his comments about how it has been a bill crafted not by one member, not by a chairman of a committee but by a group of us on that committee, Democrats as well as Republicans who contributed to this bill.

So I thank him for his work.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I know the Senator from Connecticut has been on the floor all of this day managing a piece of legislation, and it appears to be kind of a lonely process here. He is managing what is a very important piece of legislation dealing with financial reform or Wall Street reform. I know he is perhaps as frustrated as everybody else that we are not making more progress and voting on amendments. I know work is going on behind the scenes as well.

I hope we will be able to move ahead and get a good piece of legislation through the Senate. I don't know what time it will take, but what is far more important is that we get it right. The consequences of not making the changes necessary would be that we would experience again at some point in the future the kind of financial crisis we have seen in the last couple years. It is a significant crisis for a lot of Americans—about $15 trillion of lost value, but that is an aggregate number that doesn't mean much.

What means something is that millions of people are losing their jobs, their homes, and many are losing hope. That is the consequence of this kind of very deep recession—the deepest recession since the Great Depression.

Following the Great Depression, if you read the economic history of the country, you will find that a number of very aggressive pieces of legislation were put into place to protect our country and make certain that could not happen again. Those pieces of legislation enacted into law lasted for a long time—70 or 80 years—to protect this country's economic interests. But what happened was that a number of people decided they were old-fashioned provisions and needed to be modernized, so we had modernization legislation that I did not support. We had to modernize the system. That modernization a decade ago caused massive problems. So now we are back having experienced the last couple of years and a very deep recession that is not a natural economic disaster; it is manmade. I think it is caused by the most unprecedented greed this country has ever seen among some of its largest financial institutions.

It is important to say that banking is critical to this country's economic existence. You need production and you need finance. I don't think we ought to suggest—and nobody has—that finance is not worthwhile. It is very important. You can't produce or have businesses without the ability to provide finance for those businesses. But over a couple of centuries of economic history in this country, sometimes producers have had the upper hand; sometimes those in the finance production have had the upper hand. For the last 15, 20 years, those in finance production in this country have had an unbelievable amount of clout and sway and the upper hand. That has caused us serious problems.

Today, I am not talking about the origins of this latest economic wreck—I have done that many times before—but starting with the subprime loan scandal that permeated much of the country, there was unbelievable greed and excess, securitization of bad mortgages that were rated AAA and passed from one to another, from mortgage bankers, to hedge funds, to investment banks, and back and forth.

Then even that wasn't enough. They were passing a bunch of bad paper around where everybody was making big fees, not knowing what they were buying, and buying things they would not get from people who never had it.

That wasn't enough. Then we created synthetic securities and naked swaps. I guess that was a natural extension by those who were greedy enough to believe you have to have something to trade no matter what the circumstances. So they created instruments—debt instruments, securities, and others—that had no value. They were debt instruments related to values of things that were extraneous, so there was no insurable interest.

A naked credit default swap is something that has no insurable interest on either end. It is simply two people who have decided to bet on whether a bondholder over there may or may not default, despite the fact that neither of these people has an economic interest in the bond. They are just making a wager. They could have just as well put it on black or red at the roulette wheel or played the craps table or played blackjack. It is not an investment; it is just betting.

That all went on, and there was a dramatic amount of new leverage and borrowing. I cannot begin to describe the excess that occurred. I guess the final circumstance for me to see what was wrong with all of this was that in 2008 the ''Wall Street'' firms earned a net negative of about $36 billion, that is, they had $36 billion of losses, and still paid, I believe, $17 billion in bonuses. That represents sort of the most egregious excesses you can imagine.

The question now and the circumstance that exists that I know the Senator from Connecticut cares a lot about is how do we restore confidence? How do we restore some confidence for the American people going forward? If we do not have confidence, this economy is not going to expand and rebound.

The answer is, we put together a piece of legislation called Wall Street or financial reform and construct it the right way to try to make certain the things that were done cannot be done again, to make certain the kind of economic wreck that occurred cannot happen again.

My colleague from the Banking Committee, the chairman of the Banking Committee, Senator DODD, and others have done quite a good job of putting together a piece of legislation that moves in that direction. It can be improved, in my judgment, and perhaps will be. I know he will agree with that as well. There are other ideas that can be brought to the floor of the Senate on this legislation.

I am going to talk about two of them ever so briefly—actually three, but one of them will be very quick.

Senator GRASSLEY and I intend to offer an amendment that says to the Federal Reserve Board: You must disclose to whom you were providing emergency assistance during the financial debacle on Wall Street, including loans out of the discount window to investment banks for the first time in history. You must disclose whom you provided loans to, what the terms were, and how much those loans amounted to. Two Federal courts—the district court and now the appeals court—have ordered the Fed to do so. The American people, they said, deserve to know. The Fed announced they intend to appeal that once again.

Tomorrow, Senator GRASSLEY and I will offer an amendment that says the law will require them to make that disclosure. The American people deserve to know.

On the other two issues, one is on too big to fail. This is central to the bill. There are a lot of ideas about too big to fail. Mine is, I think, the most direct, the most decisive, and the most effective.

If the Financial Stability Oversight Council decides that an institution is too big to fail—that is, by definition, the construct and size of that organization would create a moral hazard to this country, would create unacceptable risks and grave risks to the entire future of the American economy—if that is the case, if that is the judgment, then it seems to me you have to pare back portions of that enterprise until it is not any longer too big to fail and causing grave risk to the future of this economy.

In my judgment, the most direct and reasonable thing to do is to simply require that you restructure and require divestiture, where necessary, of those portions of an institution that have become too big to fail and cause a grave risk to the future of this country's economy, should they fail.

I will be offering that amendment. I know it is different than some others. My colleagues, Senator BROWN and Senator KAUFMAN, have an amendment which I will vote for and support as well on this issue. I think this is probably the most direct and probably the most effective amendment on the issue of too big to fail.

Finally, I am going to offer an amendment that would ban what are called naked credit default swaps. If people want to gamble, just bet one another. There are plenty of places to do that in America. Las Vegas comes to mind. Atlantic City comes to mind. It seems to me, we should not mistake betting for investing. We ought to get back to basics in our financial institutions.

I think we have something close to $25 trillion of credit default swaps that exist now. I don't know what percent of them have no insurable interest, that represent just wagers, just flatout bets rather than investments. In England, a study suggested that about 80 percent of credit default swaps are what are called naked credit default swaps with no insurable interest. If that is the case on this side, we are talking about a notional value of perhaps $16 trillion, $17 trillion of instruments out there that simply allow for the making of wagers that have nothing at all to do with the insurable interest and bonds.

I mentioned earlier that Mr. Pearlstein, who writes for the Washington Post, once observed a pretty simple question: Why should there be more insurance policies to insure bonds than there are bonds to insure? The answer is obvious. They created these excess insurance policies that have no insurable interest so people could just gamble. It is fine if you are gambling with your own money, but once you start gambling with the taxpayers' money, if you are a federally insured bank and the taxpayers are going to bear the risk, that is a different matter.

I am going to offer these amendments. I say, again, as I said when I started, all of us who come to this debate about financial reform or Wall Street reform understand that an effective, functioning system of finance in this country is essential to the well-being of America. I do not think anybody wants to take apart a system of finance that has the different levels of FDIC insured banking, commercial banking, investment banking, venture capitals, hedge funds—all those are important to this country's long-term future. I personally would like to see hedge funds and derivatives regulated. I have talked about that with Senator FEINSTEIN and others for a long time. It is very important that we have a system of finance that has the confidence of the American people and that we need in order to finance the production in this country.

Ultimately, all of us would like the productive sector to be repaired, to grow and hire people once again, employ people, and have ''Made in America'' put on products once again. All of us would like to see that happen. That will not happen unless we have a working system of finance as well.

We had a hearing where representatives from three businesses came to that hearing. All three were small- to medium-sized businesses. All three had sailed through this deep recession, with some difficulty, but were still profitable. All three were ready to expand, ready to hire more people, and none of them could find any financing to do it. None of them have been delinquent. All of them had existing banking enterprises with which they had a relationship and always paid back everything they owed. They had never been delinquent. Yet they could not find the funding to expand their business and hire more people. That is what is wrong.

Even today, by the way, some of these record profits that are coming from some of the biggest financial institutions are coming not as a result of their lending money to people but as a result of their trading, in many cases in some of the same securities that caused some of the same problems a couple years ago and over the last decade.

This reform legislation is essential. This is one of the most important pieces of legislation we will have considered in this Congress—probably the most important. In many ways, the consequences of what we do will be with us for a decade or more. That is why it is important to get this right.

I say to my colleague from Connecticut, I wish to be helpful to him. He has written a piece of legislation that has much to commend it. This Senate owes him a debt of thanks and the Banking Committee a debt of thanks. That does not mean we cannot offer amendments that might improve pieces here and there. But this is an awfully good start.

My hope is, Senator DODD will have sufficient cooperation in the Senate to begin getting votes on amendments so we can get through this, have the debate, and get the best ideas that everybody has to offer and get a piece of legislation that will give the American people some confidence once again.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Madam President, I wish to speak as in morning business for 15 minutes.

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

EXTENSION OF THE BIODIESEL TAX CREDIT

Mr. GRASSLEY. Madam President, last Tuesday, President Obama traveled to Iowa. He visited counties and towns that have been hit particularly hard by the economic downturn. While Iowa's average unemployment rate stands at 6.8 percent, Lee County's unemployment rate stands near 11 percent. Wapello County's unemployment rate is at 9.5 percent. These were the counties that President Obama visited. Over 1,000 jobs have been lost in each of the 3 counties he visited since the recession began.

The visit to Iowa was billed as an effort to highlight the steps taken to achieve long-term growth and prosperity by creating a new, clean energy economy.

During his trip, the President visited a Siemens wind blade manufacturing facility in Fort Madison. I had the opportunity to visit there about a year and a half ago. The President touted Iowa's leadership in the production of wind energy. This Siemens facility is a great facility. I recall just a few years ago speaking to Siemens manufacturing when they were looking for a site for their first wind production facility in the United States. I told the executives at Siemens they would not be disappointed if they chose Fort Madison for their facility because Iowans are some of the hardest working and honest people in the country.

I am particularly proud of the second-in-the-Nation status of Iowa's wind production. I first authored and won enactment of the wind production tax credit in 1992. This incentive has led to the exponential growth in the production of wind across our entire United States.

It has also helped my State of Iowa to become a leader in the production of wind energy component manufacturing.

The emerging wind industry has created thousands of jobs in recent years in the cities of Newton, West Branch, Cedar Rapids, and Fort Madison.

When President Obama says energy security should be a top priority, I agree with our President. When he says we need to rely more on homegrown fuels and clean energy, I agree with our President. When he says our security and our economy depend on making America more energy independent, I agree with our President.

During a subsequent visit to an ethanol facility in Missouri, President Obama stated unequivocally that his administration would ensure the domestic biofuel industry would be successful. The President and I are in strong agreement that renewable biofuels are a key part of our future.

Unfortunately, I believe President Obama missed an important opportunity to make a push for the message of the biodiesel tax credit. While the President was in Iowa touting green jobs, this Democratic Congress has, in effect, sent pink slips to about 18,000 people who depend on the production of biodiesel for their livelihood.

On December 31, 2009, the biodiesel tax credit, which is essential to keep a young bioindustry competitive, expired. In anticipation of the expiration of the tax credit, Senator CANTWELL and I introduced a long-term extension in August of 2009. That bill was never considered last year.

In December, as the expiration loomed, I came to the Senate floor to implore my colleagues to put partisan politics aside and pass a clean extension of the biodiesel tax credit because, without an extension, I knew the industry would come to a grinding halt, and it has.

For whatever reason, the Democratic leadership in the House and the Senate have never considered this extension a priority. Now the industry is experiencing the dire situation I predicted.

On January 1 of this year, about 23,000 people were employed in the biodiesel industry. Because of the lapse in the credit, nearly every biodiesel facility in the country is idle or operating at a fraction of capacity. Nearly all of Iowa's 15 biodiesel refineries have completely halted production. This has led to the loss of about 2,000 jobs in Iowa alone.

The thousands of jobs created by the wind industry in Iowa have essentially been offset by the thousands of jobs lost in the biodiesel industry.

You do not have to take my word for the dire state of the industry. A $50 million biodiesel facility in Farley, IA—that is in northeast Iowa—announced that they just laid off 23 workers and cut the pay of the rest of the staff. Renewable Energy Group laid off 9 employees in a facility in Ralston, IA, and 13 in Newton, IA. Ironically, the Newton biodiesel facility is 1 mile down the road from a wind manufacturing facility that President Obama visited on Earth Day just last year. During President Obama's trip to Iowa, he was within a few miles of three biodiesel facilities that are idle: one in Keokuk, IA, one in Washington, IA, and another in Crawfordsville, IA.

According to a press release from the Iowa Renewable Fuels Association, an Iowan affiliated with biodiesel industry was able to speak to President Obama very briefly following a townhall session in Ottumwa, IA. Mr. Albin, vice president at Renewable Energy Group, told President Obama that plants are idle and 90 percent of the biodiesel employees have been laid off simply as a result of the tax credit lapse. According to Mr. Albin, President Obama assured him that he would not let the biodiesel industry die.

He recalls the President saying something like this—and I want to quote what I suppose was a paraphrase by Mr. Albin:

> I'm the President and I promise I will do whatever I can. Look, I'm on your side, but I've got a Congress to deal with.

Well, I can understand what the President would say. I happen to believe that in my 4 years of serving with then-Senator Obama, that Senator Obama, now President Obama, is very sincere about the promotion of ethanol and biodiesel or biofuels—whatever you want to call it. In fact, I had the good occasion of working with then-Senator Obama on a Senate bill when I was still chairman of the Finance Committee to promote the tax credit that is now in place so that filling stations can get a tax credit for putting in for E85 ethanol, as an example. So I don't question President Obama's response to Mr. Albin. Of course, we do have checks and balances in government and the President has Congress to deal with. But I hope President Obama will take strong action to insert himself into this debate in the Congress.

It seems that even President Obama, from this quote, is frustrated by the lack of action by the Democratic congressional leadership on this issue.

Mr. President, I ask unanimous consent to have printed in the RECORD this press release from Iowa RFA at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GRASSLEY. The board president of Western Iowa Energy in Wall Lake, IA, recently stated:

> Due to the continued lapse of the biodiesel tax credit, Western Iowa Energy continues to suffer from significantly limited sales and reduced sales forecasts. Due to these market conditions, we have made the difficult decision to idle our facility. Today we are laying off 15 full-time employees. This represents more than 50 percent of our staff.

On February 10, Senator BAUCUS, chairman of the Finance Committee, and I worked in a bipartisan fashion to develop an $84 billion jobs package that included a 1-year extension of several energy tax credits, including the biodiesel tax incentive. Before the ink was even dry on the paper, Majority Leader REID scuttled our bipartisan package in favor of a partisan approach. That delayed passage of an extension in the Senate for well over a month, until the month of March.

Now it has been languishing for 6 weeks. Where is the urgency? This Congress jammed through a stimulus bill that spent $800 billion to keep the unemployment rate below 8 percent, and of course it didn't stay below 8 percent. Yet we can't find the time to pass a simple tax extension that will likely reinstate 20,000 jobs overnight. We are 4 months delinquent in our obligation to these biofuel producers with no end game in sight. The lack of action on this issue defies logic or common sense.

So while the Democratic leadership talks about creating green jobs, their action has led to job cuts. Americans are unemployed today because of the action—or more aptly the inaction—of the Democratic congressional leadership, particularly on this biodiesel issue.

The United States is more dependent upon foreign oil because of the inaction of the Congress. Automobiles are producing more pollution because we have essentially eliminated this renewable, cleaner-burning biofuel. Rural economies are being stripped of the economic gain of this value-added agricultural product.

So I urge the Senate to take immediate action to extend this tax incentive and reduce our dependence upon foreign oil and save green jobs.

Mr. President, I yield the floor.

EXHIBIT 1

PRESIDENT OBAMA GETS BIODIESEL MESSAGE IN OTTUMWA

IRFA SECRETARY ALBIN USES 90 SECONDS WITH THE PRESIDENT TO SHARE URGENCY OF TAX CREDIT

OTTUMWA, IA.—During his Iowa visit on April 27, 2010, President Barack Obama heard firsthand of the urgency to reinstate the biodiesel tax credit from Brad Albin, Vice President at Renewable Energy Group and Secretary of the Iowa Renewable Fuels Association (IRFA).

Following President Obama's speech and town hall session at Indian Hills Community College, Albin grabbed the President's attention. During a 90 second exchange, Albin shared the message of the biodiesel industry's state of disruption and uncertainty resulting from the lapse of the federal biodiesel blenders tax credit since January 1, 2010.

''I shook his hand and told him that we're losing jobs as we stand here, which seemed to get his attention,'' explained Albin, who had been sitting in the second row. ''I told him about plants idling and that more than 90 percent of manufacturing staff at U.S. biodiesel plants have been laid off as a result of the tax credit lapse.''

President Obama acknowledged that his biodiesel tax credit updates are coming through USDA Secretary Vilsack. The President continued to listen as Albin explained that for 20 years Americans have worked to meet the challenge of increasing energy independence, that farmers and families have invested billions, and that now companies are bleeding to death or bankrupt. Albin further explained that the five month lapse of the tax credit could not have come at a worse time as the Renewable Fuels Standard goes into effect July 1, 2010.

''We're going to die without this tax credit,'' Albin added even after the President's assurances. ''The President then responded, 'We won't let you die.' ''

''Those that know me know I want to make sure my message is clearly understood; so as the President was walking away to shake another hand, I asked him if he could commit to the tax credit being in place by May 31,'' Albin said. May 31, 2010, the start of the Memorial Day recess, is the date Chairman Sander Levin of the House Ways and Means Committee promised as a reinstatement deadline for the biodiesel tax credit during an energy hearing earlier this month.

''The President heard me ask him again about the May 31 date. He turned back to me and said, 'I'm the President and I promise I'll do whatever I can,' '' Albin recalled of the exchange. ''President Obama then assured me of his commitment to clean energy by saying, 'Look, I'm on your side, but I've got a Congress to deal with.' ''

''I believe he now has our urgent message straight from the state where the tax credit lapse is having the most impact—the nation's top biodiesel state,'' Albin said. ''It really was a miracle to be in that right spot at the right moment to be able to get the biodiesel message straight to the President of the United States of America.''

The Iowa Renewable Fuels Association was formed in 2002 to represent the state's ethanol and biodiesel producers. The trade group fosters the development and growth of the renewable fuels industry in Iowa through education, promotion, legislation and infrastructure development.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. FRANKEN. Mr. President, I rise today to discuss an amendment that I have just filed. But before I begin, I would like to thank Chairman DODD for his exemplary work on this Wall Street reform bill. It is the result of months of tireless work and many hours of negotiation by Chairman DODD and his staff.

This Wall Street reform bill will vastly improve the regulatory structure currently on the books. It creates a strong consumer watchdog within the Fed—a bureau that will put consumers first, ahead of Wall Street profits. This bill also brings derivatives out of the shadows and onto exchanges so that Wall Street's bets upon bets never again threaten to bring down our entire economy. This bill accomplishes many things and brings us a long way toward robust reform.

But there is one area we need to make stronger. We need to go further in addressing the rampant problems plaguing the credit rating industry. That is why I intend to introduce an amendment to change the way the initial credit ratings are assigned and encourage competition within the credit rating industry.

Currently, Wall Street firms that issue complex securities request and purchase ratings from nationally recognized statistical rating organizations—or NRSROs. I am sure all of you are familiar with them—Moody's, Standard & Poor's, and Fitch. What you may not know is that there are actually a handful of other credit rating agencies doing the same work. But the big three agencies have effectively shut all others out of the market. It is easy to see how.

In the current system, the issuer of the bond pays the credit rating agency. So there is an incentive to rate every product that comes across your desk as AAA. If you give a risky product a low rating, the issuer can just go to one of the other agencies and shop around for a better rating. Guess which agency that issuer is going to go back to the next time? Of course, the agency that gave them the higher rating. Does anyone see a problem? I do.

Well, the problem is that the entire credit rating structure is basically one enormous conflict of interest. Issuers want high ratings, and raters want business. The market offers incentives for inflated ratings not accurate ratings. These perverse incentives have driven the behavior of all participants. Any rating agency looking to enter the market with better methods or any rating agency that refuses to inflate its ratings will never be able to compete.

My friend and colleague, Senator LEVIN, held a hearing not long ago in the Permanent Subcommittee on Investigations. His PSI investigative team unearthed some very unsavory e-mail exchanges between issuers and raters—e-mails which implied that an issuer could obtain a higher rating if he paid more money. And money—money—is what drove this industry not performance. As an example, the New York Times reported Sunday that 93 percent of AAA-rated subprime mortgage-backed securities issued in 2006 have since been downgraded to junk status.

This might be easy to dismiss if these junk bonds simply cost some Wall Street speculators a few bucks here and there. But, in fact, these junk securities permeated the entire market. These junk securities were in older workers' pension funds and working peoples' retirement funds. These junk bonds contributed to the loss of $3.4 trillion in retirement savings during this crisis.

To me, it is obvious we need an entirely different model. My amendment, which I am introducing with Senators SCHUMER and NELSON, would finally encourage competition and—get this—accuracy, in an industry that has little of either. Specifically, my amendment creates a credit rating agency board—a self-regulatory organization—tasked with developing a system in which the board assigns a rating agency to provide a product's initial rating. Requiring an initial rating by an agency not of the issuer's choosing will put a check on the accuracy of ratings. Simple.

My amendment leaves flexibility to the board to determine assignment process. But the board will be inclined to make the process one that incentivizes accuracy because the representatives of the investor community will make up a majority of the board—for example, pension fund managers and endowment directors; folks who have a vested interest in the AAA bonds they have selected actually performing as AAA bonds. The board gets to design the assignment process it sees fit. It can be random, it can be based on a formula, just as long as the issuer doesn't get to choose the rating agency.

