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Senate

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

PRAYER

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

Let us pray.

O, Lord, our Redeemer, abide with our Senators through the passing hours of another day. Strengthen them to stand firm for those good and eternal values that keep a nation strong. Lord, give them the courage to do the right even when others are doing wrong. Remind them that You are the pilot of their lives who can guide them to a desired destination. Let discretion preserve them and understanding keep them, protecting them from the forces of evil. Save them from pride that mistakes their abilities for possessions, and keep them humble enough to see their need for You.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROLAND W. BURRIS led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 5, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a

Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of the Helping Families Save Their Homes Act. The time until 10:50 will be equally divided and controlled between Senators DODD and CORKER. At 10:50 a.m., the Senate will proceed to vote in relation to the Corker amendment.

The Senate will recess from 12:30 until 2:15 to allow for the weekly caucus lunches. We have still a large number of amendments that could possibly be debated and voted on today. But it appears that we should not have more than maybe six or seven votes, something like that.

The managers are working on the bill, and we should be able to finish it without a lot of trouble today. So there will be votes throughout the day. We do not expect any more votes until after the caucus.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader.

REPLACING JUSTICE SOUTER

Mr. MCCONNELL. Mr. President, Justice Souter's decision last week to retire from the Supreme Court presents us with an opportunity to prepare for

an important debate about the role of the courts and the meaning of the Constitution. Of all the Senate's duties, few have come to enliven our civic life as much as the consideration of a Supreme Court nominee.

Justice Souter never made a secret of the fact that he prefers New Hampshire to Washington, and the fact that he has served so long in spite of that preference speaks of a deep commitment to public service. As Justice Souter returns to New Hampshire, we thank him for his many years of dedicated service.

Now attention turns to the President's eventual nominee.

Republicans are hopeful that President Obama will choose someone with the same qualities that have always characterized a good judge: superb legal ability, personal integrity, sound temperament, and, above all, an evenhanded reading of the law.

These are the qualities Americans have always looked for in their judges. Any judge who has them can fulfill his or her judicial oath to "administer justice without respect to persons and do equal right to the poor and to the rich." And these are the qualities that we should expect of any nominee to the highest court in the land.

Over the years, there has been a growing tendency among some on the left to pick or promote judges based on policy and political preferences, and President Obama's past statements on judicial appointments strongly suggest that he shares this view.

As a candidate for President, he said that his criteria for a judicial nominee would be someone who would empathize with particular parties or particular groups. This viewpoint was evident again last week when, in describing a good nominee, the President seemed to stress empathy over and above a judge's role of applying the law without prejudice.

The problem with this philosophy is that it arises out of the misguided notion that the courts are simply an extension of the legislative branch rather

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



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than a check on it. Americans do not want judges to view any group or individual who walks into the courtroom as being more equal than any other group or individual. They expect someone who will apply the law equally to everyone, so everyone has a fair shake.

Americans expect, and should receive, equal treatment whether they are in small claims court or the Supreme Court. And any judge who pushes for an outcome based on their own personal opinion of what is fair undermines that basic trust Americans have always had and should always expect in an American court of law.

The President is free to nominate whomever he likes. But picking judges based on his or her perceived sympathy for certain groups or individuals undermines the faith Americans have in our judicial system. So throughout this nomination process, the impartiality of judges is a principle that all of us should strongly defend.

In a nation of laws, the question is not whether a judge will be on the side of one group or another. It is not "whose side," the judge is "on," as a senior Democrat on the Judiciary Committee framed the issue during another debate over a Supreme Court nominee. The issue is whether he or she will apply the law evenhandedly.

Once the President chooses his nominee, Senate Republicans will work to ensure the Senate can conduct a thorough review of their record, and a full and fair debate over his or her qualifications for the job. This is a responsibility we take seriously, and one that the American people expect us to carry out with the utmost deliberation.

RESERVATION OF LEADER TIME

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DODD. What is the pending business before the Senate?

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 896, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 896) to prevent mortgage foreclosures and enhance mortgage credit availability.

Pending:

Dodd/Shelby amendment No. 1018, in the nature of a substitute.

Corker amendment No. 1019 (to amendment No. 1018), to address safe harbor for certain servicers.

Dodd (for Grassley) amendment No. 1020 (to amendment No. 1018), to enhance the oversight authority of the Comptroller General of the United States with respect to expenditures under the Troubled Asset Relief Program.

Dodd (for Grassley) amendment No. 1021 (to amendment No. 1018), to amend Chapter 7 of title 31, United States Code, to provide the Comptroller General additional audit authorities relating to the Board of Governors of the Federal Reserve System.

Mr. DODD. Mr. President, my understanding is my friend and colleague from Tennessee has an amendment which is in order. I am prepared to defer to him. Then when he completes his remarks, I will respond.

I believe Senator MARTINEZ of Florida may be coming over as well. I understand we have an agreement to have a vote at 10:50. Is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. I yield the floor.

AMENDMENT NO. 1019

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

Mr. CORKER. Mr. President, I rise to speak on amendment No. 1019. Let me start by saying I appreciate the work Senators DODD and SHELBY have done to bring the bill to the floor. I know they are trying to solve a number of problems that exist right now as relates to homeowners in our country trying to reposition where they are with their homes.

I know there are a number of issues with HOPE for Homeowners that was passed last summer that they are trying to solve. I say to the Senator from Connecticut, I appreciate his efforts. I appreciate the efforts of Senator SHELBY.

The amendment I am offering and on which we will be voting tries to make the safe harbor arrangement that exists in this bill something that is fair to all folks involved in these loans. Most people are aware of pooling arrangements where, in essence, there are servicers who take care of the indebtedness against a homeowner. They pool these together through the securitization that has taken place in the past in order to deal with homeowners. There has been great difficulty in the past in trying to move programs along so we can modify these mortgages.

The problem with this bill, though, is that under the safe harbor arrangement that has been put in place, it does not necessarily do what is best for the homeowner and doesn't necessarily do what is best for the investors, as many Americans have these in their 401(k)s. What it does do is an excellent job of taking care of the large four banks that do the bulk of the servicing: J.P. Morgan, Wells Fargo, Citigroup, and Bank of America. This bill actually

incentivizes them. We are paying them money to do what is in their best interest.

Most of these large banks actually hold the second mortgages, not the first mortgages. The first mortgages are the ones I think most of us realize have priority. Those are the loans that allowed you to go into and actually purchase the home in the first place. Then these banks came along, in some cases unwittingly, and participated in predatory-type lending. So these banks, in essence, own most of the second mortgages, the home equity loans. They also own a huge portion of the credit card debt that many of these consumers have. We are paying them in this bill to actually deal with these mortgages in a way that is in their best interest. They have the lesser amount of security, but they also have built-in conflicts of interest where, in essence, if they can do things to cause these consumers to have the secondary debt taken care of, it is in their best interest to do that.

I think this is a huge problem. I find it incredible that we, in essence, in this body would pass a bill where we, in essence, are paying the fox to guard a chicken house that is in their best interest. That is what this bill does.

What our amendment would do is say to these servicers, these people who are taking care of these mortgages, which is servicing the first and second mortgage—again, them owning mostly the second mortgages—what it would do is say they have to look at all options, not just the ones cited in the bill.

For instance, if a homeowner would be better served by having forbearance, meaning for reduction of principal or something such as that, or maybe a short sale, something else that might be in much better stead for the homeowner and for the investor, the servicer doesn't have to do that. All the servicer has to do in this bill is look at one of two programs—the Obama administration's modification program or the HOPE for Homeowners modification program, just one, not both—and compare it to foreclosure. If it is better off going with one of these two programs, they move it into those programs, even though it may not be in the homeowner's best interest and even though it may not be in those many Americans across our country who have these first mortgages in their 401(k)s, not in their best interest. Typically, though, it is going to be in the servicers' best interest, these four large banks that are being paid money by this bill to actually pursue this servicing in a manner that is in their best interest.

I hope everyone will join me in asking these servicers to not just look at what is in their best interest but to actually first look and see what is in the best interest of those people who own the first mortgages and for those people who actually are in these homes who are trying to stay in these homes. There are provisions here that actually

make it worse for the homeowner, in that, basically, much of the debt gets pushed off into 5 years and actually defers their paying, actually makes their situation even worse than it is today. But in the short term, it might make it better, again, for these four large banks.

I am somewhat surprised the sponsors of this bill, whom I have a lot of respect for and work with on a number of issues, are not accepting this commonsense amendment, which says to these servicers, who have a contract, by the way, for those people whom they are servicing these mortgages for, to say that they have to look at everybody's best interest, not their own self-interest, prior to making changes in these mortgages. It is pretty astounding to me. I am still not sure I understand.

Let me make one other point. Last week we, as a body, both sides of the aisle in a bipartisan way, turned away something called cram-down, which gave judges around the country the ability to change the terms of a first mortgage. This body, in a bipartisan way, said we should not be letting the courts change contracts. That is something that is foreign to an American way of thinking. By the way, courts, at least judges, are appointed or elected. They are in positions of public service. What this bill does instead is, it pays servicers, many of which have contributed to this problem in a huge way, to do things that in many cases are in their own self-interest, breaking contract law, and in many cases hurting the homeowner and hurting the investors.

I hope everybody will see the commonsense nature of this amendment. I hope we can pass this amendment and cause the work that Senators DODD and SHELBY have done to improve the situation that exists, to make it even fairer to all involved.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I see our colleague from Florida has arrived. I will take a few minutes and then ask unanimous consent that he be recognized as the original author of the safe harbor provision so he has a chance to explain his point of view.

Let me begin. Again, it is not necessarily the most compelling of arguments, but I think it is worthy of note that those organizations who are opposed to the amendment of the Senator from Tennessee include the Consumer Federation of America, the National Community Law Center, the National Association of Consumer Advocates, the Housing Policy Council, the Financial Roundtable, the Center for Responsible Lending, the Mortgage Insurance Corporation, mortgage bankers, and the ABA. This is a pretty rare collection, when we get the major consumer groups that watch all this stuff very carefully, as well as some of the major lending institutions. They never come together on anything. It is a unique moment on this proposal.

Let me say to my friend from Tennessee, I don't like the situation we are in either. This is not the ideal world because his point about contracts is a valid one. There is no question. I pointed out there are contracts with second homes and vacation homes and the like as well. We had no problem with the cram-down with mortgages involved there. We have a prohibition on primary residences, but we make the exception with other properties. Frankly, had we taken the Durbin amendment, that might have minimized the importance of what we have here.

Here is the problem: 10,000 people a day are losing their homes; 20,000 a day are losing their jobs. The question is, How can we possibly get the kind of incentives so the bankers, the servicers, the lenders, and the borrowers can modify these mortgages? We now have 11 million homes in this country where the mortgage exceeds the value of the property. If we don't step up soon, those numbers will explode. We have a moratorium on foreclosures in certain areas, and that is just building up a backlog that if we don't end up with some means by which that borrower and lender can work out an arrangement that they can modify the mortgage, we will face a cascading effect which most people agree is the root cause of our financial difficulties, beginning with predatory lending and subprime lending that helped create this problem with no-documentation loans, the liar loans and the like.

What we have crafted is a rather narrow answer. They have a safe harbor provision which is very broad and, frankly, it can be narrowed. That is what Senator MARTINEZ has done with his proposal. What we are talking about are loans in the private label securities. That represents about 16 percent of what we are talking about. Yet within that 16 percent, in excess of 62 percent of those loans, are seriously delinquent loans. So while it is a relatively small number compared to the total mortgages being written, in terms of delinquent mortgages, it represents a fairly significant majority. We are narrowly dealing with those.

Then we are talking about two circumstances in which they voluntarily can move. That is with the Obama plan or the HOPE for Homeowners. We are not limiting it. If people don't want to do it, there is no requirement that they do it. We are trying to remove one of the great barriers, and that is the fear of litigation. The servicers are saying: We would like to do this. We understand the value of it. We want to get paid. Banks want to get paid. Borrowers want to stay in their homes. Everybody seems to agree on that. Here is the problem: If we end up modifying this, the investor, not an illegitimate point, says: Wait a minute, we had a contract with you, Mr. Servicer. You are going to now modify this, violating our interests as an investor. Therefore, we are going to sue you.

That is the fear. So the servicer says: I am not going near this. I respect the

fact the borrower would like to get out of this situation in an affordable mortgage. I would like to get paid something in the process. But I will not go through the kind of litigation that will occur if there is not a safe harbor. Hence, the Martinez amendment.

In these narrow circumstances involving 16 percent of this market, and of which 62 percent are the delinquent mortgages, under two fact situations, the HOPE for Homeowners and the Obama mortgage modification plan, we provide for that safe harbor, saying to that servicer, if, in fact, you move forward, we will provide you with that harbor and avoid the potential of litigation, in some cases even frivolous litigation.

Again, in a perfect world, would I like to avoid that and do what my friend from Tennessee wants? Absolutely. But there are no perfect choices, and yet there are some potential dangers. I don't like setting a precedent. We narrowly define this in time and circumstance, only involving those that already occurred, and the problem dies or is sunsetted in December of 2012. So this is not a perpetual program. It is limited to the fact situation, limited to opportunities in order to try and provide some relief primarily to the consumer, to the person holding that mortgage or the person having that mortgage who runs the risk of losing their home.

We have tried, for a year and a half, all sorts of different ways. My friend from Tennessee and the former Secretary of Housing and Urban Development, Senator MARTINEZ, who knows something about these issues, will recall we tried, in the spring of 2007, to get these people together to try and work out things. They promised they would try. They never did. Then we drafted legislation, far from perfect because we are back today talking about it, called HOPE for Homeowners. We tried all sorts of means by which we could slow down the foreclosure problem.

Regretfully, we have not been as successful as we would like. There is no guarantee this will work as well as we would like either. I say that as a co-author of this bill overall, and I appreciate my colleague's fine comments about the effort. But it is an attempt to try and provide some space, in these very delinquent mortgages, to provide an opportunity for a modification so people can stay in their homes, borrowers can keep their homes, lenders get something back, rather than going to foreclosure in which the implications for everyone are devastating.

Again, the investor does not have an illegitimate complaint, but in the context of balancing these interests, where, again, no one is going to come out of this perfect, in a way I think it is in our interest to try and do what we can to keep people in their homes and have the lenders be able to get something back. Hence, that is why you see this very unique coming together of

various interest groups, from the consumer advocates to the major lending associations, saying on this point, they think this is the right—at least worthy of our attempt to get this right.

Again, I respectfully say to my colleague from Tennessee, I appreciate his points. He and I talked about this. But I honestly believe in this case this would be a mistake to accept this amendment and to run the risk of losing the opportunity to get that safe harbor opportunity.

With that, I yield to my colleague from Florida.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Mr. President, if the Senator from Florida would allow me to speak for 1 minute.

Mr. DODD. Yes.

Mr. CORKER. Mr. President, I wish to make it clear because I think the Senator from Connecticut, in doing a good job in talking about his position, made it seem as if we are against loan modifications. Look, there were 134,000 loan modifications last month. I am all for loan modifications.

But what this bill does now is it gives those four largest banks, and many others, the ability—we are paying them, we are giving them the ability to do things that are in their self-interest and not in the homeowners' self-interest—let me say that one more time: not in the homeowners' self-interest—and be totally obligation free, with no legal recourse whatsoever against them.

What this amendment does is say we are giving them safe harbor, but they have to look at a variety of ways to make sure the homeowner and the investor both are being treated fairly. This bill is very narrow. It allows them to wash their hands and do things that are in their best interest alone, and we are paying them to do that with no legal recourse. To me, that is far, far, far more than we should be doing in legislation such as this.

I thank the Senator.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, a quick response.

The homeowner gets to keep their home, hopefully, at a rate they can afford to pay. That is not insignificant, I say with all due respect. The idea there is nothing in here that benefits homeowners—and I am not interested in helping out the four big banks at all. I am interested in making it possible for this to avoid litigation. That is what the concern is; that if we are going to do this, we run the risk because it violates a contract potentially, and if you do that, you are subject to a lawsuit; hence, nothing happens.

That is the fear: nothing happens. If the servicers do not act, then you end up with the borrower losing their home, the lender ends up getting nothing out of it at all; and, hence, the reason why this safe harbor is designed to get us to the point where both the bor-

rower and the lender—again, we are not interested in anyone coming out of this situation with some enrichment, but the idea of slowing down this cascading problem of foreclosures, I think is in everyone's interest, as my colleague has pointed out.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Thank you, Mr. President.

Let me make one more point. I will be brief.

Mr. MARTINEZ. Point of order, Mr. President.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. MARTINEZ. Mr. President, if I could inquire of the Chair—

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Tennessee has the floor.

Does the Senator from Tennessee yield to the Senator from Florida?

Mr. CORKER. Certainly. Yes.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I would like to be heard and have an opportunity to join in the discussion regarding this very important issue. I appreciate the fact that the Senator from Tennessee has spoken, rebutted, and wants to speak again. I appreciate that. But I would like to have an opportunity to express my point of view at some point. If the Chair could keep that in mind, I would like to do that at some appropriate point.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Mr. President, unless I am rebutted, this will be my final point.

I would like to make a point that from the standpoint of the homeowner, in many cases, they would be much better off if they were given the opportunity to refinance, given the opportunity to refinance at a lower rate and a longer amortization with organizations that provide that opportunity today.

The servicer has no obligation to even look at a refinancing such as that, for which in many cases the homeowner and the investor would be better off. That is not a part of this bill. I find that to be a major flaw.

I yield my time, Mr. President.

I thank the Senator from Florida for being so patient.

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

Mr. MARTINEZ. Mr. President, I did not want the opportunity to pass to be heard on this issue, and I would be pleased to have the Senator from Tennessee make a rebuttal after I make my comments. But at some point I did wish to have an opportunity to express my point of view on this issue.

Here is the situation we are in. As the chairman of the Banking Com-

mittee has said, this is not a perfect world. We are in a heck of a mess. The people in Florida, by the thousands, are having their homes foreclosed. Unemployment is almost 10 percent because about 25 percent of Florida's economy is dependent on building homes and on the construction industry, which is completely stopped, for the most part.

We are in a situation now where if I hold a forum in a city such as Fort Myers, 450 people show up desperate for a solution to their problem to stay in their home. We have some banks there, and we have some people from HUD, from HOPE for Homeowners—all these people coming together—to try to work things out, and many times it happens. It is not nearly keeping up with the rate of foreclosures going on across the country, but some are getting worked out.

How many more would be worked out if we had a safe harbor provision—balanced—that keeps the investor community from being able to bring legal action against the servicers? I think we would have thousands more. Would the country be better off? Absolutely. Would the homeowner be better off? Absolutely. Would everyone involved in the business of housing and housing finance be better off? I submit to you it would be so.

One of the reasons many of these loan modification programs we have had—and they began in the Bush administration; they have continued now in the Obama administration but they have not worked because of the safe harbor need, because of the legal ramifications once a servicer perceives the threat of litigation. The safe harbor provisions of this legislation remove that perceived risk.

This bill, which includes a safe harbor that is lots narrower than the one in the House version of this bill, makes it clear that so long as a mortgage servicer concludes that, from the perspective of the investors, an approved loan modification is better than foreclosure; that is, modification will yield greater value than foreclosure—in other words, the investor is protected to a degree—then the servicer cannot be held liable for choosing to modify the loan and not foreclose.

This legislation strengthens the current Federal loan modification guidelines to assure that only deserving homeowners benefit from a modification. Individuals with a net worth of more than \$1 million cannot qualify for a modification. Individuals who have been convicted of fraud would also be barred. Any participant must certify that he or she has not intentionally defaulted on any other debt before a modification is going to be permitted.

Unlike the safe harbor provision in the House bill, this bill's safe harbor would still permit investors to hold a servicer liable if the servicer acts unreasonably or improperly fails to maximize investor value through instigating a foreclosure. In other words,

there will still be a foreclosure if, in fact, it is in the best interest of the investor.

The safe harbor provisions in this bill would help to strike the proper balance between the future health of residential mortgage credit in this country and the rights of investors.

I think what we need to understand a little better is that the intent of the Corker amendment—while it is good; and I hate to disagree with the Senator from Tennessee, whom I so often find myself in full agreement with, but in this instance, I must because he requires that all potential alternatives to foreclosure be evaluated and to select the one that is best for the investor, regardless of whether that is in the best interest of the homeowner, before the safe harbor litigation protections are triggered. So before the safe harbor litigation protections are triggered, all other options would have to be reviewed and considered. Basically, there is no safe harbor at all. I do not think, if the Corker amendment was adopted, we would see a lesser number of foreclosures.

There are two problems with this amendment.

The language of the amendment appears to fail to achieve its stated intent. The current language appears to require that a servicer evaluate all possible alternatives to foreclosure but only provides a safe harbor if the servicer chooses a government-sponsored loan modification.

The second problem is it fails to strike the proper balance among the interests of the servicers, the investors, and the homeowners. We tried to strike a balance among all these competing interests in what we acknowledge is an imperfect world.

The current language of the bill is better because it forces servicers to make a reasonable determination about whether an investor would be better off with a loan modification or foreclosure. It allows the current loan modification efforts—that allow homeowners to remain in their homes—an opportunity to actually work.

This allows investors to benefit from a modification, where it is appropriate, while decreasing the number of foreclosures and increasing the number of families who can remain in their homes.

Some have alleged constitutional concerns about this legislation, and I have to tell you, in these kinds of moments, I think we do not want to violate our Constitution, but it is necessary sometimes we step outside a comfort zone, and it is undisputed Congress has the power to regulate the residential mortgage industry. We believe we are on safe legal grounds in that and that this does not constitute a taking or even come close to that.

I believe the well-intended Corker amendment would not improve the current situation as it relates to the number of workouts that are taking place, and foreclosure would still be the rule

of the day. I believe the language in the bill is superior. It strikes a better balance. It is not as broad as the House language, it is not as restrictive as the Corker language, but it hits it just about right.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Tennessee.

Mr. CORKER. Mr. President, I thank my colleague from Florida, who has served our country well both as a Senator but also as Secretary of HUD and has tremendous amounts of experience in this area. We disagree on this issue.

My amendment does not just seek to do what is best for the investor. It seeks to do what is best for the homeowner and asks the servicer to not just compare one alternative to foreclosure but an array of alternatives to foreclosure.

I have to tell you, I know of people in financial distress, as most of us do. I think I would like for these major banks that basically are servicing credit card debt and home equity loans, I would like for them to have to look after the interests of the homeowner and the investor in every way they can prior to moving to foreclosure. That is what this amendment does.

It is a commonsense amendment. I think we have moved ourselves into a situation now that is potentially worse, as I said before, than what we did the other day, which was that the other day we rejected giving judges the ability to unilaterally change contracts. Now we are going to be paying, in large portions, the four largest banks in the country, we are going to be paying them our money, taxpayer money to do things that in many cases are in their best interest and not in the homeowner's best interest and the investor's best interest. I find that problematic.

In years to come, if this legislation passes without this amendment, we are going to look back and realize we did some things that may have sounded great in the middle of a crisis but we did some things that 4 or 5 years from now we are going to wake up and realize have done great harm to the very homeowners this bill seeks to help.

Mr. President, I thank you for the time.

I thank the Senator from Florida and the Senator from Connecticut for the thoughtful conversations they have put forth. I think this legislation is flawed. I know there are some other components of this bill that are very good. As a matter of fact, I have authored, with the major proponent, the Senator from Connecticut, large portions of this bill. But this safe harbor agreement has many problems. I think it is a shame, if this amendment is not adopted, we are going to end up with a piece of legislation that does a lot of good but also does a lot of harm and sets precedents in this country we are going to live to regret.

Mr. President, I yield my time.

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

Mr. DODD. Mr. President, I will take a minute. Let me just say again that I have great respect for my colleague from Tennessee. He and I work closely together on a lot of issues. He is invaluable as a colleague, as is Senator MARTINEZ, former Secretary of Housing, who understands a lot of these issues well, not just from a senatorial perspective but from his previous job as Secretary of Housing and Urban Development in Washington.

Again, this is a program that is limited in time, limited in scope.

As both the Senator from Florida and I have said, this is far from a perfect world in terms of how we have to balance the various interests in all of this. I am not unmindful of the fact that we are in uncharted waters. We all recognize as well that we are in uncharted waters in a larger sense. We are in a time that none of us in this Chamber—with the exception of my colleague from West Virginia and a couple others—can recall. Our parents and grandparents talked to us about times like these almost a century ago.

While we are taking action here—and I hear my colleague from Tennessee, who made a legitimate point that we establish precedent here, and I understand that. People will look back, as we have looked back, to previous decades to seek ideas that might help us get back on track again and restore that optimism and confidence in our country. So we are moving into an area that is new, but as the Senator from Florida pointed out, we are in a time that is new as well.

We have tried, as we know, in numerous ways over the last many months to figure out ways to get at the root of this foreclosure problem. Every idea you can come up with has its shortcomings. We have yet to find the perfect one that everybody agrees on. If somebody has it, please let us know because we are looking for it to get us to the point where we can put the brakes on foreclosures, not because you impose a moratorium but because people can afford their mortgages, lenders are being paid, the economy is moving, credit is flowing, businesses are growing, and joblessness is no longer increasing but declining—all of the things we want to see.

This proposal we have advocated here, the safe harbor, in a narrowly crafted way, limited in time, scope, and circumstance, we believe will help in that regard. Is it perfect? Far from it. Is it necessary? Absolutely. That is why I think you see the collection of organizations. I don't want to overemphasize this point, but they have come together to say this is an idea worth trying. Rarely do you get that kind of cooperation.

At least there is some indication that the other body might be willing to accept our language and take this bill, and the other provisions of the bill—

my colleague is correct—really are important and are needed immediately. We don't need to delay this further. That is not a reason to be for or against the amendment, but I just point out that the other side would agree to the Martinez idea.

I ask our colleagues to, at the appropriate time, oppose this amendment—and I say that respectfully—so that we can move on to the other amendment and see if we can reach a final vote this evening or sometime in the morning.

I yield the floor.

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

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

The ACTING PRESIDENT pro tempore. Two minutes 16 seconds.

Mr. MARTINEZ. Mr. President, I wish to conclude and follow up on something the chairman said.

The situation we are in is critical. Striking some balance that reduces foreclosures is worth the risk. The corrosive effect of foreclosures—and all of the things we have tried have nipped at the issue but have not fixed it. The corrosive effect of foreclosures continues this downward spiral of home prices, which escalates the problem the banks have. Assets were becoming toxic yesterday, and are today and tomorrow, because of the decline in home values. There is a dramatic decline in my State, and the biggest reason for that is foreclosures.

The foreclosures set a new floor on what the prices in the neighborhoods are, and that floor then begins to be what other purchasers are willing to pay. That, in effect, then reduces home equities, reduces the opportunities for folks to stay in their homes, and it is a downward spiral we have to stop. This is an effort to try to stop it.

I am delighted to hear the Senator say that the House may take our language. I think their language is very broad, frankly. What Senator CORKER has raised in his concerns would be heightened by the House language. I think our language, in its imperfection, strikes a decent balance among the interests of all parties and perhaps will increase the number of workouts and reduce the number of foreclosures. I also speak in opposition to the Corker amendment, and I would be excited to see our bill move forward with this provision and the many others that are helpful.

I yield the floor.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. DODD. Mr. President, so the pending matter is the Corker amendment?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. Mr. President, I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHN-SON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from New Hampshire (Mrs. SHAHEEN) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 31, nays 63, as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—31

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

NAYS—63

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

NOT VOTING—5

Johnson	McCain	Shaheen
Kennedy	Rockefeller	

The amendment (No. 1019) was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 1036 TO AMENDMENT NO. 1018

Mr. DODD. Madam President, I ask unanimous consent that the pending amendments be set aside so I may call up, on behalf of Senator KERRY, amendment No. 1036.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. KERRY, for himself, Mrs. GILLIBRAND, and Mr. REID, proposes an amendment numbered 1036 to amendment No. 1018.

The amendment is as follows:

(Purpose: To protect the interests of bona fide tenants in the case of any foreclosure on any dwelling or residential real property, and for other purposes)

At the end of the amendment, add the following:

TITLE V—PROTECTING TENANTS AT FORECLOSURE ACT

SEC. 501. SHORT TITLE.

This title may be cited as the “Protecting Tenants at Foreclosure Act of 2009”.

SEC. 502. EFFECT OF FORECLOSURE ON PRE-EXISTING TENANCY.

(a) IN GENERAL.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; or

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

(c) DEFINITION.—For purposes of this section, the term “federally-related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

SEC. 503. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semi-colon in subparagraph (C) the following: “and in the case of an owner who is an immediate successor in interest pursuant to foreclosure—

“(i) during the initial term of the lease vacating the property prior to sale shall not constitute other good cause; and

“(ii) in subsequent lease terms, vacating the property prior to sale may constitute good cause if the property is unmarketable while occupied, or if such owner will occupy the unit as a primary residence”; and

(2) by inserting at the end of subparagraph (F) the following: “In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential

real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.”.

SEC. 504. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.

Mr. DODD. I thank the Chair, and let me just say to my colleagues—and I see my friend, Senator SHELBY, on the floor of the Senate as well—that we are open for business, as the expression goes. We have a number of amendments—a significant number—on which I think we might be able to reach agreement. We are not quite there on those, but we can do that. There are several that require votes, and the leadership would obviously like to complete this bill this evening, if it is possible.

My good friend from Alabama has been a good partner in all of this, in working on this, and so we invite all those with amendments to come over. We can offer them, debate them, and possibly reach agreement on them as well and adopt them as part of the bill. So I would just make that point.

I see one of my colleagues on the Senate floor but who is maybe not ready yet, so I will suggest the absence of a quorum until we get someone to show up.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Idaho is recognized.

Mr. CRAPO. Madam President, I am coming to the floor to thank Chairman DODD for working with us on some important pieces of this legislation. Included in this legislation is the increased borrowing authority for both the FDIC and the NCUA, so they can immediately access the necessary resources to resolve failing banks and credit unions and provide timely protection for insured depositors. Earlier this year, Senator DODD and I joined in introducing legislation that would increase the borrowing authority of the FDIC, and since that time we have expanded that legislation to provide parallel authority for the NCUA, for credit unions, and to include an assumption in the budget resolution about the need to pass legislation to ensure adequate resources are available to the FDIC and the NCUA.

This legislation is similar to what is included in the Dodd-Shelby substitute

that was passed by the Banking Committee on a voice vote in an amendment to the credit card legislation we will be looking at later on.

I come to the floor simply to make note of how important it is that we continue to pursue this legislation and to thank Senator DODD for working so closely with me to make sure it happens. When you look at today's economic climate and the threats facing us in the financial industry, we have to provide the necessary tools to our financial institution regulators so they can protect us as best they can. One important piece—and I am glad to say one of those pieces about which there is very little controversy—is the need to make sure we strengthen the FDIC and NCUA to make sure they can undertake their statutory responsibilities in the context of failing institutions.

I would be remiss if I didn't say I wish to be sure that both the FDIC and NCUA are very careful in the exercise of these authorities, to make sure they do not do more harm than good and harm institutions that could otherwise have survived, by stepping in. But when the true need comes, they need to have the authority.

This language deals with significant reforms that need to be undertaken, and undertaken as soon as possible, so our regional banks do not face very significantly increased levies and requirements for funding the FDIC and NCUA operations.

It would permanently increase the Federal Deposit Insurance Corporation's borrowing authority from their current level of \$30 billion to \$100 billion, with additional authority, that is temporary, to allow them to get up to \$500 billion in the case of emergency circumstances.

It would permanently increase the borrowing authority of the NCUA from the current \$100 million, with authority for a temporary increase up to \$30 billion. The temporary authority for both the FDIC and the NCUA could only be used if determined necessary in the FDIC Board of Directors' written recommendation and support of two-thirds vote; the Board of Governors for the Federal Reserve system, with written recommendations and support of two-thirds vote; and the Secretary of the Treasury, in consultation with the President.

The FDIC and NCUA need to have access to sufficient resources to deal with the potential costs for seizing failing institutions we are facing in our country right now. Assets in the banking industry have increased since 1991 from \$4.5 trillion to \$13.6 trillion at the same time that no increases in this borrowing authority have been authorized. The assets in the credit union industry have also significantly increased since their borrowing authority levels were established.

It is important to note that this borrowing authority is not coming from taxpayer dollars. The levies and the assessments that are made on the par-

ticipants in the financial industry themselves, the depository institutions, are the source of the dollars that would cover this loan authority. I think most people understand, but what happens in the case of a failing institution is the FDIC steps in immediately and protects all depositors so the depositors can have that assurance of the Federal guarantee of their deposits in these depository-protected institutions. Then the FDIC basically works out the resolution of the remaining assets of the failed institution and the banking institution itself. Other depositors, through their assessments, pay for the cost of the operation of this program. We are simply increasing the borrowing authority to make sure the FDIC and the NCUA have the resources necessary to deal with these very difficult and challenging times.

In addition, the borrowing authority would allow the FDIC and the NCUA to lower their recent special assessments that went out to the banking and credit industry. In other words, this would allow us to kind of smooth out that process by which the depository institutions themselves fund this process and not create huge liquidity and financial pressures on the banks that are not facing the potential of any kind of FDIC intervention but which are being looked to to bear the cost of these problems as we move forward.

The language ensures that the FDIC and the NCUA have the resources necessary to address future contingencies and to fulfill the Government's commitment to protect America's depositories.

As I said at the outset, I wish to be sure the NCUA and the FDIC are very careful in the utilization of the authorities we have given them. There are some concerns already being raised about the fact that perhaps the stress test and some of the other analysis that is being put into place and the evaluation of the solvency of our banks need to be fine-tuned so we do not unnecessarily utilize these authorities where a better resolution, better activities can be pursued. But when it does become necessary, we need to be sure our depositors are protected. Once again, I thank Senator DODD for his strong support and work on this issue.

There is another issue I have been working on with Senator DODD. I wish to make it clear that the frustration I am going to share right now is not directed at him because he has been working very hard to address this same issue and trying to resolve it. But I do believe it needs to be said that there is another piece of the issue we must resolve.

Earlier, on previous legislation, language was included dealing with depository institutions that gave the FTC much broader jurisdiction than it should have had with regard to depository institutions. The language was intended to give broader jurisdiction and clarification of jurisdiction to the FTC's regulation of other, nondepository institutions, but the way the

wording in the bill was written it included depository institutions—wrongly.

We identified that issue at the time. We stood on this floor, a number of us Senators stood on this floor and pointed out that was not intended by the bill and that we would correct it. In fact, we said we would correct it at the first available opportunity. Now we are seeing opportunities arrive, and we cannot reach a conclusion with regard to the necessary correction of the legislation that gives unnecessary and confusing dual jurisdiction to the FTC now over depository institutions, which was not intended by this Congress and which will not be helpful, in terms of creating a duplicate regulatory system with which our regulatory institutions must deal.

Again, I stand and call for us to do what we agreed to do, which is to fix the FTC issue and make sure we carefully clarify the jurisdiction of the appropriate committees and the jurisdiction of the appropriate regulators over depository institutions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Madam President, before my colleague leaves the floor, I thank him as well. He has been a senior Member of the Banking Committee and has been an invaluable asset and partner on these issues. He understands regulatory reform as well as anyone and has dedicated a good part of his service on the committee to that issue. It was a pleasure to work with him on the issues he has mentioned in this bill, dealing with the FDIC and the National Credit Union Association. We are providing these resources. We think we have built in some pretty good safeguards so these guidelines will not be exceeded, but the best safeguards are for the institutions themselves to be cautious and prudent in utilization of these resources as well.

I underscore and endorse his comments on that point and I thank him immensely for his work on the bill, making it possible for us to arrive where we are this morning.

Lastly, I join him as well in his concerns about the Federal Trade Commission issue that I thought we successfully resolved in the colloquies we had here. Unfortunately, that was not, apparently, the case. We are still working at this. I want you to know Senator CRAPO's office is directly involved with ours and others we are negotiating with and will obviously pursue this matter. I am hopeful we can resolve it amicably but, if not, there will be a moment in the not-too-distant future we will have to vote. I would like to work things out to everyone's satisfaction without that, but if that is the case, we will have to do that. I join with him. I think the jurisdiction is clear on that matter, and I think most agree with us, but, obviously, from time to time, you need to bring these matters to a head and actually have a

decision by the body. Again, I hope we can avoid that, but if not, I join him in that effort to provide that legislative effort. I thank him very much, and hopefully we will, this evening, complete work on this bill and send it off.

I am hopeful about the other body which, I am told, has looked on our efforts here with approving eyes, so we may be able to get it signed into law pretty quickly.

Mr. CRAPO. I thank the Chairman. I look forward to working with him.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1030 TO AMENDMENT NO. 1018

Mr. THUNE. Madam President, I ask unanimous consent to call up and make pending amendment No. 1030.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 1030 to amendment No. 1018.

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

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

The amendment is as follows:

(Purpose: To require the Secretary of the Treasury to use any amounts repaid by a financial institution that is a recipient of assistance under the Troubled Asset Relief Program to reduce the reauthorization level under the TARP)

At the end of the amendment, add the following:

TITLE V—TARP REDUCTION PRIORITY ACT

SEC. 501. SHORT TITLE.

This title may be cited as the "TARP Reduction Priority Act".

SEC. 502. FINDINGS.

Congress finds the following:

(1) On October 7, 2008, Congress established the Troubled Asset Relief Program (TARP) as part of the Emergency Economic Stabilization Act (Public 110-343; 122 Stat. 3765) and allocated \$700,000,000,000 for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

(2) The Department of Treasury, without consultation with Congress, changed the purpose of TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program (CPP) rather than purchasing toxic assets.

(3) Lending by financial institutions was not noticeably increased with the implementation of the CPP and the expenditure of \$218,000,000,000 of TARP funds, despite the goal of the program.

(4) The recipients of amounts under the CPP are now faced with additional restrictions related to accepting those funds.

(5) A number of community banks and large financial institutions have expressed

their desire to return their CPP funds to the Department of Treasury and the Department has begun the process of accepting receipt of such funds.

(6) The Department of the Treasury should not reuse returned funds for additional lending for financial assistance.

(7) The United States Constitution provided Congress with the power of the purse hence any future spending of TARP funds, or other financial assistance, should be determined by Congress.

SEC. 503. TARP AUTHORIZATION REDUCTION.

Section 115(a)(3) the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) is amended by inserting "minus any amounts received by the Secretary for repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any program enacted by the Secretary under the authorities granted to the Secretary under this Act," before "outstanding at any one time."

Mr. THUNE. Madam President, the amendment I offer today essentially follows along with the bill I introduced earlier called the TARP Reduction Priority Act. Essentially, this amendment reduces TARP authority by any amount of principal returned by a financial institution to the Treasury.

Again, by way of background, I spoke to this amendment a little bit last week. On October 7, 2008, as we all know, Congress passed the Troubled Asset Relief Program, or TARP, as part of the Emergency Economic Stabilization Act, authorizing \$700 billion for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

The Department of the Treasury, without consultation with Congress, changed the purpose of TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program rather than purchasing toxic assets.

Financial lending was not increased with implementation of the CPP, and \$218 billion, I believe, has been allocated thus far, despite the goal of the program. These institutions receiving funding through the CPP are now faced with additional restrictions related to accepting those funds.

A number of community banks and financial institutions have expressed their desire to return the CPP funds to the Department of the Treasury, and Treasury has begun the process of accepting receipt of these funds. However, because of the financial stress test that Treasury is currently conducting, it is possible Treasury will restrict banks from returning funds they received from the Capital Purchase Program.

In his testimony before the TARP Congressional Oversight Panel on April 21, 2009, Secretary Geithner stated that Treasury estimates \$134.6 billion of TARP funds are still available. In that figure, he includes \$25 billion which Treasury expects to receive back from banks under the CPP.

Geithner also stated that he believed the \$25 billion is a conservative number and that private analysts predict more

will eventually be returned. Section 120 of the Emergency Economic Stabilization Act terminates the authority for TARP funds on December 31, 2009, and the Secretary can request an extension to the deadline not later than 2 years after enactment, which was October of last year, 2008. So keep in mind this restriction applies only to Treasury's issuance of new loans and does not cover the reuse of previously issued assistance that was returned to the Treasury.

So, essentially, my argument for why this piece of legislation, this amendment, is important is, until the December 31, 2009, expiration date or possibly longer, as I said earlier, if the Secretary is granted an extension, without this legislation Treasury can continue to use TARP funds, including those repaid, in any manner they see fit.

This is certainly not what Members of Congress envisioned when this legislation passed last year. These are taxpayer dollars. They should not become a discretionary slush fund for Treasury. Under the Constitution, Congress controls the power of the purse, and there are major concerns regarding the Treasury's handling of TARP funding. If the Treasury Department believes it needs additional funding to address problems in the financial sector, they should come to Congress to get that authority.

The inspector general, Neil Barofsky, stated in his quarterly report to Congress that 12 separate programs are being funded under TARP involving up to \$3 trillion of Government and public funds. Amazingly, this is the equivalent to the size of the entire Federal budget, certainly not what Congress was told the funding would be used for.

Mr. Barofsky also mentioned on April 4, 2009, the CBO report which estimated that TARP will cost the Government \$356 billion, meaning the Treasury will only be able to recover about \$344 billion, or approximately 49 percent of the \$700 billion that was originally authorized. When this program, as I said earlier, was initially pitched to Congress, Secretary Paulson argued that the Government could end up making money once the toxic assets were sold, after the economy recovered.

Clearly, based on what the inspector general is saying, that does not appear to be the case.

Because if the numbers CBO is using are correct, they are estimating that TARP will cost the Government \$356 billion, and therefore only about \$344 billion or 49 percent of it will actually be recoverable of the original \$700 billion.

Barofsky's report spans 247 pages. It says that:

The very character of the program makes it inherently vulnerable to fraud, waste, and abuse, including significant issues related to conflicts of interest facing fund managers, collusion between participants, and vulnerabilities to money laundering.

It would seem irresponsible to continue recycling money in the TARP if

the very nature of the program makes it susceptible to fraud. In fact, the special investigator's office already has 20 criminal investigations underway.

What amendment No. 1030 does is amend the underlying bill to say that TARP funds that are repaid by financial institutions, if they choose to do it—and that is going to be in consultation with Treasury—if the funds come back in—and according to Secretary Geithner, about \$25 billion of the amount they say is available under TARP, still available to lend, consists of moneys being paid back by financial institutions—that when those moneys come back in, they should reduce the amount, the principal amount of TARP available to be used.

Again, I offered a similar amendment to the fraud recovery bill a couple weeks ago. In that case, I offered it with the intention of having any funds paid back under TARP by financial institutions to be dedicated to paying down the public debt—in other words, to debt reduction. Under that arrangement, it was considered not to be germane. So when cloture was filed, it fell postcloture. It was not, therefore, able to be voted on. We worked with folks who are involved in trying to make sure this is germane, that it fits within the parameters of the bill under consideration. It addresses it in a slightly different way; that is to say, whatever TARP funds are repaid, it reduces the amount of TARP authority available to be used.

I hope my colleagues will support this amendment. It is a responsible thing to do. These are taxpayer dollars. Many of us, when we supported this last fall, had an understanding about how the funds would be used. They were used differently. It would appear at this point that much of the moneys put out under the program, which at the time we were told would be paid back, that will not be the case. As much as half or more of this is probably going to be lost.

It seems to me the dollars that are paid back should not be recycled or reused. They ought to reduce the amount of TARP lending authority that is available.

It is a fairly straightforward amendment. I urge colleagues to support it. At the appropriate time, I will ask for the yeas and nays.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my colleague from South Dakota. I appreciate his cooperation in getting the amendment up and having a chance to debate it. It is my understanding, even though the debate may not last long on this, there will be a vote probably sometime around 2:15. That is the plan right now. So while we may not exhaust a lot of time when we come back at 2:15, I ask unanimous consent that there be 2 minutes equally divided between the Senator from South Dakota and myself for the ben-

efit of our colleagues before a vote, to explain the amendment once again before we actually have a vote. I ask unanimous consent for that.

Madam President, I withhold that request.

Let me address the substance of the amendment. What all of us want, without exception, is to have this TARP money come back. This is taxpayer money that went out last fall to shore up the financial system, to make it possible for the financial system to get stabilized and provide resources to either purchase toxic assets or legacy assets, as well as to make capital investments in order to provide stability to institutions that were at risk of becoming completely insolvent or going out of business entirely. History will ultimately judge whether that decision was the right one or the wrong one. I happen to believe it was right. Most people concluded that it was, that had we not taken that step, as difficult as it was, with the warnings of the Federal Reserve Board and others that the financial system, in fact, globally, could melt down if we did not act quickly—it was awfully difficult in that environment to know exactly what was best. But given the time constraints and the importance of the issue, this body acted. I think we did so appropriately and properly.

The good news is that it is showing some glimmer of hope. I don't want to overstate the case, but there are some indications that this is beginning to work. Not that it will resolve itself overnight, but certainly it is beginning to show the possibility of getting credit once again moving.

The Senator from South Dakota offers an amendment that has a certain attractiveness, the idea that TARP money now coming back, as much as maybe \$25 billion, maybe more—certainly, we hope a lot more ultimately will come back into the coffers of the Government—what do we do with that TARP money at this juncture? If we adopt the amendment of the Senator from South Dakota, it would take those resources off the table. We couldn't use them. What does that mean? It would mean that just at a time when the so-called stress tests are being conducted—and none of us knows and won't know until this Thursday how many of these 19 institutions will actually need additional capital. We hope none do, but I suspect some will. If that is the case, where does it come from?