The board will select a subset of qualified credit rating agencies to be eligible for the assignment pool. The board will be required to monitor the performance of the agencies in the pool. If the board so chooses, it can reward good performance with more rating assignments. It can recognize poor performance with fewer rating assignments. If the rater is bad enough, that might even be zero assignments.

My amendment gives the SEC a year and a half to carefully implement this new system with input from the board members. The result will be increased competition among the credit raters, generally, and incentives to produce accurate ratings, not inflated ratings. The amendment does not prohibit an issuer from then seeking a second or a third or a fourth rating from an agency of its choice.

But rating agencies will be disinclined to give inflated ratings to a product if the initial rating reflects its true value. Some smaller credit rating agencies, which haven't taken part in the inflated ratings game, would finally have a chance to compete. An assignment mechanism for initial ratings will break up today's credit rating oligopoly, promote real competition, and produce more accurate ratings. More accurate ratings will decrease risk and create more stability in our financial system. And that is what this is all about.

Now, Wall Street lobbyists may claim this issue is too complex for Congress to address, but imagine that your child came home from school one day saying their chemistry teacher was offering an A to anyone who wanted to skip the final exam and instead pay $100.

You don't need to know anything about chemistry to understand that this system of rewards is harmful. Not only is the teacher making easy money, but nobody is holding the student accountable for doing good work.

Now I don't know any teachers that corrupt. But the credit rating agencies have demonstrated that they have blindly followed the perverse incentives of the current market. Congress should not sit idly by and let the credit rating industry continue to expose our economy to great risk just because Wall Street insists the problem doesn't have an easy solution. Now, my amendment may not fix the entire system, but it will provide checks, encourage accuracy, and increase competition.

And there is no need to take my word for it—the idea in my amendment was actually first proposed by several well-respected academics. Matthew Richardson, a leading expert and professor of applied financial economics at NYU's Stern School of Business, supports this proposal, and has been integral in the development of my amendment, and I would like to thank him for his assistance.

Economist Paul Krugman has suggested this model as a step toward improvement. And so has economist Dean Baker. Americans for Financial Reform, which includes the Nation's most prominent consumer groups, supports it.

I would like to thank my colleagues, Senator SCHUMER and Senator NELSON, for their leadership on this issue and for their expertise in helping me craft this amendment. I also thank my colleagues, Senators BROWN, WHITEHOUSE, and MURRAY for joining us in cosponsoring it.

Going forward, I hope that more of my colleagues will join with us in taking action to restore integrity to the credit rating industry.

I yield the floor.

Ms. MIKULSKI. Mr. President, if there is one thing that we should all be able to agree on, it is that the American taxpayer should never again have to bail out a Wall Street firm. We need to be fighting for Main Street, not Wall Street, and the Boxer amendment is a step in the right direction on that path.

This amendment sends a clear message to Wall Street firms that they can no longer take risks with our financial security and then expect the taxpayers to be there to prop them up. Wall Street must be held accountable. It is time to end to taxpayer bailouts once and for all.

When I talk to people in Maryland, I hear their frustration and I feel their anger. They want to know, why should AIG receive a bailout, when nobody is bailing out them from this economic crisis? They wonder, who is on their side? Who is going to bail out their stagnant wages? Who is going to bail them out when they are trying to pay their utilities and put gas in the car? And, seniors wonder who will bail them out as they try to make sure they do not lose their income.

This amendment shows that we heard their concerns and we are on their side. It sends a message to Wall Street that their time of running around acting like masters of the universe—with irresponsible lending practices and risky investments—has come to an end. And, it sends a message to American families and small businesses that their government is looking out for them. We are here fighting for them—fighting so that consumers can be sure that their deposits are safe; fighting so that small businesses have access to the credit they need to create and retain jobs; and fighting to make sure that taxpayers' money is protected.

We teach our kids at a young age that they will be held responsible for their own actions. When they make a mess, they must take responsibility and clean it up. We must pass this amendment so that corporate America can see that the same lesson applies to them, and to show the taxpayers that we are serious about being stewards of their money. This amendment makes sure that if a Wall Street firm gets in trouble, they will be required by law to clean up their own mess. If a company gets in trouble from this point forward, the responsibility will be placed where it belongs—on the financial sector. No longer will taxpayers be standing by.

I support the Boxer amendment because I believe it is time to put an end to all taxpayer bailouts.

Mrs. FEINSTEIN. I have filed an amendment to the Wall Street reform bill before us that would remove one barrier between the unemployed and a job.

Forty-seven percent of employers use credit reports to screen at least some potential hires, according to the Society for Human Resource Management. Thirteen percent of employers checked the credit history of all hires.

Unfortunately, many of our country's 15 million unemployed are facing more challenges than ever. For instance, some have seen their credit drop precipitously as a result of the economic downturn. In some cases, their credit history is affecting their ability to find employment.

My amendment would prohibit employers from using a consumer credit report as a condition of employment. It would impact potential hires and current workers.

Put simply, an employer would not be able to hire or fire someone based upon their credit history.

I certainly understand that some jobs require workers to display a pattern of financial responsibility. To that end, my amendment would exempt those applying for the following:

Positions at financial institutions, including banks and credit unions, that require substantive work with customer accounts and funds; jobs that require a national security or Federal Deposit Insurance Corporation clearance; State or local government jobs that otherwise require a credit report; and, positions otherwise requiring credit checks by law.

This amendment is similar to a bill introduced in the House of Representatives by Representative STEVE COHEN known as the Equal Employment for All Act, H.R. 3149.

Why is this legislation needed? As of March 2010, 15 million Americans continue to struggle with unemployment, and over 2.3 million of them live in my State alone.

It is critical that obstacles to employment be removed for these victims of the economic downturn.

During these difficult times, many unemployed Americans have seen their credit scores reduced precipitously for events largely outside of their control. These events include bankruptcy, foreclosure, and credit card debt.

Millions of American homeowners have also experienced foreclosure over the past 3 years. Through the first 3 months of this year alone, 216,000 have been filed in California. Last year, more than 1 million foreclosures were filed in my State.

Foreclosures can have a devastating impact on one's credit history. Moreover, responsible alternatives to foreclosure, such as a short sale or loan modification can also affect a homeowner's credit.

A short sale can reduce a homeowner's credit score between 200 to 300 points, according to the Third Way.

And in a report prepared by First American CoreLogic, in February 2010, 35 percent of California homeowners were underwater, or owed more on their mortgage than the value of their home. This means that short sales, in which a homeowner sells a home for less than they owe, will likely continue as an alternative to foreclosure.

According to the National Bankruptcy Research Center, more than 1.4 million individuals and businesses filed for bankruptcy in 2009. This is a 32-percent increase over the prior year 2008.

Federal Reserve statistics show that average credit card debt in the U.S. per household is over $16,000.

These are disturbing trends, and display a pattern of difficult financial situations facing many Americans.

Unfortunately, if you have lost your job in this economy, these circumstances are often out of your control. But, they should not impede your ability to find another job.

I have received many heartbreaking letters from Californians facing these situations. They can't pay off debt because their debt is limiting their ability to find work.

For example, a chemist from San Diego wrote to me about her student loans, which have ballooned from $60,000 to $110,000. At the time she wrote, she had been unemployed for 15 months.

But, she feels she cannot find a job in the field she trained for due to her poor credit score.

A former job recruiter from Corona wrote to share her firsthand experience with this practice, which prevented her from hiring well-qualified, experienced candidates. This constituent, herself now unemployed and late on her mortgage payment, is worried that her credit will now prevent her from finding a new job in the recruiting field.

These are just two examples of how credit history is posing an unnecessary obstacle for the long-term unemployed.

An April 9, 2010, article in the New York Times highlighted the issue that my amendment seeks to address.

It cited testimony provided by an executive of the credit bureau TransUnion before the Oregon legislature. He stated that he was not aware of research linking job performance to the contents of a worker's credit report.

Research by Professor Jerry K. Palmer of Eastern Kentucky University has also found no correlation between worker performance and the strength of their credit report.

While credit bureaus argue that credit background checks are a helpful tool in preventing employee theft and workplace violence, little evidence supports that conclusion.

To be clear, I recognize that in some cases, a credit history is important. Mortgage brokers or bank employees working with deposits should be able to demonstrate a responsible credit history.

That is why my bill would exempt these industries from the prohibition in my amendment.

The unemployment situation in California is untenable. It is my goal to develop fiscally responsible solutions to help those in need.

My amendment does just that.

Workers should not be prevented from a job they are well-qualified for, on account of reasons beyond their control.

If my colleagues have concerns about this legislation, I am happy to work with them to improve it.

I hope this amendment will be adopted and provide assurance to workers that their credit will not keep them out of work.

Mr. President, I have also filed an amendment to the Wall Street Reform legislation that would require the Consumer Financial Protection Bureau to undertake a study on the availability of credit to the unemployed.

An article in the Los Angeles Times in March 2010 highlighted a disturbing new trend in the payday lending industry targeting the unemployed. Specifically, payday lenders are providing cash advances to individuals using unemployment checks as collateral.

This is a troubling practice, especially for those surviving solely on their unemployment benefits.

In California, payday loans can carry interest rates of up to 459 percent.

In light of this, I believe more must be done to ensure reasonable and fair credit terms are available to the unemployed.

This Wall Street Reform bill creates a research unit within the Bureau of Consumer Financial Protection housed at the Federal Reserve.

My amendment would require this unit to conduct a study on the following:

The effects of payday lending on the unemployed; the potential impacts, both positive and negative, of providing payday loans to individuals using their unemployment checks as collateral; alternative credit options for the unemployed, including the accessibility and costs associated with them; and policy recommendations that the Bureau of Consumer Financial Protection could implement to prevent unscrupulous lending practices.

This report would be completed within 1-year of the bill's enactment and be made available to the public.

To be clear, my amendment would not provide the Bureau of Consumer Financial Protection with any new authorities, nor require it to carry out the study's recommendations. It is intended as a guide for the Bureau as it works on rules to protect consumers, notably the unemployed, from deceptive and predatory lending practices.

In California, those individuals who turn to cash advances from payday lenders can expect to pay roughly $15 in fees for every $100 they borrow.

This interest rate, when expressed in terms of an annual percentage rate, amounts to 459 percent. While this is the maximum rate that may be charged for a payday loan in California, some States, such as Delaware and Wisconsin, have no interest rate limit at all.

The maximum payday loan that can be extended to a borrower at any one time in California is $300.

So in practical terms, a borrower wishing to take out the maximum $300 payday loan will pay $45 in fees just to borrow $255.

Often, borrowers must take out additional payday loans in order to pay off their current debts. In 2006, approximately 450,000 borrowers in California made more than six back-to-back payday loans.

Such reliance on this form of credit can lead some working families to fall into a harmful spiral of debt.

Over 2.3 million people in California are out work and roughly 100,000 of them have reached the 99-week maximum for receiving unemployment benefits.

The average unemployed Californian receives roughly $300 a week in benefits, which is also the State's limit for a payday loan.

Typically, payday loans are offered as advances on paychecks and should be used in cases of emergency. Such cases include falling short on bills or rent during a difficult month.

However, unemployment, especially in this economy, can be long-term. Payday loans may not offer a sustainable solution.

Unemployment is one of the underlying factors contributing to the rise in foreclosures throughout our country. In California alone, over 215,000 foreclosures were filed in just the first 3 months of this year. In tough months, those facing the dual threat of unemployment and foreclosure need to access credit more than ever.

And now, payday lenders have made it easier for the unemployed to fall into a cycle of debt.

By offering cash advances on their primary source of income, Federal or State unemployment benefit checks, payday lenders are specifically targeting this vulnerable group of borrowers.

Now is not the time to be doing this.

Such high loan fees are a burden for those surviving solely on their unemployment benefits.

So why is this study important?

Studies and reports on the effects of payday lending are already available, some of which consider its benefits and others its burden to borrowers. But the study required by my amendment should offer much more than just the pros and cons of payday lending.

I hope this study will determine if payday lending practices, including cash advances on unemployment checks, are useful credit options for the unemployed.

If they provide a benefit, I hope the study's recommendations will make these loans more fair and reasonable to borrowers.

If not, the study should review and recommend alternative credit options for the unemployed.

As I mentioned, we all agree this is not the time to be exploiting the unemployed. Many of the unemployed are experiencing some desperate financial straits right now.

I believe policymakers should be provided with clear options to help improve the financial situation for them.

Mr. WYDEN. Mr. President, along with Senator GRASSLEY, I am introducing as an amendment to the financial reform bill, S. 3217, our bipartisan resolution to amend Senate rules to eliminate secret holds.

The legislation now before the Senate is intended to bring greater openness and accountability to Wall Street and other financial institutions. At the same time the Senate is reforming how financial markets do business, there is no better time for the Senate to reform the process for how the Senate conducts its own business.

Under current Senate rules, it is still possible for Senators to use secret holds to block legislation or nominations from coming to the floor without having to give any reason. There is no openness or accountability to anyone when a Senator places a secret hold.

The Senate should not have a double standard that requires greater openness and accountability on Wall Street while tolerating a practice that keeps both the public and colleagues in the dark with no accountability to anyone.

That is why Senator GRASSLEY and I are offering our bipartisan proposal to end the practice of secret Senate holds as an amendment to the financial reform bill. Because our amendment would eliminate secret holds by amending Senate rules, I hereby give notice of our intent to amend the Senate rules by filing the Wyden-Grassley amendment to S. 3217.

I urge colleagues to support this bipartisan reform of Senate rules.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

IN PRAISE OF KENNETH CONCEPCION

Mr. KAUFMAN. Mr. President, I rise once again to recognize the service of one of America's Great Federal Employees.

So many of our outstanding Federal employees spend their careers in our uniformed services, standing at the ready to guard our liberties and protect lives. One of these services has a unique mission that combines coastal defense, maritime search and rescue, and environmental protection.

I am speaking about the U.S. Coast Guard.

The 42,000 men and women who serve in the Coast Guard embody the highest principles of our nation. Their dual responsibilities in both civil and military matters require Guardians to demonstrate flexibility, patience, and resolve.

This year is 95th anniversary of the Coast Guard's creation from the old Revenue Cutter Service. That earlier service evolved from our nation's first maritime force in the infant years of our republic.

The Federal employee I have selected to honor this week served as Chief of U.S. Flag Deepdraft Vessels and Plan Review for the Coast Guard at the time of the September 11 attacks.

Kenneth Concepcion was based on Staten Island, within view of the twin towers of the World Trade Center. On that fateful morning, Kenneth was the first Coast Guard employee on the scene, arriving at New York's Pier Eleven just 20 minutes after the collapse of the second tower.

What he found there was disorder and masses of frightened people with no way to get home. Kenneth took charge and recruited NYPD officers and Transportation Department officials to help him organize the crowds into lines based on intended destination. He assumed control of all the vessels at the pier and prioritized the safe evacuation of first-responders who had been injured in the attacks.

Thanks to Kenneth's leadership and steady hand, the Coast Guard was able to evacuate 70,000 people from Lower Manhattan that morning to points across the Hudson River. In addition, he made sure that commercial ships continued to have safe passage in and out of New York Harbor, keeping some of America's vital ports open for business.

But Kenneth's heroism doesn't end there. Two months after the attacks, American Airlines flight 587 crashed tragically near JFK airport in Queens. Kenneth served as the on-scene coordinator for the maritime recovery of debris. Under his leadership, and as a result of his ability to get different agencies to work well together, all significant debris from the crash was recovered in less than 2 days.

Our Coast Guard members, like Kenneth Concepcion, stand ever at the ready to keep our maritime interests safe and to serve as our Nation's first line of search and rescue when disaster strikes. We rely on them to protect us, and I hope my colleagues will join me in thanking Kenneth and all members of the Coast Guard for their service to our Nation.

They are all truly great Federal employees.

REMEMBERING KENNETH EDWARD CARFINE

Before I yield the floor, I want to note with sadness the passing of one of my previous honorees.

On October 19 of last year, I stood at this desk and spoke about an outstanding employee from the Department of the Treasury, Kenneth Edward Carfine.

He served in the Treasury Department since 1973 and worked over the last 37 years in banking, cash management, payments, check claims, and government-wide accounting.

Recently, he had served under the Fiscal Assistant Secretary as an adviser to senior department officials. Ken's intellect and diligence had been critical to the Treasury's economic recovery efforts. He helped shape how the Treasury deals with debt financing, cash management, trust fund administration, and a range of services.

One of his lasting legacies will be the ability to use a national debit card to receive Social Security benefits—a program he helped implement.

Kenneth Edward Carfine lost his battle to cancer last week. He is survived by his wife of over 40 years, Deborah, as well as by his two sons, Ken Jr. and Greg, their families, and his two granddaughters.

Ken worked at the Treasury Department for 37 years, and I know there literally must be hundreds of Treasury employees, past and present, who are grieving deeply today for this incredibly fine person and dedicated public servant. His passing is a great loss for all of them, the Department and for the nation he served so ably.

My thoughts are with his family, friends and colleagues at the Treasury Department, and I hope my Senate colleagues will join me in offering our condolences.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The clerk proceeded to call the roll.

Mr. INHOFE. 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. INHOFE. Mr. President, with all of the trauma that is going on right now with the oilspill and all of the other problems that are out there and, of course, the bill under consideration, I ask unanimous consent that I be recognized as in morning business for 15 minutes.

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

EPA LEAD PAINT RULES

Mr. INHOFE. On April 22, a new EPA lead-based paint rule went into effect that has caused all kinds of serious problems, not just in my State of Oklahoma but throughout the country. My office has received an incredible number of calls and e-mails from constituents, from homeowners, from contractors, to landlords, to plumbers, all trying to get information about a rule that, in most cases, they had never heard of until last week. I think everyone in this Chamber stands strongly behind the intent of the rule, which is to protect women who might be pregnant, children, and others from harmful effects of lead. With over 20 kids and grandkids, I understand that. I appreciate the importance of the rule and the potential it has to future decrease lead exposure. But, as even the Obama administration admits, implementation of the rule has been painfully slow and seriously flawed.

Specifically, the rule requires that renovations to homes built before 1978 that disturb more than 6 square feet of surface area have to be supervised by a certified renovator and conducted by a certified renovation firm. In order to be certified, contractors have to submit an application with a fee to the

EPA and complete a training course for instruction on lead-safe workplaces. Now, that sounds simple enough. There is one serious problem; that is, there aren't any instructors around to certify these people.

What is worse than that, those who violate the rule; that is, they go and they try to do something to their own home, if it was a home that was built prior to 1978, if they violate this, they can be fined up to $37,500 a day. Just imagine how hysterical people are, not just in Oklahoma but throughout the country.

There are not nearly enough contractors who have been certified, and that is because there are far too few people certified to teach the classes.

That is why today, with 23 cosponsors, I am introducing legislation, S. 3296, to remedy this implementation travesty. This bill provides additional time for contractors and others to get certified so they can become qualified to go ahead and do these things and not be subjected to fines. It actually extends the time for a period of 1 year or until the EPA can have enough people to certify people around the country so that this can be done.

The need for the bill is on display in Oklahoma, where, until yesterday, no one was teaching classes publicly. Keep in mind, no one is teaching these classes. Yet, if they try to do any renovation, they can be fined up to $37,500 a day.

I am pleased to hear that Metro Tech of Oklahoma City has finally received its certification from the EPA and will begin teaching classes on May 13. I should note that because the demand is so high, they anticipate having full classes until July.

Because access to courses is so limited, renovators and contractors cannot be trained and they cannot pass along the benefits of their lead-safe work practices to homeowners and help protect pregnant women and children from further lead exposure. Without enough certified renovators, we will simply not get the benefits this rule can provide.

Let me give you a couple of statistics to help illustrate the problem. As of April 22—that was implementation day—the EPA had only accredited 204 training providers. Those providers have conducted more than 6,900 courses. They trained an estimated 160,000 people in the construction and remodeling industries to use lead-safe work practices. This is far too few people to ensure everyone who works on a pre-1978 home, including roofers, plumbers, painters, general contractors, or just individual homeowners, can have access to training to get certification they have to have.

Let me share with you a few examples from Oklahoma.

Paul Kane, executive vice president and CEO of the Home Builders Association of Greater Tulsa, was in my office with a number of Oklahoma homebuilders the day before the rule was implemented. That would have been April 21. During our meeting, I was pleased that Cass Sunstein, head of the Obama administration's Office of Information and Regulatory Affairs, was available to hear from my constituents about their concerns with the rule.

As the Tulsa World reported:

> Kane explained the difficulty local contractors are having in getting certified, adding that only one trainer in the entire State of Oklahoma has been certified, and that that person has been certified only a few weeks. Moreover, he told Sunstein, that person is not offering training to the public but is limiting his classes to his own organization.

So we have one guy who can teach these classes in the State of Oklahoma. Yet there are literally thousands out there who are out of work until such time as they can go back and start working again.

I really appreciate the fact that Mr. Sunstein was listening to the concerns of my Oklahoma constituents. He told us he recognized that the implementation of the rule was causing economic hardship. He raised the possibility of providing a 60-day delay to help sort out of some of the implementation problems. In the end, however, this option was not workable, and we simply ran out of options to stop the rule from going into effect. Now, that was the day before the rule became finalized. But we certainly appreciate his attention, looking into it, and we are going to try to work with his staff.

My staff also spoke with a property owner who rents homes to low-income residents in Tulsa. He has been unable to get contractors out to his properties to replace carpet or even paint because they do not have EPA certification, which means they can get fined by the agency if they work without it. So it is no surprise that my constituent is concerned that his housing units could fall into disrepair and that people would lose their access to affordable housing—not not only losing access to affordable housing but exposing people to lead paint.

Additionally, we heard from a painter in Oklahoma City who has experienced delays in getting trained for the simple reason that his trainer has not yet been certified by the EPA. This issue reaches far beyond Oklahoma. There are a number of Senators, Republicans and Democrats, who have expressed concerns about the implementation of the rule. Several Members weighed in before the rule went into effect. Senators BYRON DORGAN and KENT CONRAD of North Dakota and a bipartisan group of Members of the House of Representatives sent a letter outlining these concerns to the EPA.

During a recent EPW subcommittee hearing, Senator AMY KLOBUCHAR urged the EPA to come up with a solution that will ensure contractors have the opportunity to come into compliance with this rule. We are talking about everybody, Members of the House, the Senate, Democrats, Republicans. They are all affected the same.

The issue has also been raised before the Senate Energy and Natural Resources Committee. In testimony before the committee on March 11, Bob Hanbury, speaking on behalf of the National Association of Home Builders, raised concerns about potential conflicts between Homestar and the lead rule. Members may recall that Homestar is one of President Obama's signature issues. It is a program that helps homeowners increase the energy efficiency of their homes. But Mr. Hanbury believes the lead rule won't allow the Star program to move forward.

As we can see, there were plenty of concerns raised about the lead rule implementation before it went into effect. Nevertheless, EPA repeatedly said, in the 2-year period leading up to the rule, that it could meet these implementation challenges. As the ranking member of the committee with jurisdiction over the EPA, I wrote to the EPA two times that I believed EPA appeared to be far from prepared. In both cases, EPA said they were ready. In a June 3, 2009 letter responding to my concerns, the EPA wrote:

> I agree that both EPA and the regulated community have a great deal of preparation in front of us as we approach next April's deadline. I am confident, however, that the ten months between now and April of 2010 will allow us to meet these deadlines.

That was a year ago. Of course, it didn't happen.

In a letter dated December 1, 2009, EPA wrote me explaining:

> We are confident there will be enough training providers to meet the demand. EPA does not plan to revise the April 2010 effective date [for the] rule.

The EPA also stated in the letter:

> Currently, the capacity for training is in excess of the demand as several training courses have been canceled for lack of attendance.

What they are saying is they have been providing all these people, but it is just flat not true. In light of this situation, what can lawmakers do to help provide guidance for constituents back home?

First and foremost, we have to get out the word. I have raised the issue both in my travel around Oklahoma and on Oklahoma radio. Last week I sent out a "Dear Colleague" letter to all Senators with information to help them navigate the confusion associated with the rule's implementation. Included are Web links to EPA's Web site which take constituents to important information about the lead rule as well as the rule itself. It also provides a link to the EPA and the Ad Council's new Web site, www. Leadfreekids.org, which is a consumer friendly Web page with information on protecting yourself from lead. I wish also to commend the coverage of the rule by the Tulsa World. The paper's reporting has informed the public and even resulted in more classes being taught throughout Oklahoma.

Further, along with Senator COBURN and some 23 of my fellow Senators, I have introduced S. 3296 to delay the implementation of the rule by several months, giving contractors, trainers, and the EPA breathing room to get more people through classes. The EPA has said the people have had a year to get ready for this rule. However, the first training class wasn't even held until June 16, 2009. Renovation firms could not apply for certification until October of last year. Our bill would delay the implementation and give people time to comply with this.

This is in a way bureaucracy at its worst. We say we are going to demand that no one is going to be able to do something to their very own home if it disturbs as much as 6 square feet. And if they do, they could be fined $37,500 a day. Imagine how frightening that is. Yet they don't have enough instructors to teach people to be certificated. This is one we have to address.

I think the only thing we can do right now is to get an extension. That is what I am doing with this Senate bill. I certainly call on my colleagues, Democrats and Republicans. The problem I am pointing out in Oklahoma is not just in Oklahoma; it is in all States. We will have to address this thing, get something done, or we have a lot of risk out there. We have children and pregnant women who could be at risk of exposure to lead and lead paint. Of course, one of the things that is almost as bad is the fact that we have literally, only in Oklahoma, thousands of people out of work because they cannot do renovation. Most of the homes they deal with are pre-1978. It is something that will have to be dealt with. I certainly encourage others to join the cause to relieve us of this problem. The rule will affect more than 70 million homes. The implementation of this rule to date has been a disaster. Congress will have to ensure that enough people are trained and certified. That way, the rule can do what it is supposed to do—protect the health of young people and pregnant women.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I am forever amazed at my friends on the other side of the aisle. They have clearly established themselves as the party of no. America knows that. But what they have done on this bill dealing with Wall Street reform is hard to comprehend. We started on this bill a week before last. We filed cloture on it. On Monday, we had a cloture vote last week; Tuesday, a cloture vote last week; Wednesday, a cloture vote last week. Finally, they said: OK, we don't need any more cloture votes. Let's start legislating on the bill.

Tomorrow is Wednesday. It has been a week. Nothing has happened. Why? Because the party of no says no to everything we try. Listen to this one. This is something. They will not let us vote on amendments the Republicans have offered and amendments we have agreed to they would not let us vote on.

I came to the floor of the Senate today to let everyone know the frustration the American people must feel and the frustration many people feel in the Senate as a result of the party of no continually doing what they are doing. I want to make sure everyone understands the facts in more detail than what I have given.

On Thursday, April 15, Wall Street reform legislation was introduced and placed on the Legislative Calendar. Thursday, April 22, I sought consent to proceed to that bill. The Republicans objected, and I was forced to file cloture. I don't want to get into a lot of the procedural problems we have, but remember, the Republicans have caused us to file cloture almost 100 times this Congress. So everyone understands, it is more than just a word—''filibustering.'' That is what they have done almost 100 times.

I moved to the bill. They would not let me—I had taken it off the calendar and tried to bring it to the floor. They said no. I had to file a motion signed by 17 or 18 Senators. It took 2 days for that to ripen before we could vote on it. Once we voted on it and we got cloture, they got another 30 hours. So in this instance, they had a new game.

They said: Go ahead and move to the bill. We are not going to use the 30 hours. We are going to use a week. We have done nothing for a week waiting for this phantom amendment they think is floating around here someplace, this so-called Shelby amendment.

Monday, April 26, when my cloture motion had ripened, we failed to get cloture 57 to 41. We did some other things—moved to reconsider, some parliamentary maneuvers so we could get this bill moving along. Tuesday, April 27, cloture failed, 57 to 41, the same vote as the day before. Wednesday, April 28, cloture vote failed, 56 to 42. One of their Members, I guess, was gone or maybe somebody switched a vote. I really don't know. Remember, each time I voted on the prevailing side. I had to change my vote so I could move to reconsider.

So on April 28, after the cloture vote failed, they said: OK, we give up. You can start legislating for the American people. But that wasn't being fair and square with the American people. They had no intention of doing that. They are stalling on everything we do. We know they have said publicly they want health care to be Obama's Waterloo.

So just to be very clear, we were ready to start debate on this last Monday—actually, frankly, the Thursday before that. Even though we were able to overcome the objections to begin this debate, we now find many of the same parties are preventing us from making any progress on this important legislation.

One Senator I saw quoted in the newspaper last week said I had stopped—I had told that person I was going to move to a certain bill—a Republican Senator—and that Senator said: He hasn't done that. I wrote that person a letter today going over the long list of filibusters to prevent us from moving to that and many other pieces of legislation.

We haven't had a single vote on this legislation, not a single vote. People are waiting around on both sides, I am told, to offer amendments. We can't get votes on even the amendments we have agreed to and one Senator SNOWE has offered.

We have to finish this legislation. We have provisions that are expiring at the end of this month that are extremely important. A jobs bill—the expiring provisions and all the stuff we have put in that bill that we passed once before are extremely important to our country and will create lots and lots of jobs. But we can't get to that because of what is going on here. Food safety—we can't get to that. Why? Because the Republicans are stopping us from moving to anything.

I had a conference call just from the sparsely populated State of Nevada with a few of the people who have suffered terrible injuries as a result of eating contaminated food.

One little girl has missed a year of school. Her growth is stunted. People have spent—one woman I talked to—or I talked to her husband because they were getting first aid. They went home. She had been in the hospital for months and months from eating contaminated food. We are trying to do something about that. We can't do that. It is a bipartisan bill. It is nothing the Democrats are trying to jam down the throats of the Republicans. They won't let us move to anything.

Scores of nominations. The House has passed more than 300 measures that are stuck over here because the Republicans won't let us move to them, measures in years passed that would pass by unanimous consent.

I hope everyone understands. I know my caucus understands what is going on, but I hope the Republicans will accept reality and understand why we are not going to have all of the amendments they want to offer be able to be offered. We are not going to be on the bill that long. We can't be. We are trying to do something with this legislation that will change America forever for the better. What has happened as a result of Wall Street doing business not in the shadows but in the dark of night, the blackest dark you could ever see is where they have been doing their work, causing people in Colorado, in Nevada, and all over this country to suffer irreparable damage. People have lost their homes, their jobs as a result of what went on in Wall Street, the shady deals that are worse than any illegal gambling game that was ever conducted in America. That is what they were doing up there: betting our money—our money. If they win, they keep our money. If they lose, they want more of our money. We are trying to stop that. That is what this legislation is all about. This is a good bill.

Obviously, from the shenanigans the Republicans have performed on this legislation, they don't want us to do anything about Wall Street reform; otherwise, they wouldn't have done all of these efforts to stop us from moving to the bill. We want to hold Wall Street accountable. We want to end taxpayer bailouts. We want to guarantee the taxpayers will never again be forced to bail out reckless Wall Street. We want to end too big to fail, restrict new capital and leverage requirements to prevent firms from becoming too big to fail.

As I said before, and I say again: We want to bring sunlight and transparency to these shadowy markets where Wall Street executives make gambles that threaten our entire economy, the same laws that are in effect basically today that were in effect when Wall Street crashed and caused us all this harm. We are trying to change that so it can't happen again. We want to rein in these big shots who have unlimited control of money and get these huge bonuses—not bonuses of $50,000, which is huge in most people's lives, but they get bonuses in the hundreds of millions of dollars.

We want to protect consumers. We want to put a new cop on the beat, a consumer protection entity that will look at all of these different financial shenanigans that are going on. We want to make sure people who get something in the mail from—however they get it. They take them out and they look at it, they can't understand it. We want it in plain, simple English so the American people can understand what they are being asked to sign. We want to protect consumers from these hidden fees, abusive terms, and deceptive practices that are running rampant in America.

So despite the party of no saying no again and again, we are going to be patient and do our best to work through this. Chairman DODD is working with, it seems, this never-ending amendment the ranking member wants. It has been weeks and weeks. Remember, there have been negotiations going on in this matter for months—not weeks, not days—months. I guess the Republicans are saying, until that amendment comes, there is not going to be anything else happening on this bill. That is the decision they have made. They won't even let us set amendments aside and move to amendments that are agreed upon.

There is only so much I can do—we can do—in the face of determined obstructionism that is so clearly the brand the Republicans have now.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

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

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

RECOGNIZING DePAUL UNIVERSITY

Mr. DURBIN. Mr. President, I rise today to honor the memories of St. Vincent DePaul and St. Louise de Marillac and to note their legacy on DePaul University in Chicago. This year DePaul is marking the 350th anniversary of the deaths of St. Vincent and St. Louise.

Providing access to social services such as health care and education, St. Vincent and St. Louise attended to the needs of those afflicted by poverty, illness, and injustice in the 17th century. St. Vincent DePaul and St. Louise de Marillac dedicated their lives to serving the underprivileged. It was by their example that the Vincentians founded DePaul University in Chicago, Illinois in 1898.

DePaul University was established with a fundamental mission centered on service and civic engagement, ensuring academic excellence, providing access to affordable education, and promoting respect for the dignity of all persons. The spirit of St. Vincent and St. Louise lives admirably in the University's traditions. Since its founding, DePaul has been a home for students struggling to attain their dreams for higher education. Historically, DePaul has educated many students who would have otherwise seen the door to college closed for them. DePaul was one of the first universities to admit female students in a coed setting. The university also has a long and distinguished history of providing an education to first-generation college students and children of immigrants.

Today, DePaul is one of the largest and most diverse private institutions in the Nation. The student body of over 25,000 represents a wide variety of religious, geographical, ethnic, and economic backgrounds that honor the memory of St. Vincent and St. Louise. And DePaul passes the noble tradition of serving others on to its students. Students at DePaul live the legacy of St. Vincent and St. Louise when they participate in community service through a variety of university-wide programs, including the annual Vincentian Service Day.

The year 2010 marks the 350th anniversary of the deaths of St. Vincent and St. Louise. Today, a commitment to service and a celebration of diversity is more important than ever before in our Nation. DePaul embodies these goals. The University continues to promote socially responsible leadership in its students and upholds its Vincentian mission to make education accessible for all students regardless of family background or financial means.

Mr. President, I commend DePaul's celebration of the 350th anniversary of St. Vincent and St. Louise and praise their continuing pursuit of excellence in higher education.

MEDICARE DIABETES SELF-MANAGEMENT TRAINING ACT

Mrs. SHAHEEN. Mr. President, I rise today to talk about the Medicare Diabetes Self-Management Training Act, a bill I have recently introduced along with Senators STABENOW, HAGAN, FRANKEN and LANDRIEU. This bill will improve the lives of Medicare beneficiaries with diabetes by improving their access to high quality information and care from certified diabetes educators.

Diabetes affects many individuals and families in New Hampshire and across the country. My own family was touched by the disease in 2007 when my eldest granddaughter Elle was diagnosed with type 1 diabetes. We have experienced firsthand the challenges that diabetics and their families confront in having to continuously monitor and manage blood sugar levels, administer daily injections, and face a lifetime of worrying about the possibility of serious complications arising from the disease. Diabetes can be managed effectively but it requires a sustained coordinated team effort among patients and their health care providers. Certified diabetes educators, as defined by the American Association of Diabetes Educators, ''are licensed healthcare professionals who specialize in educating people with diabetes about their condition. The training, counseling and support that diabetes educators provide to patients is known as diabetes education or diabetes self-management training.'' This education teaches patients how to stay healthy, and the diabetes educator is an important part of the health care team.

Take for example a case from Raymond, NH. The patient, Rachel, is 45 years old and has type 2 diabetes. For years she struggled, trying to understand how her eating habits and lack of physical activity negatively impacted her diabetes and general health. Her medical provider followed all the appropriate American Diabetes Association guidelines, tried several oral medications and insulin, but in spite of this, Rachel's diabetes remained poorly controlled. In fact, not only were her blood sugar levels elevated, but she was already starting to suffer from complications related to diabetes.

However, once Rachel began working with a certified diabetes educator, CDE, things started turning around. The CDE was able to assess and accommodate Rachel's individual learning style and barriers to change. Through ongoing support and positive reinforcement, Rachel began to recognize her ability to control her diabetes with a few lifestyle changes. Successful, long-term behavior change is difficult to achieve in the best of circumstances. One only has to look at the current obesity epidemic in the U.S. to appreciate the difficulty in learning how to eat healthily. Rachel's success in eating less and healthier and walking daily was due in large part to the relationship that developed between her and her diabetes educator. Rachel now understood the lifestyle changes necessary to achieve success and was able to bring her blood sugar into a safe range. She reported having more energy and was able to cut her insulin dose in half.

Over the years Congress has made strong efforts to improve the care of individuals with diabetes. This includes authorizing the diabetes self-management training, DSMT, as a Medicare benefit in 1997, with the goal of providing a more comprehensive level of support to educate beneficiaries about diabetes and self-management techniques, reduce the known risks and complications of diabetes, and improve overall health outcomes.

However, there is a significant gap in the 1997 DSMT benefit that holds it back from achieving its full potential. Under the DSMT, Medicare covers the critical types of health care services necessary for diabetes control, but does not recognize the health care professionals who deliver those services. Certified diabetes educators are the primary group of health care professionals who work most closely with the patient to provide essential training and education in diabetes self-management. My legislation is designed to address this gap by ensuring that certified diabetes educators are designated providers under Medicare for these vitally important services.

Under the Medicare Diabetes Self-Management Training Act, a certified diabetes educator would be a covered provider of Medicare DSMT services. This health care professional, who is State licensed or registered, is most typically a nurse, dietician, or pharmacist, who specializes in teaching people with diabetes how to stay healthy and who maintains rigorous certification and continuing education credentials. This bill also increases education and outreach to primary care physicians about the importance of DSMT for their patients with diabetes. I am proud to have introduced this bill along with my colleagues Senators STABENOW, FRANKEN, HAGAN and LANDRIEU.

Diabetes is an incredibly costly disease. It is among the chief contributing causes of adult blindness, lower extremity amputations, heart disease, periodontal disease, kidney disease, vascular disease and infections. There is no cure yet but with the proper tools it can be well managed and complications can be prevented. I believe this bill is an important step along that path. I urge my colleagues to support this important cause.

HONORING OUR ARMED FORCES

SERGEANT MICHAEL K. INGRAM

Mr. BENNET. Mr. President, it is with a heavy heart that I rise today to honor the life and heroic service of Sergeant Michael K. Ingram, Jr. Sergeant Ingram, a member of the 1st Battalion, 12th Infantry Regiment, 4th Infantry Division at Fort Carson, CO, died on April 17, 2010. Sergeant Ingram was serving in support of Operation Enduring Freedom in Kandahar, Afghanistan. He was killed by injuries sustained when an improvised explosive device detonated while he was on patrol. He was 23 years old.

A native of Monroe, MI, Sergeant Ingram moved to Fort Carson when he was assigned to the 4th Infantry Division. Sergeant Ingram joined the Army in February 2006, and he was deployed to Afghanistan in May 2009.

During over 4 years of service, Sergeant Ingram distinguished himself through his courage, dedication to duty, and willingness to take on any challenge—no matter how dangerous. Commanders recognized his extraordinary bravery and talent, bestowing on Sergeant Ingram numerous awards and medals, including the Army Good Conduct Medal, the National Defense Service Medal, the Afghanistan Campaign Medal with Bronze Service Star, the Global War on Terrorism Service Medal, the Army Service Ribbon, and the Overseas Service Ribbon.

Sergeant Ingram worked on the front lines of battle, patrolling the most dangerous areas of Kandahar. He is remembered by those who knew him as a consummate professional with an unending commitment to excellence. Family and friends remember him for his smile and his commitment to service. After sustaining a mild injury, Sergeant Ingram was recently offered a chance to come home for surgery. He chose to stay with his unit and finish out his service. He planned on pursuing a career in law enforcement after his time in the Army.

Mark Twain once said, ''The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time.'' Sergeant Ingram's service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Afghanistan. And though his fate on the battlefield was uncertain, he pushed forward, protecting America's citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Sergeant Ingram will forever be remembered as one of our country's bravest.

To Sergeant Ingram's mother Patricia, his father Michael, and all his friends and family I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by your pride in Michael's service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

NATIONAL TEACHERS DAY

Mr. BURRIS. Mr. President, as I am sure many of my colleagues are aware, today is National Teachers Day, and this week is Teacher Appreciation week—an opportunity to recognize and celebrate the enormous contributions made by America's educators at every level.

The work they do—and the impact they have—can hardly be overstated.

Teachers are charged with helping to shape young minds, and providing our students with the tools and inspiration that will lead them to success at every level of our global society.

This work could not be more important. Our educators truly impact eternity.

But, as I address this Chamber today, they face a climate that is increasingly inhospitable to their work, and their goals.

Studies show that today's teachers are more experienced and more educated than ever.

Almost half of all public school teachers hold at least a master's degree, and more than 75 percent regularly participate in professional development programs.

Yet every single year we ask these dedicated professionals to work longer hours for less pay.

And in some cases we even expect them to spend their own hard-earned money to provide school supplies for their students.

This is unacceptable. We can—and we must—do better.

At every stage in my career, I have raised my voice on behalf of America's students and educators.

Today, on National Teachers Day, I urge my colleagues to join me in this call to action.

We need to step up our investment in America's future, and provide our educators with the support they need.

We need to meet competence and dedication with gratitude, fair pay, and adequate classroom resources.

And we need to do so without delay.

Because, if we fail to keep these commitments, if we fail to provide the support our educators need, we will lose quality educators and the invaluable services they provide.

In my home State of Illinois, roughly 9,000 public school teachers have received layoff notices this year.

And as many as 300,000 will lose their jobs nationwide.

This will result in more crowded classrooms, less individual attention for students who need it, reduced access to extracurricular programs, and a school faculty and staff that is increasingly stretched thin.

I invite my colleagues to consider the impact these massive layoffs will have on our students.

I invite them to think of the consequences for America's future.

We cannot let this stand.

That is why I am proud to be an original cosponsor of S. 3206—the Keep Our Educators Working Act, which I have introduced with my good friend Senator HARKIN.

This legislation would create a $23 billion Education Jobs Fund, which would help provide resources to states and local districts that are finding it hard to make ends meet.

This money would be used to retain current educators, hire new ones, and provide important on-the-job training activities to those in education-related careers.

It would keep good teachers where they belong: in the classroom—and would help to close the budget gap that currently threatens to leave many school districts high and dry.

So I urge my colleagues in this Chamber to support this bill, and make education a priority again.

Let us give teachers and students the support they need—so we can recruit the best teachers, fund afterschool programs, and keep more schools open.

I applaud President Obama for his unwavering commitment to our education system. And today, I call upon him to follow through on that commitment.

To work with my colleagues and I, on both sides of the aisle, to pass the Education Jobs Fund Act, reinvest in our schools, and make sure that America's future is secure.

And I would ask that they join with me in celebrating the dedication and hard work of our teachers—without whom none of us would be where we are today.

ADDITIONAL STATEMENTS

REMEMBERING RABBI GEDALIAH ANEMER

• Mr. CARDIN. Mr. President, I would like to take this opportunity to honor Rabbi Gedaliah Anemer, a beloved Orthodox Jewish leader and scholar who passed away at age 78 on April 15, 2010.

For more than 50 years, Rabbi Anemer served as a religious guide, compassionate counselor, and an authority on Jewish practices and laws to his Silver Spring congregation. His leadership and spiritualism helped to nurture a strong, vibrant Orthodox Jewish community in the Greater Washington area and strengthened his congregants' love of Judaism and connection to Israel. He also founded the Yeshiva of Greater Washington in Silver Spring, helping to educate a future generation of Jewish spiritual leaders.

Rabbi Anemer was born in Akron, OH, in 1932 and studied as a boy at the Tiferes Yerushalayim in New York. In 1952, he was ordained from the Telshe Yeshiva. For the 5 years following his ordination, Rabbi Anemer was the head of the Yeshiva of the Boston Rabbinical Seminary. In 1957, he became spiritual leader of a small congregation in Washington, DC, Shomrei Emunah. In 1961, the synagogue was renamed Young Israel Shomrei Emunah of Greater Washington, YISE, and later moved to Silver Spring, becoming the first Orthodox synagogue in Montgomery County.