I know this much about our colleagues: Whether you serve on one side or the other, none of us would rather go back and have to vote again on yet another tranche of TARP money. Wouldn't it be wiser, since the previously passed legislation allows for any money that comes back into the Government from these institutions repaying the TARP money, to recycle that money rather than coming back again and asking for additional money, which we may very well be asked to do very quickly?

My concern with the amendment is, just at the very hour that we may need some additional resources to either further capitalize or purchase toxic assets, in either case to allow our economic recovery to move forward, we would be removing those resources altogether, once again forcing this institution to allocate additional resources. The more prudent step to take would be to utilize these resources coming back at this critical moment in order to get this program working.

Why is that important? It isn't just about the financial institutions. In fact, if it were only about that, I suspect I know where 99 or 100 of us would be on that issue. The question isn't so much what happens to these major institutions in and of themselves; it is what happens to the people who depend upon them, those small businesses, midsize businesses that need credit lines in order to buy inventory, to pay employees. What happens to people who are seeking a mortgage, buying an automobile, dealing with student loans, dealing with credit card debt? All of these issues are affected by what happens in the financial system as a whole. These are not separate entities disconnected to the overall well-being of the economy. If you could divorce them from the well-being of the economy, most would say amen and do so. But to suggest so is to not understand how the financial system has to operate.

At the very moment that we as a nation need to keep this ball moving in a direction that allows for the financial system to shed the toxic, clogging assets that are freezing up the circulatory system financially, we would be stepping back and forcing an institution to vote for additional resources. My political barometer tells me there are not the votes. I think most of my colleagues know that. At this juncture, we need to see a lot more about how this program is working before this institution is likely to vote again for an additional allocation of taxpayer money for the program. It may come to a point where the President will ask us for that. But I don't think we want to jump to that option, particularly if we have resources coming off the TARP program that could be recycled for the next 11 months or so and that we can properly use at a moment that it is needed.

That is the reason I will ask my colleagues to respectfully reject this amendment. At this very hour, the last thing we need to be doing is deny the Treasury Department and others the resource capacity to respond to a situation.

It is in one sense, on one level, about the financial institutions. But in a far more profound and important way, it is about the people who depend upon these institutions for their economic livelihood, their economic well-being, their economic survival. That is not an exaggeration. Most businesses need credit in order to operate. If you stran-

gle credit and it does not move, then the people whom we care most about—the small businesses on Main Street, that home purchaser, that other person out there struggling at this hour, when you are losing 20,000 jobs a day, 10,000 homes every day through foreclosure, not to mention retirement accounts and other problems—at the very hour that things seem to be just limping ever so slightly in the right direction, to deny these moneys to reinvest in the program and make it work and depend upon the outcome of a vote here to provide additional resources would be the wrong step in the wrong direction. The very people we want to see get back on their feet again would be the victims.

We have a tendency to focus on whether these institutions are deserving of help. My colleagues may be divided on that point. I don't think we are divided on whether we want to see the people who need the institutions get help. There, I think we all agree. So at the very hour we agree about helping them, we deny them the ability to get the help they need by depriving these resources to be reinvested in the acquisition of the very assets that are making it difficult for credit to move. That is the reason I am asking my colleagues to reject the amendment when the vote occurs at 2:15.

Again, we will know on Thursday how many of these lending institutions are so-called "passing the stress test." My hope is that a majority of them are and that there would be very few, if any, that need more capital. I suspect there will be some that do. Which is the better choice at that moment—to take some of this TARP money that has come back and put that to use or take that off the table and have to come back up here and seek a majority vote or a 60-vote margin? What is the likelihood of that occurring? If it is not likely to occur and we stall out in this recovery, all of us would regret that.

So I appreciate very much the spirit with which Senator THUNE offers the amendment. We all agree we would like this money back. We would like it back with interest. We would like to strengthen our economy, restore that confidence and optimism that is critical for the success of the Nation. But we also recognize, as do most Americans, that we have a time to go before this is going to result in the recovery we would all like to see. This decision, at this juncture, could stall or set that effort back, not just days and weeks but months. None of us wants to be a party to that.

With those thoughts, at the appropriate time I will ask my colleagues to vote against the Thune amendment and move on to the remaining amendments which we hope we can clean up this afternoon and finish voting on this very important bill. This is a bill that is very important to our community bankers, to our folks out there trying to resolve how they can stay in their homes. It is very important to the Federal Deposit Insurance Corporation,

the insurance fund, as well as to the national credit unions across the country. There are a lot of entities that do need this kind of help. It is a major step in getting our economy moving in the right direction. This amendment would set that effort back and jeopardize this legislation from being adopted quickly at a time when we need it. With respect to the author of the amendment, knowing his intentions and his motivations are certainly understandable, I think it is the wrong choice at this hour.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. GILLIBRAND. Mr. President, I commend the debate and the Presiding Officer's amendment and Senator KERRY for his amendment on addressing these issues of foreclosure. They are so significant in New York, and we need action from Congress and the leadership of President Obama on this issue.

This year, Congress and the administration have taken a number of actions to help our homeowners weather this housing crisis. We have worked to expand foreclosure counseling services, provide homeowners with incentives to write down their debts, and to give local governments and States the tools they need to tackle this housing crisis.

These efforts will help thousands of homeowners in my home State of New York avoid losing their home. Homeowners are also not the only folks affected by this housing crisis. Across the country, thousands of tenants who rent their homes have also been affected.

I remember talking to one friend up in Warren County, and he said to me: Can you please look out for the renters? We suffer in these times as well. And that is exactly right.

More than 30,000 renters across New York who are dutifully paying their rent on time every month may face eviction because they live in a building that is about to be foreclosed. It is estimated that as much as 50 percent of foreclosures have renters involved in those properties.

These tenants have almost no rights when a bank seizes their home. Families without the means to find temporary housing or to move into another unit can literally get kicked out on the street because the landlord has failed to meet his payments or his or her obligations.

For any family this is a horrible tragedy and something that is very difficult to manage. For a low-income family with limited resources and without another place to stay, it is catastrophic. Families without the means

to find a temporary housing arrangement or to move into another unit can be kicked onto the streets just because their landlord failed to pay on time.

This is wrong, and I am proud to partner with the Presiding Officer and Senator KERRY to pass new protections for those families. This amendment would allow any tenants in a foreclosed building the right to live out their lease, providing them with the same protections any other renter would have. For a family without a lease, the amendment would guarantee a minimum of 90 days' notice so that renters have the time and the resources to find a new home.

As the housing crisis becomes more and more widespread, we need to make sure we are not just helping homeowners stay in their homes but also helping the thousands of tenants who are hit just as hard or even worse as a result of this crisis.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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. Madam President, I ask unanimous consent that at 2:15 p.m. there be 2 minutes of debate equally divided between Senators THUNE and DODD or their designees; that upon the use or yielding back of time, the Senate proceed to a vote in relation to Thune amendment No. 1030 and that there be no amendments in order to the Thune amendment prior to the vote.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECESS

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

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Acting President pro tempore.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009—Continued

AMENDMENT NO. 1030

The ACTING PRESIDENT pro tempore. Under the previous order, there is

now 2 minutes of debate equally divided on amendment No. 1030 offered by the Senator from South Dakota, Mr. THUNE.

Who yields the time? The Senator from South Dakota.

Mr. THUNE. Mr. President, very briefly, to summarize, what my amendment does is reduce TARP authority by any amount of principal returned by a financial institution to the Treasury Department. This amendment, as I said before, is necessary because until the December 31, 2009, expiration date, and possibly longer if the Secretary is granted an extension without this legislation, Treasury can continue to use TARP funds, including those repaid, in any manner they see fit.

These are taxpayers' dollars. They should not become a discretionary slush fund. These are dollars that, when they are repaid to the Treasury by the financial institutions, ought to be used to reduce the amount of TARP funding authority that is available.

As of May 1, the new administration has accumulated \$580 billion of new debt. That is about \$5.5 billion new debt per day. I understand we should not be tying Treasury's hands when we are still in the midst of a financial crisis, but Congress has the responsibility to decide how the tax money is spent, not the administration. If more money is needed in the financial sector, then Treasury needs to present a plan to the Congress and let those of us elected by the taxpayers decide whether additional tax dollars should be placed at risk or spent.

That is what the amendment would do. I urge my colleagues to adopt it.

I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to take 1 minute. Let me say to my colleagues, all of us would like to see the TARP money come back and we recapture all of it. The danger in all this right now, with the stress test coming out on Thursday, is to be utilizing the TARP money rather than having to appropriate more money, it seems to me, to utilize TARP money to buy toxic assets and make the capital investments is what we want to do. The last thing we want to do is come back here and vote for additional money. Here is a moment when it is critically important that we take advantage of the resources to continue the program, so that we buy the assets, invest the capital necessary to get us out of this mess. At the very moment we want to be doing that, we will be back here voting. I do not need to tell my colleagues, if we need new TARP money, how difficult that would be. To avoid going down that road, utilizing the money that has come back from these interests that have gotten their money makes a lot more sense to me, I re-

spectfully say to my friend from South Dakota.

This amendment could not come at a worse time. We are going to need the capital for institutions that need help. They need help. I am not interested in them. I am interested in their ability to provide credit to homeowners, small businesses, and student loans. The credit system is frozen. We need to unfreeze it. If you deny the ability to invest these TARP dollars into buying assets and providing capital, it seems to me you slow down or set back that process considerably.

For those reasons, I urge my colleagues to vote against the amendment. I thank my colleague for the intention behind it.

Have the yeas and nays been ordered?

The ACTING PRESIDENT pro tempore. The yeas and nays have been ordered.

The question is on agreeing to amendment No. 1030. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 48, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—47

Alexander	Dorgan	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Feingold	Nelson (NE)
Brownback	Feinstein	Pryor
Bunning	Graham	Risch
Burr	Grassley	Roberts
Cantwell	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Inhofe	Tester
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	Lincoln	Wicker
DeMint	Martinez	

NAYS—48

Akaka	Hagan	Mikulski
Bayh	Harkin	Murray
Begich	Inouye	Nelson (FL)
Bennet	Kaufman	Reed
Bingaman	Kerry	Reid
Boxer	Klobuchar	Sanders
Brown	Kohl	Schumer
Burris	Landrieu	Shaheen
Byrd	Lautenberg	Specter
Cardin	Leahy	Stabenow
Carper	Levin	Udall (CO)
Casey	Lieberman	Udall (NM)
Conrad	Lugar	Warner
Dodd	McCaskill	Webb
Durbin	Menendez	Whitehouse
Gillibrand	Merkley	Wyden

NOT VOTING—4

Baucus	Kennedy
Johnson	Rockefeller

The amendment (No. 1030) was rejected.

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

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, we are waiting for someone to come with an amendment. In the meantime, 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. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BOND. I ask to be permitted to speak as in morning business for up to 6 minutes.

Mrs. BOXER. Reserving the right to object, and I will not object, if the Senator could amend that to say Senator BOXER will be called on to talk about a couple of amendments following his remarks, I would really appreciate it.

Mr. BOND. Mr. President, it will be an honor to ask that Senator BOXER, the chair of the EPW Committee on which I am proud to serve, be recognized after my remarks are completed.

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

Mrs. BOXER. I thank the Senator.

GUANTANAMO BAY

Mr. BOND. Mr. President, keeping the American people safe is the Government's highest priority. Keeping our Nation safe should not be a political issue; it is an American one. That is why I was disappointed when the White House made an early national security decision based on politics and not what is in the best interests of keeping Americans safe. I am talking about the President's plan to close the terrorist detention center at Guantanamo Bay without a backup plan.

I have been sounding the alarm over this rash decision since the President announced it in January. But it is not just my side of the aisle, the Republicans, who are questioning the President's decision to close Guantanamo with no plan on how to handle the detainees, the terrorists housed there. Yesterday, Democratic House Appropriations Committee chairman DAVID OBAYE said, "So far as we can tell there is no concrete program." That is my point exactly.

This is a classic example of "ready, fire, aim." That is a strategy we cannot afford. I prefer aiming before shooting, which is why I keep calling on the President to tell the American people how his plan to close Guantanamo without any plans right now to deal with the detainees will make our Nation safer.

The President needs to honor his pledge of transparency and provide the American people with answers to these questions. How the President answers these questions is even more important now that some of the terrorists could be coming soon to a neighborhood near you. That is right. Some of the ter-

rorist-trained detainees could be coming to American communities.

Last week the Obama administration admitted as much. Defense Secretary Gates testified before our Senate Appropriations Defense Subcommittee that as many as 100 Guantanamo detainees could be coming to the United States. Whether these terrorists are coming to a prison in nearby Kansas or a halfway house in a city in Missouri or any other State, I can tell you this: Americans do not want terrorists in their neighborhoods.

That is why, when we put it to a vote, the Senate voted 94 to 3 against importing detainees to American soil, even if that meant deporting them to a maximum security prison.

Americans also do not want these terrorists sent back to the battlefield to kill our troops. We know the terrorists detained at Guantanamo have gone back to fight even the ones who were supposed to be less dangerous, less likely to do so. The Pentagon has confirmed that at least 18 detainees who were released have gone back to the fight, and 43 more are suspected of doing the same.

There are no easy solutions. So instead of meeting an arbitrary deadline to close Guantanamo Bay, I sincerely hope the White House will reconsider. I hope the President will realize that closing Guantanamo Bay without having a plan to deal with the terrorists currently there and future terrorists captured on the battlefield is not in our Nation's best interest. Closing Guantanamo with no plan, no plan, is one campaign promise that cannot hold up to national security priorities.

I yield the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1035

Mrs. BOXER. Mr. President, I will be offering two amendments, one of which is going to be second-degreed by Senator ENSIGN, a friendly amendment we have worked with him on. So we will have a vote on that amendment.

Then the final vote on the other Boxer amendment can be a voice vote without problem. But these are two amendments that are very important to the financial security of the country. One deals with the toxic asset purchase program, the other one deals with making sure our people can actually renegotiate their mortgages if they are in trouble. I will start with that one first.

It seems like common sense if you have a mortgage on your home, you ought to know who holds the mortgage. But in today's real estate market, where the original lender often

sells the loan to another entity, you can lose track and not know who actually owns your mortgage. So we are doing a very simple amendment—and I thank Senator DODD and staff, because they have worked so closely with us to draw this up in a good way. It is very easy: When your mortgage is sold or transferred, the homeowner must be informed who owns that mortgage. This is the way it used to be years ago. I remember many times receiving those notices but suddenly it stopped happening.

I want to give you the example of James and Mary Meyers, who took out a high-rate home loan with Argent Mortgage in 2004. Because the loan violated the truth-in-lending laws, they later attempted to exercise their Federal rights to cancel the loan. But the servicer, who happened to be Countrywide at the time, refused to identify who owned the loan. So by the time the Meyers discovered that the current noteholder was Deutsche Bank, the deadline for canceling the loan had passed. The court dismissed the Meyers' claim, even though it found that there were grounds, legitimately, for the Meyers to cancel the loan.

So this kind of hide-and-seek situation has real-life ramifications. It certainly does with the President's plan now that says, if someone has a mortgage that is under water, they can renegotiate, they have a chance. But if they do not know who holds the mortgage, it is a hollow kind of plan. We know that current law does require homeowners be informed when the servicer of their loan has changed. That is in the law. And Federal law does require that the servicer tell the homeowner the identify of the person holding their mortgage.

But servicers routinely ignore requests from homeowners for information on the noteholder. So this is pretty simple. Simply put, it is worth saying, if someone new is holding your mortgage, the servicer has 30 days to inform you as to who that person is.

While servicers are required to disclose this information, there are no penalties in the law for noncompliance and no remedies for a homeowner faced with a recalcitrant servicer.

The law has also failed to protect homeowners because there is no specific requirement that servicers identify the agent or party with the authority to act on behalf of the noteholder.

The Boxer amendment provides borrowers with the basic right to know who owns their loan by requiring that any time a mortgage loan is sold or transferred, the new note owner shall notify the borrower within 30 days of the following: the identity, address, and telephone number of the new creditor; the date of transfer; how to reach an agent or party with the authority to act on behalf of the new creditor; the location of the place where the transfer is recorded; and any other relevant information regarding the new creditor.

To be clear, the amendment does not require borrowers to receive a notification every time a mortgage backed security with a slice of their mortgage changes hands. Those are transactions between investors and do not involve a change in ownership of the physical note.

This amendment only provides transparency and gives borrowers an additional tool to fight illegitimate foreclosures or to negotiate loan modifications that would keep them in their homes.

I do not understand why we have to have a vote on this. I know Senator DODD has signed off on this. It is a very important amendment. I will read into the RECORD a list of those supporting this. It is a whole list of consumer groups. I want to list who has endorsed this amendment: the National Consumer Law Center, the National Association of Consumer Advocates, Consumer Action, the Consumer Federation of America, Consumers Union, the National Association of Neighborhoods, the National Council of La Raza, and the National Fair Housing Alliance.

This is a very narrowly targeted amendment with little cost to the industry. But the benefit to homeowners and communities would be absolutely enormous. So it is a simple amendment, common sense. I hope we will have an overwhelming vote for it.

I want to make my statement at this time, and however the chairman wants to dispose of the amendment, if it is accepted by voice, that is fine with me. But if we have to do to a rollcall because we cannot clear it, I ask that we have a rollcall vote.

AMENDMENT NO. 1038

The second amendment I will be offering is one that Senator ENSIGN will be offering a second-degree amendment to. It is a very friendly second-degree amendment. Again, I thank the Banking staff on both sides of the aisle for working with us—Senator DODD, in particular—to make this a very good amendment.

What we are basically saying is, as we go into a new program which is the Public-Private Investment Program, which basically says that when we take toxic assets off the books of the banks, we want the private sector to come in and give a value to those assets, we do not want the Government doing it.

The private sector plays a very important role. What Senator ENSIGN and I believe is very important, and Chairman DODD has agreed, is to make sure it is a very clean process, and there is not a process for collusion between the parties, and no chance to defraud, frankly, the taxpayers.

How could that happen? Hypothetically, you can have a bank that is trying to unload a toxic asset. They want the most they can get for it. They can go to a private party and say: Hey, between us, bid a little bit more for this toxic asset, we will give you a kickback later. They could not call it that. We will take care of you later.

That is clearly a no-no. You cannot do that.

Under the Boxer-Ensign language, that would not be allowed. The Treasury would put forward regulations to make sure it is not allowed. We would give the TARP inspector general \$15 million to perform audits of selected recipients so we can make sure we are following up with audits and making sure there is no collusion.

We would guarantee there is access to financial data from the Public-Private Investment fund that is necessary to perform these audits, and we would require regulations that are very clear, so that—listen to this—the private sector cannot use money they have borrowed from other Federal programs to pump into the system.

They might be able to use some loans, but we do not want 100 percent of that money being recycled again. In other words, they could take a loan from the Government, then they go buy an asset, and all of the money being used in the program is Government money.

The Boxer-Ensign amendment, which is endorsed by Senator DODD, and I believe Senator SHELBY, I believe has been signed off by both. If I misspeak, I am sure I will be told that. It is a very “good government” amendment.

It essentially says as we begin to buy these toxic assets from the banks, we are going to make sure there is no collusion, no fraud, no conflict of interest. We are going to give the inspector general the ability to get the information he or she needs to go in, perform an audit, and keep this program clean.

The last thing taxpayers want is another scandal that revolves around these banks and all of the things they did before. So this is an important amendment.

At this time, I think I have explained both of my amendments. I await hearing from the chairman as to a time to come back and speak for perhaps a minute to generally summarize both of them.

Again, my deepest thanks to Senator DODD. He has worked so hard. Without his help, we could not be at this point on both these important amendments.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Let me first thank our colleague from California for her leadership on this issue. They are very commonsense, straightforward proposals that we think can improve the legislation.

And it is almost, in a way—I was thinking, as my colleague and friend was talking, it is almost sad that we have to have an amendment such as this. You would almost think that there has got to be some law someplace that would say what she is suggesting by her amendment would be covered.

In a way it is a tragic commentary on the times we are in, the idea where we have to say that, by the way, collusion is not permissible. I did not think it was anyway. But her amendment

makes it certain in this legislation that that is the case.

I am not sure the of order, but the first comments my colleague gave regarding information about their mortgages, again this is pretty straightforward.

I see Senator ENSIGN is on the floor, and I will be brief, because I want him to be able to offer his amendment so we can move forward.

But the idea that you can find out who owns the mortgage is pretty straightforward. Those of us with a little gray hair on our head—and my colleague from California has none, I want the RECORD to show.

Mrs. BOXER. It turned blond.

Mr. DODD. I do remember when I bought my first home, an old 1710 center chimney cape house in Connecticut. I went down to the Old Stone Bank and got a mortgage. I could go down every day for as long as that mortgage was around and look at it, see it, and pick it up if I wanted to and hold it and do whatever I wanted to do with that mortgage.

Today, of course, because the world has changed, people buy a home—and, of course, put aside the issue of predatory lending and subprime mortgages and the rest—and that mortgage, within 8 to 10 weeks, on average, is sold off. It is securitized, as they call it. This is true of a lot of debt. It is student loans, it is credit cards, it is all kind of debt that gets securitized.

By the way, that is not a bad thing, because that provides liquidity, that provides assets for people so more people can afford to buy homes.

But the Senator from California has pointed out that you ought to know who that is. That seems to me a logical request. If that mortgage has been sold off, who owns it? So if a borrower wants to be able to do something with it, you ought not to have to go through and hire a private investigatory agency to find out who holds your mortgage.

So while we respect the idea that securitization can actually be beneficial to the community at large, if it deprives that owner of the mortgage the opportunity to determine who is the holder of that mortgage, obviously then we have lost something in the process. The Senator from California has proposed a very worthwhile amendment.

The New York Times story of April 24, 2009, notes:

Advocates wanting to engage lenders “face a challenge even finding someone with whom to begin the conversation,” according to a report by NeighborWorks America. . . .

That is exactly what the Senator from California addresses with her amendment. With whom do you begin the conversation? The conversation ought to be with the person who is holding that instrument.

I endorse her amendment and urge my colleagues to do so as well.

Regarding the second amendment, the other amendment offered by Senator BOXER deals with the collusion

issue. I briefly addressed that previously by saying, in a way, I was almost sad to hear her offering the amendment. I was under the impression that was against the law anyway. The idea we are offering an amendment to further corroborate that collusion in these matters ought to be against the law. If it is not, it ought to be.

I commend the Senator from California and her colleague from Nevada for offering the amendment, along with Senators PRYOR and SNOWE. This amendment is clearly a step in the right direction from where we were last week. I do want to say the administration has some concerns. My colleagues know that. They have talked about them. I have listened to them.

I am not suggesting their concerns are illegitimate, but I believe the value of the amendment trumps their concerns. I think we have done enough to continue to move forward, and it is the right step to be taking. This is an important effort. I support the Ensign second-degree amendment to the Ensign-Boxer amendment however that amendment is described.

With that, I yield the floor.

AMENDMENT NO. 1038 TO AMENDMENT NO. 1018

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, my understanding is we are ready to go on the Ensign second-degree amendment. So is it not appropriate for me to send the Boxer amendment to the desk at this time?

Mr. DODD. Certainly.

Mrs. BOXER. I call up my amendment.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 1038 to amendment No. 1018.

Mrs. BOXER. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for oversight of a Public-Private Investment Program, and to authorize monies for the Special Inspector General for the Troubled Asset Relief Program to audit and investigate recipients for non-recourse Federal loans under the Public Private Investment Program and the Term Asset Loan Facility)

At the appropriate place, insert the following:

SEC. ____ PUBLIC-PRIVATE INVESTMENT PROGRAM; ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.

(a) PUBLIC-PRIVATE INVESTMENT PROGRAM.—

(1) IN GENERAL.—Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Troubled Asset Relief

Program, impose strict conflict of interest rules on managers of public-private investment funds that specifically describe the extent, if any, to which such managers may conduct transactions involving public-private investment funds that affect the value of assets—

(i) that are not part of such public-private investment funds; and

(ii) in which managers or significant investors in such funds have a direct or indirect financial interest;

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury that discloses the 10 largest positions of such fund;

(C) require each manager of a public-private investment fund to report to the Secretary of the Treasury any holding or transaction by such manager or a client of such manager in the same type of asset that is held by the public-private investment fund;

(D) allow the Special Inspector General of the Troubled Asset Relief Program, access to all books and records of a public-private investment fund, including all records of financial transactions in machine readable form;

(E) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(F) require each manager of a public-private investment fund to acknowledge a fiduciary duty to both the public and private investors in such fund;

(G) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(H) require investor screening procedures for public-private investment funds that include “know your customer” requirements at least as rigorous as those of a commercial bank or retail brokerage operation; and

(I) require each manager of a public-private investment fund to identify for the Secretary of the Treasury each investor whose interest in the fund totals at least 10 percent, in the aggregate;

(2) REPORT.—Not later than 45 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General of the Troubled Asset Relief Program shall submit to Congress a report on the implementation of this section.

(b) ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL OF THE TROUBLED ASSET RELIEF PROGRAM.—

(1) IN GENERAL.—Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), \$15,000,000 shall be made available to the Special Inspector General of the Troubled Asset Relief Program (in this section referred to as the “Special Inspector General”), which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) PRIORITIES.—In utilizing funds made available under this section, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under the Public Private Investment Program established by the Secretary of the Treasury or the Term Asset Loan Facility established by the Board of Governors of the Federal Reserve System (including any successor thereto or any other similar program established by the Secretary or the Board), to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that

may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.

(c) DEFINITION.—In this section, the term “public-private investment fund” means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

AMENDMENT NO. 1043 TO AMENDMENT NO. 1038

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I call up the Ensign second-degree amendment, No. 1043, at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN], for himself, Mr. PRYOR, Mrs. BOXER, and Ms. SNOWE, proposes an amendment numbered 1043 to amendment No. 1038.

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

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

The amendment is as follows:

(Purpose: To make perfecting changes)

On page 1, strike line 6 and all that follows through page 6 line 5, and insert the following:

(a) SHORT TITLE.—This section may be cited as the “Public-Private Investment Program Improvement and Oversight Act of 2009”.

(b) PUBLIC-PRIVATE INVESTMENT PROGRAM.—

(1) IN GENERAL.—Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Troubled Asset Relief Program (in this section referred to as the “Special Inspector General”), impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests (which conflict of interest rules shall be implemented by the manager of a public-private investment fund prior to such fund receiving Federal Government financing);

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury (in this section referred to as the “Secretary”) that discloses the 10 largest positions of such fund (which reports shall be publicly disclosed at such time as the Secretary of the Treasury determines that such disclosure will not harm the ongoing business operations of the fund);

(C) allow the Special Inspector General access to all books and records of a public-private investment fund, including all records of financial transactions in machine readable form, and the confidentiality of all such information shall be maintained by the Special Inspector General;

(D) require each manager of a public-private investment fund to retain all books,

documents, and records relating to such public-private investment fund, including electronic messages;

(E) require each manager of a public-private investment fund to acknowledge, in writing, a fiduciary duty to both the public and private investors in such fund;

(F) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(G) require strict investor screening procedures for public-private investment funds; and

(H) require each manager of a public-private investment fund to identify for the Secretary each investor that, individually or together with its affiliates, directly or indirectly holds equity interests in the fund acquired as a result of—

(i) any investment by such investor or any of its affiliates in a vehicle formed for the purpose of directly or indirectly investing in the fund; or

(ii) any other investment decision by such investor or any of its affiliates to directly or indirectly invest in the fund that, in the aggregate, equal at least 10 percent of the equity interests in such fund.

(2) **INTERACTION BETWEEN PUBLIC-PRIVATE INVESTMENT FUNDS AND THE TERM-ASSET BACKED SECURITIES LOAN FACILITY.**—The Secretary shall consult with the Special Inspector General and shall issue regulations governing the interaction of the Public-Private Investment Program, the Term-Asset Backed Securities Loan Facility, and other similar public-private investment programs. Such regulations shall address concerns regarding the potential for excessive leverage that could result from interactions between such programs.

(3) **REPORT.**—Not later than 60 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General shall submit a report to Congress on the implementation of this section.

(C) **ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL.**—

(1) **IN GENERAL.**—Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), \$15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) **PRIORITIES.**—In utilizing funds made available under this section, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under the Public Private Investment Program established by the Secretary of the Treasury or the Term Asset Loan Facility established by the Board of Governors of the Federal Reserve System (including any successor thereto or any other similar program established by the Secretary or the Board), to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.

(d) **RULE OF CONSTRUCTION.**—Notwithstanding any other provision of law, nothing in this section shall be construed to apply to any activity of the Federal Deposit Insurance Corporation in connection with insured depository institutions, as described in section 13(c)(2)(B) of the Federal Deposit Insurance Act.

(e) **DEFINITION.**—In this section, the term “public-private investment fund” means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury or the Federal Deposit Insurance Corporation.

(f) **OFFSET OF COSTS OF PROGRAM CHANGES.**—Notwithstanding the amendment made by section 202(b) of this Act, paragraph (3) of section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225) is amended by inserting “, as such amount is reduced by \$2,331,000,000,” after “\$700,000,000,000”.

Mr. ENSIGN. I rise to talk about the Ensign-Boxer-Pryor-Snowe amendment. The four of us have worked on this amendment. It is a second-degree amendment, but it is a friendly second-degree amendment to the Boxer amendment. I commend all four offices and our staffs that did superwork over the last several days to come up with the language. It is not compromising language; it is strengthening language. This is great bipartisan work to increase the oversight of this program known as the Public-Private Investment Program or as some call it, PPIP. The special inspector general of TARP has stated that PPIP is “inherently vulnerable to fraud, waste, and abuse.” Our amendment would go a long way to protect taxpayers from such fraud, waste, and abuse.

Most of my colleagues would agree Congress gave far too long of a leash to the Treasury when it created TARP. I know few people who believe the program has been completely successful so far. The PPIP would represent the most ambitious and complex undertaking yet for TARP and by far the riskiest use of TARP funds to date. Let's not make the same mistakes with PPIP that we have made with the rest of the TARP fund so far.

Our amendment would establish key oversight, transparency, and conflict-of-interest safeguards before the program begins, not after. Our amendment will impose strict conflict of interest rules to prevent PPIP fund managers from inappropriately using the program to benefit themselves or their clients. It will require these rules be in place before any Government funds can be used in the new program. The amendment requires rigorous investor screening procedures and robust ethics policies for the Public-Private Investment Program funds. It will require Treasury to issue regulations governing how the program and the Federal Reserve's TALF Program can interact to avoid excessive and dangerous over-leveraging.

Lastly, our amendment calls for significant and improved oversight and transparency of PPIP. The amendment also preserves the language from the underlying Boxer-Snowe amendment that provides the special inspector gen-

eral of TARP with an additional \$15 million to conduct audits and investigations of this new program.

The American people are demanding more accountability and transparency from their Government. President Obama campaigned over and over on change and promised to lead the most open administration ever. Let's send a message to the country that we are backing up that rhetoric with action. Let's shine sunlight on the TARP's newest program from its inception, not once mistakes have been made. Let's put the safeguards in place from the start of PPIP to protect against fraud and waste rather than waiting until after abuses occur.

I urge my colleagues to vote in support of the Ensign-Pryor-Boxer-Snowe amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. ENSIGN. I yield the floor.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1026 TO AMENDMENT NO. 1018

Mr. DEMINT. Mr. President, I ask unanimous consent to set aside the pending amendment and bring up DeMint amendment No. 1026.

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

The bill clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes an amendment numbered 1026 to amendment No. 1018.

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

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

The amendment is as follows:

(Purpose: To prohibit the use of Troubled Asset Relief Program funds for the purchase of common stock, and for other purposes)

At the appropriate place, insert the following:

SEC. . LIMITATION ON USE OF TARP FUNDS.

Notwithstanding any other provision of law, on and after April 22, 2009, no funds made available to carry out the Troubled Asset Relief Program may be used for the acquisition of ownership of the common stock of any financial institution assisted under title I of the Emergency Economic Stabilization Act of 2008, either directly or through a conversion of preferred stock or future direct capital purchases.

Mr. DEMINT. Mr. President, I would like to take a few moments to explain this amendment. I appreciate the chairman allowing me to offer this amendment. It relates to what we call

TARP funds or troubled asset funds we passed last year.

If I can take my colleagues through a little bit of history on how this happened, at the end of last year, the President and the Secretary of the Treasury came to us and explained a very dire crisis, not only in the United States but the world, that the whole financial system was on the verge of collapse, and if we did not pass this \$700 billion Troubled Asset Recovery Program, it was very likely we would have financial chaos and even depression in the United States and around the world.

It was a pretty stunning presentation. It curiously lacked a lot of facts. There were no PowerPoint slides or statistics or graphs. It was more: Trust us, we know this is going to happen. We need to pass this immediately.

What they were going to do with the funds—and Secretary Paulson was very specific—was they were going to take this money and buy troubled assets in financial organizations that were too big to fail, that if they failed, it would cause severe problems all around the world. We were being told that unless we pass this money and use it immediately—and they were talking within 24 to 48 hours—to buy troubled assets, the financial system in this country so many depended on would collapse.

At this point, after hearing a number of stories, we started this time last year mailing out checks, mortgage bailouts, all kinds of spending programs. None of it worked. None of it had been done exactly like they said it would. I did not trust the whole process. This was a Republican President. I voted against it, but many of my colleagues voted to pass the troubled asset funds to buy toxic assets, troubled assets in this country and around the world.

It passed, and the President signed it. Not one of these troubled assets has been purchased. Not one. A funny thing happened. The world financial system did not collapse. The people who told us it would either did not have the facts or they were not telling us the truth.

What they did with the money was loan some to the banks. Some of the banks had to have it immediately, apparently, or they would fail. They were too big to fail. We had to have the money.

What our Government did was go to a whole lot of other banks that were doing OK and say: You have to take this too. If you don't take it, then it will be harder for these other banks to take it. We need to have this money spread around. They did not buy the toxic assets. They loaned it to banks and put a lot of pressure on other banks to take it. As soon as they did, we got more and more involved with their business, regulators on the banks' backs. Some of the banks want to give it back. Guess what. We won't let them unless they pass some kind of test.

The Government has moved closer and closer—it kind of reminds me of

the children's story, "The Gingerbread Man." It was one of my favorite stories growing up. If you remember, an older couple did not have any children. The husband was out working in the garden. The wife was making some gingerbread. She had a little left over and made a gingerbread man and put him in the oven. An hour or so later, she heard some rattling in the oven, opened it, and out jumped a gingerbread man. The gingerbread man ran around. She couldn't catch it. It ran out of the house. The husband tried to catch him. All they heard from the gingerbread man was: Run, run, run as fast as you can, you can't catch me, I am the gingerbread man.

Long story. The gingerbread man ran through the whole community. The townspeople were chasing him. The horses and the mules and everyone were chasing the gingerbread man, who kept saying: Run, run, as fast as you can, you can't catch me, I am the gingerbread man.

The gingerbread man came to a wide river and not accustomed to swimming—gingerbread probably doesn't hold up real well in a river—he was stuck with all the town running behind him. Then appeared a fox that offered to give him a ride across the river. The gingerbread man was real suspicious. He knew that fox would probably eat him. The fox said: Don't worry, you can sit way back on my back on my tail way away from my mouth. No trouble, not to worry. Gingerbread man didn't have a lot of choice. He jumped right on his back.

As the fox got out farther and farther in the river, he sank a little deeper and deeper. Gingerbread man howled and jumped up a little closer on his neck. Out a little farther, the fox went down a little bit deeper. Gingerbread man jumped right up on his head. As he got close to the other side, he started sinking his head down and gingerbread man jumped right up on his nose, and as soon as he did, slap, gingerbread man was in the mouth and gone.

Gingerbread man is a lot like our free market system, free enterprise system, and what our whole free market system is in America—fast, dynamic, made our country exceptional and prosperous. Our banking system is the same way. Some of the greatest people in our communities are running banks.

With this TARP program, what we did is similar to a fox. We invited our whole financial system to jump on the back of the Federal Government. What they told us they were going to do they did not do, and each time the Government took another step, a different step, like the gingerbread man and the fox, the gingerbread man jumped closer and closer to the mouth.

What our whole free market system is doing now is sitting on the nose of the fox, the Federal Government, which keeps taking us deeper and deeper into this river. The Federal Government did not buy toxic assets. They kind of pushed loans out into the market. They said they had to do that.

Now we see where they are, telling us this does not look good on the books of banks for it to be a loan. So we are going to just change the balance sheet from a loan to an asset. We are going to turn these loans into common stock, equity, which will make the Federal Government owners in the banks, voting owners.

Folks, there is kind of a sacred line in this country we had not crossed. There is a separation between what the Government does and what the private sector does, and this Government does not own private companies. But just like this fox, we have been led into this thing with misinformation—I hope that is all it is and not outright deception—but we are at the point where the Government is now telling us they are going to own a lot of these banks. They will not let them give it back. They are going to convert it to ownership. All these private companies out there are going to be owned, in part, by the Federal Government.

What we are hearing from investors—Chairman Bernanke said it at lunch today—is when they are trying to get people to invest in financial institutions, what they are finding is a strange thing. The private investors, smart investors, do not want to get in bed with the Federal Government because they do not know what we are going to do. They have every reason not to know what we are going to do because we have yet to do what we said we were going to do with this \$700 billion, which will ultimately be over \$1 trillion, with which we are now playing in the private stock market.

As we pass this bill that is supposed to protect homeowners, I am offering an amendment. It is an amendment that would force this Government to do at least part or keep it from going further than it already has into the private sector. It would prohibit the Government from converting these loans, which are sometimes referred to as preferred stock now. It is not voting. It would prohibit them from converting this to common stock, to ownership, to equity in these banks.

It should not surprise anyone. We were told this would not happen in the first place. We were told the money was going to buy these toxic assets. This amendment would at least put up a firewall that says: You cannot go any further, fox; you cannot take over private enterprise in America.

A lot of my colleagues are going to give a lot of excuses why they cannot vote for this amendment, but I hope America is looking in at this and remembering that it was not this Government that made this country great, that made us exceptional and prosperous and good, that put us on the top of the world in a lot of ways, the envy of the world. It was not this Government. It was a limited government. It was free markets and free people.

This Government now has pushed and pushed and intervened in the private market to the point where it is not

working. We wonder why people are not investing and why the markets are erratic. Because no one knows what the Federal Government is going to do once it starts playing in the stock market in this country, once it starts arbitrarily converting loans that were for a crisis to own our banks, to own our private companies.

They took the TARP money and made loans to General Motors. What are they going to do with that? They are going to convert it to common stock so this Federal Government owns General Motors.

That is not America. That is not free markets. That is not free enterprise. That is not what we signed up for, and we shouldn't allow it.

This amendment is pretty simple: Government, you cannot go any further. Enough is enough. You cannot convert these loans to common stock. We are going to have a firewall between where you are now and where you want to go.

Folks, we cannot let them go any further. We have lost the line between Government and the private sector. The Government is not set up to manage things and control things. Everything we try to do, we mess up. What we are here for is to develop a framework of law and predictable regulations so free markets and free people can operate. We are not set up to manage auto companies.

I was in a meeting this morning talking about how we were going to manage General Motors and Chrysler. I have been in a lot of boardrooms because I have done a lot of strategic planning for private companies in my lifetime. It is so obvious, we do not have the capability to manage a dynamic, complex, global marketplace. That is central planning. That is what Karl Marx thought we could do. But every time it has been tried in the history of the world, it has failed because there is no way a legislative body and a large national government such as this can manage the private sector.

What happens, though, is we get involved, we make things worse, and then we say we need more government to solve the problem. We are doing that now with AIG, the largest insurance company in the country. We have gotten in, we own most of the stock, mismanagement is rampant, and we are talking about we need more government, we need more money. Folks, it doesn't work.

I would encourage my colleagues to consider what I think we are hearing from all across America: Enough is enough. We can't do this under the guise of one crisis after another. Let's stop this rampage of the Federal Government into our private lives, the free markets, the whole concept of America. Please support this amendment that would stop the conversion of loans—TARP money—into common stock. It is a simple concept. We shouldn't be able to excuse our way around this one.

I thank the Chair, I yield back, and 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. BARRASSO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CLIMATE CHANGE

Mr. BARRASSO. Mr. President, a recent Wall Street Journal op-ed highlighted a dangerous game that is being played right now by this administration and by the Environmental Protection Agency, and it is a game that is being played with the American public about which I have great concerns. The piece in the Wall Street Journal was entitled "Reckless Endangerment: The Obama EPA plays 'Dirty Harry' on cap and trade." The article refers to the Russian roulette style of negotiating that is going on right now by cap and tax advocates who want to pass the President's energy tax in this Congress.

The administration and the majority of the leadership in the House and the Senate have created a regulatory ticking timebomb. It is called the Environmental Protection Agency's endangerment finding. Well, they want to use this ticking timebomb as a threat to get the President's energy tax passed. They are putting this regulatory timebomb on the kitchen table of Americans all across the country. The message to Americans: Your tax money or your livelihood. This is not an idle threat. If allowed to proceed, the irresponsible use of the Clean Air Act will require the EPA to regulate any building, any structure, any facility, any installation that emits above a certain amount of carbon dioxide. The result would be thousands of lost jobs, with no environmental benefit to be seen from it. Hospitals, schools, farms, commercial buildings, and nursing homes will be required to obtain preconstruction permits for their activities.

Further, when you talk to the legal scholars, they will tell you that the statutory language is mandatory and does not leave any room for the EPA to exercise discretion or to create any exceptions. That is the problem. The only jobs this option will create are in law firms, as the litigation bonanza begins. EPA is going to be sued by environmental groups wanting to eliminate exempted sectors. The EPA will also be sued by industries that are not exempted. How is the EPA going to respond to all these legal challenges? I asked EPA Administrator Jackson. She says she can target what she taxes. She claims she is only going to target cars and trucks. Well, that really is setting a precedent of choosing winners and losers. We don't know what standards will be applied to make those decisions. We do not know what role politics will play in the decisions. Jackson's state-

ment also ignores the regulatory cascade that the endangerment finding in the motor vehicle emission standards will trigger. Litigators and courts will drive much of this job-killing regulation.

We now have a nominee to head up the EPA's Air Office—Mrs. Regina McCarthy. We have an Administrator of the EPA and a climate and energy czar who is supposed to coordinate climate change policy for the administration. Well, Carol Browner, the climate and energy czar, has not been confirmed by Congress—not by this Congress—at all. We do not know who is developing this roadmap for how to hijack the Clean Air Act to regulate climate change. What jobs and what industries will be kept? What industries will be penalized? Who will be held accountable for making the decisions? The American people—the people at home in Wyoming whom I talk to—are demanding answers to these questions.

The economic consequences will be devastating. By the EPA's own estimate, the typical preconstruction permit in 2007 cost each applicant \$125,000. And how much time do they have to put into this work? Well, on average, 866 hours just to fill out the paperwork. If you are a small business, a farm, or a private nursing home, you have no background in this area. It takes a lot of time and effort, so you need to hire lawyers and you need to hire experts. That costs thousands of dollars that are nowhere in your budget. You are taking time out of the day to figure out all this redtape. While you are spending that time and that money, you are not running your business.

This is going to create such a fog of uncertainty—uncertainty with investors, uncertainty with small businesses. It is going to make it that much harder for small businesses to borrow money, to get a business loan. Nobody is going to know how much this is going to cost their business. If you take a look at our economic situation, with lending in this country having slowed down significantly, this is hardly the right move now for our country and for our economy.

According to the U.S. Chamber of Commerce, there are 1.2 million schools, hospitals, nursing homes, farms, small businesses, and other commercial entities that are not currently covered under these preconstruction permits, and they are going to be vulnerable to the new controls, to new monitoring, to new paperwork, and to new litigation. If even 1 percent of these 1.2 million have to get preconstruction permits, well, that would mean 12,000 new preconstruction permits this year. By the EPA's own analysis, if permitting is increased by just 2,000 to 3,000, that would impose what they call significant new costs and an administrative burden on permitting authorities. How much of a burden? How much cost? Those permitting authorities are the EPA and the 43 States that participate in the program.

The EPA said that the burden “could overwhelm permitting authorities.”

The net result of all of this is going to be thousands of jobs lost. According to the Heritage Foundation, the job losses are estimated to reach 800,000. Well, if Carol Browner, Administrator Jackson, or Mrs. McCarthy cannot tell us how they will protect American jobs from court challenges, if they can't tell us by what legal authority—legal authority—they can pick the winners and losers, if they cannot provide economic certainty to lenders and small businesses, if they do not know how they will process all the thousands of new preconstruction permits, then they should take this option—this option they have proposed, this option that kills jobs—and they should take it off the table.

I have tried to get answers to these questions from the nominee who will most directly oversee this process—Mrs. McCarthy. I placed a hold on her nomination because these are questions that still need to be answered. I am committed to working with her in a constructive way to get answers to the questions because I believe we do need to chart a new course, a course that makes America's energy as clean as we can, as fast as we can, without hurting small businesses and without raising energy prices on American families.

We should start by not taking any clean energy source off the table. That means fossil fuels fitting with new carbon capture technology. That means exploring for oil and natural gas in an environmentally friendly way, using new technologies. That means promoting carbon-neutral nuclear energy. That means funding renewable energies—wind and solar, geothermal, and hydropower. We need it all. An all-of-the-above energy approach is the key to solving our energy problem for this Nation. I look forward to working with my colleagues on both sides of the aisle to achieve this goal for America.