In Silver Spring, Rabbi Anemer and YISE became a ''cornerstone'' of the Kemp Mill Orthodox community. Rabbi Anemer's energy and enthusiasm for his congregants, for his neighbors, and for the Jewish people could be observed in his daily endeavors: Holding minyon in his basement, leading services for his congregation, presiding as the head of the Rabbinical Council of Greater Washington's beit din, or religious court, and acting as a mentor and confidant to his community.

Under his leadership, YISE flourished. The shul originally started by holding services in private homes. As it grew, YISE moved to a number of different locations—a clubhouse, the basement of an apartment building, a condemned house awaiting demolition, and a Masonic building—before settling into its own, newly constructed building. Services were held in Hebrew and English because the majority of the congregation's participants were scientists and engineers who did not have a Yeshiva education. Rabbi Anemer also sponsored a number of Jewish learning activities including children's services, Talmud night, and regular adult education classes. He became the spiritual leader of a congregation that grew from 30 families in 1963 to more than 500 families today.

Rabbi Anemer wore many hats in his career and in his personal life. He was a loving husband, a devoted father to four children, a caring brother, and a fiercely compassionate friend. I ask my colleagues to join me in remembering the many accomplishments of Rabbi Gedaliah Anemer and in recognizing him as a pioneer and friend to the Jewish Orthodox community of the Greater Washington area.•

TRIBUTE TO KEVIN MANNING

• Mr. CARDIN. Mr. President, today I pay special tribute to the outstanding accomplishments of Kevin J. Manning, Ph.D., president of Stevenson University. May 21, 2010, is Commencement Day at Stevenson University, a day when student accomplishments are rewarded and recognized. This year's Commencement Day also marks the end of Kevin J. Manning's 10th year as president of Stevenson University.

During Dr. Manning's 10 years as president, the university has transitioned itself from a liberal arts college to a university that emphasizes a core liberal arts curriculum and has a unique focus on career preparation. Stevenson University students are well prepared and have a strong record of excelling in academics, community service, and postgraduate work.

With Dr. Manning's guidance, Stevenson University has seen tremendous success and growth. In recent years, the university has had seen record levels of enrollment, the opening of a second campus in Owings Mills, and the opening of a new School of Business and Leadership in 2008.

Dr. Manning has provided critical guidance to the development of the university's Career Architecture Program, for which he received the Maryland Innovator of the Year Award from the Daily Record in September 2003. The Career Architecture Program provides career guidance and counseling to undergraduate students at Stevenson University.

Dr. Manning also has been committed to the community surrounding Stevenson University. He sits on the board of directors of numerous community and professional organizations, including the United Way of Central Maryland, the Independent College Fund of Maryland, the Greater Baltimore Committee, the Maryland Chamber of Commerce, and the Maryland Business Roundtable for Education.

I ask my colleagues to join me in applauding Kevin J. Manning for his outstanding accomplishments at Stevenson University and for his dedication to his students and colleagues, to higher education, and to the larger community.•

TRIBUTE TO JOHN TAYLOR

• Mr. KAUFMAN. Mr. President, last week, at an event of the Delaware Chapter of Common Cause, I had the pleasure of introducing the recipient of their prestigious Open Government Award, John Taylor.

It is hard to believe that it has been 40 years since I saw John Taylor on TV and signed up as an original member of Common Cause. It has been a great ride for Common Cause and especially for its Delaware chapter.

My home State's chapter of Common Cause is known for its efforts to hold the government accountable and make sure that it is as ethical and transparent as possible. Admittedly, I am biased, but I know that the group is doing a great job. From tackling campaign finance reform to election reform, the members are working on the tough but important issues.

From the beginning they have had excellent people on board who know how to get the job done. I am not the only one who thinks this. In a February 2010 article in the News Journal, their group was termed the ''Who's Who of academia, business and government.'' John Taylor truly belongs on the ''Who's Who'' list for Delaware, and Common Cause's selection of him for its Open Government Award could not have been more appropriate.

Most Delawareans know John from his 22-year stint as editorial page editor at the News Journal. It was obligatory in Delaware to see what John Taylor had to say each week—and he did it in 700 words or fewer.

John is a traditional journalist in many ways, starting his career as a freshman reporter in 1966. He fought to get to the bottom of the story, paid close attention to the details, and possessed that sixth sense to know where the real stories lie. But he also took time away from the newsroom to pursue his other passion of education.

From the late 1960s to the early 1970s, he served as assistant to the superintendent of the Wilmington Public Schools. Before joining the newspaper business, he taught English and history at St. Mary's Secondary School in Tilbury, England.

His awards and honors are too many to name here, but he has received the Helen Wise Friend of Education Award from the Delaware State Education Association and four Mark Twain Awards for column writing from the Associated Press. He was also the 1999 recipient of the Chairman's Award from the United Way of Delaware.

After a triumphant and successful career in the news business, John found another calling in the realm of public policy and government. Today, he is a senior vice president of the Delaware State Chamber of Commerce and executive director of the Delaware Public Policy Institute. He is the driving force behind Vision 2015, and the children of Delaware will have increased opportunities because of his efforts.

It only makes sense that, after decades of writing and following politics, he would pick up a thing or two. I am pleased to see that his skills are being well used at a center that promotes the discussion of policies, programs, and issues affecting the State of Delaware.

The entire Delaware community has profited from John's efforts. From his serving on the Delaware Community Foundation Board of Directors and the Christiana Care Board of Trustees, to the boards of environmental, health, community, and educational groups, John has been an advocate for some of the most important issues of our day. He did not just write about what was or wasn't happening, although that is important: he has also pitched in to create positive headlines on his own terms.

John Taylor undoubtedly deserves his most recent honor of the Open Government Award. In his long and distinguished career, he has written about those in government, held their feet to the fire, and followed up to make sure that they were held accountable. He has taught tomorrow's leaders, interviewed the movers and shakers of yesterday, and now informs the policy makers in our day.

I extend my congratulations to the national Common Cause organization on the occasion of its 40th anniversary and to John Taylor for his achievement.●

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 3:27 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3714. An act to amend the Foreign Assistance Act of 1961 to include the Annual Country Reports on Human Rights Practices information about freedom of the press in foreign countries, and for other purposes.

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. INHOFE (for himself, Mr. COBURN, Mr. VITTER, Mr. BARRASSO, Mr. CRAPO, Mr. ALEXANDER, Mr. BOND, Mr. HATCH, Mr. DEMINT, Mr. BUNNING, Mr. BROWN of Massachusetts, Mr. CORNYN, Ms. COLLINS, Mr. ENZI, Mrs. HUTCHISON, Mr. GRASSLEY, Mr. RISCH, Mr. BROWNBACK, Mr. COCHRAN, Mr. MCCONNELL, Mr. ISAKSON, Mr. WICKER, Mr. CHAMBLISS, Mr. ROBERTS, and Mr. BURR):

S. 3296. A bill to delay the implementation of certain final rules of the Environmental Protection Agency in States until accreditation classes are held in the States for a period of at least 1 year; to the Committee on Environment and Public Works.

By Mr. FEINGOLD (for himself, Mr. ISAKSON, and Mr. KERRY):

S. 3297. A bill to update United States policy and authorities to help advance a genuine transition to democracy and to promote recovery in Zimbabwe; to the Committee on Foreign Relations.

By Mr. UDALL of Colorado (for himself and Mr. FRANKEN):

S. 3298. A bill to establish a pilot program to reduce the increasing prevalence of overweight/obesity among 0–5 year-olds in-child care settings; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN (for himself, Mr. KERRY, Mr. CARPER, Ms. CANTWELL, Mr. MERKLEY, and Mrs. GILLIBRAND):

S. 3299. A bill to amend the Help America Vote Act of 2002 to allow all eligible voters to vote by mail in Federal elections; to the Committee on Rules and Administration.

By Mr. WYDEN (for himself, Mr. KERRY, Mr. CARPER, Ms. CANTWELL, Mr. MERKLEY, and Mrs. GILLIBRAND):

S. 3300. A bill to establish a Vote by Mail grant program; to the Committee on Rules and Administration.

By Mr. WYDEN (for himself and Mr. KERRY):

S. 3301. A bill to establish an Online Voter Registration grant program; to the Committee on Rules and Administration.

By Mr. ROCKEFELLER (for himself, Mr. PRYOR, Mrs. BOXER, Ms. CANTWELL, Mr. LAUTENBERG, Ms. KLOBUCHAR, Mr. BEGICH, and Mr. UDALL of New Mexico):

S. 3302. A bill to amend title 49, United States Code, to establish new automobile safety standards, make better motor vehicle safety information available to the National Highway Traffic Safety Administration and the public, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BENNET (for himself and Mr. UDALL of Colorado):

S. 3303. A bill to establish the Chimney Rock National Monument in the State of Colorado; to the Committee on Energy and Natural Resources.

By Mr. PRYOR (for himself, Mr. KERRY, Mr. CONRAD, and Mr. DORGAN):

S. 3304. A bill to increase the access of persons with disabilities to modern communications, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MENENDEZ (for himself, Mr. NELSON of Florida, Mr. LAUTENBERG, Mr. CARDIN, Mr. SCHUMER, Mr. WHITEHOUSE, and Mr. SANDERS):

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; to the Committee on Environment and Public Works.

By Mr. MENENDEZ (for himself, Mr. NELSON of Florida, Mr. LAUTENBERG, Mr. CARDIN, Mr. SCHUMER, Mr. WHITEHOUSE, and Mr. SANDERS):

S. 3306. A bill to amend the Internal Revenue Code of 1986 to require polluters to pay the full cost of oil spills, and for other purposes; 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. TESTER (for himself and Mr. BURR):

S. Res. 513. A resolution designating July 9, 2010, as "Collector Car Appreciation Day" and recognizing that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. 632

At the request of Mr. BAUCUS, the names of the Senator from Oklahoma (Mr. COBURN) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 632, a bill to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly.

S. 1215

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

S. 1228

At the request of Mr. AKAKA, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1228, a bill to amend chapter 63 of title 5, United States Code, to modify the rate of accrual of annual leave for administrative law judges, contract appeals board members, and immigration judges.

S. 1345

At the request of Mr. REED, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1345, a bill to aid and support pediatric involvement in reading and education.

S. 1353

At the request of Mr. LEAHY, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1353, a bill to amend title

1 of the Omnibus Crime Control and Safe Streets Act of 1986 to include nonprofit and volunteer ground and air ambulance crew members and first responders for certain benefits.

S. 1611

At the request of Mr. GREGG, the name of the Senator from Massachusetts (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. 3058

At the request of Mr. DORGAN, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Indiana (Mr. BAYH) 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. 3102

At the request of Mr. MERKLEY, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 3102, a bill to amend the miscellaneous rural development provisions of the Farm Security and Rural Investment Act of 2002 to authorize the Secretary of Agriculture to make loans to certain entities that will use the funds to make loans to consumers to implement energy efficiency measures involving structural improvements and investments in cost-effective, commercial off-the-shelf technologies to reduce home energy use.

S. 3116

At the request of Mr. KERRY, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 3116, a bill to amend the Whale Conservation and Protection Study Act to promote international whale conservation, protection, and research, and for other purposes.

S. 3117

At the request of Mr. WYDEN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 3117, a bill to strengthen the capacity of eligible institutions to provide instruction in nanotechnology.

S. 3151

At the request of Mr. KERRY, the names of the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from Maryland (Mr. CARDIN) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 3151, a bill to establish the Office for Global Women's Issues and the Women's Development Advisor to facilitate interagency coordination and the integration of gender considerations into the strategies, programming, and associated outcomes of the Department of State and the United States Agency for International Development, and for other purposes.

S. 3247

At the request of Mr. UDALL of Colorado, the names of the Senator from Missouri (Mr. BOND), the Senator from Mississippi (Mr. COCHRAN) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 3247, a bill to amend the Fair Credit Reporting Act with respect to fair and reasonable fees for credit scores.

S. 3275

At the request of Mr. BAUCUS, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Florida (Mr. LEMIEUX) were added as cosponsors of S. 3275, a bill to extend the Caribbean Basin Economic Recovery Act, to provide customs support services to Haiti, and for other purposes.

S. 3283

At the request of Mrs. BOXER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 3283, a bill to designate Mt. Andrea Lawrence.

S. 3295

At the request of Mr. SCHUMER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 3295, a bill to amend the Federal Election Campaign Act of 1971 to prohibit foreign influence in Federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

S. RES. 507

At the request of Mr. MENENDEZ, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. Res. 507, a resolution designating April 30, 2010, as ''Dia de los Ninos: Celebrating Young Americans''.

S. RES. 511

At the request of Mr. LEAHY, the names of the Senator from Alabama (Mr. SESSIONS), the Senator from Illinois (Mr. DURBIN), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Wisconsin (Mr. KOHL), the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from California (Mrs. FEINSTEIN), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from South Carolina (Mr. GRAHAM) 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. 3737

At the request of Mrs. BOXER, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 3737 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. 3738

At the request of Mr. SANDERS, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 3738 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. 3747

At the request of Mr. BENNET, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of amendment No. 3747 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. 3749

At the request of Mr. TESTER, the names of the Senator from Massachusetts (Mr. BROWN), the Senator from Iowa (Mr. HARKIN) and the Senator from New Hampshire (Mrs. SHAHEEN) were added as cosponsors of amendment No. 3749 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. CORNYN, his name was added as a cosponsor of amendment No. 3749 intended to be proposed to S. 3217, supra.

At the request of Mr. JOHANNS, his name was added as a cosponsor of amendment No. 3749 intended to be proposed to S. 3217, supra.

AMENDMENT NO. 3755

At the request of Ms. SNOWE, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 3755 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. 3759

At the request of Mrs. HUTCHISON, the names of the Senator from Kansas (Mr. ROBERTS) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of amendment No. 3759 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. 3765

At the request of Mr. FRANKEN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3765 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. 3769

At the request of Mr. DURBIN, the names of the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of amendment No. 3769 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. 3770

At the request of Mr. DURBIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of amendment No. 3770 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. 3772

At the request of Mr. SCHUMER, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3772 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. 3775

At the request of Mr. WYDEN, the names of the Senator from Colorado (Mr. UDALL) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of amendment No. 3775 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. 3778

At the request of Mr. UDALL of Colorado, the names of the Senator from Mississippi (Mr. COCHRAN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from New Jersey (Mr. MENENDEZ), the Senator from New York (Mr. SCHUMER) and the Senator from New Mexico (Mr. UDALL) were added as cosponsors of amendment No. 3778 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. 3780

At the request of Mr. FEINGOLD, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3780 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. 3781

At the request of Ms. COLLINS, the name of the Senator from Massachusetts (Mr. BROWN) was added as a cosponsor of amendment No. 3781 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. 3784

At the request of Mr. CORKER, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of amendment No. 3784 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD (for himself, Mr. ISAKSON, and Mr. KERRY):

S. 3297. A bill to update United States policy and authorities to help advance a genuine transition to democracy and to promote recovery in Zimbabwe; to the Committee on Foreign Relations.

Mr. FEINGOLD. Mr. President, today I am pleased to introduce the Zimbabwe Transition to Democracy and Economic Recovery Act with Senator ISAKSON and Senator KERRY. This legislation aims to update U.S. policy and to provide the necessary direction and flexibility for the United States to proactively push for democracy and economic recovery in Zimbabwe. In September 2008, the parties in Zimbabwe signed the Global Political Agreement, the GPA, and committed to work together to chart a new political direction for the country. Unfortunately, that commitment has not yet been fulfilled and political and human rights abuses continue at a disturbing rate. Nonetheless, the GPA and the formation of the transitional government have created new political realities and realignment in Zimbabwe, and subsequently, new opportunities to push for a genuine transition to democracy and for economic recovery. The United States and other international stakeholders can seize those opportunities by supporting reformers, while renewing and ramping up pressure on those who obstruct implementation of the GPA. Our bill aims to promote such a dynamic approach.

We are all familiar with the tragic story of Zimbabwe's descent. Zimbabwe was one of Africa's most prosperous countries, a major food producer and home to the continent's best education system. Its leader Robert Mugabe was considered one of the great liberation leaders of southern Africa. Yet over time, Mugabe and his regime moved to tighten their grip on power, using increasingly violent tactics to stop the political opposition, stifle independent media, and take over private property. The results, particularly in the last decade, have been disastrous. Mugabe has presided over the collapse of Zimbabwe's economy and a dramatic decline in the living conditions of his people. At the end of 2008, Zimbabwe's economy reached a low point with world-record inflation, millions of people at risk of starvation, and unemployment over 90 percent. Meanwhile, Mugabe and his party have had to resort to increasing violence to repress the will of the people. Most recently, following the March 2008 election, the Mugabe regime and its cronies launched a brutal campaign of violence against members and supporters of the opposition MDC after Morgan Tsvangirai won the first round of voting.

I have closely followed the situation in Zimbabwe since 1999 when I traveled to Harare and witnessed then the early stages of this political crisis. During that trip, I also met some incredibly dynamic, committed and inspiring civil society leaders. Upon returning, I said on the Senate floor that we must not abandon these leaders; that the international community should move to arrest Zimbabwe's descent before it became more complex. I teamed up then with Senator Bill Frist to author legislation on U.S. policy toward Zimbabwe.

And in 2001, President Bush signed that legislation, the Zimbabwe Democracy and Economic Recovery Act, into law. ZDERA, as that bill is known, placed restrictions on U.S. support for any new international loan, credit or debt reduction for Zimbabwe until the President certifies that a number of political conditions have been met, namely an end to abuses and the restoration of rule of law. The bill also called for targeted sanctions against individuals responsible for politically motivated violence.

At the same time, ZDERA also spelled out the United States' commitment to the Zimbabwean people in their struggle to effect peaceful and democratic change. And it stated our commitment to be a strong partner in helping the Zimbabwean people to rebuild their country when that change was achieved. I have not given up on that commitment, despite the Mugabe regime's relentless and violent efforts to hold onto power. In 2002, I tried to return to the country, but my visa was revoked and the government blocked my entry into the country. In 2003, I traveled to South Africa and Botswana, in part to discuss the crisis in Zimbabwe and the regional consequences. Most recently, in 2008 and 2009, in my capacity as the Chairman of the Africa Subcommittee, I have held hearings specifically on Zimbabwe and U.S. policy options.

With the signing of the GPA, I was skeptical that Robert Mugabe and his allies had any real intention to share power and respect the agreement. I remain skeptical as at almost every turn, hardliners in the transitional government have resisted any moves that would undermine their historic patronage system and power structures. Mugabe has refused to implement several parts of the agreement, continuing to use Western sanctions as a scapegoat. Meanwhile, state security forces remain largely under the control of ZANU-PF and continue to harass civil society activists and participate in illegal, often violent, seizures of private land and property. In this sense, little has changed in Zimbabwe.

Yet at the same time, for many Zimbabweans, the establishment of a transitional government that includes former opposition leaders who were imprisoned and tortured as part of Zimbabwe's democratic struggle has brought forth a sense of possibility that has not existed for years. It has brought their struggle for democracy into the halls of government. And over the last year, some progress has been made toward enacting reforms. Most notably, the Finance Ministry has managed to halt Zimbabwe's economic decline and put an end to some of the disastrous fiscal activities of the previous regime. That said, progress has been slow and limited mostly to the economic sector. We cannot deceive ourselves into thinking that the return of food and other goods to stores is an indication that true democracy has taken root. Reformist elements in the government continue to lack the leverage as well as the qualified personnel and resources to overcome the resistance of hardliners and to break their hold on the security sector. They need greater support if they are going to win this struggle and achieve a genuine transition to democracy and economic recovery.

I respect those who are cautious about changing the international posture toward Zimbabwe until there is greater progress and a clear transition underway. I too am cautious, as there is good reason to be so. But at the same time, I also believe we must support the Zimbabwean people in their ongoing struggle for peaceful, democratic change and we can best do that by reconsidering some of the strict polices of years prior. We must realize that the dynamics of that struggle have changed—not as much as we would like them to go, not even close but there has been change. Adhering to a strict wait-and-see approach allows Mugabe and his allies to continue to marginalize reformers in the transitional government and manipulate the political environment, while relying on their usual anti-Western propaganda to win local and regional support. Alternatively, through proactive and targeted engagement, there may be ways that we can better support reformers in government, create incentives for others in the government to embrace such reform, and isolate the hardliners. If we are to see institutional change in Zimbabwe, it is in our interest to pursue those possibilities.

The United States has a key role to play in this regard. We continue to be very active in Zimbabwe, providing humanitarian assistance and support for civil society. In Fiscal Year 2009, the United States provided nearly $300 million to Zimbabwe, over half of which was food assistance. Over the last year, some within the administration have begun to explore ways we can better target our assistance to help reformers in order to consolidate democratic reforms and lay the groundwork for economic recovery. We have already provided some technical assistance to help certain ministries in the government. This is the right approach and we should continue to look for ways to proceed, both symbolically and substantively. At the same time, we should continue to update and increase targeted pressure on those individuals and institutions that are actively obstructing reform. We should also look for innovative ways to address illegal activities that are in violation of the GPA.

The Zimbabwe Transition to Democracy and Economic Recovery Act of 2010 seeks to encourage and provide the authority and flexibility for the Obama administration to pursue such a dynamic approach toward Zimbabwe. Our bill authorizes continued and expanded technical assistance to reformist ministries of the transitional government as well as to the Parliament as it seeks to repeal or amend repressive laws. It also amends the funding restrictions on Zimbabwe in the fiscal year 2010 State and Foreign Operations appropriations bill to allow for greater engagement in the areas of health and education. Furthermore, it encourages the United States to promote agricultural development as much as possible within our food assistance efforts, while we actively press the government to reestablish security of tenure for all landowners.