Mr. President, I yield floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I was listening to what my colleague, Senator BARRASSO, said about the Environmental Protection Agency, and I know it is a little bit off the work Senator DODD is doing, but I hope he won't mind if I take about 3 minutes to respond.

I think what is so interesting is that under the Bush administration, the Environmental Protection Agency drafted the endangerment finding. They found that pollution in the form of greenhouse gas emissions—this is the Bush administration—was absolutely an endangerment to the American people. That is the Bush administration.

You may say: Gee, why didn't I hear about that? I will tell you why. The EPA sent that endangerment finding, that proposed endangerment finding, over to the White House, and it was labeled, as you get your e-mails, “pro-

posed endangerment finding.” There was advice immediately from the lawyers over at the Bush White House not to open the endangerment finding—not to read it, not to look at it, not to consider it, not to open it because, they said, once it was open, it was in the public domain and the public would learn that, indeed, climate change is an endangerment to the people of this country. We are talking about extreme weather events. We are talking about organisms that do not live in cold waters, but when the waters get warm, they carry disease to our kids. We saw a case in Arizona where that happened: organisms that never lived in these rivers and streams are now living there. Heat stroke. And that is not to mention the issue of the rising waters, that is not to mention the national security issues, and that is not to mention the fact that the way out of this economic mess is to say: We are going to look at this challenge and we are going to respond to it in a way that will create clean jobs, in a way that will lead us out of this morass and lead us to economic prosperity.

Anyone who has read Thomas Friedman's book “Hot, Flat, and Crowded” knows that the country that gets on top of this issue of clean energy and clean energy jobs will lead the world. So for my colleague to get up and say: I am holding up the Obama nominees—that is the party of no. That is the party of no, no, no. They want to keep this information from the American people.

Then they talk about lawsuits and the rest. Well, the fact is that the old EPA was sued repeatedly by community groups and environmental groups because they weren't following the law, and every single time, they lost. So the Supreme Court comes down on the side of cleaning up pollution. I am not afraid of lawsuits because the fact is, the people will win the lawsuits.

My message to the EPA is very simple. It is very different from Senator BARRASSO, who is holding up qualified nominees—Republicans. They are Republicans they are holding up whom President Obama wants to put into his circle of advisers on the environment. This one particular woman I believe served, Senator DODD, your State for Republican Governor Rell, and they are holding her up. They are holding her up.

Why? Because they want to continue being the party of no. No, don't open up the endangerment finding; no, don't trust the people with the information; no, don't think about making polluters pay; no, we are not going to go to clean energy and clean jobs and all the prosperity that will come forward with that. It is a sad day.

My friend and I, JOHN BARRASSO and I, are very good friends. We like each other. We work together when we can. But on this one he will admit and I will admit we do not share a common view. My view is that science should dictate what we do on the health front and the

revival of this economy should dictate what we invest in here, so we invest in these high technologies and we create good, clean jobs. I am very sad to hear that my friend will be holding up, and saying no, to some good people.

I understand his point of view. He has every right to do it. But I hope we will file a cloture motion and I hope we will be able to say to the party of no: Please, there was an election. President Obama won. He deserves to have the people in place that he thinks will give him good advice. If you do not like the advice, then legislate against it. But don't hold up good people.

They are doing it every day. The party of no, no, no, no. The American people want us to work together for their benefit and the benefit of their children and their grandchildren. My message to the EPA is do not be bullied into not doing your job. The endangerment finding you have made provisionally is very close to the same endangerment finding the scientists made under George W. Bush. The difference is, this administration is not going to hide it from the American people. We are going to look at it and we are going to figure out a way to respond to it in such a manner that jobs will be created, exports will be created, technologies will come to the fore. To the party of no, I say look inside yourself. The days of the old energy are coming to an end. They are too polluting, they are too costly, they are subject to the whims of foreign dictators.

I remember when George W. Bush went over and kissed the Saudi prince—I was a little surprised at that—begging, begging Saudi Arabia: Oh, please, please, let us have more oil. And the price went up and up and up. Frankly, it was not until the Democrats here demanded that there be some remedy for price fixing—it was not until then that the prices started going down, because there was manipulation. We know that.

I am disappointed that Senator BARRASSO, an important member of the Environment Committee—this is the Environment Committee he is from. It is not the polluting committee. Let's get on with our work. Let's do what is right for the health of the American people. Let's do what is right for the workers in America. Let's develop the technologies. Let's not stand up here, hold decent people up, don't let them get a vote, stop them because you are a little angry that, yes, you did lose the election; and yes, times are changing; and yes, you have to recognize that Lisa Jackson is not Stephen Johnson—who came from a pesticide background, for God's sake.

One thing I found as I look at this administration that I admire—and I do not agree with every single thing they do or say—but I have to say this, they are putting people in place who care about the issue they are supposed to care about. You remember what happened over there with, “Brownie, you

are doing a great job at FEMA," and we had Hurricane Katrina. Brownie had come from the Arabian horses industry. That was his expertise.

Stephen Johnson, EPA, came from a pesticide background. That was his background to head up the Environmental Protection Agency.

Then you had others. You had Spencer Abraham, a nice man. He voted to eliminate the Department of Energy when he was a Senator, and he got to be put in charge of—you got it—the Department of Energy.

I have a great committee I am privileged to chair, but I am distressed that we have to file cloture and stop a filibuster on perfectly well-qualified people, some of whom are Republicans, who are being stopped here by my friend. It is discouraging. But I am optimistic and I know we will get these important nominees through, even though we have to take the time to fight a filibuster and file cloture and get 60 votes. I am convinced we can do it—in closing—because the American people do not want us to be the party of no, no, no. They want us to be the Senate that is going to bring about positive change for the American people.

I say to Senator DODD, thank you for your indulgence here.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

AMENDMENT NO. 1026

Mr. DODD. Mr. President, I am going to respond, if I may, to our colleague from South Carolina, Senator DEMINT, who offered an amendment, No. 1026, a few minutes ago. Senator BARRASSO and Senator BOXER were talking about the Environment Committee and the work that goes on there a little bit, and I digressed a little bit when that subject matter came up, but I want to bring it back to his amendment which we will vote on, I hope, in a few minutes—maybe a couple of amendments. I notify my colleagues we will try to get at least two votes together so we don't bring people over for just one vote, if we can do that.

The amendment of the Senator from South Carolina, as I think I understand it—but correct me here—would prohibit the Federal Government from either purchasing or converting preferred stock to common stock. This is not a mandate as in present law, it is the option of converting preferred to common stock.

Why is that an important issue? My colleague from South Carolina went on at some length to talk about the overriding issue, going back to last fall, as to whether there should be any program at all of the so-called Emergency Economic Stabilization Act that provided the resources to try to get our financial system on its feet again. That was a very significant debate. Seventy-five of our colleagues in this Chamber, Democrats and Republicans, agreed with President Bush at the time. Candidate Obama and our colleague JOHN MCCAIN, as well as many others, on a

bipartisan basis, called for the support of that effort. They accepted the notion as we were told by the chairman of the Federal Reserve Board, Mr. Bernanke, along with the Secretary of the Treasury and others across the political spectrum, that acting at that point was critically important if we were going to stabilize this economy and try to get it back on its feet.

History will probably write for many decades to come about that decision-making process, of the wisdom of it or the lack thereof. I am confident as I stand here today that, while certainly not a well-managed program for a good many weeks, the absence of doing anything, just doing nothing at the time, I think would have created a far bigger problem, a far more serious problem, probably a problem it would be almost difficult to imagine how it would be overcome had that action not been taken. That in no way minimizes how the program was managed, for those who raised serious issues, and still is the subject of significant debate here.

My friend from South Carolina says the Treasury Department should not be allowed to convert preferred stock to common stock. Why is that an important issue in the context of what we are talking about?

First, understanding what preferred stock is, and common stock—preferred stock is almost a debt obligation on which dividends are paid. The whole point is the value of it is in the dividend. With common stock, of course, the value changes based on how well the company is doing. If the company is doing well, the common stock goes up. If they are not doing well, the common stock goes down, unlike preferred shares. So in terms of what is real capital, what is real capital is common stock. Preferred shares are not seen as being real capital.

I gather we have had today, as the Presiding Officer knows we have every Tuesday, the respective two parties gather in our respective rooms to have lunch to talk about the issues of the day. I am told by several of my friends on the Republican side that Chairman Bernanke was the guest at the Republican Conference lunch today and answered questions from our Republican colleagues. I gather one of the questions was—and certainly it was a question he received from us when we met, either alone or together—why aren't banks lending more? We put all this capital up. Why aren't they putting more money out the door to small business and others to help our economy get moving?

I gather Chairman Bernanke expressed the same frustration, that the regulators are being overly restrictive, in some ways threatening these lending institutions, not doing enough to encourage them that they ought to step up and get that capital out, get that credit moving again.

My colleagues on the Republican side heard from the Chairman of the Federal Reserve today and raised a very

good question, raised by one of my colleagues—I don't know which one it was who raised the issue—but a very good question: Why aren't the banks lending more?

It seems to me if we accept the DeMint amendment we are going to make the answer even more difficult because what our lending institutions need is obviously capital—whether private capital or otherwise, they need capital. This is not a requirement under existing law that is mandating converting preferred to common, but at a time when we want lending institutions to get more capital, allowing the Treasury to make that conversion where and if they see it as appropriate exactly addresses the question that was raised at the luncheon today: Why aren't banks lending more? Why aren't they providing that kind of assistance to small businesses and others?

This is not about the Government taking over these entities. I don't know of anyone who supports that idea. We are taking positions in these companies far larger than most of us would like, and I hope and I believe it to be the case that as soon as the moment is appropriate we are going to be selling this off and getting out of it as fast as we can. My colleague from South Carolina is correct—I think all of us agree with him—it is not the business of Government to become bank managers or to run automobile companies or to run commercial enterprises. This country has not grown and prospered and done as well as it has in two-and-a-quarter centuries because Government has run these entities. Quite the opposite.

But at a critical time such as this, when our economy is facing the worst crisis since the Great Depression, in almost 100 years, taking positions, getting capital moving on these legacy assets or toxic assets is absolutely essential if we are going to get back on track again.

I am not suggesting that every idea we have had is one that is working. But the idea of saying in this case you have no right, I am going to prohibit you, absolutely mandate that the Treasury Department cannot convert any preferred shares to any common shares, seems to me the kind of overreaching, in a way, in a moment such as that, that my colleague from South Carolina is arguing against and I agree with him. We should not be restricting, in a sense, the ability of people to have the flexibility to respond to a situation and allow this situation to improve.

There is a second reason. We are talking about TARP moneys here. What are TARP moneys? TARP money is taxpayer money. That is the American taxpayers' money. That is what TARP money is. We want to get back this money. We have been told these are loans. We hope they are, that we are actually going to get money back.

You don't get money back necessarily with preferred shares. You get it back with common shares. In any

case, if we are looking to see the Government realize any gain on the sale of its common shares after the economy recovers, as we all hope and believe it will, the Government's upside potential is far greater with common shares than it would be under an amendment offered by the Senator from South Carolina where we would not be allowed to convert preferred to common.

I want to make it clear I am not necessarily advocating this be the case, but I don't want to so restrict the Treasury from making those moves to adversely affect the taxpayer when we could have a far greater benefit if in fact there are common shares coming back in. If that company or entity improves its value, the taxpayer is the clear beneficiary of that if in fact we are holding common shares.

Not allowing the Treasury to make that conversion could directly have an adverse reaction for the American taxpayer who is expecting some return on this—not to mention, of course, the ability to get capital into these entities which is essential if lending is going to occur.

We can go back and debate September and October and I presume history will debate that. But we made that decision and these resources are being far better managed today than they were in the first 60 days or so of that program. Today, to restrict this Department, this Treasury from making these kinds of decisions would be a major blow at the very hour we are going to maybe need this capital in order to get these entities back on their feet.

Why is that important? It has little or nothing to do with the entities themselves. If that were the only argument, I would not be standing here and making it. It is not about the institutions we are getting the capital to, it is about the facilities, the businesses that require capital in order for credit to flow. So we spend a lot of time talking about the capital that goes into these larger institutions. The only reason we talk about it is because the financial system requires that if credit is going to move to small businesses, to homeowners and the like, when that small business shows up at their bank and says: Look, I have a great idea of expanding. I think the economy is improving. I would like to get a loan. I would like some credit. I have some people I need to hire. I have some inventory I need to purchase. I have some improvements to expand my space, and the bank says: I am sorry, we cannot. No capital. Well, if we adopt the DeMint amendment, that will be one of the reasons the answer is no because we absolutely prohibited the Treasury Department of our country from converting, where they think it is wise to do so, preferred shares to common shares. Not because we are requiring it but because we have the flexibility to do it.

When the American taxpayer wants to get a greater return on the invest-

ment we have made to get these institutions back on their feet again, and all we were allowed to hold was preferred shares paying a dividend instead of the common shares that could be the upside benefit to the American taxpayer, we would have to look back on this amendment and say: That is the reason we are not doing better than we ought to be doing.

That is really the argument I would give to my colleagues about why I think the DeMint amendment is an unwise move at this juncture. Again, it is more ideological. If you, in a sense, believe we should not be doing anything at all, let the market work its way through all of this—and there is a school of thought that embraces that. I happen to believe that is a dangerous policy to follow, in my view. I think many who looked at this issue from across the spectrum would agree. So that is the alternative. That is why I hope this amendment would be rejected when the time comes for a vote.

I yield the floor.

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

AMENDMENT NO. 1040 TO AMENDMENT NO. 1018

(Purpose: To amend the McKinney-Vento Homeless Assistance Act to reauthorize the Act, and for other purposes)

Mr. REED. First, let me commend Chairman DODD for his leadership on this very important legislation that is going to address one of the most significant issues facing America today; that is, restoring the value in our homes, but also giving people the hope that they can stay in their homes and helping those people who are displaced from their homes to find adequate, suitable housing.

I hope to be able to offer an amendment which would address the issue of homelessness in the United States.

Mr. President, I ask unanimous consent to call up amendment No. 1040 to S. 836 and ask that it be made pending.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, and Mr. BOND, proposes an amendment numbered 1040 to amendment No. 1018.

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

Mr. REED. This legislation is cosponsored by Senator KIT BOND, Senator BOXER, Senator COLLINS, Senator DURBIN, Senator KERRY, Senator LAUTENBERG, Senator LEVIN, Senator LIEBERMAN, Senator SCHUMER, and Senator WHITEHOUSE. It embodies legislation I introduced earlier this year, along with Senator KIT BOND, the Saving the Homeless Emergency Assistance and Rapid Transition to Housing Act, known in short as the HEARTH Act.

I want to particularly commend Senator BOND for his support, help, and leadership in this effort. He has been

an advocate for sensible housing programs, not only on the floor of the Senate but particularly in his duties as a member of the Appropriations Committee and as the Ranking Member of the Subcommittee on Transportation and Housing and Urban Development.

He has been a great leader in advocating for the sensible, sound, and efficient use of taxpayers' resources to help people to find affordable housing. I thank him very much for his assistance, along with all of the other cosponsors.

This legislation is endorsed by the National Alliance to End Homelessness, U.S. Conference of Mayors, the League of Cities, NACo, Habitat for Humanity International, National Association of Local Housing Finance Agencies, LIISC, Enterprise, National Low Income Housing Coalition, Corporation for Supportive Housing, the National Equity Fund, NAMI, the Housing Assistance Council and the National Community Development Association. It enjoys widespread support.

According to the Homelessness Research Institute at the National Alliance to End Homelessness, 2.5 to 3.5 million Americans experience homelessness each year. On any one night, approximately 672,000 men, women, and children are without homes.

While strides have been made to reduce homelessness over the last couple of years, the current economic decline has halted such progress.

Today I saw a front page article with a photograph in USA Today of a tent city going up. This is a phenomenon we thought was an artifact of history. Too often people are using any means to shield themselves from the elements.

Organizations such as Amos House, a shelter in my home State of Rhode Island, are seeing an increased demand for their services, while at the same time they are facing budget cuts and the economic downturn has curbed charitable donations.

I don't need to tell anybody in this Chamber how urgent this crisis is.

Across the country, we have already seen tent cities forming; shelters turning away people in need; and most major cities reporting double-digit increases in the numbers of families experiencing homelessness.

There is a tendency to view homelessness as something that happens to a few adults, men and women. But too many children are without homes.

As foreclosure and unemployment rates continue to rise, more families are being pushed out of their homes. Not everyone ends up on the streets. Some are able to move in with friends or family members, but they can not afford a home of their own and they can not find a job to get back on their feet.

America has not seen this level of displacement since the Great Depression and we simply cannot afford to ignore this problem.

That is why I am offering the Homeless Emergency Assistance and Rapid

Transition to Housing, HEARTH, Act of 2009 as an amendment to the Helping Families Save Their Homes Act.

The Banking Committee, of which I am a member, has worked long and hard on this legislation, which I believe has resulted in a very strong piece of legislation.

This amendment invests \$2.2 billion for targeted homelessness assistance grant programs and provides local communities with greater flexibility to spend money on preventing homelessness.

While strides have been made to reduce homelessness over the last couple of years, the current economic decline has halted that progress and threatens to overwhelm it.

As a result of the recession, 1.5 million additional Americans nationwide are likely to experience homelessness over the next 2 years according to estimates by the National Alliance to End Homelessness. In Rhode Island, the latest numbers show homelessness is up 43 percent since February of 2008. And the number of shelter residents who cited foreclosure as their reason for becoming homeless tripled in the last 8 months.

This means more trauma for children and adults, more dislocation from schools and communities, and more of a drain on local community services.

In addition to the \$2.2 billion for HUD homeless assistance programs, the HEARTH Act would also provide up to \$440 million to be used to serve people who are not homeless yet, but are at risk of homelessness. That, I think, is in accord with the spirit of the legislation Senator DODD proposed; to prevent people from losing their homes.

It would allow cities and towns to serve people who are about to be evicted, live in severely overcrowded housing, or otherwise live in an unstable situation that puts them at risk of homelessness. The money could be used to make utility payments, security deposits, and provide short- and medium-term rental assistance.

The HEARTH Act would increase the emphasis on performance by measuring applicants' progress at reducing homelessness and providing incentives for proven solutions like rapid re-housing for families and permanent supportive housing for chronically homeless people.

This is a measure not only to provide resources but also to insist upon accountability.

Today, more families than ever are living on the edge, but the national safety net is not as big or as durable as it used to be.

This bipartisan legislation combines federal dollars with new incentives to help local communities assist families on the brink of becoming homeless. It is a wise investment of federal resources that will save taxpayers money in the long run by preventing homelessness, promoting the development of permanent supportive housing, and optimizing self-sufficiency.

Finally, I wanted to briefly talk about the definition of homelessness.

The HEARTH Act expands the HUD definition of homelessness, which determines eligibility for much of the homeless assistance funding, to include people who will lose their housing in 14 days; any family or individual fleeing or attempting to flee domestic violence, or other dangerous or life threatening situations; and families with children and unaccompanied youth who have experienced a long term period without living independently, have experienced persistent housing instability, and can be expected to continue in such status for an extended period due to a number of enumerated factors, such as a disability.

It also allows grantees to use up to an additional 10 percent of competitive funds to serve families defined as homeless under the Education Department homeless definition, but not so defined under the HUD definition. For areas with low levels of homelessness, up to 100 percent of funds may be used for such purposes.

The HEARTH Act also provides communities with greater flexibility in using funds to prevent and end homelessness. Whether it is the new Emergency Solutions Grant or the new Rural Housing Stability Assistance Program, that would grant rural communities greater discretion in addressing the needs of homeless people or those in the worst housing situations in their communities, this bill allows people to help people who are not technically homeless, and keep them from becoming so.

I recognize there have been tensions on the definition issue. All of us want to be sure that we are providing services to homeless children and families, and those at risk of homelessness.

Our amendment does not change the definition of homelessness in the No Child Left Behind Act for education programs that serve homeless children, nor does it seek in any way to hinder or limit these services.

In fact, our amendment strives to reach an appropriate balance to make sure that there are HUD funds available to help these families.

I hope that my colleagues can join Senator BOND and me, and support this important amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I am very pleased to work with our colleague from Rhode Island on this matter and strongly urge the support of this amendment as well. This is a good bill. We have an underlying bill that is a better bill because of what Senator REED and Senator BOND have added to it. This is a value added to the issue.

It is one that our colleague from Rhode Island has been involved in for virtually the entire time he has been in the Senate, and cared about. His earlier partner, Senator Allard of Colorado, worked with him on the issue. Senator Allard retired from the Sen-

ate, so Senator REED reached out to Senator BOND, who has a strong interest in housing issues, and became his partner, along with others. I am proud to call myself one of those partners, as chairman of the Banking Committee.

As we move forward, I know in my own State of Connecticut, we have had a 13-percent increase in homeless families in the last year and a half—that is really beginning in 2007 before this issue of foreclosures exploded in our communities. So I think those numbers are up beyond that.

The number of homeless children and families is now increasing. The fastest growing part of the population that is homeless is children in our country, and this is no longer just that person we see on a street corner who is struggling in their lives. Shelters are jam-packed. You can only stay so long. I know many of my colleagues have visited these facilities and seen families who, only weeks before, owned a home or had a place to live, are out of that situation and now are part of a growing number of people. So the timeliness of this legislation could not be more important. We are talking about trying to stop foreclosures.

What an important corollary to that to make sure we are simultaneously providing—Lord forbid people fall into that situation—an opportunity to have decent shelter.

So I thank my colleague from Rhode Island for his leadership. I applaud those of his cosponsors. This amendment would consolidate existing HUD McKinney-Vento homeless assistance programs and make several improvements to cost effectively end homelessness.

I have to take note because I mentioned McKinney-Vento. Both individuals are great friends of mine.

Stu McKinney was a Congressman from Connecticut for many years and took on the issue of homelessness. He passed away many years ago. He had a wonderful family. His son John is one of the Republican leaders in the Connecticut State legislature. His wife Lucy is a wonderful friend. Stu McKinney was a remarkable human being.

Of course, Bruce Vento was a great champion. I served with him in the House as well. McKinney-Vento, we throw these names around, but know that McKinney and Vento were two wonderful Members of Congress who cared deeply about what happened to people who fall on hard times.

We can add the name REED to that group as well. I compliment my friend and urge adoption of his amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I thank the chairman for his kind words and support. I do also recognize Senator Wayne Allard of Colorado. Wayne and I worked together on this legislation for a number of years. In fact, we sort of rotated between subcommittee chairman of the Housing Subcommittee. Consistently and in a very bipartisan

fashion, we worked together. We have been joined by Senator BOND whose leadership on the Appropriations Committee is remarkable when it comes to housing issues. We benefited immensely by the contributions of Senators Allard and BOND. I did not have the fortune of knowing Stuart McKinney. I knew him only by reputation. He was known as a sterling man who worked hard when the issue of homelessness was not as central to our consciousness as it is today.

Bruce Vento was extraordinarily decent. These two gentlemen sort of pointed the way. Now we have to take up the task and move it forward and further. I think we can with this legislation.

I thank the chairman for his support and urge all colleagues to join us in support of the amendment.

I suggest the absence of 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, we understand how busy everyone is, but we have to finish this bill tonight. We have people who have amendments they say they want to have a vote on. If they want to debate the issue, they will have to do it soon. We have two votes coming up. I have suggested to the manager of the bill that if people don't come over and there are amendments pending, he move to table them. If they don't want to bring the matters before the Senate, then we will move to third reading. We will finish this tonight. It is not fair for people to stand around waiting for all these great ideas to not come forward. If people want to have their amendments debated and voted on, they better do it pretty soon. We have two votes scheduled forthwith. After that, I hope the people who have amendments will come and speak to the manager of the bill and say: Here is how much time I would like or at least give some indication, just don't ignore us because we will not be ignoring them.

We have to move on. We have many things to do. After we finish this week, we have 2 weeks until the Memorial Day recess. I have mentioned there are certain days we will not have votes, but during the recess, we will not have votes. We have things we have to finish. We have to finish the procurement, credit cards, the supplemental, and this bill and some nominations. I hope everyone will cooperate with the managers of the bill. This is extremely important legislation. The longer we delay in passing it, the more harm it will do to communities all over America.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I believe this request has been agreed to by both the majority and minority.

I ask unanimous consent that there now be 2 minutes prior to a vote in relation to the Ensign second-degree amendment No. 1043 to the Boxer amendment No. 1038; that prior to the vote, the Ensign amendment be modified with the changes at the desk; that upon the use or yielding back of the time, the Senate proceed to vote in relation to the Ensign amendment, as modified; that if the Ensign amendment is not agreed to, then the Senate vote in relation to the Boxer amendment; provided further that if the Ensign amendment is agreed to, the Boxer amendment, as amended, be agreed to and the motion to reconsider be laid upon the table; that there then be 2 minutes of debate prior to a vote in relation to the DeMint amendment No. 1026, with the time equally divided and controlled between Senators DODD and DEMINT or their designees; that after the first vote in this sequence, the second vote be 10 minutes in duration.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, I wished to respond to Senator REID and ask a question to the chairman. I have another amendment that has to do with simply letting a homeowner know when his mortgage has been sold. We have objection on the other side. I wished to make it clear to everyone, I am willing to take that on a voice vote and not have to go through a recorded vote. I wished to make that comment. I hope Senator SHELBY and his side will allow us to move forward on that.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Without objection, it is so ordered.

FARM LOAN RESTRUCTURING

Mr. FEINGOLD. Mr. President, the Treasury Department has committed to provide almost \$250 billion in financial assistance to banks and financial institutions as part of TARP, which has become more commonly known as the bank bailout. Based on 2007 figures, 40 percent of all small farm loans come from banks and financial institutions that received more than \$1 billion each under TARP. Those loans represent a third of the monetary value of commercial farm credit in these types of loans. So it is clear that a sizable portion of farm loans have been provided by entities that received significant TARP funding.

The Treasury Department's Making Home Affordable program that was detailed on March 4 requires TARP recipients that provide home loans to take steps to avoid unnecessary foreclosures. The idea behind the program is that institutions that benefit from taxpayer funds should, in turn, be required to help home owners as much as possible, by making foreclosure the last resort when loan modification is not a viable alternative. This plan does not apply to farm loans, even though most family farmers and ranchers reside on their farms, and their homes are commonly listed as security on

their farm loans. So a foreclosure on a farm loan is also commonly a foreclosure on a home.

Like many other businesses, farmers and ranchers are struggling due to the ongoing economic troubles. The prices they receive have dropped by as much as 50 percent since last year. At the same time, input prices for many farmers remain relatively high. This squeeze from both sides has impacted dairy farmers in Wisconsin and across the country especially hard but is a growing concern in other segments of agriculture as well. Even when national prices have held up, in some localized areas the closure of animal processing facilities has virtually eliminated the market for some farmers' production. These factors beyond their control have meant it is increasingly difficult for many farmers to keep up with their payments, including farm loans.

Given that TARP has injected almost \$250 billion to support the financial stability of lenders, it seems reasonable to expect them to offer restructuring as an alternative to foreclosure for farm loans—just as they are required to do already for home loans and similar to the existing requirements for the farm credit system and direct Federal farm loans.

While Senator GILLIBRAND and I believe our amendment to extend requirements to provide loan restructuring as an alternative to foreclosure for farm loans is a sensible approach, we are willing to review the issue further and work with Chairman DODD on the issue. I appreciate the chairman's willingness to accept an alternative amendment we crafted to require a special report by the TARP Congressional Oversight Panel on farm loan restructuring. This report will analyze the current loan modification policies used by TARP recipients and examine the alternatives that could be used for a farm loan. Additionally, Chairman DODD has agreed to work with Senator GILLIBRAND and me to pull together a meeting of USDA and Treasury officials to hear from farm groups and farmer advocates to explain the growing need and how the existing restructuring program works currently under USDA direct loans and the farm credit system.

Mr. DODD. I appreciate the Senator from Wisconsin raising this issue and I will be pleased to work with him to arrange such a meeting, and to ensure that the Treasury Department looks into the concerns raised in the Senator's amendment.

Mr. FEINGOLD. I appreciate the chairman's support and assistance. I just want to note that this is an issue where instead of running from crisis to crisis, we have a chance to be a little proactive and get ahead of what could become a serious crisis in farm country if conditions do not improve. That is why there was such extensive support for my initial amendment from across the spectrum of agriculture-related organizations including the American

Farm Bureau Federation, Dairy Farmers of America, Midwest Dairy Coalition, National Farmers Union, National Family Farm Coalition, National Milk Producers Federation, National Sustainable Agriculture Coalition, Rural Advancement Foundation International—RAFI—USA—and almost 60 others. I will continue working to ensure that their concerns about farm loans are addressed.

AMENDMENT NO. 1032, AS MODIFIED

Mr. DODD. On behalf of Senator FEINGOLD, I call up amendment No. 1032 and ask that the amendment be modified with the changes at the desk; that upon modification, the amendment be agreed to and the motion to reconsider be laid upon the table.

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

The amendment (No. 1032), as modified, was agreed to, as follows:

(Purpose: To require the Congressional Oversight Panel to submit a special report on farm loan restructuring)

At the end, add the following:

TITLE —FARM LOAN RESTRUCTURING
SEC. 01. CONGRESSIONAL OVERSIGHT PANEL SPECIAL REPORT.

Section 125(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5233(b)) is amended by adding at the end the following:

“(3) SPECIAL REPORT ON FARM LOAN RESTRUCTURING.—Not later than 60 days after the date of enactment of this paragraph, the Oversight Panel shall submit a special report on farm loan restructuring that—

“(A) analyzes the state of the commercial farm credit markets and the use of loan restructuring as an alternative to foreclosure by recipients of financial assistance under the Troubled Asset Relief Program; and

“(B) includes an examination of and recommendation on the different methods for farm loan restructuring that could be used as part of a foreclosure mitigation program for farm loans made by recipients of financial assistance under the Troubled Asset Relief Program, including any programs for direct loan restructuring or modification carried out by the Farm Service Agency of the Department of Agriculture, the farm credit system, and the Making Home Affordable Program of the Department of the Treasury.”.

AMENDMENT NO. 1043, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the Ensign amendment No. 1043 is modified by the changes at the desk.

The amendment (No. 1043), as modified, is as follows:

On page 1, strike line 6 and all that follows through page 6 line 5, and insert the following:

(a) SHORT TITLE.—This section may be cited as the “Public-Private Investment Program Improvement and Oversight Act of 2009”.

(b) PUBLIC-PRIVATE INVESTMENT PROGRAM.—

(1) IN GENERAL.—Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Troubled Asset Relief Program (in this section referred to as the “Special Inspector General”), impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased

in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests (which conflict of interest rules shall be implemented by the manager of a public-private investment fund prior to such fund receiving Federal Government financing);

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury (in this section referred to as the “Secretary”) that discloses the 10 largest positions of such fund (which reports shall be publicly disclosed at such time as the Secretary of the Treasury determines that such disclosure will not harm the ongoing business operations of the fund);

(C) allow the Special Inspector General access to all books and records of a public-private investment fund, including all records of financial transactions in machine readable form, and the confidentiality of all such information shall be maintained by the Special Inspector General;

(D) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(E) require each manager of a public-private investment fund to acknowledge, in writing, a fiduciary duty to both the public and private investors in such fund;

(F) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(G) require strict investor screening procedures for public-private investment funds; and

(H) require each manager of a public-private investment fund to identify for the Secretary each investor that, individually or together with its affiliates, directly or indirectly holds equity interests in the fund acquired as a result of—

(i) any investment by such investor or any of its affiliates in a vehicle formed for the purpose of directly or indirectly investing in the fund; or

(ii) any other investment decision by such investor or any of its affiliates to directly or indirectly invest in the fund that, in the aggregate, equal at least 10 percent of the equity interests in such fund.

(2) INTERACTION BETWEEN PUBLIC-PRIVATE INVESTMENT FUNDS AND THE TERM-ASSET BACKED SECURITIES LOAN FACILITY.—The Secretary shall consult with the Special Inspector General and shall issue regulations governing the interaction of the Public-Private Investment Program, the Term-Asset Backed Securities Loan Facility, and other similar public-private investment programs. Such regulations shall address concerns regarding the potential for excessive leverage that could result from interactions between such programs.

(3) REPORT.—Not later than 60 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General shall submit a report to Congress on the implementation of this section.

(c) ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL.—

(1) IN GENERAL.—Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), \$15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) PRIORITIES.—In utilizing funds made available under this section, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under

the Public Private Investment Program established by the Secretary of the Treasury or the Term Asset Loan Facility established by the Board of Governors of the Federal Reserve System (including any successor thereto or any other similar program established by the Secretary or the Board), to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.

(d) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, nothing in this section shall be construed to apply to any activity of the Federal Deposit Insurance Corporation in connection with insured depository institutions, as described in section 13(c)(2)(B) of the Federal Deposit Insurance Act.

(e) DEFINITION.—In this section, the term “public-private investment fund” means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury or funds appropriated under the Emergency Economic Stabilization Act of 2008.

(f) OFFSET OF COSTS OF PROGRAM CHANGES.—Notwithstanding the amendment made by section 202(b) of this Act, paragraph (3) of section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225) is amended by inserting “, as such amount is reduced by \$2,331,000,000,” after “\$700,000,000,000”.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, there is now 2 minutes equally divided on the Ensign amendment; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. Mr. President, I am here to say this is a very friendly amendment to the underlying Boxer amendment. I hope everyone will support it. I am very proud of the work we did in a bipartisan way. I thank our staffs for doing this. It is a very significant amendment. What we are saying is, as we begin this new program, this Public-Private Partnership to buy toxic assets from the banks, Senator ENSIGN and I wish to make sure there is no collusion in the dealing, that there is no conflict of interest as this goes by. We wish to make sure the inspector general has the funding required to audit this program in a timely fashion. I am very pleased we have had this bipartisan coming together because we were a little bit far apart. But we worked hard for actually a couple weeks on this.

I urge everyone to vote for the Ensign-Pryor-Boxer second-degree amendment, and then we will move for adoption of the Boxer amendment, as amended.

I yield back the time. I do not see Senator ENSIGN here, but I know he believes very strongly in this second-degree amendment.

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

Mrs. BOXER. I ask for the yeas and nays.

The PRESIDING OFFICER. They are already ordered.

Who yields time in opposition?

If there is no further debate on the Ensign amendment, the question is agreeing to amendment No. 1043, as modified.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHN-SON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 180 Leg.]

YEAS—96

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

NOT VOTING—3

Johnson Kennedy Rockefeller

The amendment (No. 1043), as modified, was agreed to.

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

AMENDMENT NO. 1038

The PRESIDING OFFICER. Under the previous order, amendment No. 1038, as amended, is agreed to, and the motion to reconsider is considered made and laid upon the table.

AMENDMENT NO. 1026

Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 1026, offered by the Senator from South Carolina.

Who yields time?

The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, if I could have my colleagues' attention, the next amendment is one that would prohibit the Federal Government from converting TARP loans to common equity. Millions of Americans are telling us that enough is enough. We were told that the TARP money would be used one way, and it hasn't been used that way. It has been used for loans. We cannot let it go further to let these loans convert to common stock.

I urge my colleagues to support at least some firewall between what the Federal Government does and the private sector. We didn't approve TARP funds so the Government could become common equity shareholders in banks across the country. Let's let them give this back when they are capitalized, but let's not get the Government in the business of owning banks.

My amendment would prohibit the conversion of these loans to common equity. I encourage my colleagues to support it.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, briefly, let me thank my colleague from South Carolina. The reason I oppose this amendment is because we ought to have the flexibility. It is not a mandate. Today, the Treasury has the right to be able to convert preferred shares to common shares. There is a reason for that. The markets react in terms of real capital to common shares, not preferred shares. Preferred shares are a form of debt. If you are trying to get capital into lending institutions, which is critical to be able to provide loans, you need to have capital. Common shares allow you to make that determination.

Secondly, on the upside for taxpayers, and TARP money coming back, there is a greater likelihood we will benefit if we have common shares. I am not advocating that kind of conversion, but you ought to have the flexibility to move from preferred to common. You may want to bifurcate that in some of these tranches. The Senator's amendment would prohibit that in any case. I think that is the wrong move to make.

I oppose the amendment and urge my colleagues to vote against it.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 1026.

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

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

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from South Dakota (Mr. JOHN-SON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from

West Virginia (Mr. ROCKEFELLER), are necessarily absent.

The result was announced—yeas 36, nays 59, as follows:

[Rollcall Vote No. 181 Leg.]

YEAS—36

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

NAYS—59

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

NOT VOTING—4

Bayh Kennedy
Johnson Rockefeller

The amendment (No. 1026) was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 1036

Mr. KERRY. Mr. President, I call up amendment No. 1036, with a possible modification, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment is pending and, without objection, it is the pending amendment.

Mr. KERRY. I thank the Chair.

Mr. President, I am offering this amendment to address the needs of renters in properties that have been foreclosed. This amendment is cosponsored by Majority Leader REID, Senate Banking Committee Chairman DODD, and Senators KENNEDY, BOXER, GILLIBRAND, and MERKLEY.

Congress has already taken extraordinary measures to help troubled borrowers in communities where they have abandoned foreclosed properties, but Congress has done very little to help renters who have been paying their rent regularly on time but, unfortunately, they have landlords who are losing their property to foreclosure. So these renters are absolutely blameless victims in the foreclosure catastrophe that has hit the country.

It is estimated that as many as one in every six mortgages in America is going to be lost to foreclosure in the

next 4 years. In Massachusetts, more than 12,000 homeowners lost their homes to foreclosure last year, an increase of 62 percent in just 1 year. About 3,300 of those foreclosures involved homes with two or three units, and most of those homes had tenants who were evicted.

These renters often have absolutely no idea that their home is about to be foreclosed. Depending on the State they live in, they may be evicted with absolutely no notice. Obviously, this could be particularly difficult for low-income renters who don't have the resources to relocate or even to do so very quickly.

Under this amendment, tenants in any federally related mortgage loan or any dwelling or residential real property with a lease have a right to remain in the unit until the end of the existing lease. If a new purchaser intends to use the property as a primary residence, then the lease may be terminated, but the tenant has to receive 90 days' notice to vacate.

So what we believe is that this provides an appropriate level of protection. It doesn't take away the right of someone who takes over the home in foreclosure to be able to then transition that property or it decides if that person is going to keep the property as a rental property, the person who already has a legitimate lease has a right to be able to stay.

The provisions of this amendment would sunset. I wish to make that clear. This sunset is based on the notion that this is to deal with the current crisis, and it would sunset on December 31, 2012. Furthermore, it states specifically that none of the provisions here would affect any State and local law that provides a longer time period or other additional protections to renters. So there is nothing here that reduces the protection renters get.

Let me give my colleagues a couple graphic examples. A landlord should not be allowed to come in, change the locks, and force out tenants who were there completely legitimately, with an expectation that they were coming home to their same old home. A recent story in the Boston Globe shows how devastating and, frankly, absurd this can be at times.

A Dorchester, MA, man returned to the home he had been renting for the past 4 years. He found that the locks had been changed and a foreclosure notice had been placed on the door. With a neighbor's help, he managed to crawl through a second-floor window to get into the apartment. When the police arrived, he had to beg them not to be arrested. Fortunately, he was not but only because he was able to show proof he rented the apartment. Then for the next 4 months, he had to battle with the bank that then owned the building, enduring no heat, no electricity, and no water while he went through that 4-month process.

This is disgraceful. Unfortunately, it is not an isolated incident. In early

January, a 45-year-old former factory worker from China came home to her third-floor walkup in east Boston to find a crew of moving men removing all of her furniture. She thought she was being robbed. She didn't speak English. She pleaded with them in Chinese to stop. She ended up on the street with all of her possessions until a city clerk noticed that the eviction paperwork, which the renter had never received, had expired. A judge issued an order that allowed her to move back. But for how long and under what circumstances?

These kinds of incidents show how completely vulnerable renters are to this foreclosure cycle we are witnessing. It is well documented how foreclosure is already overpowering countless numbers of homeowners who are unable to pay their mortgages, but foreclosure is also causing a rampage of sudden evictions of renters. My amendment would stop that rampage and help unsuspecting renters from falling victim to foreclosure in which they played absolutely no part.

I thank the Senate Banking Committee chairman, Senator DODD, for his support of this amendment. It will very plainly help families stay in their homes. It is a way of preventing an already grave situation being turned into one that is even more egregious and more insulting. I think Senator DODD understands this. No one has worked harder than he has to fight against the level of foreclosures that are taking place.

I appreciate his leadership and his support for the families across the Nation who are facing this kind of foreclosure problem.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Pennsylvania.

AMENDMENT NO. 1033 TO AMENDMENT NO. 1018

Mr. CASEY. Madam President, I call up amendment No. 1033.

The PRESIDING OFFICER. Without objection, the clerk will report.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. CASEY], for himself and Mr. LEAHY and Mr. SPECTER and Mrs. GILLIBRAND, proposes an amendment numbered 1033 to amendment No. 1018.

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

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

The amendment is as follows:

(Purpose: To enhance State and local neighborhood stabilization efforts by providing foreclosure prevention assistance to families threatened with foreclosure and permitting Statewide funding competition in minimum allocation States)

At the end of title I of the amendment, add the following:

SEC. 105. NEIGHBORHOOD STABILIZATION PROGRAM REFINEMENTS.

(a) IN GENERAL.—Section 2301 of the Foreclosure Prevention Act of 2008 (42 U.S.C. 5301 note) is amended—

(1) in subsection (b), by adding at the end the following:

“(5) DISTRIBUTION OF FUNDS IN CERTAIN STATES; COMPETITION FOR FUNDS.—Each State that receives the minimum allocation of amounts pursuant to the requirement under section 2302 shall be permitted to use such amounts to address statewide concerns, provided that such amounts are made available for an eligible use described under paragraphs (3) and (4) of subsection (c).”; and

(2) in subsection (c), by adding at the end the following:

“(4) FORECLOSURE PREVENTION AND MITIGATION.—

“(A) IN GENERAL.—Each State and unit of general local government that receives an allocation of any covered amounts, as such amounts are distributed pursuant to section 2302, may use up to 10 percent of such amounts for foreclosure prevention programs, activities, and services, foreclosure mitigation programs, activities, and services, or both, as such programs, activities, and services are defined by the Secretary.

“(B) DEFINITION OF COVERED AMOUNTS.—For purposes of this paragraph, the term ‘covered amount’ means any amounts appropriated—

“(i) under this section as in effect on the date of enactment of this section; and

“(ii) under the heading ‘Community Development Fund’ of title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 217).”.

(b) RETROACTIVE EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on the date of enactment of the Foreclosure Prevention Act of 2008 (Public Law 110-289).

Mr. CASEY. Madam President, this amendment deals with the Neighborhood Stabilization Program, a very important part of our strategy to fight the battle against foreclosure throughout the country. So many States have had a terrible time with record numbers of foreclosures. The State I am from, the State of Pennsylvania, fortunately has not had as big a problem as some States, but we still have a major challenge on our hands.

The good news is we have strategies to deal with it and we have a lot of locally grown, so to speak, strategies in big cities such as Philadelphia and smaller communities where people at the local level are dealing with it on the front end and the back end.

On the front end, that means having strategies in place for counseling and other ways to prevent people from getting into a problem of foreclosure.

This amendment is very simple. What it says is that dollars allocated under this program, some of those dollars should be allowed to be used for foreclosure prevention, as well as mitigation. Basically, what we are asking for in this amendment and what it would do is allow up to 10 percent of the funding under the Neighborhood Stabilization Program to be used for foreclosure prevention programs, activities, and services, and then, secondly, in another category, foreclosure mitigation programs, activities, and services.

I believe it is critically important to give local officials and people running programs at the local level the discretion—a very limited amount of discretion but some discretion—on how they spend those dollars. We hear a lot of discussion in this Chamber all the time

about empowering people at the local level. This is one way to do it. They know how to fight this battle. They have strategies in place to prevent people from falling into foreclosure, but also how to mitigate it if foreclosure comes about.

That is what this amendment is all about. I ask my colleagues to support it. It is the right thing to do for a lot of local communities. It is also the right thing to do for people who are expert at dealing with foreclosure prevention, as well as mitigation.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, I ask unanimous consent that the Reed amendment be the pending amendment.

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

AMENDMENT NO. 1042 TO AMENDMENT NO. 1040

(Purpose: To establish a pilot program for the expedited disposal of Federal real property)

Mr. COBURN. Madam President, I call up my amendment to the Reed amendment.

THE PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 1042 to amendment No. 1040.

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

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

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

AMENDMENT NO. 1036

Mr. COBURN. Madam President, I am going to spend a minute talking about the Kerry amendment. I am sitting over here listening to him. There is no question he is right on what should happen in terms of notifications on evictions. But we are about to make the same mistake we make all the time. That is a State issue. State laws apply, and we are going to pull that in and make it a Federal issue. Anybody who has any connection with Federal insurance, FHA, anything else, we are now going to start writing the laws on contract law in my State, in his State, and every other State. That is exactly how we got into the trouble we are in today.

I hope the American people will look at how we got where we are. We got where we are because we are putting our nose into States' business. We think we have a nexus, no matter what the problem is, we ought to be solving it, which means why have State legislatures anymore? Why have Governors? Why not solve all the problems?

AMENDMENT NO. 1042

Now to the amendment at hand. You cannot help but be discouraged about the Congress. We have all these grand ideas and new programs to expand the

size and scope of the Federal Government, but we never want to pull it back in when it is not effective and when it is not working. So what do we do? We create a new program or we renew a new authorization, not looking at the facts, not looking at the downside consequences of it. What we do is just reauthorize it with a good goal in mind.

Helping homeless people is great for us to do. The McKinney-Vento Act in the past has made a great contribution to 250 homeless shelters in this country. But nobody pays attention to the fact that we spent \$300 million and went through 30,000 properties to fund 250 homeless shelters.

The other thing that is not recognized is that we have all these pieces of property we cannot get rid of. It is actually 69,850 properties that the Federal Government owns that it is not using. Some of them need to be razed, but they are costing us billions every year to maintain because we have a bureaucracy that we cannot get through to sell the property.

We have \$89 billion of cash sitting there right now—right now, \$89 billion. That is conservative appraisal values today on properties. We could put that money into the Federal Treasury. That is \$89 billion we would not borrow against our grandchildren if, in fact, we had a commonsense, cogent way to dispose of excess Federal properties.

All this amendment does is say let's create a pilot program for 5 years. Let's offset anything 100,000 square feet or less. Anything bigger let's go around it. We are not going to have 100,000-square-foot homeless shelters. And let's incentivize the agencies to get rid of their property by leaving 20 percent of the money they would get from selling those properties in the agency.

The GAO says one of our biggest at-risk programs is our real property management. Peter Orszag testified in his hearings on confirmation that it is a giant problem. So now we come up with an amendment that is common sense. It is a pilot project. All it does is say let's test it on a limited number of properties for 5 years and see if we can't move some of this property, can't lower the cost of Government for the American people, and let's do it in a way that is smart.

We have over 10,000 properties that need to be razed, need to be torn down, that we are expending tons of money to guard or protect or to maintain in a small fashion that is absolutely wasteful. Yet this body does not want to do that. It does not want to approach a commonsense program.

This does not do anything to homeless people. This does not take any opportunities away from them. There is a very set guideline in here on how they get to perform against the properties under the pilot project. But we are going to claim—because the homeless groups that support McKinney-Vento are not happy with it, we are going to claim we cannot do anything. So we

are not going to accept this amendment. They are going to raise a point of order because it costs \$20 million. But when CBO scored it, they did not count any of the funds coming from the properties.

It is a net gain of billions, and we are going to get a point of order. Why? Because we would rather satisfy completely an interest group than do what is best for the country as a whole. We would rather spend more money than save money. We would rather look good in one area than protect the future in the long term.

One cannot read this amendment and not say it doesn't make common sense for us to be doing it. It is absolute common sense. What the American people know, better than we do, is there is not much of that up here; otherwise, we would have solved this problem 4 years ago when I started offering amendments on it. But we don't want to do it. We don't want to take on the established, connected lobbyists and interest groups that say: No, we don't want that to happen.

We had an offer from the House to do five properties over 5 years. That was the offer from the House—5 out of 69,000 properties—69,000 pieces of property the Federal Government has that it wants to get rid of and we cannot do it because we are afraid we might miss one opportunity to put a piece of property in the hands of good people who want to do the right thing for those less fortunate.

Yet we sit here and we deny common sense. If we sold \$89 billion worth of properties, compound that interest over what we are borrowing right now over the next 5 years. Think about how that could offset some of our difficulties today. If we just did half of it, what would happen? The first thing the American people would say is, Hey, they are starting to get it. They are starting to understand what we are going through, making priorities.

The risk of missing an opportunity for a homeless shelter versus getting rid of a high-risk problem that this Federal Government has—not denying but maybe missing one opportunity as small compared to how it is going to impact the future homeless people in this country, who are going to be our grandkids who will never be able to afford to buy a home because we are strangling them with debt.

It will be fine to challenge this on a point of order. I will make a motion to waive the point of order. We can have a vote in the Senate about whether we are going to take commonsense actions that actually help our kids and our grandkids at the same time we are helping the homeless or we are going to say: No, we are not going to do anything new. We are not going to do common sense. We are not going to apply what the ordinary man would do with their own money. We are just going to reject it.

The fact that this is not even considered to be accepted in this bill is a

statement about this body that is unbelievable. There is no legitimate complaint with this pilot program. The only complaint is, those who lobby on the other side do not want it or the only complaint is they are afraid we will not get everything we want if you do that.

This Nation needs to learn right now; if we are going to get out of these problems, we are all going to have to sacrifice something. Everybody is going to have to sacrifice. That means we can't have everything we want. So the very idea that we won't address this issue at this time on housing, when we have a big, large, overburdening problem with real property in the Federal Government, says: What are we thinking about? Why does this not fit within the bounds of what we are supposed to be doing right now? Who are we going to hurt if we create a pilot program to get rid of properties over 100,000 square feet? How much money are we going to save just on maintenance every year? It has to be seen in the light of the whole picture, not just in the light of the homeless. If we fail to do that, we fail to think about the long-term benefits that will come from having common sense in real property reform. We ought to be doing this. We ought to be helping the next two generations.

I am reminded that I did 27 townhall meetings while we were on break. And I will never forget, this guy came up to me and said: I don't care what you do to me, quit hurting my children. Quit hurting my children.

Not accepting this amendment hurts everybody's kids. It is money we could save if we wanted to, but we won't because we don't have the backbone or the courage to do what is the best right thing for the country right now. I have no doubt we will do the politically expedient thing. We won't work on real property. We won't solve this big issue that costs us billions every year just in maintenance costs. We will do the easy thing.

I will have more to say about this as it is challenged on the point of order, and also before the vote, but I hope my colleagues start becoming partisan for our kids, partisan for our children. We can help the homeless and help our kids too. We can help the homeless and create a better future for our kids, but we can't if we won't take a risk. So my challenge to my colleagues is to at least look at the amendment and say: If it was my money, what would I be doing? And the fact is, if it was your money, you wouldn't be sitting on \$89 billion worth of property that is costing us billions every year to maintain, that we are not using, and that we can't get through the process to get rid of.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, Senator COBURN has been working very diligently over the last several years to deal with the issue of property disposi-

tion. We have established over many decades now certain priorities to access Federal properties, and included in those are very low-priority agencies that provide shelter for homeless people. Prior to these, in my recollection of the distribution of the properties, is the right of State and local governments to buy property at a discounted price.

Madam President, as Governor, you have probably considered this option many times. It is my understanding that this underlying bill would exempt a number of the properties from the Federal Property Act provisions that would allow, in fact, State and local governments to access these properties at prices that are reasonable, particularly now, given the budget pressures of local governments. But, in addition, this 5-year pilot program would encompass the largest and potentially most valuable properties that are held in surplus by the United States.

It is far from a pilot program. What our colleagues in the House are talking about is a true pilot program—a limited number of properties to validate and really legitimize the approach Senator COBURN and others are suggesting. I know the Senator has been working very diligently and sincerely with colleagues on both sides of the aisle, but this represents a version, an early version, I believe, that, at least in terms of discussion with others, has been changed somewhat.

One point I wish to make with respect to the underlying amendment that is important is that we are not attempting to deal with the issue of property distribution, which cuts across the entire spectrum of Federal properties—practically every agency in the Federal Government. That encompasses not only the rights—very limited rights—of homeless groups to acquire property but fundamentally the rights of State and local communities to acquire this property. In fact, for many State and local communities, this program is a major source of economic development.

Again looking at the Chair, who was the Governor of the State of New Hampshire, Pease Air Force Base was surplus property which is now a dynamic economic development tool. My guess, again, was that it was obtained by the State, probably using at least in part some of these powers. All of that would be altered in this pilot program that would give, in fact, public lands managers wide discretion to dispose of properties. Again, it is a pilot program, but it is so long term. Five years is not exactly a short-term, let's do an experiment, evaluate it, and see what can be done.

Our legislation, the underlying amendment, is the result of many years of bipartisan effort to deal with the issue of homelessness, not the distribution or disposition of public property. I think it would represent an extraordinary improvement in the current system. It is more efficient, it consolidates applications, it gives

flexibility to local communities, and it deals with the problem that I think is equally compelling for the children of today. There are thousands of children who don't have a home. We have to be cognizant of the future. We have to take prudent steps—and I wish, looking back over the last 8 years, some of my colleagues on this side would have been much more prudent in their fiscal policies that took a surplus in 2001 and turned it into a huge deficit in 2008, 2009. So the ability to look ahead is not exclusive to one side of the aisle. But the legislation I have proposed, along with Senator BOND, represents a reauthorization of McKinney-Vento, which will give the States and localities better tools to deal with the current crisis of countless families who are without homes.

My concern is not only with the breadth of this amendment, with its focus on one part of a much more complicated puzzle, but also the fact that I think it could seriously jeopardize the passage of what is important legislation—the McKinney-Vento reauthorization.

I do believe, because of the Senator's efforts, because of his sincere and energetic and consistent advocacy of this, that this issue is resonating on both sides—both with our colleagues in the House and here in the Senate. I would be extraordinarily disappointed if we were to miss a great opportunity to fundamentally reform the program.

We worked with the Senator last Congress. We had bipartisan support, led by Senator Allard. We had, in fact, the clear endorsement of President Bush and the Housing and Urban Development Department under the Bush administration for our homelessness proposal, but it failed because this legislation, the Reed amendment, was embroiled in this controversy of property disposition which spans every agency of the Federal Government. It is not just HUD, it is the Department of Defense, the Department of Agriculture, the Department of the Interior.

I think if we are going to do something this comprehensive, let's not single out the homelessness initiative as sort of the wedge or the fulcrum or the lever. Let's step back, work collectively, collaboratively, and pass legislation that will apply across the board and will do so in a principled and practical way. There is no opposition to that.

I would also note, as the Senator alluded to, that at an appropriate moment there will be a point of order raised on the legislation. But I would hope that, again, we could move through this proposed second degree, pass the underlying amendment, and not forget but in fact redouble our efforts to approach this in a comprehensive way. I know many colleagues—not only Senator COBURN but Senator CARPER—are sincerely and enthusiastically interested in having reform of the way we dispose of property.

I am certainly also in a position to say personally that I think if we do

this, we have to take into consideration the equities of all the parties. This is not just about homeless groups that get grants, this is about State and local governments, this is about the way we have established over many years the disposition of Federal property. Can it be improved? Yes, it can. Should we improve it? Yes, we should. But I think to essentially target the homeless population as sort of the lever for this change is the wrong approach. So I would, at the appropriate moment, either myself or the manager, raise a point of order.

With that, I yield the floor.

Madam President, I do have another amendment which I would like to call up, but I see the Senator from Oklahoma is here, and he should have an opportunity to speak.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I appreciate Senator REED's understanding of our effort, but the question arises: We have 69,850 properties. This isn't a big pilot. It only allows 750 properties to be disposed of. Think about that—750. It is barely over 1 percent. It is going to be \$800 million to \$1 billion, and we are going to block everything—a pilot—because it is too big, too expansive—750 properties out of 69,850. We don't think we ought to attach that now?

We put in extra provisions to make sure the homeless can have these, but most of them aren't good for anything. In fact, most of them will probably be razed. But the fact is, to say we can't do it—we have been saying we can't do it for 4½ years. Can't do it. Can't do it. When can we do it? And 750 properties to look at over a 5-year period is just 150 properties a year. How small does it need to be for us to have a pilot—out of 750, 150 properties a year? A total of 69,850. One hundred fifty, and we can't do that? And because we can't do that, that becomes a symbol for the rest of our failures. We can't sell 750 properties and protect the homeless while we do it and lower some of the burden of the excess real property this Government has. If we can't do that on this bill, a small number of properties, I am wondering what we can do.

It confounds me. It doesn't fit with any sort of common sense. It doesn't fit with any reason. It doesn't fit with any long-term view of how do we get out of the mess we are in. What it fits with is that we don't want to do it because it is hard. We don't want to do it because somebody might yell, somebody might scream. But how do we do the best right thing—not the best thing, the best right thing—for the country? I can tell you that letting another year go by when we have 73,000 properties and \$98 billion worth of money and \$8 billion a year to maintain it isn't the best right thing.

I am used to standing up and losing, but I am not going to stop putting forward ideas that we shouldn't be rejecting, that make a difference in the outcome for the future of this country.

This doesn't have a liberal or conservative slant to it. It is just plain old, good old Oklahoma common sense, good old Connecticut common sense, good old Rhode Island common sense. The fact we would reject it says that our motives have to be somewhat suspect on the reasons we would reject it at this time, especially when we are in the trouble we are in.

It is so discouraging to go home and hear people say, why are you doing what you are doing? Why aren't we fixing this? Why aren't we making the small steps that create a big step that create a yard that create a mile that secures the future?

It is amazing to me that you can have a real objection to this amendment—not 150 properties a year. That isn't going to impact anybody except our kids in the long term, and it is going to impact them positively. But we are going to have a parochial reason why we might not do it? I think that is what I might have heard implied. A parochial protection? We are going to die of parochialism. It is going to kill us. Eighty-plus billion dollars sitting there and we could take and lower the impact of this tremendous downturn and make a difference. Yet we are going to say no.

As they say in Oklahoma—go figure.

Mr. DODD. Will my colleague yield?

Mr. COBURN. I am happy to yield.

Mr. DODD. I understand what my colleague from Rhode Island is talking about, but I must say our colleague from Oklahoma is making a lot of sense. He often does so. Who has jurisdiction over this? Does it depend upon the Federal property, where it is located? Which of the committees?

Mr. COBURN. Homeland Security.

Mr. DODD. People say debates here don't have an effect on anybody. I will make a commitment to you as chairman of the Banking Committee, I will work with you on this.

Mr. COBURN. I appreciate the Senator's offer.

Mr. DODD. I am intrigued by what the Senator is saying. I suspect a lot of other people don't disagree with what he is driving at here. We need to pull some people together to see if we might get something done.

At this late hour of the night I might not be listening to this debate were I not chairing the committee and managing the bill on the floor, but my colleague from Oklahoma I think has raised a very valuable point and it is worthy of our consideration and I would like to sit with him and see if I can't help.

Mr. COBURN. I am happy to take the Senator up on that offer as soon as I lose my amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I want to give my colleague from Rhode Island a chance to be heard but—let him offer his amendment.

Mr. REED. Madam President, there will be an amendment that I propose

that will help qualify the status of warrants that are currently held by the Department of Treasury with respect to TARP. It will give the Secretary of the Treasury discretion to dispose of those warrants when he feels it is appropriate. Right now, under language that was adopted in the context of our debates over the recent amendments to TARP, there is a mandatory requirement for the Secretary to surrender or dispose of the warrants if the TARP funds are returned by a financial institution.

I believe the Secretary should have the discretion to hold these warrants if he thinks it is in the best interests of the taxpayers. The whole point of the warrants, and a point I insisted upon in the original legislation for the TARP bill last September, indeed a point that I found to resonate with many of our colleagues on the Republican side—SPENCER BACHUS, the ranking Republican on the House Financial Affairs Committee cited this specifically as one of the reasons why the TARP program could be supported—and that is, in addition to our investment in preferred stock which pays dividends, the Government would also have the right to obtain warrants; that would be the right to acquire stock in the future.

Interestingly enough, at the time we were debating the TARP bill, Warren Buffett, who was a very sophisticated and is a very sophisticated investor, made a preferred stock investment in a large financial institution and also received warrants. So this is typically how many of these deals are done.

At this juncture the institutions receiving TARP funds have the right at any time to pay it back. That is an issue that has been settled. It is the policy of the United States. But I believe the Secretary of the Treasury should have the discretion, because these are separate instruments, to hold those warrants, to maximize, if he can, the market price that he will receive on behalf of the taxpayers.

This, again, is an issue that was very critical to many of us in the initial adoption of the TARP legislation. We are not mandating that the Secretary of the Treasury surrender the warrants, nor are we mandating that he keep them. It will be discretionary. He and his colleagues have, and I believe must exercise, the judgment when it is an appropriate time to surrender these warrants or to take other actions under the contracts under which they were issued, to ensure value for taxpayers.

We have made very significant investments in the financial system through the TARP program. The premise, again, was that not only would the direct investment be repaid, but taxpayers would benefit from the recovery of these institutions. We are seeing that recovery now. We have a ways to go but we are seeing some encouraging signs. I believe, again, that having assumed risks, taxpayers should benefit from the rewards of a revived

financial institution and in that case we are simply making this discretionary with the Secretary of the Treasury so that he can judge whether and when the appropriate time is to surrender the warrants, to receive fair market price for the warrants, and to ultimately help benefit the taxpayers who have put up the money to deal with a huge financial crisis.

At the appropriate time I believe there will be a consent to move forward on this amendment. I hope it would be supported and adopted, but I wanted to make that point at this juncture.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Madam President, I rise and offer my support for the amendment of the Senator from Rhode Island that repeals the requirement for the Secretary of the Treasury to liquidate warrants under repayment of obligations under the Troubled Asset Relief Program. The Senator from Rhode Island I think has laid out the rationale for this, but the point is under existing law it was rather restrictive and required a specific action without consideration of what the values may be. What the Senator is suggesting is moving from a "shall" requirement to a "may" gives flexibility, which is exactly what we have been arguing for today in a number of these amendments, giving flexibility dealing with preferred and common shares—flexibility. Some of the other amendments earlier reflect on this flexibility, which is critical.

These warrants change over time. It doesn't suggest by holding back you will necessarily get a better value. It doesn't mean by releasing them earlier you will do better. It is obviously a judgment call and you want to give people the opportunity to make the judgment calls. The beneficiary of all of this ultimately will be the American taxpayer and that is ultimately what we are trying to achieve.

I think my colleague has once again offered a very wise and worthwhile amendment to this bill. It strengthens it, in my view. I thank him for it. I don't know if there is any objection to this at all.

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

Mr. REED. Madam President, I believe they are working on an appropriate consent to adopt it.

Mr. DODD. As soon as that happens, we will move this along and see if we can't get this agreed to.

AMENDMENT NO. 1036

I want to mention a few words about the amendment offered by Senator KERRY from Massachusetts and Senator GILLIBRAND from New York and Senator REID from Nevada, if I may.

This is a very good amendment. My hope is my colleagues will support it. We offered an amendment on earlier legislation dealing with rental properties that were affected under the Government-sponsored enterprise. Under that legislation, we prohibited

those properties from evicting tenants who were current in their rental obligations when a property was foreclosed or purchased by a new buyer, the thought being, if a tenant is current in their obligations, they should not be evicted unless they are on a month to month, in which case at the end of the month the landlord would have that right. But if there are leases of longer duration, these tenants ought to be respected under the contracts they have.

I can say in my own State of Connecticut, we do not have a great supply of affordable rental stock. This is not unique in my State. I think this is true in most States. As you are watching more and more foreclosures occurring and as people lose their homes, the demand for rental stock is increasing. The cost of it is prohibitive. In the State of Connecticut—I believe these numbers are correct—I think you need an hourly income of close to \$21 an hour to afford the average two-bedroom apartment. Obviously that could fluctuate to some degree, but that gives you some idea of the cost, and that is close to three minimum wage jobs, in effect, in a day to pick up that kind of income.

It is important that we do what we can to protect people in this situation. That is exactly what Senator KERRY does, in that the measure requires at least 90-days' notice for all renters in federally related housing, but would honor the full term of any existing lease unless a new owner will occupy the home. The amendment also amends the housing voucher statute to preserve section 8 contracts at foreclosure. These provisions would be in effect during the foreclosure crisis, sunset at the end of December 2012.

This is a very worthwhile proposal. We are protecting an awful lot of good people out there. Frankly, I am somewhat perplexed that there are those who object to this. It seems to me it would be in the interests of a new owner to want to keep people in paying rents, current in those obligations, rather than evicting them and beginning another process unless they are looking for some extremely—higher rents coming in. But it seems to me, given the amount of people out of work, given the declining value of properties, you are probably acquiring these properties at a lot less cost than the previous owner may have had which means the rents you would have to secure wouldn't have to be as expensive to maintain it.

At the very hour people are worrying about where they are going to live—we just heard a discussion by Senator REED about homeless families. The largest increase in homeless families is children in our country.

Again, imagine that family tonight—10,000 tonight, as there were last night, as there will be tomorrow night and every night—who has discovered they are in such default their home is on the auction block or has been lost. That is a pretty compelling moment to know

you have lost your home. It further compounds that problem by not knowing where you are going to live, where you are going to take your family—showing up tonight and looking at your children and suggesting you are going to move, going to have to find a different place to live.

What Senator KERRY is saying here, at least for tenants who are in good standing on their properties, they should not be affected because the property ended up in foreclosure through whatever rationale that may have happened to the landlord. It seems to me, putting people out on the street is not what we ought to be doing at a time such as this. Whatever your views are about whether these programs are working as effectively as they should, I think all of us agree the innocent who are being confronted with these decisions should not be left in a more precarious position than they are already in, and that is exactly what would happen in the absence of the Kerry amendment, the Kerry-Gillibrand-Reid amendment.

Once again the majority leader, Senator REID, has taken a strong position on these matters and is making a difference, as he has, by allowing these matters to come up and being as supportive as he has of the various efforts we are making here to complete this work.

I thank Senator KERRY of Massachusetts, his colleagues Senator REID of Nevada and Senator GILLIBRAND of New York, for offering this idea. It is one deserving of our support and will make a real difference.

People have asked whether this bill is going to make a real difference for real people. This amendment makes a real difference for real people, and is exactly what we ought to be doing. These were not the people who caused the problems they are in. These are the victims of what is occurring. If we care about what is happening to them, this is a wonderful way to say we understand it, we are stepping up and making a difference in their lives.

With that, I yield the floor.

Ms. SNOWE. Madam President, I rise in strong support of the Boxer-Snowe amendment, which would be modified by an Ensign-Pryor-Boxer-Snowe second-degree perfecting amendment, to provide for additional oversight of the Public-Private Investment Program—PPIP—which the Treasury Department has established to help remove toxic securities from bank balance sheets and restore the flow of credit.

With up to \$100 billion of Troubled Asset Relief Program—TARP—dollars at stake for PPIP alone, it is critical that we take every step at our disposal to safeguard taxpayer dollars. To that end, I am pleased to have collaborated with Senators ENSIGN and PRYOR to modify the amendment Senator BOXER and I initially offered. I hope that the Senate will now approve our consensus language overwhelmingly.

One common feature of PPIP, which will work in conjunction with the

Term Asset-Backed Loan Securities Loan Facility—TALF—that Treasury has established to get small business and consumer credit flowing once again, is that both programs match dollars put forth by private investors with money from TARP, the Federal Reserve, and Federal Deposit Insurance Corporation. One concern that has been raised by private observers and the Special Inspector General for TARP Neil Barofsky in his April 21 report to Congress is the potential for fraud. Indeed, Mr. Barofsky's assessment could not be clearer, as he wrote, "Many aspects of PPIP could make it inherently vulnerable to fraud, waste, and abuse."

Unfortunately, the potential for fraud appears widespread. For example, as private funds with access to taxpayer dollars will be created to purchase and manage toxic assets under PPIP, conflicts of interest between what is best for the fund manager and the taxpayer could easily arise. In cases in which a fund already owns or manages the same types of assets it is proposing to purchase on behalf of taxpayers, that could give it the incentive to overpay. The reason is that it could make more money if the price of the assets it already owned were bid up. At the same time, the taxpayer will have overpaid for assets and forfeited an investment fee to the fund managers.

To ensure that taxpayers are not bilked, the original Boxer-Snowe amendment had two objectives. First and foremost, it would require Treasury to work with Special Inspector General for TARP Barofsky to write stringent conflict of interest rules. Second, it would provide Mr. Barofsky's office an additional \$15 million to audit transactions under PPIP to ensure taxpayers do not get fleeced. As I mentioned, that Senator BOXER and I were able to work with Senators ENSIGN and PRYOR to strengthen the taxpayer protections contained in our initial amendment. The result is a consensus amendment that will ensure PPIP is subject to strict safeguards that will still allow it to get underway and begin to clear toxic assets from bank balance sheets, thereby, spurring the flow of credit.

Turning to specifics, our consensus amendment will require the Treasury Department to impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests.

Second, each public-private investment fund would be required to disclose quarterly to the Secretary of the Treasury the value of the 10 largest positions of each fund manager.

Third, each manager of a public/private investment fund would be obliged to acknowledge a fiduciary duty to both the public and private investors in

such a fund, as well as develop a robust ethics policy and methods to ensure compliance.

Fourth, our amendment would mandate that Special Inspector General Barofsky would have access to all books and records of a public-private investment fund, as well as each fund manager to retain all relevant books, documents, and records to facilitate investigations.

Last but not least, our amendment would add critical legislation proposed by Senators ENSIGN and PRYOR that would require the Secretary of the Treasury to work with Special Inspector General Barofsky to issue regulations governing the interaction of PPIP with the Term-Asset Backed Securities Loan Facility to address concerns regarding the potential for excessive leverage that could result from interactions between the programs. The issue here, is that although both programs would match private funds with public dollars, the government's stake is generally several times higher. For example, in the case of PPIP alone, private funds may only have to put up \$7 for each \$100 invested. Given that it is always easier to play with other people's money than your own, I am pleased that this language has been added to the underlying Boxer-Snowe amendment.

I ask my colleagues to support this commonsense amendment that would safeguard taxpayer funds on both the front end by mandating critically necessary conflict of interest rules on PPIP and on the back end as well by providing Inspector General Barofsky with additional resources to investigate those who would seek to enrich themselves at taxpayer expense.

AMENDMENT NO. 1039, AS MODIFIED

Mr. DODD. Madam President, I am going to make a series of unanimous consent requests dealing with modifications.

On behalf of Senator REED of Rhode Island, I call up his amendment No. 1039 and ask that the amendment be modified with the changes at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. REED, proposes an amendment numbered 1039, as modified.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The amendment, as modified, is as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 126. REMOVAL OF REQUIREMENT TO LIQUIDATE WARRANTS UNDER THE TARP.

Section 111(g) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(g)) is amended by striking "shall liquidate warrants associated with such assistance at the current market price" and inserting "at the market price, may liquidate warrants associated with such assistance".

AMENDMENTS NOS. 1020 AND 1021, AS MODIFIED

Mr. DODD. On behalf of Senator GRASSLEY, I ask unanimous consent

that his amendments Nos. 1020 and 1021 be modified with the changes at the desk.

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

The amendments, as modified, are as follows:

AMENDMENT NO. 1020

At the end of the bill, add the following:

TITLE V—ENHANCED OVERSIGHT OF THE TROUBLED ASSET RELIEF PROGRAM

SEC. 501. ENHANCED OVERSIGHT OF THE TROUBLED ASSET RELIEF PROGRAM.

Section 116 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5226) is amended—

(1) in subsection (a)(1)(A)—

(A) in clause (iii), by striking "and" at the end;

(B) in clause (iv), by striking the period at the end and inserting "and"; and

(C) by adding at the end the following:

"(v) public accountability for the exercise of such authority, including with respect to actions taken by those entities participating in programs established under this Act."; and

(2) in subsection (a)(2)—

(A) by redesignating subparagraph (C) as subparagraph (F); and

(B) by striking subparagraphs (A) and (B) and inserting the following:

"(A) DEFINITION.—In this paragraph, the term 'governmental unit' has the meaning given under section 101(27) of title 11, United States Code, and does not include any insured depository institution as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 8113).

"(B) GAO PRESENCE.—The Secretary shall provide the Comptroller General with appropriate space and facilities in the Department of the Treasury as necessary to facilitate oversight of the TARP until the termination date established in section 5230 of this title.

"(C) ACCESS TO RECORDS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, and for purposes of reviewing the performance of the TARP, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the TARP, any entity established by the Secretary under this Act, any entity that is established by a Federal reserve bank and receives funding from the TARP, or any entity (other than a governmental unit) participating in a program established under the authority of this Act, and to the officers, employees, directors, independent public accountants, financial advisors and any and all other agents and representatives thereof, at such time as the Comptroller General may request.

"(ii) VERIFICATION.—The Comptroller General shall be afforded full facilities for verifying transactions with the balances or securities held by, among others, depositories, fiscal agents, and custodians.

"(iii) COPIES.—The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate.

"(D) AGREEMENT BY ENTITIES.—Each contract, term sheet, or other agreement between the Secretary or the TARP (or any TARP vehicle, officer, director, employee, independent public accountant, financial advisor, or other TARP agent or representative) and an entity (other than a governmental unit) participating in a program established under this Act shall provide for access by the Comptroller General in accordance with this section.

“(E) RESTRICTION ON PUBLIC DISCLOSURE.—

“(i) IN GENERAL.—The Comptroller General may not publicly disclose proprietary or trade secret information obtained under this section.

“(ii) EXCEPTION FOR CONGRESSIONAL COMMITTEES.—This subparagraph does not limit disclosures to congressional committees or members thereof having jurisdiction over a private or public entity referred to under subparagraph (C).

“(iii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or amend the prohibitions against the disclosure of trade secrets or other information prohibited by section 1905 of title 18, United States Code, section 714(c) of title 31, United States Code, or other applicable provisions of law.”.

AMENDMENT NO. 1021

At the appropriate place insert the following:

TITLE —COMPTROLLER GENERAL ADDITIONAL AUDIT AUTHORITIES

SEC. —. COMPTROLLER GENERAL ADDITIONAL AUDIT AUTHORITIES.

(a) BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Section 714 of title 31, United States Code, is amended—

(1) in subsection (a), by striking “Federal Reserve Board,” and inserting “Board of Governors of the Federal Reserve System (in this section referred to as the ‘Board’),”; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “Federal Reserve Board,” and inserting “Board”; and

(B) in paragraph (4), by striking “of Governors”.

(b) CONFIDENTIAL INFORMATION.—Section 714(c) of title 31, United States Code, is amended by striking paragraph (3) and inserting the following:

“(3) Except as provided under paragraph (4), an officer or employee of the Government Accountability Office may not disclose to any person outside the Government Accountability Office information obtained in audits or examinations conducted under subsection (e) and maintained as confidential by the Board or the Federal reserve banks.

“(4) This subsection shall not—

(A) authorize an officer or employee of an agency to withhold information from any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee; or

(B) limit any disclosure by the Government Accountability Office to any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee.”.

(c) ACCESS TO RECORDS.—Section 714(d) of title 31, United States Code, is amended—

(1) in paragraph (1), by inserting “The Comptroller General shall have access to the officers, employees, contractors, and other agents and representatives of an agency and any entity established by an agency at any reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate.” after the first sentence;

(2) in paragraph (2), by inserting “, copies of any record,” after “records”; and

(3) by adding at the end the following:

“(3)(A) For purposes of conducting audits and examinations under subsection (e), the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things or property belonging to or in use by—

“(i) any entity established by any action taken by the Board described under subsection (e);

“(ii) any entity receiving assistance from any action taken by the Board described under subsection (e), to the extent that the access and request relates to that assistance; and

“(iii) the officers, directors, employees, independent public accountants, financial advisors and any and all representatives of any entity described under clause (i) or (ii) to the extent that the access and request relates to that assistance;

“(B) The Comptroller General shall have access as provided under subparagraph (A) at such time as the Comptroller General may request.

“(C) Each contract, term sheet, or other agreement between the Board or any Federal reserve bank (or any entity established by the Board or any Federal reserve bank) and an entity receiving assistance from any action taken by the Board described under subsection (e) shall provide for access by the Comptroller General in accordance with this paragraph.”.

(d) AUDITS OF CERTAIN ACTIONS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Section 714 of title 31, United States Code, is amended by adding at the end the following:

“(e) Notwithstanding subsection (b), the Comptroller General may conduct audits, including onsite examinations when the Comptroller General determines such audits and examinations are appropriate, of any action taken by the Board under—

“(1) the third undesignated paragraph of section 143 of the Federal Reserve Act (12 U.S.C. 343) with respect to a single and specific partnership or corporation.

AMENDMENT NO. 1035 TO AMENDMENT NO. 1018

Mr. DODD. On behalf of Senator BOXER, I call up amendment No. 1035.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mrs. BOXER, proposes an amendment numbered 1035 to amendment No. 1018.

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

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

The amendment is as follows:

(Purpose: To require notice to consumers when a mortgage loan has been sold, transferred, or assigned to a third party)

At the appropriate place, insert the following:

SEC. —. NOTIFICATION OF SALE OR TRANSFER OF MORTGAGE LOANS.

(a) IN GENERAL.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following:

“(g) NOTICE OF NEW CREDITOR.—

“(1) IN GENERAL.—In addition to other disclosures required by this title, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

“(A) the identity, address, telephone number of the new creditor;

“(B) the date of transfer;

“(C) how to reach an agent or party having authority to act on behalf of the new creditor;

“(D) the location of the place where transfer of ownership of the debt is recorded; and

“(E) any other relevant information regarding the new creditor.

“(2) DEFINITION.—As used in this subsection, the term ‘mortgage loan’ means any consumer credit transaction that is secured by the principal dwelling of a consumer.”.

(b) PRIVATE RIGHT OF ACTION.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended by inserting “subsection (f) or (g) of section 131,” after “section 125.”.

AMENDMENT NO. 1031, AS MODIFIED, TO AMENDMENT NO. 1018

Mr. DODD. On behalf of Senator SCHUMER, I call up amendment No. 1031 and ask unanimous consent that the amendment be modified with the changes at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. SCHUMER, proposes an amendment numbered 1031, as modified, to amendment No. 1018.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

(Purpose: To establish a multifamily mortgage resolution program)

At the end of title I of the amendment, add the following:

SEC. 105. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

Title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) is amended by adding at the end the following:

“SEC. 137. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

“(a) ESTABLISHMENT.—The Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, shall develop a program to stabilize multifamily properties which are delinquent, at risk of default or disinvestment, or in foreclosure. The Secretary may use any existing authority to carry out the program.

“(b) FOCUS OF PROGRAM.—The program developed under this section shall be used to ensure the protection of current and future tenants of at risk multifamily properties by—

“(1) creating sustainable financing of such properties that is based on—

“(A) the current rental income generated by such properties; and

“(B) the preservation of adequate operating reserves;

“(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of enactment of this section; and

“(3) facilitating the transfer, when necessary, of such properties to new owners, provided that the Secretary of the Treasury determines such new owner to be responsible.

“(c) COORDINATION.—The Secretary of the Treasury shall in carrying out the program developed under this section coordinate with the Secretary of Housing and Urban Development, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

“(d) DEFINITION.—For purposes of this section, the term ‘multifamily properties’ means a residential structure that consists of 5 or more dwelling units.”.

AMENDMENT NO. 1036, AS MODIFIED

Mr. DODD. On behalf of Senator KERRY, I ask unanimous consent that his amendment be modified with the changes at the desk.

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

The amendment, as modified, is as follows:

At the end of the amendment, add the following:

TITLE V—PROTECTING TENANTS AT FORECLOSURE ACT

SEC. 501. SHORT TITLE.

This title may be cited as the “Protecting Tenants at Foreclosure Act of 2009”.

SEC. 502. EFFECT OF FORECLOSURE ON PRE-EXISTING TENANCY.

(a) IN GENERAL.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; or

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

(c) DEFINITION.—For purposes of this section, the term “federally-related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

SEC. 503. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: “and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the initial term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—

“(i) will occupy the unit as a primary residence; and

“(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.”; and

(2) by inserting at the end of subparagraph (F) the following: “In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential

real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.”.

SEC. 504. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1021

Mr. GRASSLEY. Madam President, I rise to speak on an amendment I have offered, 1021. It will have Democratic and Republican cosponsors. This substitute amendment gives the Government Accountability Office authority to audit the Federal Reserve.

However, this version limits the Government Accountability Office's new authority to matters involving the Federal Reserve's participation in the TARP or its emergency action under section 13(3) authority.

This is a much narrower version of the original amendment. It is intended to address the Federal Reserve's concern that its core monetary policy functions remain independent of the Government Accountability Office scrutiny.

For over 90 years, the Fed has conducted monetary policy through a combination of open-market operations and changes in banking reserve requirements. On rare occasions, the Fed has invoked its authority under section 13(3) to take extraordinary action to address what they would decide was a very short-term crisis. While these actions are intended to be temporary, they can have a lasting impact on specific institutions and on the long-term credibility of the Fed.

The Fed has created a number of facilities that are making nonrecourse loans or buying and selling assets through a subsidiary of the Fed. These transactions involve undisclosed counterparties. Without adequate oversight, no one will ever know the terms or conditions of these transactions: Who received what from the Fed and what did the Fed receive in return? How much did each of those entities profit and how much did the taxpayers lose?

This amendment is simply about accountability, not monetary policy, be-

cause I do not want to interfere in Fed monetary policy. But I do think that when we are helping out businesses, the way we are, sometimes through appropriations from Congress, sometimes through facilities and powers of the Fed, we are talking about taxpayers' money.

If you think the Fed does not have anything to do with taxpayers' money, remember that last year they returned, I think it was, \$38 billion to the Federal Treasury—I know it was in the mid-30s that it returned to the Federal Treasury in year-end operations.

They are not going to be able to do that this year, but that \$38 billion goes into the general fund to be used, like money being fungible. It is not seen by the taxpayers any differently from the income tax or the payroll taxes that are paid. There is an interest in protecting the taxpayers' money. It is not an interest in doing anything with the independence of the Fed, it is just a matter of knowing who is getting helped, what is being helped, are they profiting, how much are they profiting, and the extent to which the taxpayers are being protected, the instruments the Fed takes in as collateral. These are things that it is good to know. We need to know. We need to know them. Why? Because there are a lot of facilities, institutions, companies being helped that would be belly up—well, I guess you would say they are belly up or they would not need the help—but belly up and they exist because of either Congress appropriating money or because of the Fed intervening.

All good reasons maybe but they operate. So, in my judgment, the public's business ought to be public. Oh, there are some exceptions, such as intelligence information, national security, some privacy. But everything else ought to be public. That is what this amendment is all about. It is all about making sure money is handled responsibly.

The Fed is only supposed to lend money against good collateral. Their authority to conduct monetary policy must not be allowed to degenerate into a taxpayer-funded bailout for those who engage in reckless lending.

I hope people who are going to be voting on this amendment tomorrow will consider what we are trying to do. We are trying to do everything this President said in his campaign—the President has not spoken on this issue, but I am speaking in a general way about what the President said in his campaign—that he wanted more transparency in Government, he wanted more accountability in Government.

For the most part, the President, through various things, maybe not completed yet, has tried to deliver on that promise—putting TARP expenditures on the Internet, for instance, so anybody in the United States can know, maybe not today but eventually, where every penny went—because it is the taxpayers' money. This Government belongs to the American people.

What this Government does that affects the pocketbooks of Americans ought to be made public.

This amendment is not something to try to destroy anything. It is not something trying to get involved in that which affects the monetary policy of the Fed. We are just trying to get information out and make sure people are accountable. We have to have this information to know that. It doesn't hurt one iota to make sure the public has access to this information. I hope Members will support amendment No. 1021 tomorrow.

There is another amendment which, it is my understanding, the managers will accept. But 1021 we will have to have a vote on. I have given my reasons. I may take a minute in the morning to expand on that and remind Senators, but I hope we can move forward and get this agreed to.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Connecticut.

Mr. DODD. Mr. President, I commend my friend from Iowa. He has been a consistent advocate over the years for transparency and accountability. I am pleased to work with him on these amendments. I am fairly confident the committee will accept these amendments as part of the underlying bill. It strengthens what we are trying to achieve. I regret we couldn't arrange to do that this evening while the Senator was here, but there are other powers that my colleague and I are well aware of that need to make sure they pour over everything before we go forward. I thank him for his counsel and his advice and this recommendation.

Mr. GRASSLEY. I thank the Senator.

Mr. DODD. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

CREDIT CARD INDUSTRY

Mr. SANDERS. Mr. President, I wanted to take a couple minutes to talk about an issue that will be on the Senate floor next week, and that is the outrageous way that the credit card industry is treating millions and millions of Americans. Last week, 2 weeks ago, I sent an e-mail out to my mailing list, which is about 135,000 people, and I said: Tell me how credit card companies are treating you. Within a few days, we had 1,000 responses, many from Vermont but, in fact, from all over the country.

Essentially, what people were saying, as they described the treatment they are receiving at the hands of these credit card companies: We are disgusted that at the same time we as taxpayers are bailing out Wall Street and these large financial institutions, at the same exact time as the big banks are receiving zero interest loans from the Fed, the response of the credit card companies and the banks is to double or triple the interest rates we are paying on our credit cards.

The stories that came in were heart-breaking, appalling, and they spoke to

the greed and the callousness of many of these financial institutions. We put a couple dozen of these responses into a little booklet called "Enough is Enough, How Credit Card Companies Are Abusing Americans, Letters from Vermont and the Nation." They are available on my Web site at sandersonsenate.gov.

What I want to do for the moment is read some of the comments we received from Vermont and around the country and also invite any viewer who has a problem to correspond with us and we will read them right here in the Senate. I think it is time that some of my colleagues in the Senate understood what is going on in the real world.

Yes, I do understand that the financial interests have put \$5 billion into lobbying and campaign contributions over the last 10 years. And, yes, I do understand that despite the fact that they have pushed this country, through their greed and recklessness, into a recession, they still have enormous power on Capitol Hill. But maybe it is time that we started listening to the American people rather than the lobbyists from the large banks.

I will read a few of the comments, excerpts from some of the responses we received from all over the country. This is from Donna from New Jersey:

I want to know why consumers are not protected in any way from these predatory lenders who were bailed out with my taxpayer dollars and then turn around and raise my interest rate from 7 percent to 27 percent because of "difficult economic times" for the credit industry. This is outrageous! I have not missed a payment and my credit rating is in the high 800's. How can they keep getting away with this?

Well, that is a good question. How can they keep getting away with this? And they continue to get away with it.

This is from James in Highgate Center, VT:

I once had Bank of America charge me 27.99 percent interest when I had only a \$53 balance on one of their cards. I of course paid it in full, then closed out the card to avoid doing business with those crooks!

The next one is from Los Angeles, CA, from Jennifer:

I have personally had three separate credit cards raise the APR to 29.99 percent—when I have paid my bills on time (Citicard, Chase and [Bank of America]). Then just last billing cycle, another card I am in perfect standing with doubled my APR—no apparent reason (Chase).

Well, I think Jennifer raises a good question. What are we doing about it? How can companies get away with doubling or tripling the interest rates on people who have always paid their bills on time?

This is from Sheila in Wilder, VT:

I am tired of being the one who has to pay! The executives of these credit card companies mess up and the little people pay. The government messes up and the little people pay. Now my oldest child is going off to college and I can't even get financial help except for loans. Yes, more interest! So now I have to pay more interest on my credit cards. When will I get help?

Well, Sheila, I guess you will have to contribute a whole lot of money into

the political system because apparently Congress is not listening to you.

Susan and John in Sea Cliff, NY:

Capital, Chase, and Bank of America all doubled and tripled their rates despite a life-long perfect payment record, with no excuse (we phoned them) except that they could. This is nothing but breach of promise and a flat-out theft. A good reason for severe, retroactive rollbacks or simple seizure of banks. . . .

Theft? Not bad.

Anne from Brattleboro, VT:

I live in a small town in Vermont. I feel that the credit card companies need to have a ceiling on interest rates and fees they are stealing from us. We pay for the bail out and we pay the interest increases. They must think we are stupid.

And on and on it goes. This is just a couple of dozen. We received 1,000. There are millions of people out there who are sick and tired of being ripped off.

What is the solution? I think the House has made some progress. I guess the Senate committee is making some progress. Ultimately, what we have to do is call a spade a spade and say that when you are charging people 25, 30 percent in interest rates, that is usury. That is outrageous. It should be illegal in America.

As many people know, for a number of years individual States had usury rates. They said loans could not be made out above whatever the rate may be, depending on the State. Then what happened in 1978, the Supreme Court made a decision in the Marquette case which basically said if a credit card company did business in a State without any usury rates, other States could not stop them from charging any interest rates whatsoever. That is, in fact, what has happened.

I have introduced legislation and will bring up an amendment when we debate the credit card issue. I hope we can get some support in the Senate to pass a national usury law. The rate we have decided upon is 15 percent, with some exceptions. The reason we chose that as the ceiling is that is exactly what credit unions have been existing under for 30 years. A lot of people don't know that. But a credit union cannot charge 25, 30 percent interest rates. It is illegal for them to do that by law. So I think if we have a regulatory ethic with credit unions that has been working quite well for the last 30 years—credit unions are not marching into Washington for bailouts—I think we can apply it to the private sector as well.

What we are proposing is a cap on interest rates of 15 percent; under exceptional circumstances, which is currently the case for credit unions, another 3 percent. That would be it.

I think that is sensible legislation. Whether we can get much support here and take on the banking interests, I don't know. But I think it is what the American people want. I certainly hope we can pass legislation like that.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I ask unanimous consent that no further amendments be in order to S. 896, and that on Wednesday, May 6, following a period of morning business, the Senate resume consideration of S. 896, and proceed to vote in the order listed on the pending amendments, with no amendment in order to any amendment listed; that prior to each vote, there be 2 minutes of debate equally divided and controlled in the usual form; that after the first vote, any succeeding votes be limited to 10 minutes each: Senator Reed of Rhode Island No. 1039, as modified; Boxer No. 1035; Casey No. 1033; Grassley No. 1020, as modified; Coburn second degree No. 1042; Reed of Rhode Island No. 1040, as amended, if amended; Kerry No. 1036, as modified; Schumer No. 1031, as modified; Grassley No. 1021, as modified; provided further, that upon disposition of the listed amendments, the substitute amendment, as amended, be agreed to and the motion to reconsider be laid upon the table; the bill be read a third time, and the Senate then proceed to vote on passage of the bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MORNING BUSINESS

Mr. DODD. Mr. President, I have a series of unanimous consent requests to make.