In addition, our bill would amend ZDERA to allow the United States greater flexibility and leverage when engaging with the International Financial Institutions on Zimbabwe. The law from 2001 restricts U.S. support for any international loan, credit or debt reduction to Zimbabwe until the President certifies that certain political conditions have been achieved in the country. This restriction currently has no discernible impact as Zimbabwe can only be eligible for such international support when it deals with its arrears, which now total billions of dollars. Nonetheless, this restriction has become a powerful symbol and it functionally ties the hands of the State and Treasury Departments to actively engage with the IMF, African Development Bank and other institutions to develop plans for supporting Zimbabwe's longer-term recovery when there is a genuine transition. Our bill would amend ZDERA to allow for such engagement, making U.S. support conditional on the proposed assistance itself, specifically whether there are sufficient controls for transparency and oversight, and whether funds will be administered by ministries that have demonstrated a commitment to reform.

Amending ZDERA will help to provide flexibility and leverage for the U.S. government, but also to undercut Mugabe's propaganda. Over the years, Mugabe and his allies have conveniently portrayed ZDERA as a symbol of Western hostility and blanket sanctions on Zimbabwe. While those allegations are clearly false, the changes made by our bill will go a long way towards ensuring they have a much harder time spinning this lie and deflecting responsibility from their own disastrous policies.

ZDERA, of course, is not to be conflated with our targeted sanctions against specific individuals and financial institutions that are directly involved in the breakdown of the rule of law and abuses of power. Our bill calls for the continuation of that program as I see no reason to terminate this sanctions program until we see an end to widespread abuses. Instead, our bill calls for the continued review and updating of those sanctions. It also encourages new action to address illegal activities involving diamonds in Zimbabwe that are reportedly fueling abuses and undermining democratic progress. Specifically, it urges the

Obama administration to consider new sanctions on individuals overseeing these activities and to press for Zimbabwe's suspension from the Kimberley Process. Zimbabwe's continued participation in the Kimberley Process undermines the integrity and important work of that process.

Finally, whenever it happens, Zimbabwe's next election will be a critical step toward any genuine transition to democratic rule and a sustainable economic recovery. The past elections have been flashpoints for increased violence and the breakdown of the rule of law. This cannot be the case this next time around if Zimbabwe is to move forward. The international community needs to prepare a coordinated strategy to help reduce the risk of violence and other abuses around such elections. Our bill directs the Obama administration to begin engaging with international partners now toward developing such a strategy.

International actions alone will not determine whether real and lasting democratic change is achieved in Zimbabwe; that will ultimately be determined by the Zimbabwean people themselves. But I do believe that we can help Zimbabweans pursue a genuine transition toward democracy and economic recovery. To do this, we need an approach that is flexible and responsive to evolving conditions and challenges on the ground. I believe this bill helps move us toward such an approach.

Nearly a decade ago, in passing ZDERA, the U.S. Congress committed to support the people of Zimbabwe in their struggle to effect peaceful, democratic change, achieve economic growth and restore the rule of law. Today, we can reaffirm that commitment by passing the Zimbabwe Transition to Democracy and Economic Recovery Act. I hope my colleagues will join us in doing so.

By Mr. WYDEN (for himself, Mr. KERRY, Mr. CARPER, Ms. CANTWELL, Mr. MERKLEY, and Mrs. GILLIBRAND):

S. 3299. A bill to amend the Help America Vote Act of 2002 to allow all eligible voters to vote by mail in Federal elections; to the Committee on Rules and Administration.

Mr. WYDEN. Mr. President, today I am introducing a package of three bills to improve the administration of U.S. elections. These bills would empower voters—giving them a greater ability to control how and when they participate in the electoral process. Just as technological developments have changed the way people manage everything from their bank accounts to their communication with friends and family, they can also give voters more power to control their involvement in the electoral process. By empowering individual voters, my bills would increase turnout and lower administrative costs, while improving the security and integrity of elections.

As my colleagues know, I am an ardent believer in bipartisanship. One thing both parties agree on is that the states are great laboratories for policy innovation. The bills I am introducing today are prime examples of progress that was pioneered at the state level. It's now time to take that proven success to the national level.

An increasing number of voters across the country now Vote by Mail. In fact, in the 2008 presidential election, one-fifth of ballots nationwide were cast by mail. I am proud to say that the State that blazed the trail for Vote by Mail is my home State of Oregon. There were many steps along this path, but the turning point came in 1996. That year, Oregon conducted its first State-wide primary and general election for a Federal race exclusively by mail. That election, of course, sent me to the U.S. Senate. But that election was not just a success for my campaign, it was a win for the voters of Oregon.

Through the success of Vote by Mail for that special election, folks in Oregon saw that elections could be conducted without long lines, malfunctioning equipment, and the risks of fraud inherent at polling places. The resounding success of that first Vote by Mail, State-wide, Federal election led directly to the passage of a referendum in Oregon on Vote by Mail two years later. In 1998, an overwhelming majority—70 percent—of Oregonians voted to adopt Vote by Mail for all elections. The Vote by Mail system was fully in place for the next election cycle, meaning that since 2000, all Oregon voters have voted exclusively by mail.

The three bills I am introducing today draw upon the success that Oregon has experienced with Vote by Mail and more recently with online voter registration. The first is the Universal Right to Vote by Mail Act. This bill would put into law the fact that every citizen has the right to vote by mail. Under this bill, any voter who requests an absentee ballot would receive one. No longer would arbitrary requirements block voters from choosing to Vote by Mail.

The second bill is the Vote by Mail Act. It would provide grants to states, or smaller jurisdictions, that wish to make the transition to Vote by Mail.

Finally, the Online Voter Registration Act would provide grants to states that wish to implement an online system that would allow voters to register to vote, update voter information, and request an absentee ballot using the internet. In Oregon, Washington, and Arizona, online systems are already working to reduce administrative costs and make it easier for voters to participate in elections.

Ten years of proven results with Oregon's Vote by Mail system has shown that this policy experiment has been a resounding success. Voters in Oregon strongly support Vote by Mail. An academic study conducted in 2005 found that over 80 percent of Oregonians prefer Vote by Mail to conventional polling place elections. Vote by Mail is also a more cost-effective way to run elections. In Oregon, the Elections Division estimated that costs were reduced by 30 percent when Vote by Mail replaced polling place elections.

One of the greatest results that Vote by Mail has had on Oregon's election is that it has increased voter turnout and that's an outcome that every state should want. In the three Presidential elections in Oregon since Vote by Mail was adopted, turnout has been 84 percent—an increase of 6 percent over the three prior Presidential elections. Vote by Mail has an even stronger beneficial impact on turnout for lower-profile elections, such as off-year, municipal, or referenda elections.

Vote by Mail also reduces election fraud. This may sound counter-intuitive to skeptics who believe voting by mail is less secure than voting at a polling place. However, a Vote by Mail system offers many safeguards that are not available in conventional elections. There is a paper trail for each and every vote, and the processing is conducted at a central, secure location that can be viewed by the public. By expanding the voting period—rather than compressing it into one day—Vote by Mail affords election officials the time to identify problems, fix errors, and investigate any questionable ballots. If the goal of our country's elections is to make sure the voice of every voter is heard clearly and securely, there is no greater tool than Vote by Mail.

Oregon's experience has shown that in a Vote by Mail system fraud is almost non-existent. Every ballot envelope is scrutinized before it is opened, and the voter's signature on it is reviewed to make sure it matches the one on file for the voter. With the longer time period involved—typically about two and a half weeks—in a Vote by Mail election, there is ample opportunity to determine whether a ballot is valid before it is counted and to investigate any allegations of fraud. If a ballot is fraudulent, it never gets counted. That could never happen in a polling place election where, by the time fraud is found, the vote has already been counted and can't be retrieved. Since Oregon converted to exclusive Vote by Mail elections, over 15 million ballots have been cast. During this time, thousands of ballots have been challenged and investigated for allegations of fraud. Thorough investigation of every allegation, however, has revealed only nine instances of vote fraud. There has been absolutely no evidence of any large-scale, systemic vote fraud that some predicted when Vote by Mail was first adopted in Oregon.

Vote by Mail offers additional advantages that may not be readily apparent. For example, on Election Day in 2006, Tillamook County, Oregon, experienced a deluge of 13 inches of rain. Roads were closed, parts of the county became unreachable, and a State of emergency was declared. Even so, 70 percent of the voters in Tillamook County cast their ballots. Vote by Mail ensured that lack of access to polling places because of a natural disaster on Election Day was no impediment to voting.

It is not only bad weather that can be overcome with Vote by Mail—an illness, caring for a loved one, pregnancy, work, travel, or religious obligations can all keep citizens from exercising their right to vote at a polling place on a one-day election. Vote by Mail trumps all of these obstacles. Such barriers are not an issue in Oregon, but they may prevent voters in 28 states and territories from voting. In those states and territories, voters must meet arbitrary requirements to get an absentee ballot. I believe the decision to obtain an absentee ballot should be made by the voter. I can see no justification for allowing arbitrary, bureaucratic rules to disenfranchise any voter anywhere in America.

I would also note that excuse requirements for obtaining an absentee ballot constitute an unwarranted invasion of voter privacy. All information submitted on an absentee ballot request form becomes part of the public record. There is no reason why voters should be forced to reveal sensitive personal information simply to have the opportunity to vote. I believe all voters should enjoy equal access to mail ballots while having their privacy ensured.

That is why I am introducing the Universal Right to Vote by Mail Act. This bill is, fundamentally, about access and fairness. No citizen should have to miss an election because they have to work, are ill, are caring for a loved one, traveling, or have a religious obligation. When voting for President, Oregonians shouldn't have an advantage over New Yorkers or Virginians. The Universal Right to Vote by Mail Act doesn't force anyone to Vote by Mail, nor does it require states to implement any new voting systems. All States are already required to have an absentee ballot system. This bill merely says all voters should have equal protection in choosing how to participate in elections.

I am also introducing today the Vote by Mail Act of 2010, which would create a three-year, $18 million grant program to help states, or smaller jurisdictions, transition to Vote by Mail systems like the one in Oregon. This bill would not mandate that any state adopt Vote by Mail. However, the bill would provide funding for state or local jurisdictions that choose to take advantage of the benefits that Vote by Mail offers. The bill would provide grants of $2 million dollars to states, or grants of $1 million to smaller jurisdictions, to help pay for the costs of implementing a Vote by Mail system. I believe Vote by Mail can improve elections in any state that adopts it. But rather than simply assume that Vote by Mail delivers benefits, I offer a solution that would provide proof that it does. My bill would instruct the Government Accountability Office to evaluate Vote by Mail and produce a study comparing traditional voting methods with Vote by Mail.

Finally, I am introducing the Online Voter Registration Act to help give voters the ability to register, update voter information, and request absentee ballots using the internet. This bill would empower voters and would reduce administrative costs. In 2008, three quarters of folks in our country reported using the internet, and 87 percent of young adults did so. These are the very people who will be registering to vote for the first time, and they expect the government to accommodate the way they live their lives. But this bill isn't just about making things easier for young adults. The internet is well-suited to this work and can save time, protect voters' privacy, reduce paper, and lower costs. Many States already allow citizens to renew their driver's licenses or register their cars online. Expanding the list of those government services offered online to Voter Registration simply makes sense.

Oregon, Washington, and Arizona have already established online voter registration systems. In the initial election cycle of implementation for Washington's system, the State reported saving over $87,000 in less than a year. Expanding access to online voter registration makes sense, but designing and implementing such systems requires considerable start-up expenses. That's why the Online Voter Registration Act would provide grants of $150,000 to States to help cover the implementation costs.

I would like to thank those who have supported Vote by Mail, including the original cosponsors of the two bills: Senators KERRY, CARPER, CANTWELL, MERKLEY, and GILLIBRAND. I would also like to thank the many organizations that support Vote by Mail, including the National Association of Letter Carriers, National Association of Postmasters, National Association of Postal Supervisors, American Postal Workers Union, National Postal Mail Handlers Union, National Rural Letter Carriers' Association, and other labor organizations including the AFL–CIO and SEIU. Vote by Mail also has the support of many civil rights and elections organizations, including Common Cause, the NAACP, the ACLU, and The League of Rural Voters.

I urge my colleagues to give voters more choice and greater opportunity to participate in elections by supporting these important bills. It's time to move the nation's elections systems into the 21st century and answer the needs of today's voters. These bills are an important step in that direction.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3299

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Universal Right to Vote by Mail Act of 2010''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) An inequity of voting rights exists in the United States because voters in some States have the universal right to vote by mail while voters in other States do not.

(2) Many voters often have work, family, or other commitments that make getting to polls on the date of an election difficult or impossible. Under current State laws, many of these voters are not permitted to vote by mail.

(3) 28 States currently allow universal absentee voting (also known as ''no-excuse'' absentee voting), which permits any voter to request a mail-in ballot without providing a reason for the request, and no State which has implemented no-excuse absentee voting has repealed it.

(4) Voting by mail gives voters more time to consider their choices, which is especially important as many ballots contain greater numbers of questions about complex issues than in the past due to the expanded use of the initiative and referendum process in many States.

(5) Voting by mail is cost effective. After the State of Oregon adopted vote by mail for all voters, the cost to administer an election in the State dropped by nearly 30 percent over the next few elections, from $3.07 per voter to $2.21 per voter.

(6) Allowing all voters the option to vote by mail can reduce waiting times for those voters who choose to vote at the polls.

(7) Voting by mail is preferable to many voters as an alternative to going to the polls. Voting by mail has become increasingly popular with voters who want to be certain that they are able to vote no matter what comes up on Election Day.

(8) No evidence exists suggesting the potential for fraud in absentee balloting is greater than the potential for fraud by any other method of voting.

(9) Many of the reasons which voters in many States are required to provide in order to vote by mail require the revelation of personal information about health, travel plans, or religious activities, which violate voters' privacy while doing nothing to prevent voter fraud.

(10) State laws which require voters to obtain a notary signature to vote by mail only add cost and inconvenience to voters without increasing security.

SEC. 3. PROMOTING ABILITY OF VOTERS TO VOTE BY MAIL IN FEDERAL ELECTIONS.

(a) IN GENERAL.—Subtitle A of title III of the Help America Vote Act of 2002 (42 U.S.C. 15481 et seq.) is amended by inserting after section 303 the following new section:

''SEC. 303A. PROMOTING ABILITY OF VOTERS TO VOTE BY MAIL.

''(a) IN GENERAL.—If an individual in a State is eligible to cast a vote in an election for Federal office, the State may not impose any additional conditions or requirements on the eligibility of the individual to cast the vote in such election by mail, except to the extent that the State imposes a deadline for requesting the ballot and related voting materials from the appropriate State or local election official and for returning the ballot to the appropriate State or local election official.

''(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to affect the authority of States to conduct elections for Federal office through the use of polling places at which individuals cast ballots on the date of the election.

''(c) EFFECTIVE DATE.—A State shall be required to comply with the requirements of subsection (a) with respect to elections for Federal office held in years beginning with 2012.''.

(b) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 401 of such Act (42 U.S.C. 15511) is amended by striking ''and 303'' and inserting ''303, and 303A''.

(c) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 303 the following new item:

''Sec. 303A. Promoting ability of voters to vote by mail.''.

By Mr. WYDEN (for himself, Mr. KERRY, Mr. CARPER, Ms. CANTWELL, Mr. MERKLEY, and Mrs. GILLIBRAND):

S. 3300. A bill to establish a Vote by Mail grant program; to the Committee on Rules and Administration.

Mr. WYDEN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3300

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Vote by Mail Act of 2010''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Supreme Court declared in Reynolds v. Sims that ''[i]t has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote . . . and to have their votes counted.''

(2) In recent presidential elections, voting technology failures, procedural irregularities, and long lines for polling places deprived some Americans of their fundamental right to vote.

(3) Under the Oregon Vote by Mail system, election officials mail ballots to all registered voters at least 2 weeks before election day. Voters mark their ballots, seal the ballots in both unmarked secrecy envelopes and signed return envelopes, and return the ballots by mail or to secure drop boxes. Once a ballot is received, election officials scan the bar code on the ballot envelope, which brings up the voter's signature on a computer screen. The election official compares the signature on the screen and the signature on the ballot envelope. Only if the signature on the ballot envelope is determined to be authentic is the ballot forwarded on to be counted.

(4) Oregon's Vote by Mail system has deterred voter fraud because the system includes numerous security measures such as the signature authentication system. Potential misconduct is also discouraged by the power of the State to punish those who engage in voter fraud with up to 5 years in prison, $100,000 in fines, and the loss of their vote.

(5) Oregon's Vote by Mail system promotes uniformity and strict compliance with Federal and State voting laws because ballot processing is centralized in county clerks' offices, rather than at numerous polling places.

(6) Vote by Mail is 1 factor making voter turnout in Oregon consistently higher than the average national voter turnout. In the 2004 presidential election, for example, Oregon had a turnout rate of 86.48 percent of registered voters, compared to 69.96 percent turnout of registered voters nationally.

(7) Women, younger voters, and homemakers also report that they vote more often using Vote by Mail.

(8) Vote by Mail reduces election costs by eliminating the need to transport equipment to polling stations and to hire and train poll workers. Oregon reduced its costs to administer elections by nearly 30 percent after implementing Vote by Mail. In Oregon's last polling place election in 1998, the cost per voter was $3.07. By 2004, the cost per voter in Oregon had dropped to $2.21.

(9) Vote by Mail allows voters to educate themselves because they receive ballots well before election day, which provides them with ample time to research issues, study ballots, and deliberate in a way that is not possible at a polling place.

(10) Vote by Mail is accurate—at least 2 studies comparing voting technologies show that absentee voting methods, including Vote by Mail systems, result in a more accurate vote count.

(11) Vote by Mail results in more up-to-date voter rolls, since election officials use forwarding information from the post office to update voter registration.

(12) Vote by Mail allows voters to visually verify that their votes were cast correctly and produces a paper trail for election recounts.

(13) In a survey taken 5 years after Oregon implemented the Vote by Mail system, more than 8 in 10 Oregon voters said they preferred voting by mail to traditional voting.

(14) Voters in other States are moving toward Vote by Mail as well. In 2008, 89 percent of voters in Washington State who cast ballots voted by mail, 64 percent of voters in Colorado voted by mail, and 44 percent of voters in California voted by mail.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELECTION.—The term ''election'' means any general, special, primary, or runoff election.

(2) PARTICIPATING STATE.—The term ''participating State'' means a State receiving a grant under the Vote by Mail grant program under section 4.

(3) RESIDUAL VOTE RATE.—The term ''residual vote rate'' means the sum of all votes that cannot be counted in an election (overvotes, undervotes, and otherwise spoiled ballots) divided by the total number of votes cast.

(4) STATE.—The term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(5) VOTING SYSTEM.—The term ''voting system'' has the meaning given such term under section 301(b) of the Help America Vote Act of 2002 (42 U.S.C. 15481(b)).

SEC. 4. VOTE BY MAIL GRANT PROGRAM.

(a) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this Act, the Election Assistance Commission shall establish a Vote by Mail grant program (in this section referred to as the ''program'').

(b) PURPOSE.—The purpose of the program is to make implementation grants to participating States solely for the implementation of procedures for the conduct of all elections by mail at the State or local government level.

(c) LIMITATION ON USE OF FUNDS.—In no case may grants made under this section be used to reimburse a State for costs incurred in implementing mail-in voting for elections at the State or local government level if such costs were incurred prior to the date of enactment of this Act.

(d) APPLICATION.—A State seeking to participate in the program under this section shall submit an application to the Election Assistance Commission containing such information, and at such time, as the Election Assistance Commission may specify.

(e) AMOUNT AND AWARDING OF IMPLEMENTATION GRANTS; DURATION OF PROGRAM.—

(1) AMOUNT OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the amount of an implementation grant made to a participating State shall be, in the case of a State that certifies that it will implement all elections by mail in accordance with the requirements of subsection (f), with respect to—

(i) the entire State, $2,000,000; or

(ii) any single unit or multiple units of local government within the State, $1,000,000.

(B) EXCESS FUNDS.—

(i) IN GENERAL.—To the extent that there are excess funds in either of the first 2 years of the program, such funds may be used to award implementation grants to participating States in subsequent years.

(ii) EXCESS FUNDS DEFINED.—For purposes of clause (i), the term ''excess funds'' means any amounts appropriated pursuant to the authorization under subsection (h)(1) with respect to a fiscal year that are not awarded to a participating State under an implementation grant during such fiscal year.

(C) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An implementation grant made to a participating State under this section shall be available to the State without fiscal year limitation.

(2) AWARDING OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—The Election Assistance Commission shall award implementation grants during each year in which the program is conducted.

(B) ONE GRANT PER STATE.—The Election Assistance Commission shall not award more than 1 implementation grant to any participating State under this section over the duration of the program.

(3) DURATION.—The program shall be conducted for a period of 3 years.

(f) REQUIREMENTS.—

(1) REQUIRED PROCEDURES.—A participating State shall establish and implement procedures for conducting all elections by mail in the area with respect to which it receives an implementation grant to conduct such elections, including the following:

(A) A process for recording electronically each voter's registration information and signature.

(B) A process for mailing ballots to all eligible voters.

(C) The designation of places for the deposit of ballots cast in an election.

(D) A process for ensuring the secrecy and integrity of ballots cast in the election.

(E) Procedures and penalties for preventing election fraud and ballot tampering, including procedures for the verification of the signature of the voter accompanying the ballot through comparison of such signature with the signature of the voter maintained by the State in accordance with subparagraph (A).

(F) Procedures for verifying that a ballot has been received by the appropriate authority.

(G) Procedures for obtaining a replacement ballot in the case of a ballot which is destroyed, spoiled, lost, or not received by the voter.

(H) A plan for training election workers in signature verification techniques.

(I) Plans and procedures to ensure that voters who are blind, visually-impaired, or otherwise disabled have the opportunity to participate in elections conducted by mail and to ensure compliance with the Help America Vote Act of 2002. Such plans and procedures shall be developed in consultation with disabled and other civil rights organizations, voting rights groups, State election officials, voter protection groups, and other interested community organizations.

(J) Plans and procedures to ensure the translation of ballots and voting materials in accordance with section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a)).