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.

FOREIGN AID REFORM

Mr. LEAHY. Mr. President, as the administration considers ways to reform our foreign aid programs, I want to call attention to a recent Op Ed piece by a Vermont friend who has over 30 years of experience dealing with these issues.

Dr. George Burrill founded Associates in Rural Development—ARD—in Burlington in 1977 and since then he has brought Vermont common sense and values to international aid and development work. Since its founding, it has implemented some 600 projects around the world including extensive work with the U.S. Agency for International Development. Today ARD, a for-profit international development firm, has \$100 million in annual revenue operating out of 43 field offices around the world.

Throughout his career, Dr. Burrill has thought long and hard about ways

to make foreign aid more effective. In his recent piece in the Burlington Free Press, a copy of which I will ask to be printed in the RECORD, Dr. Burrill calls for a “modernization” of our thinking about foreign aid; the creation of a global development strategy to give U.S. foreign aid agencies a way to effectively evaluate past actions and determine what reform is needed; and tools for evaluating progress. Beyond that, he proposes developing a “coherent strategy that will foster economic opportunity” in the developing world, enacting legislation that “elevates development as a foreign policy pillar equal with diplomacy and military defense,” and creating an independent executive agency bringing together the relevant Federal agencies and departments into a single group “giving the executive branch the authority it needs to develop solutions to 21st century problems while providing accountability to Congress.”

Foreign aid reform means many things to different people, but there is one thing we all agree on—it is overdue. Dr. Burrill’s voice is one that should be listened to, and I commend him for speaking out.

I ask unanimous consent that the article be printed in the RECORD.

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

[From the Burlington Free Press, Apr. 30, 2009]

MY TURN: INVESTING IN SMART POWER IS
FOREIGN AID WELL SPENT
(By George Burrill)

During his campaign, Barack Obama called for salvaging America’s international reputation. Rebuilding international respect and trust, he correctly maintained, is vital to our future security and economic well-being. The president’s new budget proposal indicates that he intends to follow through with this promise. Americans should be encouraged and relieved that the budget supports an increased emphasis on nonmilitary responses to our security and foreign policy interests.

A major component of nonmilitary response is our foreign assistance and development programs. They are critical in the struggle against global poverty, open markets for our products, spread our basic values, and help address global environmental and economic problems. In the 21st century, America needs smart power, as robust a diplomatic and international development capability as it has military strength. Now is the time to modernize our thinking about how to relate to the developing world.

There are several steps the Obama administration must take in order to achieve the promise of a bold makeover. These steps are consistent with the effort to make government more efficient and to ensure that the American public is getting more services and impact for the dollar. And they won’t cost anything.

First, along with the redesign of our national security and foreign policy, which the president has already vigorously embarked upon, government needs to simultaneously create a global development strategy. We need a coherent strategy that will foster increases in economic opportunity for the bottom billion of Earth’s residents and help eliminate the conditions that foster conflict

in the developing world. When the United States leads on international development and relief issues, it enhances our international standing and strengthens our relationships with allies. It creates improved possibilities for America’s global agenda.

Second, the White House needs to work with Congress and representatives of the broader development community in crafting new legislation that elevates development as a foreign policy pillar, equal with diplomacy and military defense. We currently have an outdated, inadequate set of legislation; international foreign assistance efforts that are spread across at least 20 different agencies (which has created competing fiefdoms and inefficiency). No single person or authority is clearly in charge that the president and Congress can hold accountable. New legislation would provide the congressional mandate for streamlined organizational structures and coherent policies, and give the executive branch the clear authority it needs to develop solutions to 21st-century challenges while providing accountability to Congress.

Third, a modernized set of foreign assistance policies and operations must be placed in a single, streamlined, consolidated and empowered U.S. development agency. The ideal option for streamlining and eliminating the current, inefficient, multi-agency situation would be to create a new Cabinet-level department for global development, as is the case in England. Or the White House could work with the Congress and create a new subcabinet, independent executive agency. Either option should merge all international development and humanitarian programs into a single entity. Agencies such as the U.S. Agency for International Development, the Millennium Challenge Corp., the President’s Emergency Plan for AIDS Relief and all the international development programs of various agencies including those in the Department of Defense should be merged.

As a candidate, Obama indicated his support for these actions, but there have been no recent public comments by the administration about any planned reorganization. Efficiency calls for it.

America cannot afford an uncoordinated, confused or second-best approach to our relations with the developing world. Our foreign assistance programs have immense importance in addressing global poverty, eliminating the environments that help create terrorists and fostering the advancement of a sound global economy. The Obama administration and Congress must not miss this opportunity to modernize our foreign assistance infrastructure. Getting the most out of the new budget demands it.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard.

Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

First I want to thank you for your e-mail up-dates. I am very concerned about this so called "energy crisis". I find it very interesting that as soon as the subprime crisis hit, the banks, fund managers, and speculators found another way to [profit from] the American people. Anyone who reads widely can see what is happening here. [Those who] stole our money, ran up the cost of housing and property, and overcharged homebuyers are not going to be held responsible. Yes, the good old taxpayers paid the price of the high cost of housing and now we are taking it again as we see the overinflated housing market take a dive. The banks and mortgage companies lent money to the vulnerable that never should have been able to buy such high-priced property. Then they covered [the risky practice] by bundling their risk and selling it to all of us as "good investments." But no matter, now the good old simple-minded taxpayers can pick up the tab—cannot let those poor old bankers, land speculators, loan companies, realtors, and land developers take a financial hit. Personally, I think they should all be rounded up, their money and land taken from them, and sent directly to jail for the rest of their lives!

Now, how is all of this changing my life? My home value has gone down, my investments are in the tank, the cost of food is off the chart, the cost of gas is so high that I only go to town once a week, and the vacation plan is gone. I once drove to Nampa, Caldwell, or Boise to go shopping occasionally, and now that is out of the question. We live near Ontario, Oregon, and it only has a Wal-Mart and Kmart store. If I want a nice pair of shoes, a dress, or a nice set of towels, I have to go to Boise, but cannot afford that now. I would buy online, but you never see a sale and the cost of shipping has gone out of sight. Besides, when the item does not fit or is not what you want, the cost of return shipping is too high. Then you keep what you do not want and try not to have a fit.

My only extravagance now is my Wall Street Journal, so that I can keep up on what [what is happening] in business and government. I see that the energy package faltered when the House failed to pass the law that would allow the FTC to investigate and punish motor fuels price gougers. Lawmakers also postponed a measure that would crack down on excessive speculation in energy futures trading markets. Our Congress working for the best interest of the American people again! The House passed the Medicare bill that would prevent cuts in Medicare payment to physicians. However, members of the Senate failed to invoke cloture and did not vote on the issue. The senior citizens can just find doctors that will take Medicare or do without. I was not surprised when the House failed to act on two major domestic spending bills. [It is unfortunate that partisan politics drive the agenda in Congress, rather than the needs of the American people.]

I could go on, but I really have spent too much time on venting my opinion which I know, of course, will have no meaning. I encourage you to keep trying to do what is right for the American people as a whole. I know that the answers are not easy, but you

must keep trying or we will ultimately lose our democracy. Thank you for all of your efforts.

LYNDA, *Fruitland.*

We had to cancel our trip to Ohio to see my parents whom I have not seen in six years. We also are now driving sixty miles an hour to save on gas. We need to lift all restrictions on drilling and refineries and start drilling ASAP and building more refineries. Also start building nuclear power plants. [Stop delaying over partisan arguments and] start doing something good for Americans.

RANDY.

My family just celebrated my son's graduation from high school. Because of the high gas prices, his aunt in Seattle, Washington, and uncle in Denver, Colorado, could not attend with their families. My oldest daughter has a family in Wyoming that I cannot see but only once this year because of the gas prices. Last year I was able to see my grandchildren only twice. There are a couple of things we are still planning to do but because of the gas we will not be contributing as much to our local services like Salvation Army or even our Church. Instead we have to take care of our family first. It affects us financially as we will not be able to save as much for our retirement which is hopefully in another 12–15 years. At this rate, we will have nothing to live on because of the cost of living has taken a hold of our paychecks and the jobs are not increasing in revenue at the same rate. We are not poor nor are we extremely wealthy. We are your working class people.

By allowing another country to put a stranglehold on us in such a manner, you will see a rise in unemployment, more foreclosures, small business closures, children in foster care, divorce, crime and suicide. If our government cared about our way of life, it would take care of us first and not allow another country dictate what we have on our dinner table at night or when we can see our family members again. Congress not allowing for the drilling and refineries to be built is affecting us as a nation. I am ashamed of the direction our Congress is taking us. I believe our forefathers would be too, if they could see what is taking place. Have we not learned anything?

There is only two solutions for this. Sometimes you have to grab the bull by the horns and hold on but the rewards are there. Do not allow another country to have control of our lives. As Americans, we are tired of it.

CAROL SUE.

You are right when you say on your website that we have no other choice but to keep driving and pay the high prices of oil. We live in the country, and we realize that is our choice. Carpooling and public transportation are very limited. We figure it is costing us \$35–\$60 per day just to get to work. And our vehicles get 27–35 mpg! We drive an economy car and a motorcycle, but we also have a family and sometimes have to drive a larger vehicle. We have looked into carpooling, which we are doing and saving about \$20 per day, and we are also looking into growing our canola to burn as fuel. We have also stayed home as much as we can, which on a larger scale is hurting the economy (everyone stays home, no one goes out and spends money).

It is hard when you have to work two hours per day just to pay for the gas to get there. We firmly believe that we should drill our own oil in America and not give our money to other countries. I would rather pay high prices to American workers than to terrorists who want to harm us physically and fiscally.

Still grateful to live in the greatest place on Earth,

JEREMY and KRISTINA.

You asked for our story how gas prices affect us. All I can say is the only people I know who pay \$200 a month are the ones that live in town. As you said, this is a rural state and we do not have any options. I live 18 miles north of Sandpoint; for my car alone we pay over \$200 a month. My husband is a heavy equipment operator. He works all over north Idaho and into Washington around the Spokane area. We pay \$900 a month for his vehicle in gas. We have talked about how he might have to take a lower-paying job in Sandpoint if the gas prices continue to go up. It is becoming very difficult to make ends meet when you are spending \$1,100 a month on just gas. The most frustrating part is when you read in the news that it is speculators driving the price up. There is no shortage—just greedy men, bankrupting this nation.

So my question is why do you want our stories? What do you see needs to be done? From where I sit, I do not see any politicians doing much about it. We just wonder when or if it is going to stop.

DANIELLE, *Sandpoint.*

Thank you for your invite to share my story on how energy prices are affecting me, my family and life. However, I am not going trouble you with my woes. With all due respect, stories mean little; action means everything and it is high time that Congress addressed the problem seriously and in place of rhetoric.

You are correct—we do need to consider alternate energy. The trouble is we need to start doing something about it instead of talking about doing so. In Idaho, we do two things well—we produce abundant sunshine and wind! Take a listen to a maverick oil man and his five-minute plan; he makes a ton of sense and it is worth your time. One cannot say that T. Boone Pickens is a fool. Being a pilot, I have flown the man; I know for a fact. Video: T. Boone Pickens 5 Minute Plan, <http://link.brightcove.com/services/link/bcpid1641244028/bclid1641831933/bctid1653634930>.

However, as well you know, alternate energy is not going to happen overnight, and it will take years to transition from where we are today to where we need to go tomorrow especially if we continue jawboning about it. Until then, until we actually start a real transitional journey, we are going to continue to be dependent upon oil, which is in and of itself not a problem since there is an abundance of oil within the confines of our very own borders that dwarfs that which is in the Middle East. It is high time we stopped worrying about the caribou and goodness knows what else. These are times for action and not words. And again, we need Congress to face facts and stop blocking vital resources of oil.

The Arctic National Wildlife Refuge and the oil shale of Colorado, Utah and Wyoming are reported to dwarf the oil reserves of the Middle East and, if you throw in the Athabasca oil sands north of Ft. McMurray in Alberta that the Canadians are exploiting (they say one third of the world's known oil reserves reside there) then in essence if it were not for the [arrangements] that we have with Saudi Arabia we could in essence tell the Arabs to go pound sand and be free of anyone's oil but our own. Or, at the very least the supposed energy crisis would be just what it is in reality, a NON-crisis with artificially high prices that are crippling our economy.

Please, if you truly care about Idaho, Idahoans and indeed, the rest of the country,

and, I believe you are one of the few in [Congress] that do, then take a listen to T. Boone Pickens, do some research into the oil shale in our neighboring states, research the minuscule coastal area that would be affected by drilling in the ANWR and convince the rest of Congress to [move ahead with realistic and lasting solutions.]

Thanks for giving me the opportunity to give my 2 cents worth or, in my case, more like a quarters worth.

MARCUS, *Bellevue.*

We installed propane heating in our home when it was the energy-saving thing to do! The cost of propane then was under 30 cents a gallon. We knew it would not stay that low, but in the last five years we have seen the cost go up to over \$2 a gallon. This past year, our heating cost went over \$2,000 for a heating season. With the high energy prices, we get to choose, wrap up in blankets to keep warm so we can buy gas to go to the store and buy a loaf of bread and gallon of milk or buy heating fuel to stay warm and not eat. Some choice!

UNSIGN.

My story may be coming from a different angle; you see, I am nearly 62, working for Boeing trying to get enough money to retire and move back to Idaho. My investments have lost \$130,000 in the last six months. My portfolio is fairly conservative or I would have lost much more. I am not wealthy by any means, so that much of a loss will set me back several years in my retirement plans.

All the while I am looking at Congress to come up with an energy policy that makes sense so our economy can flourish. At this point I am so tired of hearing that we cannot drill in ANWR or offshore that I have considered retiring early just to spend my senior years trying to [make a difference on how the Congress represents the people]. With [the] current approval rating of 9%, [Congress should recognize that the public does not approve of its work.] If my approval rating was less than 75% I would be fired on the spot. Think about it—would you fly on a Boeing airplane that worked 75% of the time?

RULON.

The astonishing increases in fuel prices this year are hitting everyone on a national basis very hard indeed. We are a nation that runs on fuel. Everything we buy, be it a necessity such as food or the very fuel we use in our vehicles is shipped in, and the vehicles that ship those goods to us run on diesel, and guess what fuel is priced the highest.

Why this is I have no idea, but I do know that, at the rate that the cost of diesel is increasing, it will not be long until buying food will be something akin to if not worse than the Great Depression of the 1930s. Already I have been hearing of farms all over the USA that cannot afford the fuel it takes to harvest their crops. As a result, the crops are left to rot in the fields.

My own family is rapidly approaching the point of deciding between food, the mortgage, and fuel to get to work. Personally, I drive a diesel pick-up and, in July of last year, 28 gallons (1 tankful) of diesel would cost me \$65-\$70. Now it costs me close to \$140 for the same amount of diesel, despite my diesel pick-up getting amazing economy. I am still getting hit hard by these prices, which have more than doubled in one year.

One thing in particular that I cannot figure out is why the Western states are paying much higher fuel prices than other states. Where I am coming from on this is a interesting innovation on fuel price tracking called the "Gas Temperature Map" [http://](http://gasbuddy.com/gb_gastemperaturemap.aspx)

gasbuddy.com/gb_gastemperaturemap.aspx. See for yourself, Western States are paying significantly higher prices than many southern & eastern states are. Why, I have no idea nor do I have the time and resources to research it effectively, but I am sure a lot of other Idahoans would also be interested in why this is the case.

There is much more I could say on this, but I realize you are a busy man, so I will save it for another time. It is my sincere hope that yourself and other Representatives like you can find a way to somehow turn this nightmare around.

DAN.

Thank you for the opportunity to tell you how the high cost of fuel is affecting me. I live on the west side of Idaho Falls. I work on the east side of the city. I realize that people in bigger cities have much bigger commutes, but we have no real public transit so I have to drive. I own a Honda Civic, but am considering a scooter. Because of the winters in Idaho, that is not a practical option. With the price of fuel, food and health insurance going up every day, all I can afford to do is drive to work and back. I have had to cut out movies, trips, and dining out. I received a letter from Delta airlines that was titled "An Open Letter To All Airline Customers." I hope you have seen it and are in a position to do something to stop unnecessary price gouging. Nuclear fuel is very clean and safer than most other forms of fuel, why are we not looking into that more closely? Thank you again for this opportunity.

KAREN.

The energy issue in the state of Idaho is out of hand, and one that families cannot afford. The state government should be offering land for development of wind energy, and renewable recourses, Just make them paint the towers with camo about halfway up. There should be far more incentives for home owners to add solar power to their homes, and incentives for companies that do that kind of work to come into Idaho. Allowing logging companies to go into our forests and do selective harvest makes a win-win situation for everyone man and animal. A lot of the social services done in this area do not require a car and should be revoked from those who abuse the use of city, county, and state cars. That ticks me off more than the price of fuel.

LYLE and FAMILY, *Idaho Falls.*

Tax credits for clean energy are absolutely essential to our energy future and to our economy. Society suffers from the lack of alternatives while oil companies reap large profits. In spite of all the tax benefits that oil companies receive, they show a reluctance to make investments in a timely fashion and realize large profits, which they return to investors and management.

MARY.

I am a 68-year-old taxpaying American citizen, and military veteran. I live in Coeur d'Alene and work in Spokane, Washington. It is getting increasingly more difficult to afford the gas to drive to and from work. Carpooling or the use of public transportation is out of the question as I work in the construction industry on various jobs throughout the Spokane area.

The time has come to start drilling for oil in Alaska, Colorado, Wyoming, and offshore. From what has been in the news and from what we read in various publications, all from very intelligent engineers and scientists, we know the oil is there. We have shale deposits in several states that we could be using. We need to work harder on wind and nuclear power. The states want to drill, and we need to lift the federal bans.

We should either sell or give the abandoned military bases to companies willing to build refineries on them. The time has come to quit asking—it is time to demand that this be done. We have the resources, let us use them. The United States of America should not have to go begging to other countries for oil when we have it within our own shores.

We, the people, should not be suffering these exorbitant prices due to the incompetence in all areas of our government, and speculators in the stock market.

WAYNE, *Coeur d'Alene.*

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

SPECIAL OTIS BOWEN LECTURES

• Mr. KENNEDY. Mr. President, I ask unanimous consent that remarks by Ralph Neas be printed in the RECORD.

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

REMARKS OF RALPH G. NEAS, CEO OF THE NATIONAL COALITION ON HEALTH CARE, THE SPECIAL OTIS BOWEN LECTURE, UNIVERSITY OF NOTRE DAME, MARCH 26, 2009

Thank you. It is truly an honor and a privilege to be here with you today as a participant in the Otis Bowen lecture series.

I want to express my appreciation to Dr. Mark Walsh for inviting me, and commend all the conveners and hosts of this gathering. I congratulate Indiana University and the University of Notre Dame for the collaboration that brought IU's medical school to the Notre Dame campus.

I want to especially thank Otis "Doc" Bowen, the 44th Governor of Indiana, and the Secretary of Health and Human Services during the Reagan Administration. His leadership, commitment to the public interest, and his contributions to Indiana and the Nation are exemplary and should serve as a model for us all to emulate.

Dr. Bowen, both Dr. Henry Simmons, the visionary founder and president of the National Coalition on Health Care (NCHC), and former Governor Robert Ray of Iowa, the Co-Chair of NCHC, send their warm regards. Dr. Simmons was one of President Richard Nixon's top health care advisors in the early 1970s and worked on the Grace Commission which in the 1980s found that one-third of all income taxes were consumed by waste and inefficiency. He has devoted his professional life to improving health care for all Americans. And Governor Ray worked with Dr. Simmons and you many times over the past several decades. I am so proud to be working with them.

Our timing is propitious. Indeed, the conveners of this event were prescient. We gather tonight at an extraordinary moment in history: The Nation is facing the worst economic crisis in more than seven decades and Americans urgently need a better health care system; our health care system is dysfunctional and represents an unsustainable drain on our economy as a whole. It is inefficient and inequitable; urgent action is required to systematically address what is an incredibly challenging and morally troubling policy problem affecting every American.

In short, the health care system in the United States is in desperate need of significant reform. However, we should emphasize at the beginning that we need an American solution. We can and should borrow from the best of what works elsewhere. But we should recognize our unique history and the special characteristics of the American people.

The good news is that the President and Congress are seriously considering health

care reform. In fact, in just the past month we have seen a presidential address to a joint session of Congress, a presidential budget, and a presidential summit, all prominently featuring systemic, systematic health care reform. In addition, the Senate and House of Representatives have already commenced comprehensive hearings.

We must succeed. Too much is at stake: the health and well-being of millions of American families, and the future of the Nation's economic and fiscal health. Also at stake, I believe, is whether we can help restore the trust and confidence of the American people in their government.

So I cannot imagine a better time for us to be having this conversation. And I couldn't be happier that it is happening here. The University of Notre Dame, and people connected to Notre Dame, have been central to my life in more ways than I can count.

I was a student here during the 1960s. As a young person I had watched on television as Bull Connor turned dogs and fire hoses on civil rights marchers. I had watched Martin Luther King champion human dignity in the face of bigotry and violence.

Early on, I wondered whether I had a vocation to the priesthood, but I found in Dr. King and the Kennedys an inspiration to public service as a different kind of vocation. And that brought me to Notre Dame. Father Ted Hesburgh became the first of many Notre Dame role models, teachers, and mentors who have sustained and guided me ever since.

The last time I spoke at Notre Dame was about 25 years ago, in 1983. I was just a short time into my tenure as executive director of the Leadership Conference on Civil Rights, and I was asked to address a conference for Catholic laity on work and faith in society sponsored by the U.S. Conference of Catholic Bishops. I believe, like the late Senator Phil Hart of Michigan, that politics can be a high vocation—that a politician can be a lay priest of society.

In preparing for that speech, I realized that I had learned about human dignity and equality before God from my church and my family long before I learned about the legal principle of equality under the law from my college and law school professors. Those principles have guided my life's work and are central to what I am here to talk about today.

Another principle that has guided my political life is bipartisanship. I had the extraordinary good fortune to work for two remarkable Republican senators early in my public service career—Edward W. Brooke of Massachusetts, and David Durenberger of Minnesota. They were politicians and public servants who were less interested in ideology and political positioning, and more interested in moving the Nation forward, in finding workable solutions to the Nation's problems. They weren't just willing to work across the partisan aisle; it was central to who they were.

These principles were at the core of my decision last month to accept the position as CEO of the National Coalition on Health Care. After I decided to step down as president of People For the American Way, I had spoken with many other health care coalitions and institutions. But I had a keen personal and professional interest in working to achieve health care reform in the most non-ideological and most non-partisan way possible. And I was impressed by what a great fit there was between the National Coalition and my skills, background, and approach to public policy.

The National Coalition on Health Care is the largest, broadest, most diverse coalition working to achieve comprehensive health care reform. It is an alliance of 79 organiza-

tions representing business, unions, health care providers, associations of religious congregations, minorities, people with disabilities, pension and health funds, insurers, and groups representing patients and consumers. Our member organizations represent more than 150 million Americans. They speak for a cross-section, and a majority, of our population.

Our board includes Frank Carlucci, who served several Republican and Democratic presidents in a range of intelligence, national security, and ambassadorial positions, and Israel Gaither, the National Commander of the Salvation Army. It includes John Sweeney, the president of the AFL-CIO, and William Novelli, the CEO of AARP. It includes John McArthur, dean emeritus of the Harvard Business School, Cheryl Heaton, President of the American Legacy Foundation, and John Seffrin, CEO of the National Cancer Society. These are organizations and leaders who individually play a major role in our society and in public policy making. Together they represent an extraordinary breadth of expertise and resources.

The Coalition is rigorously nonpartisan. Former Presidents George H. W. Bush and Jimmy Carter are our honorary co-chairs. Former Iowa Governor Robert Ray, a Republican, and former Congressman Bob Edgar, a Democrat from Pennsylvania are its co-chairmen. We believe it is essential to make reform a bipartisan process and a bipartisan achievement.

I am especially proud of two of the pillars of the Coalition.

One of those pillars is religious organizations. The U.S. Conference of Catholic Bishops is a member of the National Coalition on Health Care because the Catholic tradition affirms that access to health care is a basic human right and a requirement of human dignity. The Catholic bishops are joined in that belief, and in our coalition, by the Salvation Army, the Religious Action Center of Reform Judaism, the Presbyterian and Episcopal Churches, the United Methodist General Board of Church and Society, and the National Council of Churches.

The backing and active participation of these religious communities gives us access to their networks of local religious leaders and lay people. We are well equipped to engage policymakers and the public on the moral poverty of leaving millions of Americans without access to quality affordable health care, and on the moral urgency of tackling that problem.

Another especially significant pillar of our coalition is the medical societies, which together represent hundreds of thousands of doctors. They include the American College of Cardiology, the American Academy of Pediatrics, the American College of Surgeons, the American Academy of Family Physicians, and the American College of Emergency Physicians. Also included are the American Dental Education Association, the Duke University Medical Center and Johns Hopkins Medicine. And just yesterday the Association of American Medical Colleges, along with the Council of Teaching Hospitals, joined our Coalition. This is a very serious brain trust of physicians, medical educators, and their advocates.

During the last major health care reform effort in 1993 and 1994, many of the medical societies opposed that effort. But they working with us now, I think, for several reasons. First, the need for reform has become increasingly obvious and urgent to everyone who cares about making sure that people have access to quality health care. Second, I believe that doctors have a better view than anyone of the current system's problems, inefficiencies, and distortions. I remember a time in the 1980s when a rallying cry from

conservative pundits was "let Reagan be Reagan." Part of what we're trying to accomplish here is to "let doctors be doctors!" More than just about anything else, doctors want to practice medicine.

Also, this year, everyone has been invited to the table. My own experience tells me that is how lasting progress is made. In the early 1980s, I was selected to lead the Leadership Conference on Civil Rights, the Nation's oldest and largest civil rights coalition. Working with Republican and Democratic leaders, with business and labor and public interest advocates, we accomplished great things. The passage of the life- and culture-changing Americans with Disabilities Act. The strengthening of every major civil rights law with huge bipartisan congressional majorities, and often with the support of the business community.

That could only be accomplished by building active alliances across party lines, engaging business and nonprofit leaders, public officials and community activists. We had to find ways to address each community's needs with a pragmatic and principled eye on the ultimate goal of advancing the common good.

The members and board of the National Coalition on Health Care understand that all the elements of our health care system are interdependent. So are the health care sector and the broader economy. That is why any solution must be systemic and system-wide if it is to be meaningful and effective.

And that's also why reform must be accomplished now.

Let me make a case for urgency by discussing the nature of our health care problem.

There is no question that our system produces and includes extraordinarily gifted medical professionals. I am alive today because 30 years ago I had access to some of the best medical care the world has to offer.

But millions of Americans do not have affordable access to that care. Indeed, nearly 50 million Americans do not have health insurance—a number that grows with every layoff, or with every employer who cuts health coverage to avoid cutting jobs. Every 2 years, some 90 million Americans go without health coverage. Another 20 million are underinsured.

What does that mean to individuals and families? It can be disastrous for their physical and financial health.

People without insurance—or without sufficient insurance—are less likely to get preventive care that will keep them healthy. They are less likely to go to a doctor when they become ill. Their serious illnesses are diagnosed when they are more advanced and harder to treat. They put off treatments they need but cannot afford.

And when they do face serious injury or illness, the cost of treatment can be devastating to their families.

There are a lot of numbers and statistics that we use to analyze and describe the current state of our health care system. One that really leaps out to me—that is especially heartbreaking—is that currently one-half of all personal bankruptcies, and one half of all foreclosures, are caused by an inability to pay medical expenses.

Think about what that means.

Thousands and thousands of families, already traumatized by serious illness or tragic accident, are punished even further. They go through a medical crisis and are forced into a financial crisis. They say good-bye to a loved one—and are forced out of their home. And there is no telling the toll on communities of citizens who are sidelined—or worse—by a condition that could have been treated less expensively and more effectively if the cost of care had not kept people away.

These are not just tragic stories. They are evidence of an unforgivable level of cruelty in our current health care system.

And, of course, all these consequences are not limited to the uninsured and underinsured. The consequences are shared; the burden is shared, by everyone. The costs of emergency room care for the uninsured are shifted to other parts of the system, to other payers. According to a study by Emory University health care economist Kenneth Thorpe, the cost of providing uncompensated care to uninsured patients adds more than \$1,000 per year to the average cost of employer-sponsored family coverage.

And that leads us to the second part of the problem we must address—the staggering cost of health care in this country, which is growing in ways that Americans and America cannot afford.

The cost of insurance is an increasingly heavy burden even for those who have it. Over the past decade, employers and workers have seen their health care costs rise 120 percent. On the other hand, wages only increased 34 percent during the same period (while inflation rose 29 percent). The average cost to families rose from just over \$6,000 per year to about \$12,000 per year. That is a huge amount for many middle class families. It is an insurmountable burden for working families.

And unless we act, it will only get worse. Richard Johnson and Rudolph Penner of the Urban Institute projected that in 2030, out-of-pocket health care costs will consume more than 35 percent of after-tax income for older married couples. That is more than double the 16 percent that health care costs took from those couples in 2000.

As a Nation, we spend \$2.5 trillion in health care costs every year. That is a sixth of our national economy, or about \$6,000 per capita. That is twice as much as the average of all industrialized countries, and 50 percent more than the next Nation on the list. (And remember, those countries cover all their citizens, while 15 percent of Americans have no coverage at all.)

Costs have been consistently rising at a much higher rate than the consumer price index. We as a Nation simply cannot afford double-digit growth in health care costs year after year. They make it harder for businesses to provide health care coverage for their employees—and those employees find it harder to pay the growing share they are asked to contribute to that coverage.

The increasing cost to small and large businesses is a dire challenge to their profitability, competitiveness and survival. It drains funds from research and development, makes it more expensive to hire new employees, and makes it less affordable to offer workers increased wages. Increasing costs undermine the viability of pension funds. And they increasingly put American businesses at a competitive disadvantage to companies abroad who have much lower health care costs.

And the fiscal drain to state and federal governments is ruinous. It has been estimated that by 2050, Medicare and Medicaid combined will consume more than double their current share of our gross national product. Our country's financial health—as well as that of individuals, families, and companies—requires that we get costs under control.

Closely connected to the problem of runaway costs is the national epidemic of substandard care. It may be hard to believe, but every year 100,000 Americans die from preventable medical mistakes. Another 100,000 die from infections contracted in U.S. hospitals. Millions of others are injured or affected, with cascading consequences for their families, their employers, their commu-

nities. It has been estimated that preventable health care accidents, errors, and poor quality of care are the Nation's third leading cause of death after cancer and heart disease.

A few years ago a major study by the RAND Institute examined the medical records of thousands of patients from 12 metropolitan areas and evaluated the care they received using indicators of quality developed by specialty expert panels. They found that patients got about 55 percent of recommended care. We should not be willing to accept or tolerate this mismatch between standards and actual practices.

And here is more evidence of the interconnected nature of these problems. Two different research studies have estimated that dealing with defects in the quality of our health care could reduce the total cost of health care by 30 percent. 30 percent. That's \$750 billion per year. That is a huge financial incentive to deal with the quality of care and the waste and inefficiencies of our current system.

So that is the outline of the health care challenge we face—uncontrolled costs, unacceptable quality of care, and unconscionable lack of access to care for millions of Americans.

Acting urgently is both a moral and financial imperative.

The current economic crisis is putting more families out of work, putting greater strain on companies that struggle to provide health care, and putting enormous fiscal strains on Federal and State budgets.

President Obama has called for lawmakers to take action this year. In response, some pundits and critics have suggested that the Obama administration is putting too much on its plate—that it should hold off on health care reform while it figures out how to deal with the financial crisis.

But that is not possible. Health care is such an enormous part of the economy, is so interwoven with individual, corporate, and governmental crises, that it is not possible to address our economic woes without taking up health care reform. We have reached the point where the public's most pressing domestic concerns—economic growth, jobs, and retirement security, and health care—are fundamentally intertwined. The first three concerns cannot be addressed effectively unless health care costs are contained. The cost of doing nothing far exceeds the costs of taking action now. And if we implement real systemic reforms now, we will save trillions of dollars in the long run.

As economist Peter Orszag says, the road to fiscal sustainability runs through health care reform. Ben Bernanke, the chairman of the Federal Reserve System, puts it this way:

“The decision we make about health care reform will affect many aspects of our economy, including the pace of economic growth, wages and living standards, and government budgets, to name a few . . . As the public interest in these issues testifies, the stakes associated with health care reform, both economic and social, are very high.”

So, act we must. But how?

It is easy to be dismayed at the size and complexity of the problem—and by past failures to address it. But we cannot shy from reform. Nor can we let a political stalemate grind the process to a halt.

I am a veteran of many difficult battles in Washington. I've been part of them for 35 years. And I've never seen a bigger challenge, substantively or politically.

But I am cautiously optimistic about the possibilities for real reform this year. There exists a rare confluence of economic, political, and historic circumstances. There is a much broader consensus on the need for am-

bitious reform. And we are seeing all the stakeholders coming to the table, not with the goal of turning the table over and maintaining the status quo, but to seek some kind of resolution to the systemic problems that can no longer be denied or rationalized away.

That's what the National Health Care Coalition is committed to doing this year.

And, I'm proud to say, we're ready because we've already done our homework. I've been talking a lot about the problem. Let's talk about the solution.

The Coalition spent 18 months working with our board, member organizations, and health care experts to reach a consensus on principles and specifications for reform. There's no more detailed or comprehensive proposal on the table that I'm aware of.

The overarching requirement is that reform be both systemic and system-wide. With that as an understanding, we have laid out five principles for reform and specific and achievable approaches within each category.

The first principle is coverage for all Americans. We believe coverage should be defined clearly and comprehensively. It should include emergency care, acute care, prescription drugs, oral health care, early detection and screening, preventative care (including smoking cessation programs), care for chronic conditions, and end-of-life care. There should be no exclusion for pre-existing conditions.

We recognize a range of options—and possible combinations of options—can be used to achieve this goal: employer mandates, supplemented with individual mandates as necessary; expansion of existing public programs that cover subsets of the uninsured; creation of new public programs targeted at groups of the uninsured; or establishment of a universal publicly financed system.

Participation must be universal, and there must be subsidies provided for those least able to afford coverage. But none of these options requires a government-run system.

The second principle is cost management. The numbers that I talked about earlier make it clear that it will not be possible to achieve sustainable reform without tackling the cost issue head-on.

Cost management must be a multi-faceted undertaking. It should include: a plan to make health insurance premiums easier to compare by requiring insurers to establish separate premiums for the core benefit package and any supplemental coverage; a rational mechanism for increasing the cost-effectiveness of capital spending; cost-sharing and other tools to provide more and better information and incentives for patients to make good choices about health maintenance and care, and reduce over-use and under-use; an increased emphasis on prevention and early detection of disease; a commitment to improving quality of care; investment in a health care information infrastructure; and steps to modernize and simplify the administration, and dramatically reduce the administrative costs of the health care system.

It is true that successful reform of all the areas we have talked about will produce significant long-term savings. But it is also essential to begin immediately to bend the cost curve and slowing those double-digit increases that are outstripping our ability to pay for them. The increases in health care costs and insurance premiums for the core package of benefits should be brought into line with percentage increases in per-capita gross domestic product. And we should aim to achieve that goal within 5 years after the enactment of legislation.

There must be short-term cost constraints that would include rates for reimbursing providers for care encompassed by the core benefit package, and limits in increases in insurance premiums for the core benefit package. We are not advocating for cuts in reimbursement rates. But slowing the rate of increase is vital—and will reduce the likelihood of sudden cuts made under the stress of financial crisis.

We recommend that these efforts to manage costs be established and administered by an independent board chartered and overseen by Congress.

The third basic principle is one I just mentioned in terms of cost containment—that is a national effort to improve the quality and safety of care.

This includes accelerated development of a national information technology infrastructure, as well as increased emphasis on prevention and early detection of disease, and research on comparative effectiveness and practice guidelines to reduce waste and improve the safety and effectiveness of health care.

The members of the National Coalition on Health Care recommend that national practice guidelines be developed by panels of leading health care professional based on reviews of research on the effectiveness and impact of technologies and treatment. Conforming to these best practice guidelines could not only reduce unnecessary treatment and costs, but could also help protect medical professionals against frivolous or marginal lawsuits.

Fourth, we must make the financing of health care more equitable and reduce or eliminate cost-shifting.

Again in this area we have identified a range of mechanisms that could be used, individually or in some combination, to fund the costs of necessary reforms and assuring that every American is covered: general revenues, earmarked taxes or fees, required contributions from employers, required contributions from individuals and families, which would include co-payments, deductibles, and contributions toward premiums.

Subsidies should be provided, or financial obligations varied, based on relative ability to pay for less affluent individuals, families, and employers.

And fifth, we must simplify the administration of health care. The United States spends more than any other Nation—hundreds of billions of dollars every year—to administer our health care system. Administrative expenses incurred by private health insurers rose 52 percent between 1999 and 2002.

Our system's complexity is not only expensive; it is also confusing and frustrating for patients and doctors. And its lack of transparency undermines both accountability and the ability of individuals and organizations to make market-based decisions.

Assuring coverage for all Americans, and establishing a core benefit package, would create a consistent set of ground rules for patients, providers and payers.

An integrated technology infrastructure would not only reduce administrative complexity and costs, but help to reduce medical errors, protect patients' safety, and improve outcomes.

These principles—coverage for all, cost containment, quality and effectiveness of care, simplified administration, and equitable financing—are interdependent. And we must deal with them that way.

Taken together, the National Coalition on Health Care specifications provide an ambitious and achievable guide to our Nation's lawmakers. We know what investments and policy changes we need to make now in order

to improve access and quality of health care in a way that the Nation can afford.

We have a road map. Now we need to keep policymakers focused on the journey.

President Obama, who recently hosted a bipartisan summit on health care reform at the White House—has urged Congress to give him reform legislation this year. He has put a significant down payment for reform in his budget.

While I do not think the Administration has yet been ambitious enough—dealing, for example, in a realistic way with the need to contain costs—I believe the White House has learned important lessons from the experience of 1993 and 1994. They are including all stakeholders from the beginning. They are putting forward broad principles and counting on Congress to write the legislation. And they are moving in a bipartisan fashion, inviting Republican and Democratic congressional leaders into their conversations.

I believe bipartisanship is essential not just because we need 60 votes in the Senate, but because a bipartisan consensus would be good for the country as we move forward in this enormous, and enormously important, undertaking.

We must understand fully that time is our most formidable foe. We must achieve health care reform now, not only to protect and advance Americans' health, but to shore up our reeling economy. We must take advantage of the political momentum for change. We must overcome those who might be tempted to see the failure of reform as a political opportunity.

Reform must be enacted this year—and as of today the year is already almost one-quarter behind us.

In Congress, there are at least seven major committees that have some jurisdiction and will be involved in crafting reform legislation. That means multiple subcommittee hearings and markups, full committee markups, House and Senate floor debates and votes, and the House-Senate conference committee. All of this takes time. As I tell my law school legislative process classes, there are 100 decision-making points in the legislative process, and each of them is a point at which compromise can take place.

If we are to have reform enacted this year, we must have a bill through the Senate with a bipartisan consensus by Labor Day. So each day is enormously consequential. We have no time for ideological warfare or partisan posturing. This truly is a time for pragmatism to trump ideology. We need to be focused on what works. And we cannot allow the perfect to be the enemy of the good.

We can do this.

A few years ago, my father-in-law was in Rome. He was at the Vatican when he collapsed with a heart problem. He was attended to by the Pope's doctor—the finest care he could have asked for. And when he had recovered and asked how much he owed, the answer was “nothing!” His health care in Italy was free. I know it's a simple story, and our quest for an American solution is anything but simple, but there's no reason we cannot achieve the same kinds of access to affordable quality care that other nations provide.

There is another story that explains why I am so committed to making this work—and why I have faith that it can.

In 1979, as a young man of 32, I was diagnosed with Guillain-Barré Syndrome, a disease that paralyzes the nerves and muscles. Over a period of weeks I became completely paralyzed, unable to breathe on my own or move a muscle. I was put on a respirator for 75 days, and was eventually given general anesthesia when it was not clear that I would survive.

Three of my doctors in St. Mary's hospital in Minneapolis, Minnesota, were Notre Dame graduates, including chief of staff Pat Barrett, who was the football team's doctor on the road. They helped me survive and recuperate. But no one was more important than my mother, who traveled to Minneapolis from a suburb of Chicago and sat at my bedside, holding my hand, for 50 of my first 100 days in the intensive care unit. And then there was Sister Margaret Francis Schilling, a nun who had survived Guillain-Barré 25 years earlier, and who was celebrating her 50th anniversary as a nun in 1979, who talked to me every day, who prayed with me every night, and who helped save my life and renew my faith.

You can probably understand why, when given the opportunity to be transferred to the Mayo Clinic, I told my parents that I wanted to stay at St. Mary's. Sometimes the appearance of near-mystical serendipity trumps all other considerations.

The experience taught me many things, most notably how vulnerable each of us is, and how dependent we are on each other. I had been a young hot-shot on a fast track congressional career. I thought I could do anything. As long as I worked hard and never gave up, I would not need anybody. I learned the hard way how wrong I was. I learned first-hand how quickly our lives and health can take a turn. I came out of that experience with a renewed commitment to public service, and with a sense of how interdependent different vocations—like Sister Margaret's, my doctors', and mine—could be.

After I finished my physical rehabilitation, and recovered my physical and mental stamina, I began interviewing for jobs. My parents, Senator Brooke, and Senator Durenberger were all advocating that I join a law firm and begin a more traditional way of life.

In the middle of my deliberations, John Sears, a Notre Dame grad, a lawyer, and the former campaign manager for Ronald Reagan, gave me contrary advice. He told me that I could join a law firm at any time. But the Nation in 1981 was about to begin a historic debate about civil rights, social justice, and the role of the Federal Government. He told me that if I had an opportunity to have a leadership position, I should seize the moment. He told me how important it was to be on “the front lines of history.” Only then could you make a dramatic difference for your family, your community, and your country.

And that is the opportunity and the challenge that we all face at this moment.

The great Irish poet Seamus Heaney has written:

History says, Don't hope
On this side of the grave.
But then, once in a lifetime
The longed-for tidal wave
Of justice can rise up,
And hope and history rhyme.

We all have a chance, working together, to make hope and history rhyme.

Regardless of where you stand on the health care issues before us, I urge you to get involved. This is a time for all of us—of whatever vocation—to come together. We must all be willing to sacrifice for an accomplishment that would address a great moral failing, that would strengthen our Nation's economy as well as its social fabric, that could point the way toward dealing constructively with other systemic challenges ahead.

I hope you will support the principles of the National Coalition on Health Care. But the most important thing, in the words of Oliver Wendell Holmes, is to “share the passion and action” of one's time.

Please do not sit on the sidelines. Immerse yourself, passionately, in this historic moment.

Please know how much it has meant to me to be here. I am profoundly grateful for the opportunity to be with you tonight.

Thank you.■

HAYES NOMINATION

● Ms. MURKOWSKI. Mr. President, I ask that my letter to Senator McCONNELL, dated May 4, 2009, with its attachment, be printed in the RECORD.

The material follows.

U.S. SENATE, COMMITTEE ON ENERGY
AND NATURAL RESOURCES,

Washington, DC, May 4, 2009.

Senator MITCH MCCONNELL,
Republican Leader, U.S. Senate, Washington,
DC.

DEAR SENATOR MCCONNELL, Under the provisions of the Honest Leadership and Open Government Act of 2007 (section 512 of P.L. 110-81), attached please find a notice of my intent to object to proceedings on the nomination of David Hayes, Calendar number 31, reported by the Committee on Energy and Natural Resources on March 18, 2009. The reasons for my objection are included in the notice.

Sincerely,

LISA A. MURKOWSKI,
Ranking Republican Member.

NOTICE OF INTENT TO OBJECT

Under the provisions of the Honest Leadership and Open Government Act of 2007 (section 512 of P.L. 110-81), I, Senator Lisa A. Murkowski, intend to object to proceedings on the nomination of David Hayes, Calendar number 31, reported by the Committee on Energy and Natural Resources on March 18, 2009, for the following reasons:

During conversations with the nominees at meetings and hearings, they have generally expressed very reasonable views, including an affirmation of the need for continued energy production in the United States.

However, actions speak louder than words, and I am disappointed and troubled by the lack of connection between the rhetoric from the Administration and its nominees, and the reality of the Administration's actions. Rarely a week goes by that the Department of the Interior doesn't issue a pronouncement, that, taken together, add up to a wholesale assault on domestic natural resource development. A few examples are: Cancellation of the Utah leases; 180-day delay of the 5-year plan; delay of the new round of oil shale research, demonstration, and development leases; listing of the yellow billed loon; Monday's determination that the mountaintop coal mining rule is "legally defective," and, most recently, the potential application of Endangered Species Act consultation requirements to all activities that may increase carbon output.

Further, I have not been satisfied with the responses to questions we have submitted on these matters to nominees that have previously come before this Committee.

Therefore, I will add my name to the list of those who intend to object to the confirmation of Deputy Secretary-nominee David Hayes, until we can get some assurance that we will see the actions of the Department of the Interior comport with the transparency and process and policy that they have promised.

I will soon be sending a letter to the Department of the Interior with detailed questions regarding my concerns.

These are questions of huge significance to not only American energy security, but to our ability to maintain our Nation's entire infrastructure, and grow our economy.■

ADDITIONAL STATEMENTS

TRIBUTE TO COMMANDANT CHARLES BALDWIN

● Mr. CARPER. Mr. President, this spring, the fourth class will graduate from the Delaware Military Academy, and I would like to take this opportunity to recognize Commandant Charles W. Baldwin for his years of dedicated service to the school.

The Delaware Military Academy, DMA, is a unique public charter school affiliated with the Red Clay School District. Cofounded in 2003 by Commandant Baldwin and opened that year with only grades 9 and 10, the DMA has quickly found success.

Today, in addition to being a Middle States fully accredited school, the academy has grown to enroll 525 students in grades 9 through 12 and has a waiting list of more than 200 applicants. Since 2006, DMA has earned a superior rating every year from the Delaware Department of Education. In 2008, the school was named a Superstars in Education Award Winner by the Delaware Chamber of Commerce.

Designated by the United States Navy as a Distinguished Unit with Academic Honors, the academy has the unique privilege and responsibility of naming nine nominations among the Naval Academy, Air Force Academy and West Point Military Academy.

The unique school offers students a tuition-free, 4-year high school program. The entire school is incorporated within the Navy Junior Reserve Officer Training Corps, and as the first school of this nature, has become the model high school for this Navy Training Corps.

The Delaware Military Academy's college preparatory academic curriculum is supplemented with courses that include naval operations, navigation, leadership, seamanship and oceanography. With its cadet hierarchy, students are placed in leadership positions and given responsibilities rarely found in a civilian high school. As a result, they emerge from the academy better prepared to meet the demanding challenges of the adult world.

In just 6 short years, the academy, under the leadership of Commandant Baldwin, has done what takes some schools more than 20 years to accomplish. It has built and maintained a successful system that instills values and responsibility into our children while providing them an excellent education. Moreover, the commitment of DMA and its student body to community service is widely known and appreciated in the State of Delaware.

While success in such a short period is certainly a credit to the faculty and students of the academy, Commandant Baldwin has indeed played a critical leading role.

A 24-year Navy veteran himself, Commandant Baldwin has dedicated his life to training, teaching and recruiting,

including a tour of duty as principal of the George V. Kirk Middle School in Delaware's Christiana School District. Before cofounding the Delaware Military Academy, Commandant Baldwin established NJROTC programs in Delaware's Seaford and Christiana School Districts. During this time, he has received both military and civilian awards for excellence, including the Meritorious Service Medal, the Military Order of the Purple Heart, Christiana Teacher of the Year and the Christiana School District Citizenship Award. In addition, he twice received Presidential awards for management excellence.

On a personal note, I have known and admired Commandant Baldwin for more than a decade. My sincere hope is that as he steps down from his leadership role at the Delaware Military Academy, he will consider leading an effort to establish other public charter schools in the state that are based on the DMA's unique model.

I want to personally thank Commandant Baldwin for his commitment to Delaware, to the education of its young people, and to preparing them for lives of service. I warmly wish him the best.■

DRAFT LIST OF SITES, LOCATIONS, FACILITIES, AND ACTIVITIES IN THE UNITED STATES FOR DECLARATION TO THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA), UNDER (THE "U.S.-IAEA ADDITIONAL PROTOCOL"), AND CONSTITUTES A REPORT THEREON, AS REQUIRED BY SECTION 271 OF PUBLIC LAW 109-401—PM 15

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

To the Congress of the United States:

I transmit herewith a list of the sites, locations, facilities, and activities in the United States that I intend to declare to the International Atomic Energy Agency (IAEA), under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Annexes, signed at Vienna on June 12, 1998 (the "U.S.-IAEA Additional Protocol"), and constitutes a report thereon, as required by section 271 of Public Law 109-401. In accordance with section 273 of Public Law 109-401, I hereby certify that:

(1) each site, location, facility, and activity included in the list has been examined by each department and agency with national security equities with respect to such site, location, facility, or activity; and

(2) appropriate measures have been taken to ensure that information of direct national security significance will

not be compromised at any such site, location, facility, or activity in connection with an IAEA inspection.

The enclosed draft declaration lists each site, location, facility, and activity I intend to declare to the IAEA, and provides a detailed description of such sites, locations, facilities, and activities, and the provisions of the U.S.-IAEA Additional Protocol under which they would be declared. Each site, location, facility, and activity would be declared in order to meet the obligations of the United States of America with respect to these provisions.

The IAEA classification of the enclosed declaration is "Highly Confidential Safeguards Sensitive"; however, the United States regards this information as "Sensitive but Unclassified."

Nonetheless, under Public Law 109-401, information reported to, or otherwise acquired by, the United States Government under this title or under the U.S.-IAEA Additional Protocol shall be exempt from disclosure under section 552 of title 5, United States Code.

BARACK OBAMA,
THE WHITE HOUSE, May 5, 2009.

MESSAGE FROM THE HOUSE

At 2:21 p.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that the House has passed the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 103. Concurrent resolution supporting the goals and ideals of Malaria Awareness Day.

H. Con. Res. 111. Concurrent resolution recognizing the 61st anniversary of the independence of the State of Israel.

MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 111. Concurrent resolution recognizing the 61st anniversary of the independence of the State of Israel; to the Committee on Foreign Relations.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, May 5, 2009, she had presented to the President of the United States the following enrolled bill:

S. 735. An act to ensure States receive adoption incentive payments for fiscal year 2008 in accordance with the Fostering Connections to Success and Increasing Adoptions Act of 2008.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. BAUCUS for the Committee on Finance.

*Alan B. Krueger, of New Jersey, to be an Assistant Secretary of the Treasury.

*William V. Corr, of Virginia, to be Deputy Secretary of Health and Human Services.

*Demetrios J. Marantis, of the District of Columbia, to be a Deputy United States Trade Representative, with the rank of Ambassador.

By Mr. KERRY for the Committee on Foreign Relations.

*Johnnie Carson, of Illinois, to be an Assistant Secretary of State (African Affairs).

*Ivo H. Daalder, of Virginia, to be United States Permanent Representative on the Council of the North Atlantic Treaty Organization, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

Nominee: Ivo H. Daalder.

Post: NATO.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: \$500, 01/29/2008, Barack Obama; \$500, 12/28/2007, Barack Obama; \$500, 03/08/2006, Harris Miller.

2. Spouse: Elisa D. Harris: \$250, 03/28/2008, Hillary Clinton; \$250, 03/06/2008, Hillary Clinton; \$500, 03/08/2006, Harris Miller.

3. Children and Spouses: Marc H. Daalder—none; Michael H. Daalder—none.

4. Parents: Hans Daalder—none; Anneke Daalder—deceased.

5. Grandparents: Dirk Daalder—deceased; H. H. Daalder-Oversteegen—deceased; Rose Neukircher—deceased; Ivan Neukircher—deceased.

6. Brothers and Spouses: Eric Daalder—none; Helmi de Ruiter—none.

7. Sisters and Spouses: Martine Daalder—none; Sandro Bartolini—none.

*Luis C. de Baca, of Virginia, to be Director of the Office to Monitor and Combat Trafficking, with rank of Ambassador at Large.

Nominee: Luis C. de Baca.

Post: G/TIP.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, and donee:

1. Self: 10/08, Obama For America, \$250, 5/30/05, CHC-BOLD PAC, \$250.

2. Spouse: 10/18/08, Anne Barth for Congress, \$250; 10/08, Obama for America, \$250; 6/12/07, Hillary Clinton for President, \$250; 11/1/06, Leadership of Today and Tomorrow PAC, \$1,000; 3/31/06, Menendez for Senate, \$2,000.

3. Children and Spouses: None.

4. Parents: Mary de Baca, 8/13/08, Citizens for Harkin, \$250; 2008, Becky Greenwald for Congress, \$150; 8/29/07, Citizens for Harkin, \$200; 2006, Citizens for Harkin, \$250; 2006, Spencer for Congress, \$100; 2005, Citizens for Harkin, \$250; Robert C. de Baca, deceased.

5. Grandparents: Luis C. de Baca, deceased; Maria Antonia C. de Baca, deceased; Ephraim Joseph Marchino, deceased; Dorothy Elizabeth Marchino, deceased.

6. Sisters and Spouses: Monica de Baca, 9/9/08, Obama for America, \$100; Suzanna de Baca, None; Ron Weatherman, None.

Mr. KERRY. Mr. President, for the Committee on Foreign Relations I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

*Foreign Service nominations beginning with Gregory D. Loose and ending with Gregory M. Wong, which nominations were received by the Senate and appeared in the Congressional Record on April 2, 2009.

*Foreign Service nominations beginning with Laszlo F. Sagi and ending with Daniel E. Harris, which nominations were received by the Senate and appeared in the Congressional Record on April 2, 2009.

*Foreign Service nominations beginning with John M. Kowalski and ending with Jeremy Terrill Young, which nominations were received by the Senate and appeared in the Congressional Record on April 2, 2009.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. KERRY:

S. 969. A bill to amend the Public Health Service Act to ensure fairness in the coverage of women in the individual health insurance market; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU (for herself, Mr. MARTINEZ, Mr. JOHNSON, and Mr. LIEBERMAN):

S. 970. A bill to promote and enhance the operation of local building code enforcement administration across the country by establishing a competitive Federal matching grant program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SCHUMER:

S. 971. A bill to implement a pilot program to establish truck parking facilities; to the Committee on Environment and Public Works.

By Mr. GRASSLEY (for himself and Mrs. HAGAN):

S. 972. A bill to amend the Food, Conservation, and Energy Act of 2008 to provide funding for successful claimants following a determination on the merits of Pigford claims related to racial discrimination by the Department of Agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. NELSON of Florida (for himself, Mr. REID, and Mr. SCHUMER):

S. 973. A bill to amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes; to the Committee on Finance.

By Mr. MARTINEZ:

S. 974. A bill to amend title XIX of the Social Security Act to require the Secretary of Health and Human Services to make certain de-identified information collected under the Medicaid Statistical Information System publicly available on the Internet; to the Committee on Finance.

By Mr. MARTINEZ (for himself, Mr. CORNYN, Ms. COLLINS, Mr. NELSON of Florida, Mr. ALEXANDER, Mr. GRAHAM, Mr. VITTER, Mr. DEMINT, and Mr. CORKER):

S. 975. A bill to amend title XVIII of the Social Security Act to reduce fraud under the Medicare program; to the Committee on Finance.

By Mr. GRASSLEY:

S. 976. A bill to provide that certain provisions of subchapter I of chapter 35 of title 44,

United States Code, relating to Federal information policy shall not apply to the collection of information during any investigation, audit, inspection, evaluation, or other review conducted by any Federal office of Inspector General, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. MURRAY:

S. 977. A bill to amend title 38, United States Code, to provide improved benefits for veterans who are former prisoners of war, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. LINCOLN (for herself and Mr. HATCH):

S. 978. A bill to amend the Internal Revenue Code of 1986 to increase the limitation on capital losses applicable to individuals; to the Committee on Finance.

By Mr. DURBIN (for himself, Ms. SNOWE, and Mrs. LINCOLN):

S. 979. A bill to amend the Public Health Service Act to establish a nationwide health insurance purchasing pool for small businesses and the self-employed that would offer a choice of private health plans and make health coverage more affordable, predictable, and accessible; to the Committee on Finance.

By Ms. MURKOWSKI (for herself, Mr. INOUE, Mr. AKAKA, and Mr. BEGICH):

S. 980. A bill to direct the Secretary of Commerce to establish a demonstration program to adapt the lessons of providing foreign aid to underdeveloped economies to the provision of Federal economic development assistance to certain similarly situated individuals, and for other purposes; to the Committee on Indian Affairs.

By Mr. REID:

S. 981. A bill to support research and public awareness activities with respect to inflammatory bowel disease, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. REID (for Mr. KENNEDY (for himself, Mr. DODD, Ms. COLLINS, Mr. HARKIN, Ms. SNOWE, Mr. DURBIN, Mr. LUGAR, Ms. MIKULSKI, Mr. REED, Mrs. MURRAY, Mr. REID, Mr. BINGAMAN, Mr. SANDERS, Mr. BROWN, Mr. CASEY, Mr. MERKLEY, Mr. WHITEHOUSE, Mr. LEAHY, Mr. LAUTENBERG, Mr. KERRY, Mr. SCHUMER, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. LEVIN, Mr. BAUCUS, Mr. WYDEN, Mr. AKAKA, Mr. NELSON of Florida, Ms. LANDRIEU, Mr. CARPER, Mrs. GILLIBRAND, Mr. BENNET, Mr. BEGICH, Mr. BURRIS, Mr. KAUFMAN, Mr. UDALL of New Mexico, Mr. UDALL of Colorado, Mr. KOHL, Mr. FEINGOLD, Ms. CANTWELL, and Mrs. LINCOLN)):

S. 982. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. MENENDEZ (for himself and Mr. BINGAMAN):

S. Res. 128. A resolution recognizing the historical significance of the Mexican holiday of Cinco de Mayo; considered and agreed to.

By Ms. LANDRIEU (for herself, Mr. VITTER, and Mr. McCONNELL):

S. Res. 129. A resolution commending Louisiana jockey Calvin Borel for his victory in

the 135th Kentucky Derby; considered and agreed to.

By Mr. REID:

S. Res. 130. A resolution to constitute the majority party's membership on certain committees for the One Hundred Eleventh Congress, or until their successors are chosen; considered and agreed to.

By Mr. McCONNELL:

S. Res. 131. A resolution making minority party appointments for certain committees for the 111th Congress; considered and agreed to.

ADDITIONAL COSPONSORS

S. 46

At the request of Mr. ENSIGN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 46, a bill to amend title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps.

S. 243

At the request of Mr. CARDIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 243, a bill to amend the Internal Revenue Code of 1986 to allow the Secretary of the Treasury to establish the standard mileage rate for use of a passenger automobile for purposes of the charitable contributions deduction and to exclude charitable mileage reimbursements for gross income.

S. 296

At the request of Mr. CHAMBLISS, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 296, a bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States.

S. 348

At the request of Mr. NELSON of Nebraska, his name was added as a cosponsor of S. 348, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. 348, *supra*.

S. 454

At the request of Mr. LEVIN, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 454, a bill to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

S. 456

At the request of Mr. DODD, the names of the Senator from Hawaii (Mr. INOUE) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 456, a bill to direct the

Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs, to establish school-based food allergy management grants, and for other purposes.

S. 526

At the request of Mrs. McCASKILL, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 526, a bill to provide in personam jurisdiction in civil actions against contractors of the United States Government performing contracts abroad with respect to serious bodily injuries of members of the Armed Forces, civilian employees of the United States Government, and United States citizen employees of companies performing work for the United States Government in connection with contractor activities, and for other purposes.

S. 535

At the request of Mr. NELSON of Florida, the names of the Senator from Vermont (Mr. SANDERS), the Senator from Montana (Mr. TESTER) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of S. 535, a bill to amend title 10, United States Code, to repeal requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation, and for other purposes.

S. 597

At the request of Mrs. MURRAY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 597, a bill to amend title 38, United States Code, to expand and improve health care services available to women veterans, especially those serving in operation Iraqi Freedom and Operation Enduring Freedom, from the Department of Veterans Affairs, and for other purposes.

S. 614

At the request of Mrs. HUTCHISON, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 614, a bill to award a Congressional Gold Medal to the Women Airforce Service Pilots ("WASP").

S. 619

At the request of Mr. REED, his name was added as a cosponsor of S. 619, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 645

At the request of Mrs. LINCOLN, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from North Carolina (Mrs. HAGAN) were added as cosponsors of S. 645, a bill to amend title 32, United States Code, to modify the Department of Defense share of expenses under the National Guard Youth Challenge Program.

S. 649

At the request of Mr. KERRY, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 649, a bill to require an inventory of radio spectrum bands managed by the National Telecommunications and Information Administration and the Federal Communications Commission.

S. 662

At the request of Mr. CONRAD, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 662, a bill to amend title XVIII of the Social Security Act to provide for reimbursement of certified midwife services and to provide for more equitable reimbursement rates for certified nurse-midwife services.

S. 696

At the request of Mr. CARDIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 696, a bill to amend the Federal Water Pollution Control Act to include a definition of fill material.

S. 701

At the request of Mr. KERRY, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 701, a bill to amend title XVIII of the Social Security Act to improve access of Medicare beneficiaries to intravenous immune globulins (IVIG).

S. 715

At the request of Mr. LEVIN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 715, a bill to establish a pilot program to provide for the preservation and rehabilitation of historic lighthouses.

S. 717

At the request of Mr. REED, his name was added as a cosponsor of S. 717, a bill to modernize cancer research, increase access to preventative cancer services, provide cancer treatment and survivorship initiatives, and for other purposes.

At the request of Mrs. GILLIBRAND, her name was added as a cosponsor of S. 717, *supra*.

S. 718

At the request of Mr. HARKIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 718, a bill to amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

S. 738

At the request of Ms. LANDRIEU, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 738, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 816

At the request of Mr. CRAPO, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 816, a bill to preserve the rights granted under second amendment to the Constitution in national parks and national wildlife refuge areas.

S. 830

At the request of Mr. WHITEHOUSE, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 830, a bill to modify the definition of children's hospital for purposes of making payments to children's hospitals that operate graduate medical education programs.

S. 831

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

S. 838

At the request of Mr. LUGAR, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 838, a bill to provide for the appointment of United States Science Envoys.

S. 841

At the request of Mr. KERRY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 841, a bill to direct the Secretary of Transportation to study and establish a motor vehicle safety standard that provides for a means of alerting blind and other pedestrians of motor vehicle operation.

S. 843

At the request of Mr. LAUTENBERG, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 843, a bill to establish background check procedures for gun shows.

S. 908

At the request of Mr. BAYH, the names of the Senator from Illinois (Mr. BURRIS), the Senator from Illinois (Mr. DURBIN), the Senator from Kansas (Mr. ROBERTS), the Senator from Alaska (Mr. BEGICH) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of S. 908, a bill to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

S. 909

At the request of Mr. BURRIS, his name was added as a cosponsor of S. 909, a bill to provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

At the request of Mr. SANDERS, his name was added as a cosponsor of S. 909, *supra*.

S. 945

At the request of Mr. FEINGOLD, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 945, a bill to require the Secretary of the Treasury to mint coins in commemoration of Robert M. La Follette, Sr., in recognition of his important contributions to the Progressive movement, the State of Wisconsin, and the United States.

S. 954

At the request of Mr. KERRY, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of S. 954, a bill to authorize United States participation in the replenishment of resources of the International Development Association, and for other purposes.

S. 955

At the request of Mr. KERRY, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of S. 955, a bill to authorize United States participation in, and appropriations for the United States contribution to, the African Development Fund and the Multilateral Debt Relief Initiative, to require budgetary disclosures by multilateral development banks, to encourage multilateral development banks to endorse the principles of the Extractive Industries Transparency Initiative, and for other purposes.

S. 964

At the request of Mr. FEINGOLD, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 964, a bill to authorize the President to posthumously award a gold medal on behalf of Congress to Robert M. LaFollette, Sr., in recognition of his important contributions to the Progressive movement, the State of Wisconsin, and the United States.

S. 968

At the request of Mr. REID, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 968, a bill to award competitive grants to eligible partnerships to enable the partnerships to implement innovative strategies at the secondary school level to improve student achievement and prepare at-risk students for postsecondary education and the workforce.

S. RES. 49

At the request of Mr. LUGAR, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from New Hampshire (Mrs. SHAHEEN) were added as cosponsors of S. Res. 49, a resolution to express the sense of the Senate regarding the importance of public diplomacy.

S. RES. 121

At the request of Mrs. FEINSTEIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. Res. 121, a resolution designating May 15, 2009, as "Endangered Species Day".

S. RES. 125

At the request of Mr. LAUTENBERG, the name of the Senator from Delaware

(Mr. KAUFMAN) was added as a cosponsor of S. Res. 125, a resolution in support and recognition of National Train Day, May 9, 2009.

AMENDMENT NO. 1021

At the request of Mr. GRASSLEY, the names of the Senator from Alabama (Mr. SHELBY), the Senator from North Dakota (Mr. DORGAN) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of amendment No. 1021 proposed to S. 896, a bill to prevent mortgage foreclosures and enhance mortgage credit availability.

AMENDMENT NO. 1036

At the request of Mr. KERRY, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of amendment No. 1036 proposed to S. 896, a bill to prevent mortgage foreclosures and enhance mortgage credit availability.

AMENDMENT NO. 1038

At the request of Mrs. BOXER, the names of the Senator from Oregon (Mr. MERKLEY) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of amendment No. 1038 proposed to S. 896, a bill to prevent mortgage foreclosures and enhance mortgage credit availability.

AMENDMENT NO. 1040

At the request of Mr. REED, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 1040 proposed to S. 896, a bill to prevent mortgage foreclosures and enhance mortgage credit availability.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY:

S. 969. A bill to amend the Public Health Service Act to ensure fairness in the coverage of women in the individual health insurance market; to the Committee on Health, Education, Labor, and Pensions.

Mr. KERRY. Mr. President, there continues to be discrimination against women in the individual insurance market. As you know, the individual insurance market is often the last resort for health coverage for individuals who do not have access to an employer-sponsored plan or who earn too much to qualify for Medicaid.

To assist these women, I am today introducing the Women's Health Insurance Fairness Act of 2009, a bill that would end the discrimination against women who seek to purchase an insurance policy on the individual market.

According to the Kaiser Family Foundation, of the 94.7 million women between the ages of 18 and 64 in 2007, 64 percent had insurance through an employer, 18 percent were uninsured, 13 percent were enrolled in Medicaid or another type of public insurance, and 6 percent were in the individual market. In other words, about 5.7 million American women in 2007 received health insurance on the individual market. With rising unemployment, it is likely that

more women will rely on individual insurance market for coverage in the future.

This market is too often a problem for women for a number of reasons. First, women are often charged more than men for insurance in the individual market. Gender rating is a common insurance practice under which most women are charged higher premiums than men for identical coverage. Federal civil rights law prevents employers with more than 15 employees from charging different premiums based on gender and other factors. This protection is not extended to policies sold in the individual insurance market.

According to a recent report entitled "Nowhere to Turn: How the Individual Health Insurance Market Fails Women" by the National Women's Law Center, a 25 year old woman can pay up to 45 percent more than a 25 year old man for the same coverage. A 40 year old woman can pay up to 48 percent more than a 40 year old man for the same coverage. A 55 year old woman can pay up to 37 percent more than a 55 year old man for the same coverage.

Today, only 10 states prohibit and 2 States limit gender rating in the individual market. I am pleased that Massachusetts is one of the 10 States that prohibit insurers from charging different premiums based on gender. But, we should make sure that this prohibition is extended to every state in the nation.

A second problem facing women on the individual market is that insurers may delay, deny, or limit coverage to women due to pregnancy or delivery method. Over 30 years ago with the passage of the Pregnancy Discrimination Act of 1978, Federal civil rights law established as sex discrimination denial of coverage for pregnancy, childbirth and related conditions in employer-based insurance policies. Unfortunately, this protection is not extended to policies sold in the individual insurance market.

Individual market insurers can deny coverage to women based on a "pre-existing condition". If the insurer discovers that a woman applying for coverage had a Cesarean section in the past, they can: charge a higher premium; impose a waiting period during which it refuses to cover another C-section or pregnancy; or deny coverage unless the woman has been sterilized or is no longer of childbearing age.

Currently, there are only 5 States which prohibit insurance carriers from refusing to sell individual health insurance coverage to applicants who have health conditions or problems. Massachusetts is one of the five states which require insurers to accept applicants regardless of health status. Again, this prohibition should be extended to every state in the nation.

A third problem facing women is that the vast majority of policies do not provide coverage for maternity care. The 1978 Pregnancy Discrimination Act

specified that employers with more than 15 employees must cover pregnancy on the same basis as other medical conditions. Once again, similar protections do not exist in the individual insurance market.

The National Women's Law Center recently analyzed over 3,500 individual insurance market policies and found that just 12 percent included comprehensive maternity coverage and another 9 percent provided coverage for maternity care that is not comprehensive. They also found that a limited number of insurers sell separate maternity coverage for an additional fee known as a "rider", but this supplemental coverage is often expensive and limited in scope.

Currently, 5 States, including Massachusetts, have enacted laws requiring insurers to include coverage for maternity services in all individual health insurance policies sold in their state. Every woman should have access to these services.

That is why I am introducing the Women's Health Insurance Fairness Act of 2009, to end the discrimination against women who seek to purchase an insurance policy on the individual market. It has three basic parts.

First, the bill prevents insurers in the individual market from charging women higher premiums than men. Gender rating is insurance discrimination based on sex and should not be tolerated. Over 40 years ago, the insurance industry voluntarily abandoned its practice of using race as a rating factor and now it is time to end rating discrimination against women. Gender rating hurts women's health by inflating premiums and creating substantial financial barriers for women seeking to obtain health care coverage.

Second, the bill prevents insurers in the individual market from denying or limiting coverage based on a current or past pregnancy or a past or future method of delivery. No longer will insurance companies be able to deny coverage to women simply by treating a pregnancy like a pre-existing condition. Similarly, they will not be able to impose waiting periods relating to a pregnancy. They will no longer be able to impose higher premiums or deductibles on women with prior Cesareans.

Finally, the bill will require all insurance policies offered on the individual market to provide comprehensive maternity coverage for the full scope of maternity services from preconception through postpartum. There is a huge cost to our society by denying maternity coverage. In 2005, the costs associated with preterm birth, one of the most expensive pregnancy complications linked to lack of prenatal care, totaled over \$26.2 billion. Yet, for every \$1 spent on preconception care saved anywhere from \$1.60 to \$5.19 in maternal care costs.

If women do not have the necessary maternity coverage, they will be exposed to substantial out of pocket

costs. Too many women are unable to pay these costs. The average U.S. hospital cost for an uncomplicated vaginal delivery ranges from \$7,500 to \$15,000 and from \$11,000 to \$19,000 for a caesarean delivery. I believe comprehensive maternity coverage will save money and improve maternal and child health outcomes. Those currently without coverage often turn to our public safety net for assistance. Today, forty percent of all pregnancies are covered by Medicaid. We need to do everything possible to increase health outcomes for our children.

The bill would provide the Secretary of Health and Human Services with the authority to monitor compliance with the requirements of this act. It gives the Secretary the ability to assess fines of at least \$10,000 against any health insurance company that fails to submit the required data. Additionally, the bill directs the Government Accountability Office to issue a report by December 31, 2010 about problems any remaining for women on the individual insurance market in all 50 States.

I would like to thank a number of organizations who have already endorsed the legislation including the American College of Obstetricians and Gynecologists, Children's Defense Fund, Consumers Union, Families USA, the National Partnership for Women & Families, and OWL—The Voice of Midlife and Older Women.

During the Senate's consideration of comprehensive health care reform, I will work with Senate Finance Committee Chairman BAUCUS, Ranking Member GRASSLEY to make sure that discriminatory insurance practices against women are ended. I will also work with my Massachusetts colleague, Senate Committee on Health, Education, Labor and Pensions Chairman TED KENNEDY to make sure this legislation is enacted into law. As in other areas of health reform, Massachusetts is already leading the way in preventing insurers from engaging in practices that harm women. I believe the rest of the country should benefit from our experience.

I find it especially appropriate to introduce this legislation as we approach Mother's Day on Sunday, May 10th and National Women's Health Week on May 10th-16th. I can think of no better gift to our mothers, daughters, and sisters than the gift of affordable and accessible insurance that meets their health needs.

By Mr. GRASSLEY (for himself and Mrs. HAGAN):

S. 972. A bill to amend the Food, Conservation, and Energy Act of 2008 to provide funding for successful claimants following a determination on the merits of Pigford claims related to racial discrimination by the Department of Agriculture, to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRASSLEY. Mr. President, I want to first start off by thanking the Senate and in particular the Senate

Agriculture Committee for addressing a new cause of action in Federal court for those African-American farmers who may have been discriminated against and who were denied entry in the Pigford v. Glickman Consent Decree. The Food, Conservation, and Energy Act of 2008 including a provision entitled Determination on Merits of Pigford Claims.

For those who do not know, the Consent Decree was a settlement that resulted from a class action lawsuit initiated by a class of African-American farmers who had for decades been discriminated against by the U.S. Department of Agriculture in the administration of its FSA loan program. The discriminatory treatment was well-documented by both the USDA's own Inspector General and an internal task force appointed by then USDA Secretary Glickman.

We had some unanticipated consequences in the Consent Decree's implementation. There was denial of approximately 77,000 African-American farmers into the Decree even though these farmers filed petitions by the late-claim deadline. More than half of these late-claim petitioners didn't even know about the Consent Decree. The Court said the lack of notice was not a sufficient reason to allow them into the Consent Decree. Thus, these individuals were denied entry and their discrimination complaints went unresolved. This was not a fair outcome for farmers or those attempting to farm at that time.

The farm bill did the right thing by allowing late filers to have their claims heard and judged on the merits. These farmers deserve justice and at least the opportunity to have their claims heard.

Unfortunately, it has been very difficult to determine how many of the 77,000 actually have valid claims. Lots of different folks have lots of different calculations. Either way, it's likely to be expensive. Because of the budget constraints, the Farm Bill only could put \$100 million towards the endeavor.

I think we can and must do better than that. That is why today I am introducing bipartisan legislation with Senator HAGAN of North Carolina. This bill will make 3 changes to the farm bill. First it will allow the claimants to access the \$100 million already appropriated in the farm bill, but once that is expended gain access to the Department of Treasury permanent appropriated judgment fund. Second, it will allow reasonable attorney fees, administrative costs, and expenses to be paid from the judgment fund in accordance with the 1999 consent decree. Finally, it includes a section making fraud related to claims a criminal offense with punishment of a fine or up to 5 years in prison or both.

The claimants, who were able to timely file, were allowed access to the judgment fund and so it makes sense that we treat these new claimants the exact same way. The Department of

Justice was treating the \$100 million included in the farm bill as a cap, but Congress simply viewed it as a down payment to rectify the damage done.

The farm bill we passed last year does one thing right. It focuses a considerable amount of resources on new and beginning farmers and ranchers. Well, many of the Pigford claimants were in that same boat 20 years ago. It is time to rectify that.

The farm bill has simply opened up the door so that claims can be heard. If a person brings a claim and can not meet the burden of proof, then no award will be given. However, we know USDA has admitted that the discrimination occurred, and now we are obligated to do our best in getting those that deserve it, some relief. That is why I am introducing this legislation with Senator HAGAN and I urge my colleagues to support the bill. It is time to make these claimants right and move forward into a new era of civil rights at the Department of Agriculture.

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. 972

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

SECTION 1. FUNDING FOR PIGFORD CLAIMS.

Section 14012 of the Food, Conservation, and Energy Act of 2008 (122 Stat. 2209; Public Law 110-246) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—It shall be unlawful for any person to—

“(A) knowingly execute, or attempt to execute, a scheme or artifice to defraud, or obtain money or property from any person by means of false or fraudulent pretenses, representations, or promises, relating to the eligibility or ability of a person to—

“(i) file a civil action relating to a Pigford claim;

“(ii) submit a late-filing request under section 5(g) of the consent decree;

“(iii) obtain a determination on the merits of a Pigford claim; or

“(iv) recover damages or other relief relating to a Pigford claim; and

“(B) for the purpose of executing the scheme or artifice or attempting so to do, or obtaining the money or property—

“(i) place or deposit, or cause to be placed or deposited, any matter or thing to be sent or delivered by the Postal Service or any private or commercial interstate carrier;

“(ii) take or receive any matter or thing sent or delivered by the Postal Service or any private or commercial interstate carrier;

“(iii) knowingly cause to be delivered by the Postal Service or any private or commercial interstate carrier any matter or thing according to the direction on the matter or thing, or at the place at which the matter or thing is directed to be delivered by the person to whom it is addressed; or

“(iv) transmit, or cause to be transmitted, any writings, signs, signals, pictures, or sounds by means of wire, radio, or television communication in interstate or foreign commerce.

“(2) PENALTY.—Any person who violates paragraph (1) shall be fined under title 18,

United States Code, imprisoned for not more than 5 years, or both.”; and

(2) in subsection (i), by striking paragraph (2) and inserting the following:

“(2) PERMANENT JUDGMENT APPROPRIATION.—

“(A) IN GENERAL.—After the expenditure of all funds made available under paragraph (1), any additional payments or debt relief in satisfaction of claims against the United States under subsection (b) and for any actions under subsection (f) or (g) shall be paid from amounts appropriated under section 1304 of title 31, United States Code.

“(B) AUTHORIZATION OF CERTAIN EXPENSES.—Reasonable attorney’s fees, administrative costs, and expenses described in section 14(a) of the consent decree and related to adjudicating the merits of claims brought under subsection (b), (f), or (g) shall be paid from amounts appropriated under section 1304 of title 31, United States Code.

“(3) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other funds made available under this subsection, there are authorized to be appropriated such sums as are necessary to carry out this section.”.

By Mr. GRASSLEY:

S. 976. A bill to provide that certain provisions of subchapter I of chapter 35 of title 44, United States Code, relating to Federal information policy shall not apply to the collection of information during any investigation, audit, inspection, evaluation, or other review conducted by any Federal office of Inspector General, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. GRASSLEY. Mr. President, the Federal Inspectors General are the frontline of protection for taxpayer dollars, ensuring that Federal agencies spend taxpayer dollars in an effective, efficient, economical manner that is in accordance with all applicable law. The Inspectors General root out fraud, waste, and abuse in Government programs by auditing, evaluating, and investigating how Federal agencies spend taxpayer dollars and how Government programs utilize funds. The Inspectors General occupy a unique position within our government. Created by the Inspector General Act of 1978 and by various subsequent statutes, the Inspectors General at Executive Branch agencies also report directly to the Legislative Branch. They were created to keep tabs on the government bureaucracy to make sure that agencies follow the spirit and intent of the laws while protecting taxpayer dollars.

I have been an outspoken advocate for Inspectors General during my time in the Senate and I was proud to be a cosponsor of the Inspector General Reform Act of 2008, which was signed into law by President Bush last year. That legislation ensures that Inspectors General are truly independent of the Federal agencies they oversee. The independence of Inspectors General is a critical requirement to their ability to get the job done. If Inspectors General lack independence from the agency they oversee, the quality of their work is impacted negatively and their reputation as independent watchdogs is tarnished.

Over the years, I have seen a number of Inspectors General come and go. It is a tough job to be an Inspector General. You can not go along to get along. You must buck the system, dig deep into the books of the agency, find where the secrets are hidden, and then report the truth to Congress, the President, and the American people. Unfortunately, Inspectors General must do all this with the agencies that often fight their every move. These entrenched bureaucracies have an interest in not seeing Inspectors General succeed—they do not want egg on their face. That is why we in Congress must make sure they have all the tools they need to get the job done and ensure that there is accountability for the billions in taxpayer dollars that are spent annually on the operation of the Executive Branch.

One growing area of concern I have seen over the years is procedural roadblocks being placed before Inspectors General to limit or prohibit their ability to do their job of protecting taxpayer dollars. One recent example relates to the Special Inspector General for the Troubled Asset Relief Program SIGTARP, Neil Barofsky. Inspector General Barofsky notified me on January 22, 2009, that he intended to begin an oversight initiative that would have improved the transparency of the Troubled Asset Relief Program, TARP. Inspector General Barofsky’s plan was to collect data from TARP recipients asking them for a response outlining the use of TARP funds, copies of support documents, a description of plans to comply with executive compensation restrictions, and certification by a senior executive officer of the accuracy of the statements they make. This sounded like a legitimate plan from the Inspector General tasked by Congress with ensuring that the \$700 billion handed out by the TARP program wasn’t lost to fraud or abuse. However, it was shortly after this letter that Mr. Barofsky ran into procedural hurdles erected by the Office of Management and Budget, OMB.

On January 30, 2009, I asked the Inspector General for an update on his initiative when he informed me that OMB had advised the SIGTARP that he could not initiate his effort due to the restrictions in the Paperwork Reduction Act of 1980, PRA. As a result, SIGTARP requested “emergency processing” by OMB to consider the impact of its letter to TARP recipients. It is my understanding that OMB initially responded favorably finding that SIGTARP would not be limited by the PRA. However, OMB reversed course and withdrew the emergency approval right after it was granted.

OMB then informed SIGTARP that the PRA required he post his proposed letter online for TARP recipients to review for 15 days, wait for comments from the recipients, and then require that the SIGTARP justify to OMB that it has taken into account all the public comments. This was a significant, un-

necessary roadblock that was erected at a time when American Taxpayers were asking everyone “where did the money go.” This type of procedural hurdle to an audit and investigation by the SIGTARP is unacceptable. Can you imagine what the very corporations that took taxpayer money would write during the comment period? It is my view that corporations that took Government money should be subjected to oversight by Inspectors General and they should not have a say in drafting or amending a letter from the Inspector General that they must respond to. This is exactly what OMB was asking of the SIGTARP.

I am glad to report that later that same week SIGTARP Barofsky was given approval from OMB to send the letter requests to the TARP recipients without delay. However, around the same time that the letters were approved and sent, the Department of Treasury posted a comment request in the Federal Register about the SIGTARP request. Those responses were due to Treasury by April 13, 2009. While SIGTARP Barofsky was ultimately able to send his request, this uncertainty about the application of the PRA to audits, evaluations, inspections, or investigations by Inspectors General remains a significant question. This whole saga was a wakeup call for many Inspectors General. As a result, many Inspectors General have reached out to my office about this issue and the dangers the PRA could pose to their audits and investigations.

That is why I am here today to introduce legislation that will clarify the impact the PRA has on official audits, evaluations, inspections, and investigations conducted by Inspectors General. This legislation is narrowly tailored to ensure that Inspectors General are not subject to bureaucratic hurdles erected by OMB, which could be used to limit the independence and authority of Inspectors General, and most importantly information that we can garner through their work.

Specifically, the PRA currently states that agencies must receive approval for each collection request before it is implemented. Failure to get this approval provides the recipient of the request the protection to not comply with the request without penalty. The current PRA does not apply to criminal investigations, administrative actions, or investigations involving an agency against a specific individual or entities. However, it does apply to “general” investigations. The PRA is also silent as to whether it was intended to apply to Inspectors General and defines agency as any “executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government including the Executive Office of the President, or any independent regulatory agency. The PRA does expressly exclude the Government Accountability Office and the Federal

Election Commission, but not the Inspectors General.

The PRA was passed with the noble goal of reducing the impact Federal Government regulatory agencies have on small businesses and other private individuals. However, over the years the investigative and audit roles of the Inspectors General have expanded to ensure that taxpayer dollars are not lost to fraud, waste, or abuse. As a result, the important work of the Inspectors General may run directly into the PRA resulting in a slower process for audits, evaluations, and investigations, as well as potentially tipping off those being investigated by the Inspectors General and providing them time to, for example cover-up potential wrong doing.

The legislation I'm introducing today is designed to protect the PRA as well as the Inspectors General by trying to head off a potential conflict among the two statutes before it has to be decided by the courts. It simply states that the PRA shall not apply to the collection of information "during the conduct of any investigation, audit, inspection, evaluation, or other review conducted by" any Federal office of Inspector General. It further defines the definition of Inspector General to include: statutory Inspectors General, Federal entity Inspectors General, and any Special Inspector General. This definition also includes the Council of the Inspectors General on Integrity and Efficiency, CIGIE, created by the Inspector General Reform Act, and the Recovery, Accountability, and Transparency Board created by the stimulus bill signed into law earlier this year. These two entities have some audit and evaluation roles provided to them and should also not face procedural hurdles under the PRA when they are overseeing the various Inspectors General or Recovery programs.

All in all, this is a simple piece of legislation that I encourage all my colleagues to support. It picks up on the great work of the Inspector General Reform Act to ensure that Inspectors General are independent and free from any undue influence—procedural or substantive—when conducting audits, evaluations, inspections, or audits on behalf of the American people. I hope this legislation will receive expedited consideration and swift passage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 976

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

SECTION 1. INVESTIGATIONS, AUDITS, INSPECTIONS, EVALUATIONS, AND REVIEWS CONDUCTED BY INSPECTORS GENERAL.

Section 3518(c) of title 44, United States Code, is amended—

(1) in paragraph (1), by striking "paragraph (2)" and inserting "paragraph (3)";

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

"(2) Notwithstanding paragraph (3), this subchapter shall not apply to the collection of information during the conduct of any investigation, audit, inspection, evaluation, or other review conducted by—

"(A) any Federal office of Inspector General, including—

"(i) any office of Inspector General of any establishment, Federal entity, or designated Federal entity as those terms are defined under sections 12(2), 8G(a)(1), and 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.), respectively; or

"(ii) any office of Special Inspector General established by statute;

"(B) the Council of the Inspectors General on Integrity and Efficiency established under section 11 of the Inspector General Act of 1978 (5 U.S.C. App.); or

"(C) the Recovery Accountability and Transparency Board established under section 1521 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 289)."

By Mr. DURBIN (for himself, Ms. SNOWE, and Mrs. LINCOLN):

S. 979. A bill to amend the Public Health Service Act to establish a nationwide health insurance purchasing pool for small businesses and the self-employed that would offer a choice of private health plans and make health coverage more affordable, predictable, and accessible; to the Committee on Finance.

Mr. DURBIN. Mr. President, I rise today to introduce legislation with Senators SNOWE and LINCOLN to make healthcare more affordable and accessible for our nation's small businesses and self-employed individuals. This bipartisan legislation is known as the Small Business Health Options Program Act, or the SHOP Act, and I am working with the Finance and HELP Committees to incorporate it into the broader healthcare reform bill the Senate is developing.

Health reform is a priority of the American people and a central element of this Congress's agenda. While more must be done, we have taken some small but important steps already.

We expanded the CHIP program to provide healthcare to an additional 4 million children who are uninsured today.

We provided assistance to laid-off workers to help them pay for health insurance under the COBRA continuation program, so that families receiving an average monthly unemployment check of \$1,300 aren't expected to pay \$1,100 in insurance premiums.

We included in the Recovery Act \$87 billion for the Medicaid program over the next 2 years.

We provided \$2 billion for community health centers, which serve more than 18 million patients.

But we have more to do. Overall, 46 million Americans are uninsured. At the beginning of this decade, fewer than 40 million people were uninsured. Over the same period, health insurance premiums have risen 4 times faster than wages.

This is the year to enact reforms to reduce healthcare costs, expand coverage, and improve the quality of the healthcare we receive.

It is not easy for small businesses and the self-employed to afford health insurance. Without the benefits of large group purchasing, double-digit rate increases are not uncommon.

The recession has made it worse. The Main Street Alliance recently polled nearly 500 small businesses in a dozen states and found that 35 percent have reduced coverage and 12 percent have dropped it altogether in the past 2 years.

More than 50 percent of the uninsured in America are in households led by someone who is either self-employed or works for a business with fewer than 100 employees.

Workers in the smallest businesses are almost three times likely to be uninsured as those who work for the largest businesses. That is not because small businesses don't want to offer health insurance; it is because insurance is more expensive for them than for large companies.

Administrative costs for health insurance are higher for small businesses than larger businesses. About 20–25 percent of a small business's premium goes to administrative expenses, compared to about 10 percent for large employers.

Small businesses are less able than large employers to spread the risk that someone will get sick. Even a single employee with a serious medical condition can cause a dramatic increase in a small business's health insurance premium.

Small businesses are also more likely to have lower wages and narrower profit margins than large businesses, making it more difficult for these employers and employees to cover the cost of health coverage.

Small business owners like Doug Mayol of Springfield, IL, and David Borris, of Northbrook, IL, know all too well the difficulty of maintaining health insurance in this struggling economy.

Since 1988, Doug Mayol has owned and operated a small business in downtown Springfield that sells cards, gifts, and other knick-knacks. He has found that his profits are at the mercy of the rising costs of healthcare. He is fortunate that his only employee is over 65 and qualifies for Medicare and also receives spousal benefits from her late husband. If this were not the case, Doug does not think he would be able to provide her with coverage.

In terms of his own insurance, Doug has a preexisting condition and fears the real possibility of becoming uninsured. Almost 30 years ago, Doug was diagnosed with a congenital heart valve defect. He has no symptoms, but without regular healthcare he is at risk of developing serious problems.

Like most Americans, his healthcare premiums have risen over the years, but recently the increases have been

dramatic. In 2001, he paid \$200 a month. By 2005, he was paying \$400 a month. The next year, after he turned 50, his rate shot up to \$750 a month.

Trying to work within the system, he chose a smaller network of providers and a higher deductible to bring his premium back down to \$650. Unfortunately, last year it jumped to \$1037 a month. Only by taking the highest deductible allowed, \$2500, was he able to bring it down to \$888. And these rates will continue to rise.

Ironically, Doug is not even a costly patient. With his high deductible, his insurance rarely kicks in, as he has never made a claim for illness or injury and has received only routine primary care. Yet more affordable insurance carriers reject him due to his pre-existing condition.

Meanwhile, Doug avoids seeing a cardiologist, even though periodic visits would be a good idea, because he fears it would add another red flag to his already imperfect health record.