(g) BEST PRACTICES, TECHNICAL ASSISTANCE, AND REPORTS.—

(1) IN GENERAL.—The Election Assistance Commission shall—

(A) develop, periodically issue, and, as appropriate, update best practices for conducting elections by mail;

(B) provide technical assistance to participating States for the purpose of implementing procedures for conducting elections by mail; and

(C) submit to the appropriate committees of Congress—

(i) annual reports on the implementation of such procedures by participating States during each year in which the program is conducted; and

(ii) upon completion of the program conducted under this section, a final report on the program, together with recommendations for such legislation or administrative action as the Election Assistance Commission determines to be appropriate.

(2) CONSULTATION.—In developing, issuing, and updating best practices, developing materials to provide technical assistance to participating States, and developing the annual and final reports under paragraph (1), the Election Assistance Commission shall consult with interested parties, including—

(A) State and local election officials;

(B) the United States Postal Service;

(C) the Postal Regulatory Commission established under section 501 of title 39, United States Code; and

(D) voting rights groups, voter protection groups, groups representing the disabled, and other civil rights or community organizations.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) GRANTS.—There are authorized to be appropriated to award grants under this section, for each of fiscal years 2012 through 2014, $6,000,000, to remain available without fiscal year limitation until expended.

(2) ADMINISTRATION.—There are authorized to be appropriated to administer the program under this section, $200,000 for the period of fiscal years 2012 through 2014, to remain available without fiscal year limitation until expended.

(i) RULE OF CONSTRUCTION.—Nothing in this Act may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

(1) The Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.).

(2) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(3) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).

(4) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(5) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(6) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

SEC. 5. STUDY ON IMPLEMENTATION OF MAIL-IN VOTING FOR ELECTIONS.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States (in this section referred to as the ''Comptroller General'') shall conduct a study evaluating the benefits of broader implementation of mail-in voting in elections, taking into consideration the annual reports submitted by the Election Assistance Commission under section 4(g)(1)(C)(i) before November 1, 2013.

(2) SPECIFIC ISSUES STUDIED.—The study conducted under paragraph (1) shall include a comparison of traditional voting methods and mail-in voting with respect to—

(A) the likelihood of voter fraud and misconduct;

(B) the accuracy of voter rolls;

(C) the accuracy of election results;

(D) voter participation in urban and rural communities and by minorities, language minorities (as defined in section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a)), and individuals with disabilities and by individuals who are homeless or who frequently change their official residences;

(E) public confidence in the election system;

(F) the residual vote rate, including such rate based on voter age, education, income, race, or ethnicity or whether a voter lives in an urban or rural community, is disabled, or is a language minority (as so defined); and

(G) cost savings.

(3) CONSULTATION.—In conducting the study under paragraph (1), the Comptroller General shall consult with interested parties, including—

(A) State and local election officials;

(B) the United States Postal Service;

(C) the Postal Regulatory Commission established under section 501 of title 39, United States Code; and

(D) voting rights groups, voter protection groups, groups representing the disabled, and other civil rights or community organizations.

(b) REPORT.—Not later than November 1, 2013, the Comptroller General shall prepare and submit to the appropriate committees of Congress a report on the study conducted under subsection (a), together with such recommendations for legislation or administrative action as the Comptroller General determines to be appropriate.

By Mr. WYDEN (for himself and Mr. KERRY):

S. 3301. A bill to establish an Online Voter Registration grant program; to the Committee on Rules and Administration.

Mr. WYDEN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objeciton, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3301

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Online Voter Registration Act of 2010''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Americans have become increasingly comfortable with using the Internet for a wide range of purposes, including gathering information, purchasing items, performing financial transactions, and obtaining information and services from the Government.

(2) In 2008, 74 percent of adults in the United States reported using the Internet, according to the Pew Internet and American Life Project. Of those adults, 89 percent reported using the Internet to find information, 71 percent made purchases over the Internet, 70 percent read news online, 56 percent looked up campaign or political information, 55 percent utilized online banking, and 59 percent visited Government Internet websites.

(3) The Internet is well-suited to allow individuals to provide and update personal information. Completing such tasks online saves time, reduces paper, increases efficiency, and lowers costs.

(4) Many States already allow citizens to access Government services online, including renewing driver's licenses and registering cars.

(5) Two States, Arizona and Washington, have already implemented online voter registration systems, and a number of other States are in the process of adopting online voter registration systems.

(6) Although 2008 was the first election cycle that the online voter registration system was in place in Washington State, in the month prior to the general election, voter use of the online voter registration system exceeded that of mail-in registration cards by more than 20 percent.

(7) Younger adults who are registering to vote for the first time are the most adept Internet users and expect to be able to accomplish most tasks online. In 2008, 87 percent of adults age 18 to 29 used the Internet. In Washington State, voters age 18 to 24 had the highest rate of use of its online voter registration system.

(8) During the 2008 election cycle, Washington State processed about 130,000 online voter registration transactions.

(9) Implementing an online voter registration requires an initial investment to purchase the needed technology and to input existing voter information into the registration database. Washington State, for example, spent $278,000 to establish its online voter registration system.

(10) Once in place, online voter registration systems allow the processing of new voter registrations, changes of address or party, and requests for absentee ballots.

(11) Washington State reports that it costs approximately 25 cents to process paper voter registration cards and 43 cents to process those submitted via the department of motor vehicles in compliance with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.). Voters must also pay postage costs for registration cards sent through the mail. Once in place, the online voter registration system requires no processing by staff in order to complete a transaction, and therefore has no per transaction cost. For the 2008 general election, the online voter registration system saved Washington State $32,500, and saved consumers $54,600 in postage costs, which resulted in total savings to the State and consumers of over $87,000.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELECTION.—The term ''election'' means any general, special, primary, or runoff election.

(2) PARTICIPATING STATE.—The term ''participating State'' means a State receiving a grant under the Online Voter Registration grant program under section 4.

(3) STATE.—The term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

SEC. 4. ONLINE VOTER REGISTRATION GRANT PROGRAM.

(a) ESTABLISHMENT.—The Election Assistance Commission shall establish an Online Voter Registration grant program (in this section referred to as the ''program'').

(b) PURPOSE.—The purpose of the program is to make grants to participating States solely for the implementation of online voter registration systems.

(c) LIMITATION ON USE OF FUNDS.—In no case may grants made under this section be used to reimburse a State for costs incurred in implementing online voter registration systems at the State or local government level if such costs were incurred prior to October 1, 2009.

(d) APPLICATION.—A State seeking to participate in the program under this section shall submit an application to the Election Assistance Commission containing such information, and at such time, as the Election Assistance Commission may specify.

(e) AMOUNT AND AWARDING OF IMPLEMENTATION GRANTS; DURATION OF PROGRAM.—

(1) AMOUNT OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—The amount of an implementation grant made to a participating State shall be $150,000.

(B) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An implementation grant made to a participating State under this section shall be available to the State without fiscal year limitation.

(2) AWARDING OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—The Election Assistance Commission shall award implementation grants during each year in which the program is conducted.

(B) ONE GRANT PER STATE.—The Election Assistance Commission shall not award more than 1 implementation grant to any participating State under this section over the duration of the program.

(3) DURATION.—The program shall be conducted for a period of 5 years.

(f) REQUIREMENTS.—A participating State shall establish and implement an online voter registration system which individuals may use to register to vote, update voter registration information, and request an absentee ballot in the State.

(g) BEST PRACTICES, TECHNICAL ASSISTANCE, AND REPORTS.—

(1) IN GENERAL.—The Election Assistance Commission shall—

(A) develop, periodically issue, and, as appropriate, update best practices for implementing online voter registration systems;

(B) provide technical assistance to participating States for the purpose of implementing online voter registration systems; and

(C) submit to the appropriate committees of Congress—

(i) annual reports on the implementation of such online voter registration systems by participating States during each year in which the program is conducted; and

(ii) upon completion of the program conducted under this section, a final report on the program, together with recommendations for such legislation or administrative action as the Election Assistance Commission determines to be appropriate.

(2) CONSULTATION.—In developing, issuing, and updating best practices, developing materials to provide technical assistance to participating States, and developing the annual and final reports under paragraph (1), the Election Assistance Commission shall consult with interested parties, including—

(A) State and local election officials; and

(B) voting rights groups, voter protection groups, groups representing the disabled, and other civil rights or community organizations.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) GRANTS.—There are authorized to be appropriated to award grants under this section, for each of fiscal years 2010 through 2016, $1,800,000, to remain available without fiscal year limitation until expended.

(2) ADMINISTRATION.—There are authorized to be appropriated to administer the program under this section, $200,000 for the period of fiscal years 2010 through 2016, to remain available without fiscal year limitation until expended.

(i) RULE OF CONSTRUCTION.—Nothing in this Act may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

(1) The Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.).

(2) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(3) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).

(4) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(5) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(6) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 513—DESIGNATING JULY 9, 2010, AS ''COLLECTOR CAR APPRECIATION DAY'' AND RECOGNIZING THAT THE COLLECTION AND RESTORATION OF HISTORIC AND CLASSIC CARS IS AN IMPORTANT PART OF PRESERVING THE TECHNOLOGICAL ACHIEVEMENTS AND CULTURAL HERITAGE OF THE UNITED STATES

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

S. RES. 513

Whereas many people in the United States maintain classic automobiles as a pastime and do so with great passion and as a means of individual expression;

Whereas the Senate recognizes the effect that the more than 100-year history of the automobile has had on the economic progress of the Nation and supports wholeheartedly all activities involved in the restoration and exhibition of classic automobiles;

Whereas collection, restoration, and preservation of automobiles is an activity shared across generations and across all segments of society;

Whereas thousands of local car clubs and related businesses have been instrumental in preserving a historic part of the heritage of this Nation by encouraging the restoration and exhibition of such vintage works of art;

Whereas automotive restoration provides well-paying, high-skilled jobs for people in all 50 States; and

Whereas automobiles have provided the inspiration for music, photography, cinema, fashion, and other artistic pursuits that have become part of the popular culture of the United States: Now therefore, be it

Resolved, That the Senate—

(1) designates July 9, 2010, as ''Collector Car Appreciation Day'';

(2) recognizes that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States;

(3) encourages the Department of Education, the Department of Transportation, and other Federal agencies to support events and commemorations of ''Collector Car Appreciation Day'', including exhibitions and educational and cultural activities for young people; and

(4) encourages the people of the United States to engage in events and commemorations of ''Collector Car Appreciation Day'' that create opportunities for collector car owners to educate young people on the importance of preserving the cultural heritage of the United States, including through the collection and restoration of collector cars.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3785. Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. DEMINT, Mr. CRAPO, Mr. BENNETT, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 3786. Ms. CANTWELL (for herself, Mr. WHITEHOUSE, 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, supra; which was ordered to lie on the table.

SA 3787. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3788. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3789. Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 3790. Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 3791. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3792. Mrs. BOXER 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 3793. Mrs. MCCASKILL submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3794. Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3796. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3797. Mr. SCHUMER (for himself, Mr. REED, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3798. Mrs. HAGAN 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 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3800. 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 3801. Mr. HATCH (for himself, Mr. ENZI, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3802. 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 3803. 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 3804. 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 3805. Mrs. BOXER 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 3806. Mr. SPECTER (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3807. Mrs. HAGAN (for herself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and Mrs. MURRAY) 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 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) 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 3810. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3812. Mr. HARKIN (for himself, Mr. SCHUMER, 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, supra; which was ordered to lie on the table.

SA 3813. Ms. KLOBUCHAR (for herself and Mr. BENNET) 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 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3785. Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. DEMINT, Mr. CRAPO, Mr. BENNETT, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 1090, between lines 18 and 19, add the following:

SEC. 974. EXEMPTION FOR SMALLER ISSUERS UNDER THE SARBANES-OXLEY ACT OF 2002.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) is amended—

(1) in subsection (b), by striking ''With respect'' and inserting ''Except as provided in subsection (c), with respect''; and

(2) by adding at the end the following:

''(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer for which the aggregate worldwide market value of the voting and nonvoting common equity held by persons that are not affiliates of the issuer is less than $150,000,000.''.

(b) STUDY AND REPORT.—

(1) STUDY.—The Chief Economist of the Commission shall conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) for companies for which the aggregate worldwide market value of the voting and nonvoting common equity held by persons that are not affiliates of the issuer is $150,000,000 or more, and not more than $700,000,000, while maintaining investor protections for such companies.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Chief Economist of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under paragraph (1) that includes—

(A) an analysis of the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262);

(B) an analysis of whether reducing the compliance burden for companies described in paragraph (1) or providing a complete exemption from compliance with such section 404(b) for such companies would encourage the companies to list on exchanges in the United States in the initial public offerings of such companies or otherwise facilitate capital formation; and

(C) recommendations about whether the exemption under section 404(c) Sarbanes-Oxley Act of 2002, a added by subsection (a), should be extended to larger issuers.

SA 3786. Ms. CANTWELL (for herself, Mr. WHITEHOUSE, 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; as follows:

On page 762, between lines 5 and 6, insert the following:

SEC. ____. ANTIMARKET MANIPULATION AUTHORITY.

(a) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:

''(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

''(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.

''(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact, that such report is false, misleading or inaccurate.

''(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

''(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

''(3) ENFORCEMENT.—

''(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

''(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

''(i) contain a description of the charges against the person that is the subject of the complaint; and

''(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

''(C) HEARING.—A hearing described in subparagraph (B)(ii)—

''(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

''(ii) shall require the person to show cause regarding why—

''(I) an order should not be made—

''(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

''(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

''(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

''(iii) may be held before—

''(I) the Commission; or

''(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

''(4) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (6)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

''(5) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

''(6) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

''(7) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

''(8) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

''(9) EVIDENCE.—On the receipt of evidence under paragraph (3)(C)(iii), the Commission may—

''(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

''(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

''(C) assess such person—

''(i) a civil penalty of not more than an amount equal to the greater of—

''(I) $140,000; or

''(II) triple the monetary gain to such person for each such violation; or

''(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—

''(I) $1,000,000; or

''(II) triple the monetary gain to the person for each such violation; and

''(D) require restitution to customers of damages proximately caused by violations of the person.

''(10) ORDERS.—

''(A) NOTICE.—The Commission shall provide to a person described in paragraph (9) and the appropriate governing board of the registered entity notice of the order described in paragraph (9) by—

''(i) registered mail;

''(ii) certified mail; or

''(iii) personal delivery.

''(B) REVIEW.—

''(i) IN GENERAL.—A person described in paragraph (9) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

''(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

''(I) for the circuit in which the petitioner carries out the business of the petitioner; or

''(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

''(C) PROCEDURE.—

''(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

''(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

''(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) shall have jurisdiction to affirm, set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.''.

(b) CEASE AND DESIST ORDERS, FINES.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

''(d) If any person (other than a registered entity), directly or indirectly, is using or employing, or attempting to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): Provided, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.''.

(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:

''(D) who purchased or sold a contract referred to in subparagraph (B) hereof if the violation constitutes the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.

SA 3787. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 497, strike line 9 and all that follows through page 500, line 15, and insert the following:

SEC. 620. CONCENTRATION LIMITS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.

(a) DEPOSIT CONCENTRATION LIMIT.—

(1) AMENDMENT.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by striking subsection (f) and inserting the following:

''(f) NATIONWIDE CONCENTRATION LIMITS.—

''(1) CONCENTRATION LIMIT ESTABLISHED.—No single bank holding company may control more than 10 percent of the total amount of deposits of all insured depository institutions in the United States.

''(2) SALE OR TRANSFER REQUIRED.—The Board shall require any bank holding company that the Board determines is in violation of paragraph (1) to sell or otherwise transfer assets to an unaffiliated company, to the extent that the Board determines is necessary to bring the company into compliance with paragraph (1).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) SIZE REQUIREMENTS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—

(1) AMENDMENT.—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. LIMITS ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.

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

''(1) FDIC-ASSESSED DEPOSITS.—The term 'FDIC-assessed deposits' means the assessment base of a bank holding company, as calculated under part 327 of title 12 Code of Federal Regulations, or any successor thereto.

''(2) FINANCIAL COMPANY.—The term 'financial company' means any nonbank financial company supervised by the Board.

''(3) NONBANK FINANCIAL COMPANY DEFINITIONS.—The terms 'foreign nonbank financial company', 'nonbank financial company', and 'U.S. nonbank financial company' have the same meanings as in section 102 of the Restoring American Financial Stability Act of 2010.

''(4) NON-DEPOSIT LIABILITIES.—The term 'non-deposit liabilities' means—

''(A) with respect to a bank holding company—

''(i) the total assets of the banking holding company; minus

''(ii) the sum of—

''(I) the tier 1 capital of the bank holding company, taking into account any off-balance-sheet liabilities; and

''(II) the FDIC-assessed deposits of the bank holding company; and

''(B) with respect to a financial company—

''(i) the total assets of the financial company; minus

''(ii) the tier 1 capital of the financial company, taking into account any off-balance-sheet liabilities.

''(5) INCORPORATED TERMS.—The terms 'average total consolidated assets' and 'tier 1 capital' have the meanings given those terms in part 225 of title 12, Code of Federal Regulations, or any successor thereto.

''(b) LIMIT ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES.—

''(1) LIMITS FOR BANK HOLDING COMPANIES.—No bank holding company may control nondeposit liabilities that exceed 2 percent of the annual gross domestic product of the United States.

''(2) LIMITS FOR FINANCIAL COMPANIES.—No financial company may control nondeposit liabilities that exceed 3 percent of the annual gross domestic product of the United States.

''(3) DETERMINATION OF GROSS DOMESTIC PRODUCT.—For purposes of this subsection, the annual gross domestic product of the United States shall be determined using the average of the annual gross domestic product of the United States, as calculated by the Bureau of Economic Analysis of the Department of Commerce, during the 16 calendar quarters most recently completed at the time of the determination under paragraph (1).

''(4) TREATMENT OF INSURANCE COMPANIES.—

''(A) IN GENERAL.—Notwithstanding the limits under paragraphs (1) and (2), the Board may establish a separate liability limit for a bank holding company or financial company that the Board determines is primarily engaged in the business of insurance, if the Board determines that such a limit is necessary in order to provide for consistent and equitable treatment of the bank holding company or financial company.

''(B) CONSULTATION.—In establishing a liability limit under subparagraph (A), the Board shall consult with the State insurance regulator for any bank holding company or financial company described in subparagraph (A) having a subsidiary that is regulated by a State insurance regulator.

''(5) TREATMENT OF FOREIGN DEPOSITS.—The Board may exclude from the calculation of nondeposit liabilities under this subsection any foreign or other deposits that are not FDIC-assessed deposits, if the Board determines that such action is necessary to ensure the consistent and equitable treatment of institutions with international operations.

''(c) PROMPT CORRECTIVE ACTION.—

''(1) AUTHORITIES.—The Board shall require a bank holding company or financial company that violates subsection (a) to comply with the limit under subsection (a) by—

''(A) selling or otherwise transferring assets or off-balance-sheet items to unaffiliated firms;

''(B) terminating 1 or more activities of the bank holding company or financial company; or

''(C) imposing conditions on the manner in which the bank holding company or financial company conducts an activity of the bank holding company or financial company.

''(2) CORRECTIVE ACTION PLAN.—Not later than 60 days after the Board determines that a bank holding company or financial holding company has violated subsection (a), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a plan detailing the manner by which the bank holding company or financial company will be brought into compliance with subsection (a).

''(3) REPORTS TO CONGRESS.—

''(A) WRITTEN REPORTS.—At the end of each 60-day period following the date on which the Board submits a plan under paragraph (1) during which a bank holding company or financial company remains in violation of subsection (a), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the compliance of the bank holding company or financial holding company with the plan.

''(B) TESTIMONY.—At the end of each 120-day period following the date on which the Board submits a plan under paragraph (1) during which a bank holding company or financial company remains in violation of subsection (a), the Board shall testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives with respect to the compliance of the bank holding company or financial holding company with the plan.

''SEC. 14. CAPITAL ASSESSMENT PROGRAM.

''(a) ANNUAL CAPITAL ASSESSMENT REQUIRED.—Not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, and annually thereafter, the Board shall conduct a capital assessment of each bank holding company and financial company, to estimate the losses, revenues, and reserve needs for the bank holding company or financial company.

''(b) REPORT.—The Board shall submit an annual report on the results of the capital assessments under subsection (a) to the Secretary of the Treasury, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 3 years after the date of enactment of this Act.

SA 3788. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

TITLE ____—DISCOUNT PRICING CONSUMER PROTECTION ACT

SEC. ____. DISCOUNT PRICING CONSUMER PROTECTION ACT.

(a) SHORT TITLE.—This section may be cited as the ''Discount Pricing Consumer Protection Act''.

(b) PROHIBITION ON VERTICAL PRICE FIXING.—

(1) AMENDMENT TO THE SHERMAN ACT.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by adding after the first sentence the following: ''Any contract, combination, conspiracy or agreement setting a minimum price below which a product or service cannot be sold by a retailer, wholesaler, or distributor shall violate this Act.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 90 days after the date of enactment of this Act.

SA 3789. Mr. BROWNBACK (for himself and Mr. BOND) 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:

At the end of subtitle B of title X, add the following:

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

(a) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments over a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential mortgages; or

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(A) the extension of retail credit or retail leases is routinely provided directly to consumers; and

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third-party finance or leasing source.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of law, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

SA 3790. Mr. BROWNBACK (for himself and Mr. BOND) 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:

At the end of subtitle B of title X, add the following:

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

(a) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments over a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential mortgages; or

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(A) the extension of retail credit or retail leases is routinely provided directly to consumers; and

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third-party finance or leasing source.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of law, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person resident in the United States or any territory of the United States, licensed by a State, a territory of the United States, or the District of Columbia, to engage in the sale of motor vehicles.

SA 3791. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

TITLE XIII—CONGO CONFLICT MINERALS

SEC. 1301. DISCLOSURE TO SECURITIES AND EXCHANGE COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

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

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

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

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

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

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

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

''(2) PERSON DESCRIBED.—

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

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

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

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

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

''(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

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

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

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

SEC. 1302. REPORT.

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

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1301, in promoting peace and security in the eastern Democratic Republic of Congo.