What kind of healthcare system is it that causes even those with coverage to avoid care? Americans need the peace-of-mind that comes with knowing that health insurance companies will not be able to reject you, or keep raising your rates, because you have a preexisting condition.

David Borris faces another dilemma. David is the owner of Hel's Kitchen Catering, an off-premise catering company located along suburban Chicago's north shore in Northbrook, IL. Over 2 decades ago, David and his wife opened their business in a 900 square foot storefront with a handful of recipes from his mother and his wife. Both David and his wife left good-paying jobs in the hospitality industry to take their shot at the American dream of owning their own business.

David now employs 25 full-time employees and has offered health insurance to them since 1992. At first, David offered to contribute 50 percent of the premium in an employee's first year and 100 percent thereafter. The company had 8 full-time employees and David felt a moral obligation to offer insurance to the people who were helping to grow his business.

Around 2002, the company started to see staggering premium increases. In 2004, the premium jumped 21 percent. In 2005, it increased by 10 percent. In 2006, the increase was 16 percent. In 2007, he was quoted a 26 percent rate hike, and only a change of carriers allowed him to hold the increase to 17 percent. In total, his premiums have doubled since 2002, forcing him to ask longtime employees to contribute toward the cost of the premiums.

Today, David insures only 13 of his 25 full-time employees—the other 12 cannot afford their 50 percent share of the premium in the first year, and the company cannot afford to pay more.

David spent almost 13 percent of his covered employees' payroll on health insurance premiums last year, and he expects he will have to ask employees to contribute more again next year.

He knows that one employee's wife has a kidney problem and another employee's son receives an expensive treatment for a health condition. Trying to maintain health coverage for his loyal workers has become a major complication as he tries to grow his business.

Both Doug and David are living the American dream as small business owners. Providing health insurance for their employees should not destroy that dream.

As Congress works to reform the healthcare system, we need to keep in mind the struggle of small business owners like Doug and David. Small businesses are the backbone of the American economy. They need to be able to count on health insurance premiums that are reasonable and predictable. They need something better than our current system offers.

That is why I am reintroducing the SHOP Act with Senators SNOWE and LINCOLN. Our legislation offers new hope for entrepreneurs who struggle to afford health insurance. It will make health insurance more accessible and more affordable for small businesses and the self-employed.

Our bill has three core elements: purchasing pools for small businesses and the self-employed; health insurance rating reforms; and tax credits.

Our bill would create incentives for States to establish purchasing pools and would create a national pool that we call SHOP, the Small Business Health Options Program, for small businesses with up to 100 employees and for the self-employed.

Purchasing pools will lower administrative costs, give employers and employees more private health insurance plans to choose from, and enhance competition by making it easier to compare plans.

Our bill would prohibit insurers from setting premiums based on health status in both the national SHOP pool and in States' small group markets, and would gradually reduce other sources of premium variation. These rating changes will make premiums more stable from year to year and make coverage more affordable for those who need it most.

To lower the cost of providing health coverage, our bill would provide a tax credit to small businesses with up to 50 workers who pay at least 60 percent of their employees' premiums.

The size of the tax credit would be targeted to the size of the business. A full tax credit of \$1,000 for self-only coverage and \$2,000 for family coverage would be available to the smallest businesses, with the value of the tax credit phased down as the size of the employer increases.

Employers who cover more than 60 percent of the premium would be rewarded with a bonus credit.

In addition, we would move to a system where individual employees can choose their own health plan instead of having their employer choose it for

them. Where rating rules permit it, each worker would be able to enroll in the health plan in SHOP that best meets his or her needs.

The bill we have introduced reflects our commitment to find reasonable compromises and address the challenges faced by small employers and the self-employed. This bipartisan legislation has the support of a range of business, labor, and consumer groups.

We have worked closely with the National Federation of Independent Business, the National Association of Realtors, and SEIU in the development of the bill, and we also have the support of Families USA, the National Restaurant Association, and the Partnership for Women and Families.

We have received valuable input from the National Association of Insurance Commissioners and have taken the hard steps they have recommended to address rating issues and ensure that the approach is viable over the long haul.

Although each group that supports SHOP has its own priorities for broader health reform, this diverse coalition of stakeholders from across the political spectrum came together to address the needs of small businesses as one important component of reform.

Everyone understands that this bill is not comprehensive health reform, and none of us would stop with SHOP. However, the renewed focus on broader reform has given us an opportunity to offer SHOP as a carefully-crafted component of broader reform that addresses the specific needs of the small business community. We believe our approach is consistent with the broader conversation and can help the greater reform effort move forward on a bipartisan basis, and we look forward to including the features of SHOP in the broader bill.

In a town hall meeting in March this year, the President spoke to a crowd about the new mindset of this Administration. He talked about "understanding that we're all in this together and that if the middle class is working well, if working people are doing well, then everybody does well."

This bill is consistent with that thinking. Its seemingly disparate supporters may disagree on many things, but they have worked together to develop this legislation because they agree on a greater principle: that our current system is hurting everyone—families, businesses, and our economy.

We must keep working together on a bipartisan basis to try to enact legislation that will give all Americans access to affordable health insurance, and solving the healthcare challenges faced by small businesses is an important part of that process.

I look forward to working with my colleagues to enact such legislation and ensure that the healthcare needs of small businesses and all Americans are met.

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 placed in the RECORD, as follows:

S. 979

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 “Small Business Health Options Program Act of 2009” or the “SHOP Act”.

SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

“TITLE XXXI—SMALL BUSINESS HEALTH OPTIONS PROGRAM

“SEC. 3101. DEFINITIONS.

“(a) IN GENERAL.—In this title:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator appointed under section 3102(a).

“(2) SMALL BUSINESS HEALTH BOARD.—The term ‘Small Business Health Board’ means the Board established under section 3102(d).

“(3) EMPLOYEE.—The term ‘employee’ has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(6)). Such term shall not include an employee of the Federal Government.

“(4) EMPLOYER.—The term ‘employer’ has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(5)), except that such term shall include employers who employed an average of at least 1 but not more than 100 employees (who worked an average of at least 35 hours per week) on business days during the year preceding the date of application, and shall include self-employed individuals with either not less than \$5,000 in net earnings or not less than \$15,000 in gross earnings from self-employment in the preceding taxable year. Such term shall not include the Federal Government.

“(5) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning given such term in section 2791.

“(6) HEALTH INSURANCE ISSUER.—The term ‘health insurance issuer’ has the meaning given such term in section 2791.

“(7) HEALTH STATUS-RELATED FACTOR.—The term ‘health status-related factor’ has the meaning given such term in section 2791(d)(9).

“(8) PARTICIPATING EMPLOYER.—The term ‘participating employer’ means an employer that—

“(A) elects to provide health insurance coverage under this title to its employees; and

“(B) is not offering other comprehensive health insurance coverage to such employees.

“(b) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of subsection (a)(3):

“(1) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

“(2) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence for the full year prior to the date on which the employer applies to participate, the determination of whether such employer meets the requirements of subsection (a)(4) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the employer’s first full year.

“(3) PREDECESSORS.—Any reference in this subsection to an employer shall include a

reference to any predecessor of such employer.

“(c) WAIVER AND CONTINUATION OF PARTICIPATION.—

“(1) WAIVER.—The Administrator may waive the limitations relating to the size of an employer which may participate in the health insurance program established under this title on a case by case basis if the Administrator determines that such employer makes a compelling case for such a waiver. In making determinations under this paragraph, the Administrator may consider the effects of the employment of temporary and seasonal workers and other factors.

“(2) CONTINUATION OF PARTICIPATION.—An employer participating in the program under this title that experiences an increase in the number of employees so that such employer has in excess of 100 employees, may not be excluded from participation solely as a result of such increase in employees.

“(d) TREATMENT OF HEALTH INSURANCE COVERAGE AS GROUP HEALTH PLAN.—Health insurance coverage offered under this title shall be treated as a group health plan for purposes of applying the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) except to the extent that a provision of this title expressly provides otherwise.

“(e) APPLICATION OF HIPAA RULES.—Subject to the provisions of this title, parts A and C of title XXVII shall apply to health insurance coverage offered under this title by health insurance issuers. Subject to section 2723, a State may modify State law as appropriate to provide for the enforcement of such provisions for health insurance coverage offered in the State under this title. Part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181 et seq.) shall continue to apply to group health plans offering coverage under this title. Subtitle K of the Internal Revenue Code of 1986 shall continue to apply to covered employers and group health plans offering coverage under this title.

“SEC. 3102. ADMINISTRATION OF SMALL BUSINESS HEALTH INSURANCE POOL.

“(a) OFFICE AND ADMINISTRATOR.—The Secretary shall designate an office within the Department of Health and Human Services to administer the program under this title. Such office shall be headed by an Administrator to be appointed by the Secretary.

“(b) QUALIFICATIONS.—The Secretary shall ensure that the individual appointed to serve as the Administrator under subsection (a) has an appropriate background with experience in health insurance, healthcare management, or health policy.

“(c) DUTIES.—The Administrator shall—

“(1) enter into contracts with health insurance issuers to provide health insurance coverage to individuals and employees who enroll in health insurance coverage in accordance with this title;

“(2) maintain the contracts for health insurance policies when an employee elects which health plan offered under this title to enroll in as permitted under section 3107(d)(7);

“(3) ensure that health insurance issuers comply with the requirements of this title;

“(4) ensure that employers meet eligibility requirements for participation in the health insurance pool established under this title;

“(5) enter into agreements with entities to serve as navigators, as defined in section 3103;

“(6) collect premiums from employers and employees and make payments for health insurance coverage;

“(7) collect other information needed to administer the program under this title;

“(8) compile, produce, and distribute information (which shall not be subject to review

or modification by the States) to employers and employees (directly and through navigators) concerning the open enrollment process, the health insurance coverage available through the pool, and standardized comparative information concerning such coverage, which shall be available through an interactive Internet website, including a description of the coverage plans available in each State and comparative information, about premiums, index rates, benefits, quality, and consumer satisfaction under such plans;

“(9) provide information to health insurance issuers, including, at the discretion of the Administrator, notification when proposed rates are not in a competitive range;

“(10) conduct public education activities (directly and through navigators) to raise the awareness of the public of the program under this title and the associated tax credit under the Internal Revenue Code of 1986;

“(11) develop methods to facilitate enrollment in health insurance coverage under this title, including through the use of the Internet;

“(12) if appropriate, enter into contracts for the performance of administrative functions under this title as permitted under section 3109;

“(13) carefully consider benefit recommendations that are endorsed by at least two-thirds of the members of the Small Business Health Board;

“(14) establish and administer a contingency fund for risk corridors as provided for in section 3108;

“(15) coordinate with State insurance regulators to ensure timely and effective consideration of complaints, grievances, and appeals; and

“(16) carry out any other activities necessary to administer this title.

“(d) LIMITATIONS.—The Administrator shall not—

“(1) negotiate premiums with participating health insurance issuers; or

“(2) exclude health insurance issuers from participating in the program under this title except for violating contracts or the requirements of this title.

“(e) SMALL BUSINESS HEALTH BOARD.—

“(1) IN GENERAL.—There shall be established a Small Business Health Board to monitor the implementation of the program under this title and to make recommendations to the Administrator concerning improvements in the program.

“(2) APPOINTMENT.—The Comptroller General shall appoint 13 individuals who have expertise in healthcare benefits, financing, economics, actuarial science, or other related fields, to serve as members of the Small Business Health Board. In appointing members under the preceding sentence, the Comptroller General shall ensure that such members include—

“(A) a mix of different types of professionals;

“(B) a broad geographic representation;

“(C) not less than 3 individuals with an employee perspective;

“(D) not less than 3 individuals with a small business perspective, at least 1 of whom shall have a self-employed perspective;

“(E) not less than 1 individual with a background in insurance regulation; and

“(F) not less than 1 individual with a patient perspective.

“(3) TERMS.—Members of the Small Business Health Board shall serve for a term of 3 years, such terms to end on March 15 of the applicable year, except as provided in paragraph (4). The Comptroller General shall stagger the terms for members first appointed. A member may be reappointed after the expiration of a term. A member may

serve after expiration of a term until a successor has been appointed.

“(4) **SMALL BUSINESS REPRESENTATIVES.**—Beginning on March 16, 2013, 3 of the individuals the Comptroller General appoints to the Small Business Health Board shall be representatives of the 3 navigators through which the largest number of individuals have enrolled for health insurance coverage over the previous 2-year period. Such appointees shall serve for 1 year. The Comptroller General shall consider for appointment in years prior to the date specified in this paragraph, individuals who are representatives of entities that may serve as navigators.

“(5) **CHAIRPERSON; VICE CHAIRPERSON.**—The Comptroller General shall designate a member of the Small Business Health Board, at the time of appointment of such member, to serve as Chairperson and a member to serve as Vice Chairperson for the term of the appointment, except that in the case of a vacancy of either such position, the Comptroller General may designate another member to serve in such position for the remainder of such member's term.

“(6) **COMPENSATION.**—While serving on the business of the Small Business Health Board (including travel time), a member of the Small Business Health Board shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairperson of the Small Business Health Board.

“(7) **DISCLOSURE.**—The Comptroller General shall establish a system for the public disclosure, by members of the Small Business Health Board, of financial and other potential conflicts of interest.

“(8) **MEETINGS.**—The Small Business Health Board shall meet at the call of the Chairperson. Each such meeting shall be open to the public.

“(9) **DUTIES.**—The Small Business Health Board shall—

“(A) provide general oversight of the program under this title and make recommendations to the Administrator;

“(B) monitor, review, seek public input on, and make recommendations to the Administrator on the benefit requirements for nationwide plans in this title;

“(C) make recommendations concerning information that the Administrator, health plans, and navigators should distribute to employers and employees participating in the program under this title; and

“(D) monitor and make recommendations to the Administrator on adverse selection within the program under this title and between the coverage provided under the program and the State-regulated health insurance market.

“(10) **APPROVAL OF RECOMMENDATIONS.**—A recommendation shall require approval by not less than two-thirds of the members of the Board.

“(11) **PUBLIC NOTICE AND COMMENT ON RECOMMENDATIONS.**—The Administrator shall—

“(A) publish recommendations by the Small Business Health Board in the Federal Register;

“(B) solicit written comments concerning such recommendations; and

“(C) provide an opportunity for the presentation of oral comments concerning such recommendations at a public meeting.

“SEC. 3103. NAVIGATORS.

“(a) **IN GENERAL.**—The Administrator shall enter into agreements with private and public entities, beginning a reasonable period prior to the beginning of the first calendar

year in which health insurance coverage is offered under this title, under which such entities will serve as navigators.

“(b) **ELIGIBILITY.**—To be eligible to enter into an agreement under subsection (a), an entity shall demonstrate to the Administrator that the entity has existing relationships with, or could readily establish relationships with, employers or employees and self-employed individuals, likely to be eligible to participate in the program under this title. Such entities may include trade, industry and professional associations, chambers of commerce, unions, small business development centers, and other entities that the Administrator determines to be capable of carrying out the duties described in subsection (c).

“(c) **DUTIES.**—An entity that serves as a navigator under an agreement under subsection (a) shall—

“(1) coordinate with the Administrator on public education activities to raise awareness of the program under this title;

“(2) distribute information developed by the Administrator on the open enrollment process, private health plans available through the program under this title, and standardized comparative information about the health insurance coverage under the program;

“(3) distribute information about the availability of the tax credit under section 36 of the Internal Revenue Code of 1986 as added by the Small Business Health Options Program Act of 2009;

“(4) provide referrals to the applicable State agency or agencies for any enrollee with a grievance, complaint, or question regarding their health insurance issuer, their coverage or plan, or a determination under such coverage or plan;

“(5) assist employers and employees in enrolling in the program under this title; and

“(6) respond to questions about the program under this title and participating plans.

“(d) **SUPPLEMENTAL MATERIALS.**—In addition to information developed by the Administrator under subsection (c)(2), a navigator may develop and distribute other information that is related to the health insurance program established under this title, subject to review and approval by the Administrator and filing in each State in which the navigator operates.

“(e) **STANDARDS.**—

“(1) **IN GENERAL.**—The Administrator shall establish standards for navigators under this section, including provisions to avoid conflicts of interest. Under such standards, a navigator may not—

“(A) be a health insurance issuer; or

“(B) receive any consideration directly or indirectly from any health insurance issuer in connection with the participation of any employer in the program under this title or the enrollment of any eligible employee in health insurance coverage under this title.

“(2) **FAIR AND IMPARTIAL INFORMATION AND SERVICES.**—The Administrator shall consult with the Small Business Health Board concerning the standards necessary to ensure that a navigator will provide fair and impartial information and services. An agreement between the Administrator and a navigator may include specific provisions with respect to such navigator to ensure that such navigator will provide fair and impartial information and services. If a navigator, or entity seeking to become a navigator, is a party to any arrangement with any health insurance issuer to receive compensation related to other healthcare programs not covered under this title, the entity shall disclose the terms of such compensation arrangements to the Administrator, and the Administrator shall take such information into account in deter-

mining the appropriate standards and agreement terms for such navigator.

“SEC. 3104. CONTRACTS WITH HEALTH INSURANCE ISSUERS.

“(a) **IN GENERAL.**—The Administrator may enter into contracts with qualified health insurance issuers, without regard to section 5 of title 41, United States Code, or other statutes requiring competitive bidding, to provide health benefits plans to employees of participating employers and self-employed individuals under this title. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party. In entering into such contracts, the Administrator shall ensure that health benefits coverage is provided for an individual only, 2 adults in a household, 1 adult and 1 or more children, and a family.

“(b) **ELIGIBILITY.**—A health insurance issuer shall be eligible to enter into a contract under subsection (a) if such issuer—

“(1) is licensed to offer health benefits plan coverage in each State in which the plan is offered; and

“(2) meets such other reasonable requirements as determined appropriate by the Administrator, after an opportunity for public comment and publication in the Federal Register.

“(c) **COST-SHARING AND NETWORKS.**—The Administrator shall ensure that health benefits plans with a range of cost-sharing and network arrangements are available under this title.

“(d) **REVOCATION.**—Approval of a health benefits plan participating in the program under this title may be withdrawn or revoked by the Administrator only after notice to the health insurance issuer involved and an opportunity for a hearing without regard to subchapter II of chapter 5 and chapter 7 of title 5, United States Code.

“(e) **CONVERSION.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), a contract may not be made or a plan approved under this section if the health insurance issuer under such contract or plan does not provide to each enrollee whose coverage under the plan is terminated, including a termination due to discontinuance of the contract or plan, the option to have issued to that individual a nongroup policy without evidence of insurability. A health insurance issuer shall provide a notice of such option to individuals who enroll in the plan. An enrollee who exercises such conversion option shall pay the full periodic charges for the nongroup policy.

“(2) **EXCEPTIONS.**—A health insurance issuer shall not be required to offer a nongroup policy under paragraph (1) if the termination under the plan occurred because—

“(A) the enrollee failed to pay any required monthly premiums under the plan;

“(B) the enrollee performed an act or practice that constitutes fraud in connection with the coverage under the plan;

“(C) the enrollee made an intentional misrepresentation of a material fact under the terms of coverage of the plan; or

“(D) the terminated coverage under the plan was replaced by similar coverage within 31 days after the effective date of such termination.

“(f) **PAYMENT OF PREMIUMS.**—

“(1) **IN GENERAL.**—Employers shall collect premium payments from their employees through payroll deductions or other payments from employees and shall forward such payments and the contribution of the employer (if any) to the Administrator. The Administrator shall develop procedures through which such payments shall be received and forwarded to the health insurance issuer involved.

“(2) FAILURE TO PAY.—The Administrator shall establish—

“(A) procedures for the termination of employers that fail for a consecutive 2-month period (or such other time period as determined appropriate by the Administrator) to make premium payments in a timely manner; and

“(B) other procedures regarding unpaid and uncollected premiums.

“SEC. 3105. EMPLOYER PARTICIPATION.

“(a) PARTICIPATION PROCEDURE.—The Administrator shall develop a procedure for employers and self-employed individuals to participate in the program under this title, including procedures relating to the offering of health benefits plans to employees and the payment of premiums for health insurance coverage under this title. For the purpose of premium payments, a self-employed individual shall be considered an employer that is making a 100 percent contribution toward the premium amount.

“(b) ENROLLMENT AND OFFERING OF OTHER COVERAGE.—

“(1) ENROLLMENT.—A participating employer shall ensure that each eligible employee has an opportunity to enroll in a plan of the employer's choice or a plan of the employee's choice in accordance with section 3107(d)(7).

“(2) PROHIBITION ON OFFERING OTHER COMPREHENSIVE HEALTH BENEFIT COVERAGE.—A participating employer may not offer a health insurance plan providing comprehensive health benefit coverage to employees other than a health benefits plan offered under this title.

“(3) PROHIBITION ON COERCION.—An employer shall not pressure, coerce, or offer inducements to an employee to elect not to enroll in coverage under the program under this title or to select a particular health benefits plan.

“(4) OFFER OF SUPPLEMENTAL COVERAGE OPTIONS.—

“(A) IN GENERAL.—A participating employer may offer supplementary coverage options to employees.

“(B) DEFINITION.—In subparagraph (A), the term ‘supplementary coverage’ means benefits described as ‘excepted benefits’ under section 2791(c).

“(C) REGULATORY FLEXIBILITY.—In developing the procedure under subsection (a), the Administrator shall comply with the requirements specified under the Regulatory Flexibility Act under chapter 6 of title 5, United States Code, consider the economic impacts that the regulation will have on small businesses, and consider regulatory alternatives that would mitigate such impact. The Administrator shall publish and publicly disseminate a small business compliance guide, pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act, that explains the compliance requirements for employer participation. Such compliance guide shall be published not later than the date of the publication of the final rule under this title, or the effective date of such rules, whichever is later.

“(d) RULE OF CONSTRUCTION.—Except as provided in section 3104(f), nothing in this title shall be construed to require that an employer make premium contributions on behalf of employees.

“SEC. 3106. ELIGIBILITY AND ENROLLMENT.

“(a) IN GENERAL.—An individual shall be eligible to enroll in health insurance coverage under this title for coverage beginning in 2012 if such individual is an employee of a participating employer described in section 3101(a)(4) or is a self-employed individual as defined in section 401(c)(1)(B) of the Internal Revenue Code of 1986 and meets the definition of a participating employer in section

3101(a)(8). An employer may allow employees who average fewer than 35 hours per week to enroll.

“(b) LIMITATION.—A health insurance issuer may not refuse to provide coverage to any eligible individual under subsection (a) who selects a health benefits plan offered by such issuer under this title.

“(c) TYPE OF ENROLLMENT.—An eligible individual may enroll as an individual or as an adult with 1 or more children regardless of whether another adult is present in the enrollee's household or family.

“(d) OPEN ENROLLMENT.—

“(1) IN GENERAL.—The Administrator shall establish an annual open enrollment period during which an employer may elect to become a participating employer and an employee may enroll in a health benefits plan under this title for the following calendar year.

“(2) OPEN ENROLLMENT PERIOD.—For purposes of this title, the term ‘open enrollment period’ means, with respect to calendar year 2012 and each succeeding calendar year, the period beginning on October 1, 2011, and ending December 1, 2011, and each succeeding period beginning October 1 and ending December 1. Coverage in a health benefits plan selected during such an open enrollment period shall begin on January 1 of the calendar year following the selection.

“(3) NEWLY ELIGIBLE EMPLOYERS AND EMPLOYEES.—Notwithstanding the open enrollment period provided for under paragraph (2), the Administrator shall establish an enrollment process to enable a newly eligible employer or an employer with an existing health benefits plan whose term is ending to become a participating employer and for an employee of such employer, or a new employee of a participating employer, to enroll in a health benefits plan under this title outside of an open enrollment period subject to 2701(f). The Administrator may establish a process for setting the renewal date for the participation of an employer that initially becomes a participating employer outside of the open enrollment period to coincide with a subsequent open enrollment period.

“(4) LIMITATION OF CHANGING ENROLLMENT.—An employer or employee (as the case may be) may elect to change the health benefits plan that the employee is enrolled in only during an open enrollment period.

“(5) EFFECTIVENESS OF ELECTION AND CHANGE OF ELECTION.—An election to change a health benefits plan that is made during the open enrollment period under paragraph (2) shall take effect as of the first day of the following calendar year.

“(6) CONTINUATION OF ENROLLMENT.—An employee who has enrolled in a health benefits plan under this title is considered to have been continuously enrolled in that health benefits plan until such time as—

“(A) the employer or employee (as the case may be) elects to change health benefits plans; or

“(B) the health benefits plan is terminated.

“(e) PROVIDING INFORMATION TO PROMOTE INFORMED CHOICE.—The Administrator shall compile, produce, and disseminate information to employers, employees, and navigators under section 3102(c)(8) to promote informed choice that shall be made available at least 30 days prior to the beginning of each open enrollment period.

“(f) TERMINATION OF EMPLOYMENT.—

“(1) IN GENERAL.—With respect to an employee who is enrolled in a health plan through the program under this title and who is terminated or separated from employment, such employee may remain enrolled in such health plan for the period described in paragraph (2) if the employee pays 102 percent of the monthly premium for such plan for such period as provided for under paragraph (3).

“(2) PERIOD DESCRIBED.—The period described in this paragraph is the longer of—

“(A) the period provided for in the COBRA continuation provisions (as such term is defined in section 3001(a)(10)(B) of division B of the American Recovery and Reinvestment Act of 2009) beginning on the date of the termination or separation involved; or

“(B) the period permitted under any applicable continuation of coverage provisions of the State in which the employee resides.

“(3) ADMINISTRATION.—The Administrator shall develop guidelines for administering the provision of health plan coverage for employees under this subsection. Such guidelines shall address the rating rules for such continuation coverage in the calendar years prior to 2014 and shall provide for the administration of this section in a manner similar to the manner in which the COBRA continuation provisions (as such term is defined in section 3001(a)(10)(B) of division B of the American Recovery and Reinvestment Act of 2009) are administered, including the collection of premiums by the Administrator.

“(4) NONAPPLICATION OF PROVISIONS.—The COBRA continuation provisions (as such term is defined in section 3001(a)(10)(B) of division B of the American Recovery and Reinvestment Act of 2009) shall not apply to an employee to which this subsection applies.

“(g) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to prohibit a health insurance issuer providing coverage through the program under this title from using the services of a licensed agent or broker.

“SEC. 3107. HEALTH COVERAGE AVAILABLE WITHIN THE SMALL BUSINESS POOL.

“(a) PREEXISTING CONDITION EXCLUSIONS.—Section 2701 shall apply to coverage under this title, except that with respect to such coverage, the reference to ‘12 months (or 18 months in the case of a late enrollee)’ in subsection (a)(2) of each such section shall be deemed to be ‘6 months’. The period involved shall be reduced by the aggregate of 1 day for each day that the individual was covered under creditable health insurance coverage (as defined for purposes of section 2701(c)) immediately preceding the date the individual submitted an application for coverage under this title.

“(b) RATES AND PREMIUMS; STATE LAWS.—

“(1) IN GENERAL.—Rates charged and premiums paid for a health benefits plan under this title—

“(A) shall be determined in accordance with subsection (d);

“(B) may be annually adjusted; and

“(C) shall be adjusted to cover the administrative costs of the Administrator under this title and the office established under section 3102.

“(2) BENEFIT MANDATE LAWS.—With respect to a contract entered into under this title under which a health insurance issuer will offer health benefits plan coverage, State mandated benefit laws in effect in the State in which the plan is offered shall continue to apply, except in the case of a nationwide plan.

“(3) LIMITATION.—Nothing in this subsection shall be construed to preempt any State or local law (including any State grievance, claims, and appeals procedure laws, State provider mandate laws, and State network adequacy laws) except those laws and regulations described in subsection (b)(2), (d)(2)(B), and (d)(5).

“(c) TERMINATION AND REENROLLMENT.—If an individual who is enrolled in a health benefits plan under this title voluntarily terminates the enrollment, except in the case of an individual who has lost or changes employment or whose employer is terminated for failure to pay premiums, the individual shall not be eligible for reenrollment until

the first open enrollment period following the expiration of 6 months after the date of such termination.

“(d) RATING RULES AND TRANSITIONAL APPLICATION OF STATE LAW.—

“(1) YEARS 2012 AND 2013.—With respect to calendar years 2012 and 2013 (open enrollment period beginning October 1, 2011, and October 1, 2012), the following shall apply:

“(A) In the case of an employer that elects to participate in the program under this title, the State rating requirements applicable to employers purchasing health insurance coverage in the small group market in the State in which the employer is located shall apply with respect to such coverage, except that premium rates for such coverage shall not vary based on health-status related factors.

“(B) State rating requirements shall apply to health insurance coverage purchased in the small group market in the State, except that a State shall be prohibited from allowing premium rates to vary based on health-status related factors.

“(2) SUBSEQUENT YEARS.—

“(A) NAIC RECOMMENDATIONS.—

“(i) STUDY.—Beginning in 2010, the Administrator shall contract with the National Association of Insurance Commissioners to conduct a study of the rating requirements utilized in the program under this title and the rating requirements that apply to health insurance purchased in the small group markets in the States, and to develop recommendations concerning rating requirements. Such recommendations shall be submitted to the appropriate committees of Congress during calendar year 2012.

“(ii) STATE LAW HARMONIZATION.—Beginning in calendar year 2011, the Administrator shall contract with the National Association of Insurance Commissioners to conduct a study of administrative procedures, including rate and form filing, standards of external review, and standards of internal review, that apply to the program under this title and to health insurance purchased in the small group markets in the States.

“(iii) CONSULTATION.—In conducting the study under clause (i), the National Association of Insurance Commissioners shall consult with key stakeholders (including small businesses, self-employed individuals, employees of small businesses, health insurance issuers, healthcare providers, and patient advocates).

“(iv) RECOMMENDATIONS.—During calendar year 2012, the recommendations of the National Association of Insurance Commissioners shall be submitted to Congress (in the form of a legislative proposal), and shall concern—

“(I) rating requirements for health insurance coverage under this title for calendar year 2014 and subsequent calendar years; and

“(II) a maximum permissible variance between State rating requirements and the rating requirements for coverage under this title that will allow State flexibility without causing significant adverse selection for health insurance coverage under this title.

“(B) APPLICATION OF REQUIREMENTS.—If, pursuant to this subsection, an Act is enacted to implement rating requirements pursuant to the recommendations submitted under subparagraph (A), or alternative rating requirements developed by Congress, such rating requirements shall apply to the program under this title beginning in calendar year 2014 (open enrollment periods beginning October 1, 2013, and thereafter).

“(3) FAILURE TO ENACT LEGISLATION.—If an Act is not enacted as provided for in paragraph (2)(B), the fallback rating rules under paragraph (5) shall apply beginning in calendar year 2014 (open enrollment periods beginning October 1, 2013, and thereafter).

“(4) EXPEDITED CONGRESSIONAL CONSIDERATION.—

“(A) INTRODUCTION AND COMMITTEE CONSIDERATION.—

“(i) INTRODUCTION.—A legislative proposal submitted to Congress pursuant to paragraph (2) shall be introduced in the House of Representatives by the Speaker, and in the Senate by the majority leader, immediately upon receipt of the language and shall be referred to the appropriate committees of Congress. If the proposal is not introduced in accordance with the preceding sentence, legislation may be introduced in either House of Congress by any member thereof.

“(ii) COMMITTEE CONSIDERATION.—Legislation introduced in the House of Representatives and the Senate under clause (i) shall be referred to the appropriate committees of jurisdiction of the House of Representatives and the Senate. Not later than 45 calendar days after the introduction of the legislation or February 15th, 2013, whichever is later, the committee of Congress to which the legislation was referred shall report the legislation or a committee amendment thereto. If the committee has not reported such legislation (or identical legislation) at the end of 45 calendar days after its introduction, or February 15th, 2013, whichever is later, such committee shall be deemed to be discharged from further consideration of such legislation and such legislation shall be placed on the appropriate calendar of the House involved.

“(B) EXPEDITED PROCEDURE.—

“(i) CONSIDERATION.—Not later than 15 calendar days after the date on which a committee has been or could have been discharged from consideration of legislation under this paragraph, the Speaker of the House of Representatives, or the Speaker's designee, or the majority leader of the Senate, or the leader's designee, shall move to proceed to the consideration of the committee amendment to the legislation, and if there is no such amendment, to the legislation. It shall also be in order for any member of the House of Representatives or the Senate, respectively, to move to proceed to the consideration of the legislation at any time after the conclusion of such 15-day period. All points of order against the legislation (and against consideration of the legislation) with the exception of points of order under the Congressional Budget Act of 1974 are waived. A motion to proceed to the consideration of the legislation is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, to a motion to postpone consideration of the legislation, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion to proceed is agreed to or not agreed to shall not be in order. If the motion to proceed is agreed to, the House of Representatives or the Senate, as the case may be, shall immediately proceed to consideration of the legislation in accordance with the Standing Rules of the House of Representatives or the Senate, as the case may be, without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the House of Representatives or the Senate, as the case may be, until disposed of, except as provided in clause (iii).

“(ii) CONSIDERATION BY OTHER HOUSE.—If, before the passage by one House of the legislation that was introduced in such House, such House receives from the other House legislation as passed by such other House—

“(I) the legislation of the other House shall not be referred to a committee and shall immediately displace the legislation that was introduced in the House in receipt of the legislation of the other House; and

“(II) the legislation of the other House shall immediately be considered by the receiving House under the same procedures applicable to legislation reported by or discharged from a committee under this paragraph.

“Upon disposition of legislation that is received by one House from the other House, it shall no longer be in order to consider the legislation that was introduced in the receiving House.

“(iii) SENATE VOTE REQUIREMENT.—Legislation under this paragraph shall only be approved in the Senate if affirmed by the votes of $\frac{2}{3}$ of the Senators duly chosen and sworn. If legislation in the Senate has not reached final passage within 10 days after the motion to proceed is agreed to (excluding periods in which the Senate is in recess) it shall be in order for the majority leader to file a cloture petition on the legislation or amendments thereto, in accordance with rule XXII of the Standing Rules of the Senate. If such a cloture motion on the legislation fails, it shall be in order for the majority leader to proceed to other business and the legislation shall be returned to or placed on the Senate calendar.

“(iv) CONSIDERATION IN CONFERENCE.—Immediately upon a final passage of the legislation that results in a disagreement between the two Houses of Congress with respect to the legislation, conferees shall be appointed and a conference convened. Not later than 15 days after the date on which conferees are appointed (excluding periods in which one or both Houses are in recess), the conferees shall file a report with the House of Representatives and the Senate resolving the differences between the Houses on the legislation. Notwithstanding any other rule of the House of Representatives or the Senate, it shall be in order to immediately consider a report of a committee of conference on the legislation filed in accordance with this subclause. Debate in the House of Representatives and the Senate on the conference report shall be limited to 10 hours, equally divided and controlled by the Speaker of the House of Representatives and the minority leader of the House of Representatives or their designees and the majority and minority leaders of the Senate or their designees. A vote on final passage of the conference report shall occur immediately at the conclusion or yielding back of all time for debate on the conference report. The conference report shall be approved in the Senate only if affirmed by the votes of $\frac{2}{3}$ of the Senators duly chosen and sworn.

“(C) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—This paragraph is enacted by Congress—

“(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of legislation under this paragraph, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(ii) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

“(5) FALLBACK RATING RULES.—For purposes of paragraph (3), the fallback rating rules are as follows:

“(A) PROGRAM.—

“(i) RATING RULES.—A health insurance issuer that enters into a contract under the program under this title shall determine the amount of premiums to assess for coverage under a health benefits plan based on a community rate that may be annually adjusted only—

“(I) based on the age of covered individuals (subject to clause (iii));

“(II) based on the geographic area involved if the adjustment is based on geographical divisions that are not smaller than a metropolitan statistical area and the issuer provides evidence of geographic variation in cost of services;

“(III) based on industry (subject to clause (iv));

“(IV) based on tobacco use; and

“(V) based on whether such coverage is for an individual, 2 adults in a household, 1 adult and 1 or more children, or a family.

“(ii) LIMITATION.—Premium rates charged for coverage under the program under this title shall not vary based on health-status related factors, gender, class of business, or claims experience or any other factor not described in clause (i).

“(iii) AGE ADJUSTMENTS.—

“(I) IN GENERAL.—With respect to clause (i)(I), in making adjustments based on age, the Administrator shall establish not more than 5 age brackets to be used by a health insurance issuer in establishing rates for individuals under the age of 65. The rates for any age bracket shall not exceed 300 percent of the rate for the lowest age bracket. Age-related premiums may not vary within age brackets.

“(II) AGES 65 AND OLDER.—With respect to clause (i)(I), a health insurance issuer may develop separate rates for covered individuals who are 65 years of age or older for whom the primary payor for health benefits coverage is the Medicare program under title XVIII of the Social Security Act, for the coverage of health benefits that are not otherwise covered under Medicare.

“(iv) INDUSTRY ADJUSTMENT.—With respect to clause (i)(III), in making adjustments based on industry, the rates for any industry shall not exceed 115 percent of the rate for the lowest industry and shall be based on evidence of industry variation in cost of services.

“(B) STATE RATING RULES.—State rating requirements shall apply to health insurance coverage purchased in the small group market, except that a State shall not permit premium rates to vary based on health-status related factors.

“(6) STATE WITH LESS PREMIUM VARIATION.—Effective beginning in calendar year 2014, in the case of a State that provides a rating variance with respect to age that is less than the Federal limit established under paragraph (2)(B) or (3) or that provides for some form of community rating, or that provides a rating variance with respect to industry that is less than the Federal limit established under paragraph (2)(B) or (3), or that provides a rating variance with respect to the geographic area involved that is less than the Federal limit established in paragraph (2)(B) or (3), premium rates charged for health insurance coverage under this title in such State with respect to such factor shall reflect the rating requirements of such State.

“(7) EMPLOYEE CHOICE.—

“(A) CALENDAR YEARS 2012 AND 2013.—With respect to calendar years 2012 and 2013 (open enrollment periods beginning October 1, 2011, and October 1, 2012), in the case of a State that applies community rating or adjusted community rating where any age bracket does not exceed 300 percent of the lowest age bracket, employees of an employer located in that State may elect to enroll in any health plan offered under this title.

“(B) SUBSEQUENT YEARS.—Beginning in calendar year 2014 (open enrollment periods beginning October 1, 2013, and thereafter), employees of an employer that participates in the program under this title may elect to en-

roll in any health plan offered under this title.

“(C) EXCEPTION.—In any State or year in which an employee is not able to select a health plan as provided for in subparagraph (A) or (B), the employer shall select the health plan or plans that shall be made available to the employees of such employer.

“(8) STATE APPROVAL OF RATES.—State laws requiring the approval of rates with respect to health insurance shall continue to apply to health insurance coverage under this title in such State unless the State fails to enforce the application of rates that would otherwise apply to health insurance issuers under the program under this title.

“(e) BENEFITS.—

“(1) STATEMENT OF BENEFITS.—Each contract under this title shall contain a detailed statement of benefits offered and shall include information concerning such maximums, limitations, exclusions, and other definitions of benefits as the Administrator considers necessary or reasonable.

“(2) NATIONWIDE PLANS.—

“(A) IN GENERAL.—In the case of contracts with health insurance issuers that offer a health benefit plan on a nationwide basis, the benefit package shall include benefits established by the Administrator.

“(B) PROCESS FOR ESTABLISHING BENEFITS FOR NATIONWIDE PLANS.—The benefits provided for under subparagraph (A) shall be determined as follows:

“(i) Not later than 30 days after the date of enactment of this title, the Secretary shall enter into a contract with the Institute of Medicine to develop a minimum set of benefits to be offered by nationwide plans.

“(ii) In developing such minimum set of benefits, the Institute of Medicine shall convene public forums to allow input from key stakeholders (including small businesses, self-employed individuals, employees of small businesses, health insurance issuers, insurance regulators, healthcare providers, and patient advocates) and shall consult with the Small Business Health Board.

“(iii) The Institute of Medicine shall consider—

“(I) the clinical appropriateness and effectiveness of the benefits covered;

“(II) the affordability of the benefits covered;

“(III) the financial protection of enrollees against high healthcare expenses;

“(IV) access to necessary healthcare services, including preventive health services; and

“(V) benefits similar to those available in the small group market on the date of enactment of this title.

“(iv) The benefits package shall not be discriminatory or be likely to promote or induce adverse selection.

“(v) The Administrator shall publish the benefits recommended by the Institute of Medicine for public comment.

“(vi) Based on the comments received, the Administrator may make changes only to the extent that the recommendation from the Institute of Medicine is not consistent with the criteria contained in clause (iii) or there is a compelling need for the changes to ensure the effective functioning of the program.

“(vii) The Administrator shall submit a report to Congress on the benefits included in the nationwide package.

“(C) CHANGES TO BENEFITS.—

“(i) IN GENERAL.—By a vote of a two-thirds majority, the Small Business Health Board may recommend to the Administrator changes to the benefit package for nationwide plans under this paragraph for years subsequent to the first year in which such benefits are in effect.

“(ii) REDUCTION IN BENEFITS.—The Administrator may reduce benefits that were previously covered under this paragraph only if—

“(I) two-thirds of the Small Business Health Board recommend such change; or

“(II) there is a compelling need for the change to prevent a substantial reduction in participation in the program under this title.

“(f) ADDITIONAL PREMIUM FOR DELAYED ENROLLMENT.—

“(1) IN GENERAL.—A self-employed individual who is eligible to participate in the program under this title, who does not reside in a State where a self-employed individual is eligible for coverage in the small group market, and who does not elect to enroll in coverage under such program in the first year in which the self-employed individual is eligible to so enroll, shall be subject to an additional premium for delayed enrollment.

“(2) AMOUNT.—The Administrator shall establish the amount of the additional premium under paragraph (1), which shall be the amount determined by the Administrator to be actuarially appropriate, to encourage enrollment, and to reduce adverse selection. The amount of the additional premium shall be calculated by the Administrator based on the number of years specified in paragraph (4).

“(3) PAYMENT.—A self-employed individual shall pay the additional premium under this subsection, if any, for a period of time equal to the number of years specified in paragraph (4). After the expiration of such period the additional premium for delayed enrollment shall be terminated.

“(4) YEARS.—The number of years specified in this paragraph is the number of years that the self-employed individual involved was eligible to participate in the program under this title but did not enroll in coverage under such program and did not otherwise have creditable coverage (as defined for purposes of section 2701(c)).

“(g) STATE ENFORCEMENT.—

“(1) STATE AUTHORITY.—With respect to the enforcement of provisions in this title that supersede State law (as described in paragraph (2)), a State may require that health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State in the small group market or through the program under this title, comply with the requirements of this title with respect to such issuers.

“(2) PROVISIONS DESCRIBED.—The provisions described in this paragraph shall include the following:

“(A) Prohibitions on varying premium rates based on health-status related factors (subsections (d)(1)(A) and (B) of section 3107).

“(B) The implementation of rating requirements that shall apply to the program under this title beginning in calendar year 2014 (subsections (d)(2)(B) and (d)(3) of section 3107).

“(C) Benefit requirements for nationwide plans available in the program under this title (subsection (e)).

“(3) FAILURE TO IMPLEMENT OR ENFORCE PROVISIONS.—In the case of a determination by the Secretary that a State has failed to substantially enforce a provision (or provisions) described in paragraph (2) with respect to health insurance issuers in the State, the Secretary shall enforce such provision (or provisions).

“(4) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to the enforcement of the provisions of this title with respect to issuers of health insurance coverage in a State as the Secretary has under section 2722(b)(2) in relation to the enforcement of the provisions of part A of title XXVII with

respect to issuers of health insurance coverage in the small group market in the State.

“(h) STATE OPT OUT.—A State may prohibit small employers and self-employed individuals in the State from participating in the program under this title if the Administrator finds that the State—

“(1) defines its small group market to include groups of 1 (so that self-employed individuals are eligible for coverage in such market);

“(2) prohibits the use of health-status related factors and other factors described in subsection (d)(5)(A);

“(3) has in effect rating rules that—

“(A) in calendar years 2012 and 2013, comply with subsection (d)(5)(A); and

“(B) in calendar year 2014 and thereafter, comply with subsection (d)(2)(B) or (d)(3), whichever is in effect for such calendar year; except that such rules may impose limits on rating variation in addition to those provided for in such subsection;

“(4) maintains a State-wide purchasing pool that provides purchasers in the small group market a choice of health benefits plans, with comparative information provided concerning such plans and the premiums charged for such plans made available through the Internet; and

“(5) enacts a law to request an opt out under this subsection.

“SEC. 3108. ENCOURAGING PARTICIPATION BY HEALTH INSURANCE ISSUERS THROUGH ADJUSTMENTS FOR RISK.

“(a) APPLICATION OF RISK CORRIDORS.—

“(1) IN GENERAL.—This section shall only apply to health insurance issuers with respect to health benefits plans offered under this Act during any of calendar years 2012 through 2014.

“(2) NOTIFICATION OF COSTS UNDER THE PLAN.—In the case of a health insurance issuer that offers a health benefits plan under this title in any of calendar years 2012 through 2014, the issuer shall notify the Administrator, before such date in the succeeding year as the Administrator specifies, of the total amount of costs incurred in providing benefits under the health benefits plan for the year involved and the portion of such costs that is attributable to administrative expenses.