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

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

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

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

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

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

SA 3792. Mrs. BOXER 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:

At the end of title VII, add the following:

Subtitle C—Fiduciary Duty

SEC. 781. SECURITIES EXCHANGE ACT.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by this Act, is further amended by inserting after section 10D, the following:

''SEC. 10E. FIDUCIARY DUTY.

''(a) IN GENERAL.—Each financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(1) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(2) any CEA-regulated financial instrument; or

''(3) any financial instrument, the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(b) ENFORCEMENT.—This section shall be enforced—

''(1) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(A) by that regulator in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts; and

''(2) as to persons who are not described in paragraph (1)—

''(A) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts.

''(c) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in subsection (a) with respect to such persons.

''(d) LIMITATION.—The fiduciary duty referred to in subsection (a) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'financial services provider' means any person who, for compensation, is in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (1), (2), or (3) of subsection (a);

''(2) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(3) the term 'covered client' means—

''(A) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A));

''(B) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(C) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(4) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commodity Futures Trading Commission or under the Commodity Exchange Act (7 U.S.C. 1 et seq.); and

''(5) the term 'Federal functional regulator' means—

''(A) the Board of Governors of the Federal Reserve System;

''(B) the Office of the Comptroller of the Currency;

''(C) the Board of Directors of the Federal Deposit Insurance Corporation;

''(D) the National Credit Union Administration;

''(E) the Securities and Exchange Commission;

''(F) the Commodity Futures Trading Commission;

''(G) the Director of the Federal Housing Finance Agency; and

''(H) the Bureau of Consumer Financial Protection.''.

SEC. 782. COMMODITY EXCHANGE ACT.

Section 6b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by adding at the end the following:

''(e) FIDUCIARY DUTY.—

''(1) IN GENERAL.—A financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(A) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(B) any CEA-regulated financial instrument; or

''(C) any financial instrument the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(2) ENFORCEMENT.—This section shall be enforced—

''(A) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(i) by that regulator in Federal courts;

''(ii) by the office the Attorney General of the United States in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts; and

''(B) as to other persons—

''(i) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(ii) by the office the Attorney General of the United State in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts.

''(3) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in paragraph (1) with respect to such persons.

''(4) LIMITATION.—The fiduciary duty referred to in paragraph (1) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'financial services provider' means any person who, for compensation, engages in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (A), (B), or (C) of paragraph (1);

''(B) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(C) the term 'covered client' means—

''(i) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A);

''(ii) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(iii) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(D) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commission or under this Act; and

''(E) the term 'Federal functional regulator' means—

''(i) the Board of Governors of the Federal Reserve System;

''(ii) the Office of the Comptroller of the Currency;

''(iii) the Board of Directors of the Federal Deposit Insurance Corporation;

''(iv) the National Credit Union Administration;

''(v) the Securities and Exchange Commission;

''(vi) the Commodity Futures Trading Commission;

''(vii) the Director of the Federal Housing Finance Agency; and

''(viii) the Bureau of Consumer Financial Protection.''.

SA 3793. Mrs. McCASKILL submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 122. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(h) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(h))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) COUNCIL OF INSPECTORS GENERAL WORKING GROUPS.—

(A) WORKING GROUPS TO EVALUATE COUNCIL.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—A Council of Inspectors General Working Group established under this subparagraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this subparagraph.

(B) WORKING GROUPS FOR FINANCIAL COMPANIES UNDERGOING RESOLUTION.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General shall convene a Council of Inspectors General Working Group for each financial company for which the Federal Deposit Insurance Corporation is appointed as receiver under section 202.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—Not later than 270 days after the appointment of the Federal Deposit Insurance Corporation as receiver for the financial company for which a Council of Inspectors General Working Group is convened under clause (i), such Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company's failure;

(II) the reasons for the appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 3794. Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. FINANCIAL FRAUD PROVISIONS.

(a) SENTENCING GUIDELINES.—

(1) SECURITIES FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements, and appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(2) FINANCIAL INSTITUTION FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements and to ensure a term of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(b) EXTENSION OF STATUTE OF LIMITATIONS FOR SECURITIES FRAUD VIOLATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3301. Securities fraud offenses

''(a) DEFINITION.—In this section, the term 'securities fraud offense' means a violation of, or a conspiracy or an attempt to violate—

''(1) section 1348;

''(2) section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a));

''(3) section 24 of the Securities Act of 1933 (15 U.S.C. 77x);

''(4) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17);

''(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48); or

''(6) section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy).

''(b) LIMITATION.—No person shall be prosecuted, tried, or punished for a securities fraud offense, unless the indictment is found or the information is instituted within 6 years after the commission of the offense.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3301. Securities fraud offenses.''.

(c) FALSE CLAIMS AND INTERNATIONAL MONEY LAUNDERING.—

(1) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(A) in paragraph (1), by striking ''or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter'' and inserting ''agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter''; and

(B) by adding at the end the following:

''(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.''.

(2) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO AWARDS TO QUI TAM PLAINTIFFS.—Section 3730(d)(1) of title 31, United States Code, is amended, in the second sentence, by striking ''in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media,'' and inserting ''in a Federal criminal, civil or administrative hearing in which the Government or its agent is a party, in a congressional, Government Accountability Office, or other Federal audit, report, hearing or investigation, or in the news media,''.

(3) APPLICATION OF THE INTERNATIONAL MONEY LAUNDERING STATUTE TO TAX EVASION.—Section 1956(a)(2)(A) of title 18, United States Code, is amended by—

(A) inserting ''(i)'' before ''with the intent to promote''; and

(B) adding at the end the following:

''(ii) with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or''.

(d) PROMOTING CRIMINAL ACCOUNTABILITY.—

(1) DEFINITIONS.—In this subsection—

(A) the terms ''Bureau'' and ''Federal consumer financial law'' have the meanings given those terms in section 1002; and

(B) the term ''civil investigative demand'' has the meaning given that term in section 1051.

(2) REVIEW OF CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY GENERAL.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Bureau may not issue a civil investigative demand unless—

(i) the Bureau consults with the Attorney General of the United States regarding the civil investigative demand; and

(ii) the Attorney General determines that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(B) PERIOD FOR REVIEW.—If the Attorney General has not made a determination described in subparagraph (A)(ii) as of the date that is 45 days after the date on which the Attorney General receives a request to issue a civil investigative demand, the Attorney General shall be deemed to have determined that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(C) GUIDELINES.—

(i) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Bureau, shall promulgate guidelines for parallel proceedings involving the Federal consumer financial laws.

(ii) CONSIDERATIONS.—In promulgating guidelines under this subparagraph, the Attorney General and the Bureau shall consider—

(I) the significant deterrent and punitive effects of criminal sanctions;

(II) the ability to use a criminal conviction as collateral estoppel in a subsequent civil case;

(III) the possibility that the imposition of civil penalties might undermine a prosecution or the severity of a subsequent criminal sentence;

(IV) preservation of the secrecy of a criminal investigation, including the use of covert investigative techniques;

(V) prevention of the premature discovery of evidence by a defendant in a criminal case through the exploitation by the defendant of the civil discovery process;

(VI) avoidance of unnecessary litigation issues, such as unfounded defense claims of misuse of process in a civil or criminal action; and

(VII) avoidance of duplicative interviews of witnesses and subjects.

SA 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. USE OF CREDIT CHECKS PROHIBITED FOR EMPLOYMENT PURPOSES.

(a) PROHIBITION FOR EMPLOYMENT AND ADVERSE ACTION.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) in subsection (a)(3)(B), by inserting ''within the restrictions set forth in subsection (b)'' after ''purposes'';

(2) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively; and

(3) by inserting after subsection (a) the following new subsection:

''(b) USE OF CERTAIN CONSUMER REPORT PROHIBITED FOR EMPLOYMENT PURPOSES OR ADVERSE ACTIONS.—

''(1) GENERAL PROHIBITION.—Except as provided in paragraph (3), a person, including a prospective employer or current employer, may not use a consumer report or investigative consumer report, or cause a consumer report or investigative consumer report to be procured, with respect to any consumer where any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity—

''(A) for employment purposes; or

''(B) for making an adverse action, as described in section 603(k)(1)(B)(ii).

''(2) SOURCE OF CONSUMER REPORT IRRELEVANT.—The prohibition described in paragraph (1) shall apply even if the consumer consents or otherwise authorizes the procurement or use of a consumer report for employment purposes or in connection with an adverse action with respect to such consumer.

''(3) EXCEPTIONS.—Notwithstanding the prohibitions set forth in this subsection, and consistent with the other provisions of this title, an employer may use a consumer report with respect to a consumer in any case in which —

''(A) the consumer applies for, or currently holds, employment that requires national security or Federal Deposit Insurance Corporation clearance;

''(B) the consumer applies for, or currently holds, employment with a State or local government agency which otherwise requires use of a consumer report;

''(C) the consumer applies for, or currently holds, any management position or other position involving the handling or supervision of, or access to, customer funds or accounts at a financial institution (including any credit union); and

''(D) use of the consumer report with respect to the consumer is otherwise required by law.

''(4) EFFECT ON DISCLOSURE AND NOTIFICATION REQUIREMENTS.—The exceptions described in paragraph (3) shall have no effect on the other requirements of this title, including requirements in regards to disclosure and notification to a consumer when permissibly using a consumer report for employment purposes or for taking an adverse action with respect to such consumer.''.

(b) CONFORMING AMENDMENTS AND CROSS REFERENCES.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) in subsection (d)(3), by striking ''604(g)(3)'' and inserting ''604(h)(3)''; and

(B) in subsection (o), by striking ''A'' and inserting ''Subject to the restrictions set forth in section 604(b), a'';

(2) in section 604 (15 U.S.C. 1681b)—

(A) in subsection (a), by striking ''subsection (c)'' and inserting ''subsection (d)'';

(B) in subsection (c), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (2)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)''; and

(ii) in paragraph (3)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)'';

(C) in subsection (d)(1), as redesignated by subsection (a)(2) of this section, by striking ''subsection (e)'' in both places it appears and inserting ''subsection (f)'';

(D) in subsection (f), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (1), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)''; and

(ii) in paragraph (5), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)'';

(3) in section 607(e)(3)(A) (15 U.S.C. 1681e(e)(3)(A)), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)'';

(4) in section 609 (15 U.S.C. 1681g)—

(A) in subsection (a)(3)(C)(i), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)''; and

(B) in subsection (a)(3)(C)(ii), by striking ''604(b)(4)(A)'' and inserting ''604(c)(4)(A)'';

(5) in section 613(a) (15 U.S.C. 1681k(a)), by striking ''section 604(b)(4)(A)'' and inserting ''section 604(c)(4)(A)''; and

(6) in section 615 (15 U.S.C. 1681m)—

(A) in subsection (d)(1), by striking ''section 604(c)(1)(B)'' and inserting ''section 604(d)(1)(B)'';

(B) in subsection (d)(1)(E), by striking ''section 604(e)'' and inserting ''section 604(f)''; and

(C) in subsection (d)(2)(A), by striking ''section 604(e)'' and inserting ''section 604(f)''.

SA 3796. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. STUDY AND REPORT ON PAYDAY LENDING.

(a) STUDY REQUIRED.—The research unit established by the director under section 1013 shall conduct a study on the ability of the unemployed to access credit under reasonable terms, including an analysis of—

(1) the effects of the practice of ''payday lending'' on the unemployed;

(2) the potential impacts, both positive and negative, of using Federal or State unemployment benefit checks as collateral for obtaining a payday loan;

(3) alternative credit options for the unemployed, including the accessibility and costs associated with such options; and

(4) such other considerations as are determined to be relevant.

(b) REPORT TO THE BUREAU.—Not later than 1 year after the date of enactment of this Act, the research unit established under section 1013 shall—

(1) provide to the Bureau a report on the results of the study conducted under subsection (a), together with recommendations to help the unemployed to access credit on reasonable terms; and

(2) shall make such report available to the public.

SA 3797. Mr. SCHUMER (for himself, Mr. REED, and Mr. AKAKA,) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 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 3798. Mrs. HAGAN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1235, line 12, strike ''or other'' and insert '', appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators, and other''.

On page 1249, line 13, after ''Commission'' insert ''and appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators,''.

On page 1251, line 17, after ''authorities,'' insert ''including any formal committee established by State regulators to coordinate multi-state examinations or enforcement efforts for a class of covered persons,''.

SA 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, line 14, strike ''and'' and all that follows through line 25 and insert the following:

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

SA 3800. 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 94, between lines 4 and 5, insert the following:

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

SA 3801. Mr. HATCH (for himself, Mr. ENZI, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XII, insert the following:

TITLE XIII—TREATMENT OF FANNIE MAE AND FREDDIE MAC

SEC. 1301. PLAN ON REFORMING FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury, the Director of the Federal Housing Finance Agency, and the Secretary of Housing and Urban Development shall propose and submit to Congress a plan to end the conservatorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and to reform such entities.

(b) REQUIREMENTS.—The plan required under subsection (a) shall be drafted so as to have the least amount of impact as possible on—

(1) the provision of affordable housing to underserved areas; and

(2) the cost to the taxpayer.

SA 3802. 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 124, line 9, insert after the semicolon, ''and''

''(ii) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to enhance their effectiveness in liquidating and reorganizing financial companies, including whether provisions relating to qualified financial contracts should be modified.''

SA 3803. 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 278 line 23, strike ''$50,000,000,000'' and insert ''$150,000,000,000''.

On page 284, between lines 10 and 11, insert the following:

''(15) LIMITATION ON USE OF FUND.—Notwithstanding any other provision of law, amounts in the Orderly Liquidation Fund may not be used under any circumstances to 'bail out' or maintain the solvency of any covered institution.''.

SA 3804. 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:

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

SEC. 122. ENHANCED DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(n) ENHANCED DISCLOSURES REQUIRED.—

''(1) IN GENERAL.—The Commission shall, by rule, with respect to each issuer that is subject to enhanced standards under title I of the Restoring American Financial Stability Act of 2010, and that is required to file periodic reports with the Commission, and any other issuers that the Commission determines appropriate—

''(A) require each such issuer to provide, together with its annual reports to the Commission, a detailed written description of all off balance sheet activities of the issuer and a detailed justification for not putting each of those activities on the balance sheet; and

''(B) pursuant to its authority under section 13 and 15(d), require each such issuer to disclose in each quarterly and annual filings required by the rules of the Commission—

''(i) the total liabilities of the issuer as of period end and total assets as of period end;

''(ii) the average daily liabilities during the measured period and average daily assets during the measured period;

''(iii) any short term borrowings, including separately presenting securities sold under agreements to repurchase, shown as of the end of the period and as a daily average during the period;

''(iv) a period end leverage ratio, measured as total equity capital as of period end, divided by total assets as of period end;

''(v) an average daily leverage ratio, measured as average daily equity capital during the measured period, divided by average daily assets during the measured period; and

''(vi) any other leverage or liquidity ratios that the Commission determines, by rule, to be appropriate.

''(2) TRANSACTIONS AFFECTING FUTURE LIQUIDITY.—The Commission shall issue rules requiring the disclosure of information on transactions that were accounted for as sales by the issuer, but have implications for future liquidity.

''(3) GRAPHIC REPRESENTATIONS AUTHORIZED.—The disclosures under this subsection may include a graphic representation of the information required to be disclosed.''.

SA 3805. Mrs. BOXER 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 1435, line 19, strike ''(g)''and insert the following:

''(g) PROHIBITION ON STEERING INCENTIVES.—

''(1) IN GENERAL.—For any loan secured by real property or a dwelling, the total amount of direct and indirect compensation from any source permitted to a mortgage originator may not vary based on the terms or conditions of the loan.

''(2) LIMITATIONS ON FINANCING OF ORIGINATION FEES AND COSTS.—

''(A) IN GENERAL.—For any loan secured by real property or a dwelling, a mortgage originator may not arrange for a consumer to finance through the rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor or mortgage originator.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), a mortgage originator may arrange for a consumer to finance an origination fee or cost through the rate, if—

''(i) the mortgage originator receives no other compensation, however denominated, directly or indirectly, from the consumer or any other person;

''(ii) the loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated;

''(iii) the loan does not contain a prepayment penalty;

''(iv) the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where the term 'points and fees' has the same meaning as in section 103(aa)(4);

''(v) the loan does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Federal banking agencies; and

''(vi) there is no other conflict of interest between the mortgage originator and the consumer.

''(3) MORTGAGE ORIGINATOR.—As used in this subsection, the term 'mortgage originator'—

''(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

''(i) takes a residential mortgage loan application;

''(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

''(iii) offers or negotiates terms of a residential mortgage loan;

''(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

''(C) does not include any person who is—

''(i) not otherwise described in subparagraph (A) or (B), and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or

''(ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A), and who does not advise a consumer on loan terms (including rates, fees, and other costs);

''(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated for performing such brokerage activities by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

''(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 1 property in any 36-month period, provided that such loan—

''(i) is fully amortizing;

''(ii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

''(iii) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

''(iv) meets any other criteria that the Federal banking agencies may prescribe; and

''(F) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

''(h)''.

SA 3806. Mr. SPECTER (for himself and Mr. KAUFMAN), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title IV, insert the following:

SEC. _____. FIDUCIARY STANDARD OF CARE FOR BROKER-DEALERS.

Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is amended by inserting at the end the following:

''(3)(A)(i) A registered broker or dealer, or any agent, employee or other person acting on behalf of such a broker or dealer, that provides investment advice regarding the purchase or sale of a security or a security based swap, or solicits or offers to enter into, or enters into a purchase or sale of a security or a security-based swap, shall have a fiduciary duty to act in the best interests of the investor and to disclose the specific facts relating to any actual or reasonably anticipated conflict of interest relating to that security or transaction or contemplated transaction.

''(ii) The Commission may adopt rules and regulations to define the full scope and application of the duty referred to in clause (i), to grant exceptions, and to adopt safe harbors, if and to the extent the Commission finds that such additional rules, regulations, exceptions, and safe harbors are necessary or appropriate as in the public interest or for the protection of investors.

''(B)(i) It shall be unlawful for any person subject to a fiduciary duty under subparagraph (A) to effect, directly or indirectly, by the use of any instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, any transaction in, or to induce or attempt to induce, the purchase or sale of any security or security-based swap, if in connection with such purchase or sale, or attempted purchase or sale, such person willfully violates that duty or disclosure obligation.

''(ii) Any person who violates clause (i) shall be fined under title 18, United States Code, or imprisoned not more than 25 years, or both.''.

SA 3807. Mrs. HAGAN (for herself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 486, strike lines 1 through 12, and insert the following:

(3) the term ''sponsoring or investing'', when used with respect to a hedge fund or private equity fund—

(A) means—

(i) serving as a general partner, managing member, or trustee of the fund;

(ii) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(iii) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

(B) includes any activity that would cause the aggregate investment of an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, in hedge funds and private equity funds to exceed 10 percent of the total Tier 1 capital (as that term is defined in section 2(o) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) of the institution, company, or subsidiary; and

(C) except as provided in subparagraph (B), does not include any activity described under this paragraph—

(i) that is conducted in connection with, or in facilitation of, customer relationships or on behalf of unaffiliated customers;

(ii) that is related to investing a de minimis amount, as determined by the Council, in any hedge fund or private equity fund, not to exceed 10 percent of the total equity of any such fund; and

(iii) for which the obligations of any hedge or private equity funds are not guaranteed, directly or indirectly, by any affiliate.

On page 490, strike line 9 and all that follows through page 491, line 10.

SA 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and Mr. MURRAY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1006, line 7, strike ''Such inaccuracy'' and all that follows through line 9, and insert the following: ''Such inaccuracy necessitates changes in the way initial credit ratings are assigned.''.

On page 1042, strike lines 17 through 24, and insert the following:

(a) STUDY.—Not later than 1 year after the Credit Rating Agency Board, as established under section 15E(w) of the Securities Exchange Act of 1934, begins to assign nationally recognized statistical rating organizations to provide initial credit ratings, the Comptroller General of the United States shall conduct a study on the effectiveness of the implementation of the changes made to that section by section 939D of this Act, including the selection method by which the Credit Rating Agency Board assigns nationally recognized statistical rating organizations to provide initial credit ratings.

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended by adding at the end the following:

''(w) INITIAL CREDIT RATING ASSIGNMENTS.—

''(1) DEFINITIONS.—In this subsection the following definitions shall apply:

''(A) BOARD.—The term 'Board' means the Credit Rating Agency Board established under paragraph (2).

''(B) QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'qualified nationally recognized statistical rating organization', with respect to a category of structured finance products, means a nationally recognized statistical rating organization that the Commission determines, under paragraph (3)(B), to be qualified to issue credit ratings with respect to such category.

''(C) REGULATIONS.—

''(i) CATEGORY OF STRUCTURED FINANCE PRODUCTS.—

''(I) IN GENERAL.—The term 'category of structured finance products'—

''(aa) shall include any asset backed security and any structured product based on an asset-backed security; and

''(bb) shall be further defined and expanded by the Commission, by rule, as necessary.

''(II) CONSIDERATIONS.—In issuing the regulations required subclause (I), the Commission shall consider—

''(aa) the types of issuers that issue structured finance products;

''(bb) the types of investors who purchase structured finance products;

''(cc) the different categories of structured finance products according to—

''(AA) the types of capital flow and legal structure used;

''(BB) the types of underlying products used; and

''(CC) the types of terms used in debt securities;

''(dd) the different values of debt securities; and

''(ee) the different numbers of units of debt securities that are issued together.

''(ii) REASONABLE FEE.—The Board shall issue regulations to define the term 'reasonable fee'.

''(2) CREDIT RATING AGENCY BOARD.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall—

''(i) establish the Credit Rating Agency Board, which shall be a self-regulatory organization;

''(ii) subject to subparagraph (C), select the initial members of the Board; and

''(iii) establish a schedule to ensure that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings not later than 1 year after the selection of the members of the Board.

''(B) SCHEDULE.—The schedule established under subparagraph (A)(iii) shall prescribe when—

''(i) the Board will conduct a study of the securitization and ratings process and provide recommendations to the Commission;

''(ii) the Commission will issue rules and regulations under this section;

''(iii) the Board may issue rules under this subsection; and

''(iv) the Board will—

''(I) begin accepting applications to select qualified national recognized statistical rating organizations; and

''(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.

''(C) MEMBERSHIP.—

''(i) IN GENERAL.—The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.

''(ii) SPECIFICATIONS.—Of the members initially selected to serve on the Board—

''(I) not less than a majority of the members shall be representatives of the investor industry, including both institutional and retail investors who do not represent issuers;

''(II) not less than 1 member should be a representative of the issuer industry;

''(III) not less than 1 member should be a representative of the credit rating agency industry; and

''(IV) not less than 1 member should be an independent member.

''(iii) TERMS.—Initial members shall be appointed by the Commission for a term of 4 years.

''(iv) NOMINATION AND ELECTION OF MEMBERS.—

''(I) IN GENERAL.—Prior to the expiration of the terms of office of the initial members, the Commission shall establish fair procedures for the nomination and election of future members of the Board.

''(II) MODIFICATIONS OF THE BOARD.—Prior to the expiration of the terms of office of the initial members, the Commission—

''(aa) may increase the size of the board to a larger odd number and adjust the length of future terms; and

''(bb) shall retain the composition of members described in clause (ii).

''(v) RESPONSIBILITIES OF MEMBERS.—Members shall perform, at a minimum, the duties described in this subsection.

''(vi) RULEMAKING AUTHORITY.—The Commission shall, if it determines necessary and appropriate, issue further rules and regulations on the composition of the membership of the Board and the responsibilities of the members.

''(D) OTHER AUTHORITIES OF THE BOARD.—The Board shall have the authority to levy fees from qualified nationally recognized statistical rating organization applicants, and periodically from qualified nationally recognized statistical rating organizations as necessary to fund expenses of the Board.

''(E) REGULATION.—The Commission has the authority to regulate the activities of the Board, and issue any further regulations of the Board it deems necessary, not in contravention with the intent of this section.

''(3) BOARD SELECTION OF QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

''(A) APPLICATION.—

''(i) IN GENERAL.—A nationally recognized statistical rating organization may submit an application to the Board, in such form and manner as the Board may require, to become a qualified nationally recognized statistical rating organization with respect to a category of structured financial products.

''(ii) CONTENTS.—An application submitted under clause (i) shall contain—

''(I) information regarding the institutional and technical capacity of the nationally recognized statistical rating organization to issue credit ratings;

''(II) information on whether the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section; and

''(III) any additional information the Board may require.

''(iii) REJECTION OF APPLICATIONS.—The Board may reject an application submitted under this paragraph if the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section.

''(B) SELECTION.—The Board shall select qualified national recognized statistical rating organizations with respect to each category of structured finance products from among nationally recognized statistical rating organizations that submit applications under subparagraph (A).

''(C) RETENTION OF STATUS AND OBLIGATIONS AFTER SELECTION.—An entity selected as a qualified nationally recognized statistical rating organization shall retain its status and obligations under the law as a nationally recognized statistical rating organization, and nothing in this subsection grants authority to the Commission or the Board to exempt qualified nationally recognized statistical rating organizations from obligations or requirements otherwise imposed by Federal law on nationally recognized statistical rating organizations

''(4) REQUESTING AN INITIAL CREDIT RATING.—An issuer that seeks an initial credit rating for a structured finance product—

''(A) may not request an initial credit rating from a nationally recognized statistical rating organization; and

''(B) shall submit a request for an initial credit rating to the Board, in such form and manner as the Board may prescribe.

''(5) ASSIGNMENT OF RATING DUTIES.—

''(A) IN GENERAL.—For each request received by the Board under paragraph (4)(B), the Board shall select a qualified nationally recognized statistical rating organization to provide the initial credit rating to the issuer.

''(B) METHOD OF SELECTION.—

''(i) IN GENERAL.—The Board shall—

''(I) evaluate a number of selection methods, including a lottery or rotating assignment system, incorporating the factors described in clause (ii), to reduce the conflicts of interest that exist under the issuer-pays model; and

''(II) prescribe and publish the selection method to be used under subparagraph (A).

''(ii) CONSIDERATION.—In evaluating a selection method described in clause (i)(I), the Board shall consider—

''(I) the information submitted by the qualified nationally recognized statistical rating organization under paragraph (3)(A)(ii) regarding the institutional and technical capacity of the qualified nationally recognized statistical rating organization to issue credit ratings;

''(II) evaluations conducted under paragraph (6);

''(III) formal feedback from institutional and retail investors; and

''(IV) information from subclauses (I) and (II) to implement a mechanism which increases or decreases assignments based on past performance.

''(iii) PROHIBITION.—The Board, in choosing a selection method, may not use a method that would allow for the solicitation or consideration of the preferred national recognized statistical rating organizations of the issuer.

''(iv) ADJUSTMENT OF PROCESS.—The Board shall issue rules describing the process by which it can modify the assignment process described in clause (i).

''(C) RIGHT OF REFUSAL.—

''(i) REFUSAL.—A qualified nationally recognized statistical rating organization selected under subparagraph (A) may refuse to accept a selection for a particular request by—

''(I) notifying the Board of such refusal; and

''(II) submitting to the Board a written explanation of the refusal.

''(ii) SELECTION.—Upon receipt of a notification under clause (i), the Board shall make an additional selection under subparagraph (A).

''(iii) INSPECTION REPORTS.—The Board shall annually submit any explanations of refusals received under clause (i)(II) to the Commission, and such explanatory submissions shall be published in the annual inspection reports required under subsection (p)(3)(C).

''(6) EVALUATION OF PERFORMANCE.—

''(A) IN GENERAL.—The Board shall prescribe rules by which the Board will evaluate the performance of each qualified nationally recognized statistical rating organization, including rules that require, at a minimum, an annual evaluation of each qualified nationally recognized statistical rating organization.

''(B) CONSIDERATIONS.—The Board, in conducting an evaluation under subparagraph (A), shall consider—

''(i) the results of the annual examination conducted under subsection (p)(3);

''(ii) surveillance of credit ratings conducted by the qualified nationally recognized statistical rating organization after the credit ratings are issued, including—

''(I) how the rated instruments perform;

''(II) the accuracy of the ratings provided by the qualified nationally recognized statistical rating organization as compared to the other nationally recognized statistical rating organizations; and

''(III) the effectiveness of the methodologies used by the qualified nationally recognized statistical rating organization; and

''(iii) any additional factors the Board determines to be relevant.

''(C) REQUEST FOR REEVALUATION.—Subject to rules prescribed by the Board, and not less frequently than once a year, a qualified nationally recognized statistical rating organization may request that the Board conduct an evaluation under this paragraph.

''(D) DISCLOSURE.—The Board shall make the evaluations conducted under this paragraph available to Congress.

''(7) RATING FEES CHARGED TO ISSUERS.—

''(A) LIMITED TO REASONABLE FEES.—A qualified nationally recognized statistical rating organization shall charge an issuer a reasonable fee, as determined by the Commission, for an initial credit rating provided under this section.

''(B) FEES.—Fees may be determined by the qualified national recognized statistical rating organizations unless the Board determines it is necessary to issue rules on fees.

''(8) NO PROHIBITION ON ADDITIONAL RATINGS.—Nothing in this section shall prohibit an issuer from requesting or receiving additional credit ratings with respect to a debt security, if the initial credit rating is provided in accordance with this section.

''(9) NO PROHIBITION ON INDEPENDENT RATINGS OFFERED BY NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

''(A) IN GENERAL.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from independently providing a credit rating with respect to a debt security, if—

''(i) the nationally recognized statistical rating organization does not enter into a contract with the issuer of the debt security to provide the initial credit rating; and

''(ii) the nationally recognized statistical rating organization is not paid by the issuer of the debt security to provide the initial credit rating.

''(B) RULE OF CONSTRUCTION.—For purposes of this section, a credit rating described in subparagraph (A) may not be construed to be an initial credit rating.

''(10) PUBLIC COMMUNICATIONS.—Any communications made with the public by an issuer with respect to the credit rating of a debt security shall clearly specify whether the credit rating was made by—

''(A) a qualified nationally recognized statistical rating organization selected under paragraph (5)(A) to provide the initial credit rating for such debt security; or

''(B) a nationally recognized statistical rating organization not selected under paragraph (5)(A).

''(11) PROHIBITION ON MISREPRESENTATION.—With respect to a debt security, it shall be unlawful for any person to misrepresent any subsequent credit rating provided for such debt security as an initial credit rating provided for such debt security by a qualified nationally recognized statistical rating organization selected under paragraph (5)(A).

''(12) INITIAL CREDIT RATING REVISION AFTER MATERIAL CHANGE IN CIRCUMSTANCE.—If the Board determines that it is necessary or appropriate in the public interest or for the protection of investors, the Board may issue regulations requiring that an issuer that has received an initial credit rating under this subsection request a revised initial credit rating, using the same method as provided under paragraph (4), each time the issuer experiences a material change in circumstances, as defined by the Board.

''(13) CONFLICTS.—

''(A) MEMBERS OR EMPLOYEES OF THE BOARD.—

''(i) LOAN OF MONEY OR SECURITIES PROHIBITED.—

''(I) IN GENERAL.—A member or employee of the Board shall not accept any loan of money or securities, or anything above nominal value, from any nationally recognized statistical rating organization, issuer, or investor.

''(II) EXCEPTION.—The prohibition in subclause (I) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(ii) EMPLOYMENT NEGOTIATIONS PROHIBITION.—A member or employee of the Board shall not engage in employment negotiations with any nationally recognized statistical rating organization, issuer, or investor, unless the member or employee—

''(I) discloses the negotiations immediately upon initiation of the negotiations; and

''(II) recuses himself from all proceedings concerning the entity involved in the negotiations until termination of negotiations or until termination of his employment by the Board, if an offer of employment is accepted.

''(B) CREDIT ANALYSTS.—

''(i) IN GENERAL.—A credit analyst of a qualified nationally recognized statistical rating organization shall not accept any loan of money or securities, or anything above nominal value, from any issuer or investor.

''(ii) EXCEPTION.—The prohibition described in clause (i) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(14) EVALUATION OF CREDIT RATING AGENCY BOARD.—Not later than 5 years after the date that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings, the Commission shall submit to Congress a report that provides recommendations of—

''(A) the continuation of the Board;

''(B) any modification to the procedures of the Board; and

''(C) modifications to the provisions in this subsection.''.

SA 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) 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 1171, strike line 6 and all that follows through page 1187, line 9.

SA 3810. Mr. DORGAN (for himself and Mr. GRASSLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 1533, line 5, strike ''Section'' and insert the following:

''(a) IN GENERAL.—The Board of Governors shall disclose to Congress and to the public, with respect to any emergency financial assistance provided during the 5-year period preceding the date of enactment of this Act under the authority of the Board of Governors in the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343)—

''(1) the name of each financial company that received such assistance;

''(2) the value or amount and description of the emergency assistance provided, including loans to investment banks from the Federal Reserve discount lending program or special purpose entities;

''(3) the date on which the financial assistance was provided;

''(4) the terms and conditions for the emergency assistance; and

''(5) a full description of any collateral required by the Board of Governors and secured from the recipients of such emergency assistance.

''(b) PUBLIC DISCLOSURE.—Section''.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, and Mr. KAUFMAN) 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:

On page 29, line 14, strike ''and'' and all that follows through ''annually report'' on line 15 and insert the following:

''(M) identify all financial institutions that have domestic or international (or both) operations or activities of a significant size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, resulting or arising from stand alone operations or activities individually, or as a mix or combination of such international operations or activities that may pose a grave threat to the financial stability of the United States; and

''(N) annually report''.

On page 33, strike line 3 and all that follows through page 61, line 12 and insert the following:

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent or more of the members then serving, shall determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent of the members then serving, shall determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States, or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS FOR COMPANIES WITHOUT SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, that does not have significant international operations or activities, may pose a grave threat to the financial stability of the United States, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in paragraph (2), until such company does not pose a grave threat to the financial stability of the United States.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) take any combination of the actions described in subparagraphs (A) through (C).

(b) MITIGATORY ACTIONS FOR COMPANIES WITH SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, has significant international operations or activities of a size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, and would pose a grave threat to the financial stability of the United States, and would, therefore, require international or cross-border resolution in the event of failure, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in subparagraph (B), until such company's international operations or activities no longer pose such a threat.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) to take any combination of the actions described in subparagraphs (A) through (C).

(3) INTERNATIONAL RESOLUTION MECHANISM.—Because only a binding comprehensive international resolution mechanism will mitigate the grave threat such a subject company poses to the United States, this requirement shall remain in effect until the Council, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, votes that there is a binding, effective, and comprehensive international resolution mechanism. At such time, all such companies shall be transitioned to regulation under paragraph (1).

(4) INTERNATIONAL COOPERATION.—The Council shall work promptly and urgently with all appropriate countries and international authorities to establish a binding, effective, and comprehensive international resolution mechanism, and shall report to Congress not less than once every 6 months on all activities taken in connection with such effort, including actions taken or not taken by other countries and international organizations. The Council shall designate a Vice Chairperson with the sole responsibility for working with international authorities to establish such a resolution mechanism.

(c) The Council shall determine the appropriate time periods for any actions pursuant to this subsection, but any such time periods shall be as soon as prudently possible, and in no event later than 2 years after such action is ordered.

(d) NOTICE AND HEARING.—

(1) IN GENERAL.—The Council, in consultation with the Board of Governors, shall provide to a company described in subsection (a) or (b) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed mitigatory action. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Council, in consultation with the Board of Governors, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Council shall notify the company of the final decision of the Council, including the results of the vote of the Council, as described in subsection (a) or (b).

(e) FACTORS FOR CONSIDERATION.—The Council and the Board of Governors shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and (b), and in a decision described in subsection (d).

(f) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Council may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle of national treatment and competitive equity.

SA 3812. Mr. HARKIN (for himself, Mr. SCHUMER, 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; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. FAIR ATM FEES.

(a) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 904(d)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)(3)) is amended—

(1) in subparagraph (A), by striking the subparagraph heading and inserting the following:

''(A) FEE DISCLOSURE.—'' ;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) REGULATION OF FEES.—The regulations prescribed under paragraph (1) shall require any fee charged by an automated teller machine operator for a transaction conducted at that automated teller machine to bear a reasonable relation to the cost of processing the transaction, and in no case shall any such fee exceed $0.50.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective not later than 6 months after the date of enactment of this Act.

(c) RULEMAKING.—The Bureau shall issue such rules as may be necessary to carry out this section, not later than 6 months after the date of enactment of this Act.

SA 3813. Ms. KLOBUCHAR (for herself and Mr. BENNET), 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 1440, after line 21, insert the following:

(c) REQUIREMENTS ON MORTGAGE ORIGINATORS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by striking subsection (j) and inserting the following:

''(j) CONSEQUENCE OF FAILURE TO COMPLY.—Any mortgage made in violation of a provision of this section shall be deemed a failure to deliver the material disclosures required under this title, for the purpose of section 125.''; and

(2) by adding at the end the following:

''(n) REQUIREMENTS FOR MORTGAGE ORIGINATORS.—

''(1) ABILITY TO PAY.—

''(A) IN GENERAL.—No creditor or mortgage broker may make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer without first verifying the reasonable ability of the consumer to pay the scheduled payments of, as applicable—

''(i) principal;

''(ii) interest;

''(iii) real estate taxes; and

''(iv) homeowner insurance, assessments, and mortgage insurance premiums.

''(B) VARIABLE INTEREST RATE.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer for which the applicable annual percentage rate may vary over the life of the credit, the reasonable ability to pay shall be determined, for purposes of this paragraph, on the basis of a fully indexed rate plus 200 basis points and a repayment schedule which achieves full amortization over the life of the extension of credit.

''(C) VERIFICATION OF CONSUMER INCOME AND FINANCIAL RESOURCES.—

''(i) IN GENERAL.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer, the income and financial resources of the consumer shall be verified for purposes of this paragraph by tax returns, payroll receipts, bank records, or other similarly reliable documents.

''(ii) CONSUMER STATEMENT INSUFFICIENT.—A statement by a consumer of income or financial resources shall not be sufficient to establish the existence of any income or financial resources when verifying the reasonable ability of the consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer for purposes of this paragraph.

''(D) OTHER CRITERIA.—A creditor or mortgage broker may rely on additional criteria other than income and financial resources to establish the reasonable ability of a consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer, to the extent such other criteria are also verified through reasonably reliable methods and documentation.

''(E) EQUITY IN DWELLING NOT TO BE TAKEN INTO ACCOUNT.—The consumer's equity in the principal dwelling that secures or would secure the consumer credit transaction may not be used to establish the ability to make the payments described in subparagraph (A) with respect to such transaction.

''(2) PROHIBITION ON STEERING.—

''(A) IN GENERAL.—In connection with a credit transaction secured by the principal dwelling, a mortgage broker or creditor may not—

''(i) steer, counsel, or direct a consumer to rates, charges, principal amount, or prepayment terms that are more expensive for that which the consumer qualifies; or

''(ii) make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer that is more expensive than that for which the consumer qualifies.

''(B) DUTIES TO CONSUMERS.—If unable to suggest, offer, or recommend to a consumer a home loan that is not more expensive than that for which the consumer qualifies, a mortgage originator shall—

''(i) based on the information reasonably available and using the skill, care, and diligence reasonably expected for a mortgage originator, originate or otherwise facilitate a suitable home mortgage loan by another creditor to a consumer, if permitted by and in accordance with all otherwise applicable law; or

''(ii) disclose to the consumer—

''(I) that the creditor does not offer a home mortgage loan that is not more expensive than a loan for which the consumer qualifies, but that other creditors may offer such a loan; and

''(II) the reasons that the products and services offered by the mortgage originator are not available to or reasonably advantageous for the consumer.

''(C) PROHIBITED CONDUCT.—In connection with a credit transaction secured by the principal dwelling, a mortgage originator may not—

''(i) mischaracterize the credit history of a consumer or the home loans available to a consumer;

''(ii) mischaracterize or suborn the mischaracterization of the appraised value of the property securing the extension of credit; and

''(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discourage a consumer from seeking a home mortgage loan from another creditor or with another mortgage originator.''.

SA 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) Each Inspector General of a designated Federal entity may at any time be removed, but only for cause. In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Senate Committee on Energy and Natural Resources previously announced for May 6, 2010, at 9:30 a.m., has been rescheduled and will now be held on Tuesday, May 11, 2010, at 10 a.m., in room SR–325 of the Russell Senate Office Building.

The purpose of the hearing is to review issues related to deepwater offshore exploration for petroleum and the accident in the Gulf of Mexico involving the offshore oil rig Deepwater Horizon.

For further information, please contact Linda Lance at (202) 224–7556 or Allyson Anderson at (202) 224–7143 or Abigail Campbell at (202) 224–1219.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on May 4, 2010, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The President's Proposed Fee on Financial Institutions Regarding TARP: Part 2''.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled ''ESEA Reauthorization: Improving America's Secondary Schools'' on Tuesday, May 4, 2010. The hearing will commence at 2 p.m. in room 430 of the Dirksen Senate Office Building.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Crime and Drugs, be authorized to meet during the session of the Senate, on May 4, 2010, at 9:30 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Wall Street Fraud and Fiduciary Duties: Can Jail Time Serve as an Adequate Deterrent for Willful Violations?''

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on May 4, 2010, at 2:30 p.m. to conduct a hearing titled, ''Recruiting and Retaining a Robust Federal Workforce.''

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

COLLECTOR CAR APPRECIATION DAY

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. Res. 513.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 513) designating July 9, 2010 as ''Collector Car Appreciation Day'' and recognizing that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States.

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

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

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

The resolution (S. Res. 513) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 513

Whereas many people in the United States maintain classic automobiles as a pastime and do so with great passion and as a means of individual expression;

Whereas the Senate recognizes the effect that the more than 100-year history of the automobile has had on the economic progress of the Nation and supports wholeheartedly all activities involved in the restoration and exhibition of classic automobiles;

Whereas collection, restoration, and preservation of automobiles is an activity shared across generations and across all segments of society;

Whereas thousands of local car clubs and related businesses have been instrumental in preserving a historic part of the heritage of this Nation by encouraging the restoration and exhibition of such vintage works of art;

Whereas automotive restoration provides well-paying, high-skilled jobs for people in all 50 States; and

Whereas automobiles have provided the inspiration for music, photography, cinema, fashion, and other artistic pursuits that have become part of the popular culture of the United States: Now therefore, be it

Resolved, That the Senate—

(1) designates July 9, 2010, as ''Collector Car Appreciation Day'';

(2) recognizes that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States;

(3) encourages the Department of Education, the Department of Transportation, and other Federal agencies to support events and commemorations of ''Collector Car Appreciation Day'', including exhibitions and educational and cultural activities for young people; and

(4) encourages the people of the United States to engage in events and commemorations of ''Collector Car Appreciation Day'' that create opportunities for collector car owners to educate young people on the importance of preserving the cultural heritage of the United States, including through the collection and restoration of collector cars.

Mr. REID. Mr. President, we have had a big day in the Senate. Because of my Republican friends, we have been able to accomplish almost nothing—not quite but almost nothing. I love old cars, and I am glad we are able to pass this important legislation: Collector Car Appreciation Day. Collector Car Appreciation Day.

While people out there are looking for jobs, trying to save their homes, we are doing what the Republicans let us do: Collector Car Appreciation Day. That is the extent of our work because the Republicans have objected to everything we have tried to do on trying to reform Wall Street—for obvious reasons.

We all read the press saying the lobbyists are here lined up with their Gucci shoes and their new suits and a lot of new ties because we are told they are spending millions of dollars a week on these people to stop us from reforming Wall Street.

We are going to reform Wall Street. We are going to work through all of these objections. We are going to work through the party of no and the obstructionism.

ORDERS FOR WEDNESDAY, MAY 5, 2010

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, May 5; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of S. 3217, Wall Street reform.

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

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 7:10 p.m., adjourned until Wednesday, May 5, 2010, at 9:30 a.m.