“(3) ALLOWABLE COSTS DEFINED.—For purposes of this section, the term ‘allowable costs’ means, with respect to a health benefits plan offered by a health insurance issuer under this title, for a year, the total amount of costs described in paragraph (2) for the plan and year, reduced by the portion of such costs attributable to administrative expenses incurred in providing the benefits described in such paragraph.

“(b) ADJUSTMENT OF PAYMENT.—

“(1) NO ADJUSTMENT IF ALLOWABLE COSTS WITHIN 3 PERCENT OF TARGET AMOUNT.—If the allowable costs for the health insurance issuer with respect to the health benefits plan involved for a calendar year are at least 97 percent, but do not exceed 103 percent, of the target amount for the plan and year involved, there shall be no payment adjustment under this section for the plan and year.

“(2) INCREASE IN PAYMENT IF ALLOWABLE COSTS ABOVE 103 PERCENT OF TARGET AMOUNT.—

“(A) COSTS BETWEEN 103 AND 108 PERCENT OF TARGET AMOUNT.—If the allowable costs for the health insurance issuer with respect to the health benefits plan involved for the year are greater than 103 percent, but not greater than 108 percent, of the target amount for the plan and year, the Administrator shall reimburse the issuer for such excess costs through payment to the issuer of an amount equal to 75 percent of the difference between

such allowable costs and 103 percent of such target amount.

“(B) COSTS ABOVE 108 PERCENT OF TARGET AMOUNT.—If the allowable costs for the health insurance issuer with respect to the health benefits plan involved for the year are greater than 108 percent of the target amount for the plan and year, the Administrator shall reimburse the issuer for such excess costs through payment to the issuer in an amount equal to the sum of—

“(i) 3.75 percent of such target amount; and

“(ii) 90 percent of the difference between such allowable costs and 108 percent of such target amount.

“(3) REDUCTION IN PAYMENT IF ALLOWABLE COSTS BELOW 97 PERCENT OF TARGET AMOUNT.—

“(A) COSTS BETWEEN 92 AND 97 PERCENT OF TARGET AMOUNT.—If the allowable costs for the health insurance issuer with respect to the health benefits plan involved for the year are less than 97 percent, but greater than or equal to 92 percent, of the target amount for the plan and year, the issuer shall be required to pay into a contingency reserve fund established and maintained by the Administrator, an amount equal to 75 percent of the difference between 97 percent of the target amount and such allowable costs.

“(B) COSTS BELOW 92 PERCENT OF TARGET AMOUNT.—If the allowable costs for the health insurance issuer with respect to the health benefits plan involved for the year are less than 92 percent of the target amount for the plan and year, the issuer shall be required to pay into the contingency fund established under subparagraph (A), an amount equal to the sum of—

“(i) 3.75 percent of such target amount; and

“(ii) 90 percent of the difference between 92 percent of such target amount and such allowable costs.

“(4) TARGET AMOUNT DESCRIBED.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘target amount’ means, with respect to a health benefits plan offered by an issuer under this title in any of calendar years 2012 through 2014, an amount equal to—

“(i) the total of the monthly premiums estimated by the health insurance issuer and accepted by the Administrator to be paid for enrollees in the plan under this title for the calendar year involved; reduced by

“(ii) the amount of administrative expenses that the issuer estimates, and the Administrator accepts, will be incurred by the issuer with respect to the plan for such calendar year.

“(B) SUBMISSION OF TARGET AMOUNT.—Not later than December 31, 2011, and each December 31 thereafter through calendar year 2013, an issuer shall submit to the Administrator a description of the target amount for such issuer with respect to health benefits plans provided by the issuer under this title.

“(c) DISCLOSURE OF INFORMATION.—

“(1) IN GENERAL.—Each contract under this title shall provide—

“(A) that a health insurance issuer offering a health benefits plan under this title shall provide the Administrator with such information as the Administrator determines is necessary to carry out this subsection including the notification of costs under subsection (a)(2) and the target amount under subsection (b)(4)(B); and

“(B) that the Administrator has the right to inspect and audit any books and records of the issuer that pertain to the information regarding costs provided to the Administrator under such subsections.

“(2) RESTRICTION ON USE OF INFORMATION.—Information disclosed or obtained pursuant to the provisions of this subsection may be used by the office designated under section 3102(a) and its employees and contractors

only for the purposes of, and to the extent necessary in, carrying out this section.

“SEC. 3109. ADMINISTRATION THROUGH REGIONAL OR OTHER ADMINISTRATIVE ENTITIES.

“(a) IN GENERAL.—In order to provide for the administration of the benefits under this title with maximum efficiency and convenience for participating employers and healthcare providers and other individuals and entities providing services to such employers, the Administrator—

“(1) shall enter into contracts with eligible entities, to the extent appropriate, to perform, on a regional or other basis, activities to receive, disburse, and account for payments of premiums to participating employers by individuals, and for payments by participating employers and employees to health insurance issuers; and

“(2) may enter into contracts with eligible entities, to the extent appropriate, to perform, on a regional or other basis, 1 or more of the following:

“(A) Collect and maintain all information relating to individuals, families, and employers participating in the program under this title.

“(B) Serve as a channel of communication between health insurance issuers, participating employers, and individuals relating to the administration of this title.

“(C) Otherwise carry out such activities for the administration of this title, in such manner, as may be provided for in the contract entered into under this section.

“(b) APPLICATION.—To be eligible to receive a contract under subsection (a), an entity shall prepare and submit to the Administrator an application at such time, in such manner, and containing such information as the Administration may require.

“(c) PROCESS.—

“(1) COMPETITIVE BIDDING.—All contracts under this section shall be awarded through a competitive bidding process on a biennial basis.

“(2) REQUIREMENT.—No contract shall be entered into with any entity under this section unless the Administrator finds that such entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as the Administrator finds pertinent.

“(3) PUBLICATION OF STANDARDS AND CRITERIA.—If the Administrator enters into contracts under subsection (a), the Administrator shall publish in the Federal Register standards and criteria for the efficient and effective performance of contract obligations under this section, and opportunity shall be provided for public comment prior to implementation. In establishing such standards and criteria, the Administrator shall provide for a system to measure an entity's performance of responsibilities.

“(4) TERM.—Each contract under this section shall be for a term of at least 2 years, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term, except that the Administrator may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the entity involved as the Administrator may provide in regulations) if the Administrator finds that the entity has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the program established by this title.

“(d) TERMS OF CONTRACT.—A contract entered into under this section shall include—

“(1) a description of the duties of the contracting entity;

“(2) an assurance that the entity will furnish to the Administrator such timely information and reports as the Administrator determines appropriate;

“(3) an assurance that the entity will maintain such records and afford such access thereto as the Administrator finds necessary to assure the correctness and verification of the information and reports under paragraph (2) and otherwise to carry out the purposes of this title;

“(4) an assurance that the entity shall comply with such confidentiality and privacy protection guidelines and procedures as the Administrator may require;

“(5) an assurance that the entity does not have, and will continue to avoid, any conflicts of interest relative to any functions it will perform; and

“(6) such other terms and conditions not inconsistent with this section as the Administrator may find necessary or appropriate.

“SEC. 3110. PUBLIC EDUCATION CAMPAIGN AND REPORT.

“(a) IN GENERAL.—In carrying out this title, the Administrator shall develop and implement an educational campaign with interagency participation (including at a minimum the Small Business Administration, the Department of Labor, and employees of the office established under section 3102 who oversee the provision of information through navigators) to provide information to employers and the general public concerning the health insurance program developed under this title, including the contact information relating to an individual or individuals who will be available to resolve various types of problems with health insurance coverage provided under this title.

“(b) PUBLIC EDUCATION CAMPAIGN.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2009 through 2011.

“(c) REPORTS TO CONGRESS.—Not later than 1 year and 2 years after the implementation of the campaign under subsection (a), the Administrator shall submit to the appropriate committees of Congress a report that describes the activities of the Administrator under subsection (a), including a determination by the Administrator of the percentage of employers with knowledge of the health benefits program under this title.

“SEC. 3111. APPROPRIATIONS.

“There are authorized to be appropriated to the Administrator such sums as may be necessary in each fiscal year for the development and administration of the program under this title.

“SEC. 3112. EFFECTIVE DATE.

“This title shall take effect on the date of enactment of this title.”.

SEC. 3. AMENDMENT TO ERISA.

Section 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(2)) is amended by adding at the end the following:

“(C) Notwithstanding subparagraph (A), the provisions of subsections (d)(1)(B) and (g)(2)(A) of section 3107 of the Public Health Service Act (relating to the prohibition on health-status related rating and the Federal enforcement of such provisions) shall supercede any State law that conflicts with such provisions.”.

SEC. 4. CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH INSURANCE EXPENSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits) is amended by inserting after section 45N the following new section:

“SEC. 450. SMALL BUSINESS EMPLOYEE HEALTH INSURANCE CREDIT.

“(a) DETERMINATION OF CREDIT.—In the case of a qualified small employer, there

shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the credit amount described in subsection (b).

“(b) GENERAL CREDIT AMOUNT.—For purposes of this section—

“(1) IN GENERAL.—The credit amount described in this subsection is the product of—

“(A) the amount specified in paragraph (2),

“(B) the employer size factor specified in paragraph (3), and

“(C) the percentage of year factor specified in paragraph (4).

“(2) APPLICABLE AMOUNT.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The applicable amount is equal to—

“(i) \$1,000 for each employee of the employer who receives self-only health insurance coverage through the employer,

“(ii) \$2,000 for each employee of the employer who receives family health insurance coverage through the employer, and

“(iii) \$1,500 for each employee of the employer who receives health insurance coverage for 2 adults or 1 adult and 1 or more children through the employer.

“(B) BONUS FOR PAYMENT OF GREATER PERCENTAGE OF PREMIUMS.—The applicable amount otherwise specified in subparagraph (A) shall be increased by \$200 in the case of subparagraph (A)(i), \$400 in the case of subparagraph (A)(ii), and \$300 in the case of subparagraph (A)(iii), for each additional 10 percent of the qualified employee health insurance expenses exceeding 60 percent which are paid by the qualified small employer.

“(3) EMPLOYER SIZE FACTOR.—For purposes of paragraph (1), the employer size factor is the percentage determined in accordance with the following table:

“If the employer size is:	The percentage is:
10 or fewer full-time employees	100%
More than 10 but not more than 20 full-time employees	80%
More than 20 but not more than 30 full-time employees	60%
More than 30 but not more than 40 full-time employees	40%
More than 40 but not more than 50 full-time employees	20%
More than 50 full-time employees	0%

“(4) PERCENTAGE OF YEAR FACTOR.—For purposes of paragraph (1), the percentage of year factor is equal to the ratio of—

“(A) the number of months during the taxable year for which the employer paid or incurred qualified employee health insurance expenses, and

“(B) 12.

“(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) QUALIFIED SMALL EMPLOYER.—

“(A) IN GENERAL.—The term ‘qualified small employer’ means any employer (as defined in section 3101(a)(4) of the Public Health Service Act) which—

“(i) either—

“(I) purchases health insurance coverage for its employees in a small group market in a State which meets the requirements under subparagraph (B), or

“(II) with respect to any taxable year beginning after 2011, is a participating employer (as defined in section 3101(a)(8) of such Act) in the program under title XXX of such Act,

“(ii) pays or incurs at least 60 percent of the qualified employee health insurance expenses of such employer or is self-employed, and

“(iii) employed an average of 50 or fewer full-time employees during the preceding taxable year or was a self-employed individual with either not less than \$5,000 in net

earnings or not less than \$15,000 in gross earnings from self-employment in the preceding taxable year.

“(B) STATE SMALL GROUP MARKET REQUIREMENTS.—A State meets the requirements of this subparagraph if—

“(i) during calendar years 2010 and 2011, the State—

“(I) defines its small group market to include groups of one (so that self-employed individuals are eligible for coverage in such market),

“(II) prohibits the use of health-status related factors and other factors described in section 3107(d)(5)(A) of such Act, and

“(III) has in effect rating rules that comply with section 3107(d)(5)(A) of such Act (except that such rules may impose limits on rating variation in addition to those provided for in such section),

“(ii) during calendar years 2012 and 2013, the State—

“(I) meets the requirements under clause (i), and

“(II) maintains a State-wide purchasing pool that provides purchasers in the small group market a choice of health benefit plans, with comparative information provided concerning such plans and the premiums charged for such plans made available through the Internet, and

“(iii) for calendar years after 2013, the State—

“(I) meets the requirements under clauses (i)(I), (i)(II), and (ii)(II), and

“(II) has in effect rating rules that comply with paragraph (2)(B) or (3) of section 3107(d) of such Act, whichever is in effect for such calendar year (except that such rules may impose limits on rating variation in addition to those provided for in such section).

“(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

“(A) IN GENERAL.—The term ‘qualified employee health insurance expenses’ means any amount paid by an employer or an employee of such employer for health insurance coverage under such Act to the extent such amount is attributable to coverage—

“(i) provided to any employee (as defined in subsection 3101(a)(3) of such Act), or

“(ii) for the employer, in the case of a self-employed individual.

“(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance coverage pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

“(3) FULL-TIME EMPLOYEE.—The term ‘full-time employee’ means, with respect to any period, an employee (as defined in section 3101(a)(3) of such Act) of an employer if the average number of hours worked by such employee in the preceding taxable year for such employer was at least 35 hours per week.

“(d) INFLATION ADJUSTMENT.—

“(1) IN GENERAL.—For each taxable year after 2010, the dollar amounts specified in subsections (b)(2)(A), (b)(2)(B), and (c)(1)(A)(iii) (after the application of this paragraph) shall be the amounts in effect in the preceding taxable year or, if greater, the product of—

“(A) the corresponding dollar amount specified in such subsection, and

“(B) the ratio of the index of wage inflation (as determined by the Bureau of Labor Statistics) for August of the preceding calendar year to such index of wage inflation for August of 2009.

“(2) ROUNDING.—If any amount determined under paragraph (1) is not a multiple of \$100, such amount shall be rounded to the next lowest multiple of \$100.

“(e) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this section—

“(1) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

“(2) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence for the full preceding taxable year, the determination of whether such employer meets the requirements of this section shall be based on the average number of full-time employees that it is reasonably expected such employer will employ on business days in the employer's first full taxable year.

“(3) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

“(f) COORDINATION WITH ADVANCE PAYMENTS OF CREDIT.—With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced by the aggregate amount paid on behalf of such taxpayer under section 7527A for months beginning in such taxable year. If the amount determined under this subsection is less than zero, the taxpayer shall owe additional tax in such amount under this chapter.

“(g) CREDITS FOR NONPROFIT ORGANIZATIONS.—Any credit which would be allowable under subsection (a) with respect to a qualified small business if such qualified small business were not exempt from tax under this chapter shall be treated as a credit allowable under this subpart to such qualified small business.”.

(b) ADVANCE PAYMENTS OF CREDIT.—Chapter 77 of the Internal Revenue Code of 1986 is amended by inserting after section 7527 the following new section:

“SEC. 7527A. ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS FOR QUALIFIED SMALL EMPLOYERS.

“(a) GENERAL RULE.—Not later than December 31, 2009, the Secretary shall establish a program for making monthly payments on behalf of qualified small employers to the program established under title XXX of the Public Health Service Act. The amount of the monthly payment for a qualified small employer shall be one-twelfth of the amount of the credit for the tax year to which the qualified small employer is entitled under section 36. If a monthly payment is made by the Secretary for which the employer is not entitled to a corresponding credit, the employer shall owe additional tax in such amount under this chapter.

“(b) QUALIFIED SMALL EMPLOYER.—For purposes of this section, the term ‘qualified small employer’ has the meaning given such term in section 36(c)(1).”.

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart D of part IV of subchapter A of chapter 1 of the

Internal Revenue Code of 1986 is amended by adding at the end the following new items:

“Sec. 450. Small business employee health insurance credit.”.

(2) The table of sections for chapter 77 of such Code is amended by inserting after the item relating to section 7527 the following new item:

“Sec. 7527A. Advance payment of credit for health insurance costs for qualified small employers.”.

(d) DEDUCTIBILITY.—The payment of premiums by a participating employer under this Act shall be considered to be an ordinary and necessary expense in carrying on a trade or business for purposes of the Internal Revenue Code of 1986 and shall be deductible.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.

By Mr. REID:

S. 981. A bill to support research and public awareness activities with respect to inflammatory bowel disease, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID. 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. 981

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 “Inflammatory Bowel Disease Research and Awareness Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Crohn's disease and ulcerative colitis are serious inflammatory diseases of the gastrointestinal tract.

(2) Crohn's disease may occur in any section of the gastrointestinal tract but is predominately found in the lower part of the small intestine and the large intestine. Ulcerative colitis is characterized by inflammation and ulceration of the innermost lining of the colon. Complete removal of the colon in patients with ulcerative colitis can potentially alleviate and cure symptoms.

(3) Because Crohn's disease and ulcerative colitis behave similarly, they are collectively known as inflammatory bowel disease. Both diseases present a variety of symptoms, including severe diarrhea, abdominal pain with cramps, fever, arthritic joint pain, inflammation of the eye, and rectal bleeding. There is no known cause of inflammatory bowel disease, or medical cure.

(4) It is estimated that up to 1,400,000 people in the United States suffer from inflammatory bowel disease, 30 percent of whom are diagnosed during their childhood years.

(5) Children with inflammatory bowel disease miss school activities because of bloody diarrhea and abdominal pain, and many adults who had onset of inflammatory bowel disease as children had delayed puberty and impaired growth and have never reached their full genetic growth potential.

(6) Inflammatory bowel disease patients are at high risk for developing colorectal cancer.

(7) The total annual medical costs for inflammatory bowel disease patients are estimated at more than \$2,000,000,000.

(8) The average time from presentation of symptoms to diagnosis in children is 3 years.

(9) Delayed diagnosis of inflammatory bowel disease frequently results in more-active disease associated with increased morbidity and complications.

(10) Congress has appropriated \$3,480,000 from fiscal year 2005 to fiscal year 2009 for epidemiology research on inflammatory bowel disease through the Centers for Disease Control and Prevention.

(11) The National Institutes of Health National Commission on Digestive Diseases issued comprehensive research goals related to inflammatory bowel disease in its April 2009 report to Congress and the American public entitled; “Opportunities and Challenges in Digestive Diseases Research: Recommendations of the National Commission on Digestive Diseases”.

SEC. 3. ENHANCING PUBLIC HEALTH ACTIVITIES ON INFLAMMATORY BOWEL DISEASE AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 320A the following:

“SEC. 320B. INFLAMMATORY BOWEL DISEASE EPIDEMIOLOGY PROGRAM.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall conduct, support and expand existing epidemiology research on inflammatory bowel disease in both pediatric and adult populations.

“(b) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants to, and enter into contracts and cooperative agreements with, a patient or medical organization with expertise in conducting inflammatory bowel disease research to develop and administer the epidemiology program.

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Centers for Disease Control and Prevention to support a pediatric inflammatory bowel disease patient registry.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$1,500,000 for each of the fiscal years 2010 through 2014.

“SEC. 320C. INCREASING PUBLIC AWARENESS OF INFLAMMATORY BOWEL DISEASE AND IMPROVING HEALTH PROFESSIONAL EDUCATION.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants to eligible entities for the purpose of increasing awareness of inflammatory bowel disease among the general public and health care providers.

“(b) USE OF FUNDS.—An eligible entity shall use grant funds under this section to develop educational materials and conduct awareness programs focused on the following subjects:

“(1) Crohn's disease and ulcerative colitis, and their symptoms.

“(2) Testing required for appropriate diagnosis, and the importance of accurate and early diagnosis.

“(3) Key differences between pediatric and adult disease.

“(4) Specific physical and psychosocial issues impacting pediatric patients, including stunted growth, malnutrition, delayed puberty, and depression.

“(5) Treatment options for both adult and pediatric patients.

“(6) The importance of identifying aggressive disease in children at an early stage in order to implement the most effective treatment protocol.

“(7) Complications of inflammatory bowel disease and related secondary conditions, including colorectal cancer.

“(8) Federal and private information resources for patients and physicians.

“(9) Incidence and prevalence data on pediatric and adult inflammatory bowel disease.

“(c) ELIGIBLE ENTITY.—For purposes of this section, the term ‘eligible entity’ means a patient or medical organization with experience in serving adults and children with inflammatory bowel disease.

“(d) REPORT TO CONGRESS.—Not later than September 30, 2010, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Appropriations of the House of Representatives and the Senate, a report regarding the status of activities carried out under this section.

“(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.”

SEC. 4. EXPANSION OF BIOMEDICAL RESEARCH ON INFLAMMATORY BOWEL DISEASE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Secretary of Health and Human Services, acting through the Director of the National Institutes of Health and the Director of the National Institute of Diabetes and Digestive and Kidney Diseases (in this section referred to as the Institute), should aggressively support basic, translational, and clinical research designed to meet the research goals for inflammatory bowel disease included in the National Institutes of Health National Commission on Digestive Diseases report entitled “Opportunities and Challenges in Digestive Diseases Research: Recommendations of the National Commission on Digestive Diseases”, which shall include—

(A) establishing an objective basis for determining clinical diagnosis, detailed phenotype, and disease activity in inflammatory bowel disease;

(B) developing an individualized approach to inflammatory bowel disease risk evaluation and management based on genetic susceptibility;

(C) modulating the intestinal microflora to prevent or control inflammatory bowel disease;

(D) effectively modulating the mucosal immune system to prevent or ameliorate inflammatory bowel disease;

(E) sustaining the health of the mucosal surface;

(F) promoting regeneration and repair of injury in inflammatory bowel disease;

(G) providing effective tools for clinical evaluation and intervention in inflammatory bowel disease; and

(H) ameliorating or preventing adverse effects of inflammatory bowel disease on growth and development in children and adolescents;

(2) the Institute should support the training of qualified health professionals in biomedical research focused on inflammatory bowel disease, including pediatric investigators; and

(3) the Institute should continue its strong collaboration with medical and patient organizations concerned with inflammatory bowel disease and seek opportunities to promote research identified in the scientific agendas “Challenges in Inflammatory Bowel Disease Research” (Crohn’s and Colitis Foundation of America) and “Chronic Inflammatory Bowel Disease” (North American Society for Pediatric Gastroenterology, Hepatology and Nutrition).

(b) BIENNIAL REPORTS.—As part of the biennial report submitted under section 403 of the Public Health Service Act (42 U.S.C. 283), the Secretary of Health and Human Services shall include information on the status of in-

flammatory bowel disease research at the National Institutes of Health.

By Mr. REID (for Mr. KENNEDY (for himself, Mr. DODD, Ms. COLLINS, Mr. HARKIN, Ms. SNOWE, Mr. DURBIN, Mr. LUGAR, Ms. MIKULSKI, Mr. REED, Mrs. MURRAY, Mr. REID, Mr. BINGAMAN, Mr. SANDERS, Mr. BROWN, Mr. CASEY, Mr. MERKLEY, Mr. WHITEHOUSE, Mr. LEAHY, Mr. LAUTENBERG, Mr. KERRY, Mr. SCHUMER, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. LEVIN, Mr. BAUCUS, Mr. WYDEN, Mr. AKAKA, Mr. NELSON, of Florida, Ms. LANDRIEU, Mr. CARPER, Mrs. GILLIBRAND, Mr. BENNET, Mr. BEGICH, Mr. BURRIS, Mr. KAUFMAN, Mr. UDALL, of New Mexico, Mr. UDALL, of Colorado, Mr. KOHL, Mr. FEINGOLD, Ms. CANTWELL, and Mrs. LINCOLN)):

S. 982. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. 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 placed in the RECORD, as follows:

S. 982

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Family Smoking Prevention and Tobacco Control Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purpose.

Sec. 4. Scope and effect.

Sec. 5. Severability.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

Sec. 101. Amendment of Federal Food, Drug, and Cosmetic Act.

Sec. 102. Final rule.

Sec. 103. Conforming and other amendments to general provisions.

Sec. 104. Study on raising the minimum age to purchase tobacco products.

Sec. 105. Enforcement action plan for advertising and promotion restrictions.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

Sec. 201. Cigarette label and advertising warnings.

Sec. 202. Authority to revise cigarette warning label statements.

Sec. 203. State regulation of cigarette advertising and promotion.

Sec. 204. Smokeless tobacco labels and advertising warnings.

Sec. 205. Authority to revise smokeless tobacco product warning label statements.

Sec. 206. Tar, nicotine, and other smoke constituent disclosure to the public.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

Sec. 301. Labeling, recordkeeping, records inspection.

Sec. 302. Study and report.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation’s children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation’s economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year, and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today’s children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco-induced disease. Such a reduction in youth smoking would also result in approximately \$75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products, and these efforts have resulted in increased use of such products by

youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2005, the cigarette manufacturers spent more than \$13,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco marketing than adults: more than 80 percent of youth smoke three heavily marketed brands, while only 54 percent of adults, 26 and older, smoke these same brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615-44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the first amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration, and the restriction on the sale and distribution of, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this Act.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion play a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe

that "low tar" and "light" cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking "low tar" and "light" cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from "low tar" and "light" cigarettes, and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in ensuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be reviewed in advance of marketing, and to require that the evidence relied on to support claims be fully verified.

(44) The Food and Drug Administration is a regulatory agency with the scientific expertise to identify harmful substances in products to which consumers are exposed, to design standards to limit exposure to those substances, to evaluate scientific studies supporting claims about the safety of products, and to evaluate the impact of labels, labeling, and advertising on consumer behavior in order to reduce the risk of harm and promote understanding of the impact of the product on health. In connection with its mandate to promote health and reduce the risk of harm, the Food and Drug Administration routinely makes decisions about whether and how products may be marketed in the United States.

(45) The Federal Trade Commission was created to protect consumers from unfair or deceptive acts or practices, and to regulate unfair methods of competition. Its focus is on those marketplace practices that deceive or mislead consumers, and those that give some competitors an unfair advantage. Its mission is to regulate activities in the marketplace. Neither the Federal Trade Commission nor any other Federal agency except the Food and Drug Administration possesses the scientific expertise needed to implement effectively all provisions of the Family Smoking Prevention and Tobacco Control Act.

(46) If manufacturers state or imply in communications directed to consumers through the media or through a label, labeling, or advertising, that a tobacco product is approved or inspected by the Food and Drug Administration or complies with Food and Drug Administration standards, consumers are likely to be confused and misled. Depending upon the particular language used and its context, such a statement could result in consumers being misled into believing that the product is endorsed by the Food and Drug Administration for use or in consumers being misled about the harmfulness of the

product because of such regulation, inspection, approval, or compliance.

(47) In August 2006 a United States district court judge found that the major United States cigarette companies continue to target and market to youth. *USA v. Philip Morris, USA, Inc., et al.* (Civil Action No. 99-2496 (GK), August 17, 2006).

(48) In August 2006 a United States district court judge found that the major United States cigarette companies dramatically increased their advertising and promotional spending in ways that encourage youth to start smoking subsequent to the signing of the Master Settlement Agreement in 1998. *USA v. Philip Morris, USA, Inc., et al.* (Civil Action No. 99-2496 (GK), August 17, 2006).

(49) In August 2006 a United States district court judge found that the major United States cigarette companies have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction while also concealing much of their nicotine-related research. *USA v. Philip Morris, USA, Inc., et al.* (Civil Action No. 99-2496 (GK), August 17, 2006).

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products as provided for in this Act;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco-related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to

take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this Act, of the amendments made by this Act, or of the regulations promulgated under this Act (or under such amendments), or the application of any such provision to any person or circumstance is held to be invalid, the remainder of this Act, such amendments and such regulations, and the application of such provisions to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

“(rr)(1) The term ‘tobacco product’ means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

“(2) The term ‘tobacco product’ does not mean an article that is a drug under subsection (g)(1), a device under subsection (h), or a combination product described in section 503(g).

“(3) The products described in paragraph (2) shall be subject to chapter V of this Act.

“(4) A tobacco product shall not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetic, medical device, or a dietary supplement).”

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 910 as sections 1001 through 1010; and

(3) by inserting after chapter VIII the following:

“CHAPTER IX—TOBACCO PRODUCTS

“SEC. 900. DEFINITIONS.

“In this chapter:

“(1) ADDITIVE.—The term ‘additive’ means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

“(2) BRAND.—The term ‘brand’ means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, packaging, logo, registered trademark, brand name, identifiable pattern of colors, or any combination of such attributes.

“(3) CIGARETTE.—The term ‘cigarette’—

“(A) means a product that—

“(i) is a tobacco product; and

“(ii) meets the definition of the term ‘cigarette’ in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and

“(B) includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

“(4) CIGARETTE TOBACCO.—The term ‘cigarette tobacco’ means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements applicable to cigarettes under this chapter shall also apply to cigarette tobacco.

“(5) COMMERCE.—The term ‘commerce’ has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act.

“(6) COUNTERFEIT TOBACCO PRODUCT.—The term ‘counterfeit tobacco product’ means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

“(7) DISTRIBUTOR.—The term ‘distributor’ as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

“(8) ILLICIT TRADE.—The term ‘illicit trade’ means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

“(9) INDIAN COUNTRY.—The term ‘Indian country’ has the meaning given such term in section 1151 of title 18, United States Code.

“(10) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

“(11) LITTLE CIGAR.—The term ‘little cigar’ means a product that—

“(A) is a tobacco product; and

“(B) meets the definition of the term ‘little cigar’ in section 3(7) of the Federal Cigarette Labeling and Advertising Act.

“(12) NICOTINE.—The term ‘nicotine’ means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

“(13) PACKAGE.—The term ‘package’ means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

“(14) RETAILER.—The term ‘retailer’ means any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

“(15) ROLL-YOUR-OWN TOBACCO.—The term ‘roll-your-own tobacco’ means any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

“(16) SMALL TOBACCO PRODUCT MANUFACTURER.—The term ‘small tobacco product

manufacturer' means a tobacco product manufacturer that employs fewer than 350 employees. For purposes of determining the number of employees of a manufacturer under the preceding sentence, the employees of a manufacturer are deemed to include the employees of each entity that controls, is controlled by, or is under common control with such manufacturer.

"(17) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

"(18) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

"(19) STATE; TERRITORY.—The terms 'State' and 'Territory' shall have the meanings given to such terms in section 201.

"(20) TOBACCO PRODUCT MANUFACTURER.—The term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

"(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

"(B) imports a finished tobacco product for sale or distribution in the United States.

"(21) TOBACCO WAREHOUSE.—

"(A) Subject to subparagraphs (B) and (C), the term 'tobacco warehouse' includes any person—

"(i) who—

"(I) removes foreign material from tobacco leaf through nothing other than a mechanical process;

"(II) humidifies tobacco leaf with nothing other than potable water in the form of steam or mist; or

"(III) de-stems, dries, and packs tobacco leaf for storage and shipment;

"(ii) who performs no other actions with respect to tobacco leaf; and

"(iii) who provides to any manufacturer to whom the person sells tobacco all information related to the person's actions described in clause (i) that is necessary for compliance with this Act.

"(B) The term 'tobacco warehouse' excludes any person who—

"(i) reconstitutes tobacco leaf;

"(ii) is a manufacturer, distributor, or retailer of a tobacco product; or

"(iii) applies any chemical, additive, or substance to the tobacco leaf other than potable water in the form of steam or mist.

"(C) The definition of the term 'tobacco warehouse' in subparagraph (A) shall not apply to the extent to which the Secretary determines, through rulemaking, that regulation under this chapter of the actions described in such subparagraph is appropriate for the protection of the public health.

"(22) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

"(a) IN GENERAL.—Tobacco products, including modified risk tobacco products for which an order has been issued in accordance with section 911, shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V.

"(b) APPLICABILITY.—This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless to-

bacco and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

"(c) SCOPE.—

"(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or in sections 101(a), 102, or 103 of title I, title II, or title III of the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect, expand, or limit the Secretary's authority over (including the authority to determine whether products may be regulated), or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

"(2) LIMITATION OF AUTHORITY.—

"(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

"(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

"(d) RULEMAKING PROCEDURES.—Each rulemaking under this chapter shall be in accordance with chapter 5 of title 5, United States Code. This subsection shall not be construed to affect the rulemaking provisions of section 102(a) of the Family Smoking Prevention and Tobacco Control Act.

"(e) CENTER FOR TOBACCO PRODUCTS.—Not later than 90 days after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish within the Food and Drug Administration the Center for Tobacco Products, which shall report to the Commissioner of Food and Drugs in the same manner as the other agency centers within the Food and Drug Administration. The Center shall be responsible for the implementation of this chapter and related matters assigned by the Commissioner.

"(f) OFFICE TO ASSIST SMALL TOBACCO PRODUCT MANUFACTURERS.—The Secretary shall establish within the Food and Drug Administration an identifiable office to provide technical and other nonfinancial assistance to small tobacco product manufacturers to assist them in complying with the requirements of this Act.

"(g) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this chapter, the Secretary shall endeavor to consult with other Federal agencies as appropriate.

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

"A tobacco product shall be deemed to be adulterated if—

"(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

"(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

"(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

"(4) the manufacturer or importer of the tobacco product fails to pay a user fee assessed to such manufacturer or importer pursuant to section 919 by the date specified in section 919 or by the 30th day after final agency action on a resolution of any dispute as to the amount of such fee;

"(5) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

"(6)(A) it is required by section 910(a) to have premarket review and does not have an order in effect under section 910(c)(1)(A)(i); or

"(B) it is in violation of an order under section 910(c)(1)(A);

"(7) the methods used in, or the facilities or controls used for, its manufacture, packing, or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

"(8) it is in violation of section 911.

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

"(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

"(1) if its labeling is false or misleading in any particular;

"(2) if in package form unless it bears a label containing—

"(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

"(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

"(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

"(D) the statement required under section 920(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

"(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

"(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

"(6) if it was manufactured, prepared, propagated, compounded, or processed in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by

such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

“(7) if, in the case of any tobacco product distributed or offered for sale in any State—

“(A) its advertising is false or misleading in any particular; or

“(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

“(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

“(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

“(B) a brief statement of—

“(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

“(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

“(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

“(10) if there was a failure or refusal—

“(A) to comply with any requirement prescribed under section 904 or 908; or

“(B) to furnish any material or information required under section 909.

“(b) **PRIOR APPROVAL OF LABEL STATEMENTS.**—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product to ensure that such statements do not violate the misbranding provisions of subsection (a) and that such statements comply with other provisions of the Family Smoking Prevention and Tobacco Control Act (including the amendments made by such Act). No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act.

“SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

“(a) **REQUIREMENT.**—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

“(1) Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of

each tobacco product by brand and by quantity in each brand and subbrand.

“(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

“(3) Beginning 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 3 years after such date of enactment, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

“(4) Beginning 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, all documents developed after such date of enactment that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

“(b) **DATA SUBMISSION.**—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

“(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

“(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

“(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

“(c) **TIME FOR SUBMISSION.**—

“(1) **IN GENERAL.**—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

“(2) **DISCLOSURE OF ADDITIVE.**—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

“(3) **DISCLOSURE OF OTHER ACTIONS.**—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal

carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

“(d) **DATA LIST.**—

“(1) **IN GENERAL.**—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

“(2) **CONSUMER RESEARCH.**—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

“(e) **DATA COLLECTION.**—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish, and periodically revise as appropriate, a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

“SEC. 905. ANNUAL REGISTRATION.

“(a) **DEFINITIONS.**—In this section:

“(1) **MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.**—The term ‘manufacture, preparation, compounding, or processing’ shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

“(2) **NAME.**—The term ‘name’ shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

“(b) **REGISTRATION BY OWNERS AND OPERATORS.**—On or before December 31 of each year, every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person. If enactment of the Family Smoking Prevention and Tobacco Control Act occurs in the second half of the calendar year, the Secretary shall designate a date no later than 6 months into the subsequent calendar year by which registration pursuant to this subsection shall occur.

“(c) **REGISTRATION BY NEW OWNERS AND OPERATORS.**—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

“(d) **REGISTRATION OF ADDED ESTABLISHMENTS.**—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional

establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

“(e) **UNIFORM PRODUCT IDENTIFICATION SYSTEM.**—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

“(f) **PUBLIC ACCESS TO REGISTRATION INFORMATION.**—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

“(g) **BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.**—Every establishment registered with the Secretary under this section shall be subject to inspection under section 704 or subsection (h), and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

“(h) **REGISTRATION BY FOREIGN ESTABLISHMENTS.**—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

“(i) **REGISTRATION INFORMATION.**—

“(1) **PRODUCT LIST.**—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which have not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

“(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

“(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

“(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a

brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

“(2) **CONSULTATION WITH RESPECT TO FORMS.**—The Secretary shall consult with the Secretary of the Treasury in developing the forms to be used for registration under this section to minimize the burden on those persons required to register with both the Secretary and the Tax and Trade Bureau of the Department of the Treasury.

“(3) **BIENNIAL REPORT OF ANY CHANGE IN PRODUCT LIST.**—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

“(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

“(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

“(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

“(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

“(j) **REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.**—

“(1) **IN GENERAL.**—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of February 15, 2007, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

“(A) the basis for such person's determination that—

“(i) the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007, or to a tobacco product that the Secretary has previously determined, pursuant to subsection (a)(3) of section 910, is substantially equivalent and that is in compliance with the requirements of this Act; or

“(ii) the tobacco product is modified within the meaning of paragraph (3), the modifications are to a product that is commercially marketed and in compliance with the requirements of this Act, and all of the modifications are covered by exemptions

granted by the Secretary pursuant to paragraph (3); and

“(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

“(2) **APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.**—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 21 months after such date of enactment.

“(3) **EXEMPTIONS.**—

“(A) **IN GENERAL.**—The Secretary may exempt from the requirements of this subsection relating to the demonstration that a tobacco product is substantially equivalent within the meaning of section 910, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

“(i) such modification would be a minor modification of a tobacco product that can be sold under this Act;

“(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

“(iii) an exemption is otherwise appropriate.

“(B) **REGULATIONS.**—Not later than 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

“SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

“(a) **IN GENERAL.**—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

“(b) **INFORMATION ON PUBLIC ACCESS AND COMMENT.**—Each notice of proposed rulemaking or other notification under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

“(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

“(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

“(c) **LIMITED CONFIDENTIALITY OF INFORMATION.**—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904,

907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

“(d) RESTRICTIONS.—

“(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

“(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

“(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

“(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

“(3) LIMITATIONS.—

“(A) IN GENERAL.—No restrictions under paragraph (1) may—

“(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

“(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

“(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products, shall be considered as adult-written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult-written publications.

“(4) REMOTE SALES.—

“(A) IN GENERAL.—The Secretary shall—

“(i) within 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, promulgate regulations regarding the sale and distribution of tobacco products that occur through means other than a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products to individuals who have not attained the minimum age established by applicable law for the purchase of such products, including requirements for age verification; and

“(ii) within 2 years after such date of enactment, issue regulations to address the

promotion and marketing of tobacco products that are sold or distributed through means other than a direct, face-to-face exchange between a retailer and a consumer in order to protect individuals who have not attained the minimum age established by applicable law for the purchase of such products.

“(B) RELATION TO OTHER AUTHORITY.—Nothing in this paragraph limits the authority of the Secretary to take additional actions under the other paragraphs of this subsection.

“(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

“(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

“(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Secretary shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

“(B) REQUIREMENTS.—The Secretary shall—

“(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

“(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

“(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A);

“(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices; and

“(v) not require any small tobacco product manufacturer to comply with a regulation under subparagraph (A) for at least 4 years following the effective date established by the Secretary for such regulation.

“(2) EXEMPTIONS; VARIANCES.—

“(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

“(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

“(ii) in the case of a petition for a variance from a requirement, set forth the methods

proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

“(iii) contain such other information as the Secretary shall prescribe.

“(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

“(i) the date the petition was submitted to the Secretary under subparagraph (A); or

“(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee, whichever occurs later, the Secretary shall by order either deny the petition or approve it.

“(C) APPROVAL.—The Secretary may approve—

“(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

“(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

“(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

“(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

“(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

“(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

“SEC. 907. TOBACCO PRODUCT STANDARDS.

“(a) IN GENERAL.—

“(1) SPECIAL RULES.—

“(A) SPECIAL RULE FOR CIGARETTES.—Beginning 3 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the

Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this subparagraph.

“(B) ADDITIONAL SPECIAL RULE.—Beginning 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a tobacco product manufacturer shall not use tobacco, including foreign grown tobacco, that contains a pesticide chemical residue that is at a level greater than is specified by any tolerance applicable under Federal law to domestically grown tobacco.

“(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (c).

“(3) TOBACCO PRODUCT STANDARDS.—

“(A) IN GENERAL.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health.

“(B) DETERMINATIONS.—

“(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Secretary shall consider scientific evidence concerning—

“(I) the risks and benefits to the population as a whole, including users and nonusers of tobacco products, of the proposed standard;

“(II) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

“(III) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

“(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Secretary makes a determination, set forth in a proposed tobacco product standard in a proposed rule, that it is appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a tobacco product because the Secretary has found that the additive, constituent, or other component is or may be harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Secretary's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

“(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

“(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

“(i) for nicotine yields of the product;

“(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

“(iii) relating to any other requirement under subparagraph (B);

“(B) shall, where appropriate for the protection of the public health, include—

“(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

“(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

“(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

“(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

“(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d);

“(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product; and

“(D) shall require tobacco products containing foreign-grown tobacco to meet the same standards applicable to tobacco products containing domestically grown tobacco.

“(5) PERIODIC REEVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

“(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

“(A) use personnel, facilities, and other technical support available in other Federal agencies;

“(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

“(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

“(b) CONSIDERATIONS BY SECRETARY.—

“(1) TECHNICAL ACHIEVABILITY.—The Secretary shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

“(2) OTHER CONSIDERATIONS.—The Secretary shall consider all other information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand.

“(c) PROPOSED STANDARDS.—

“(1) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

“(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

“(A) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

“(B) invite interested persons to submit a draft or proposed tobacco product standard for consideration by the Secretary;

“(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

“(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed tobacco product standard.

“(3) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

“(4) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

“(d) PROMULGATION.—

“(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a tobacco product standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

“(A) if the Secretary determines that the standard would be appropriate for the protection of the public health, promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

“(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

“(2) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Secretary shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard. If the Secretary determines, based on the Secretary's evaluation of submitted comments, that a product standard can be met only by manufacturers requiring substantial changes to the methods of farming the domestically grown tobacco used by the manufacturer, the effective date of that product standard shall be not less than 2 years after the date of publication of the final regulation establishing the standard.

“(3) LIMITATION ON POWER GRANTED TO THE FOOD AND DRUG ADMINISTRATION.—Because of the importance of a decision of the Secretary to issue a regulation—

“(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll-your-own tobacco products; or

“(B) requiring the reduction of nicotine yields of a tobacco product to zero, the Secretary is prohibited from taking such actions under this Act.

“(4) AMENDMENT; REVOCATION.—

“(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a tobacco product standard.

“(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

“(5) REFERRAL TO ADVISORY COMMITTEE.—

“(A) IN GENERAL.—The Secretary may refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

“(B) INITIATION OF REFERRAL.—The Secretary may make a referral under this paragraph—

“(i) on the Secretary’s own initiative; or

“(ii) upon the request of an interested person that—

“(I) demonstrates good cause for the referral; and

“(II) is made before the expiration of the period for submission of comments on the proposed regulation.

“(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

“(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

“(E) PUBLIC AVAILABILITY.—The Secretary shall make a copy of each report and recommendation under subparagraph (D) publicly available.

“(e) MENTHOL CIGARETTES.—

“(1) REFERRAL; CONSIDERATIONS.—Immediately upon the establishment of the Tobacco Products Scientific Advisory Committee under section 917(a), the Secretary shall refer to the Committee for report and recommendation, under section 917(c)(4), the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children, African Americans, Hispanics, and other racial and ethnic minorities. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsections (a)(3)(B)(i) and (b).

“(2) REPORT AND RECOMMENDATION.—Not later than 1 year after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary’s authority to take action under this section or other sections of this Act applicable to menthol.

“SEC. 908. NOTIFICATION AND OTHER REMEDIES.

“(a) NOTIFICATION.—If the Secretary determines that—

“(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

“(2) notification under this subsection is necessary to eliminate the unreasonable risk

of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

“(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

“(c) RECALL AUTHORITY.—

“(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

“(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

“(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

“(B) NOTICE.—An amended order under subparagraph (A)—

“(i) shall not include recall of a tobacco product from individuals; and

“(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

“(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

“SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

“(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and

provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

“(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

“(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

“(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

“(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

“(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

“(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

“(b) REPORTS OF REMOVALS AND CORRECTIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

“(A) to reduce a risk to health posed by the tobacco product; or

“(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

“(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

“SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

“(a) IN GENERAL.—

“(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term ‘new tobacco product’ means—

“(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or

“(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.

“(2) PREMARKET REVIEW REQUIRED.—

“(A) NEW PRODUCTS.—An order under subsection (c)(1)(A)(i) for a new tobacco product is required unless—

“(i) the manufacturer has submitted a report under section 905(j); and the Secretary has issued an order that the tobacco product—

“(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007; and

“(II) is in compliance with the requirements of this Act; or

“(ii) the tobacco product is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

“(B) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

“(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

“(ii) for which a report was submitted under section 905(j) within such 21-month period,

except that subparagraph (A) shall apply to the tobacco product if the Secretary issues an order that the tobacco product is not substantially equivalent.

“(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

“(A) IN GENERAL.—In this section and section 905(j), the term ‘substantially equivalent’ or ‘substantial equivalence’ means, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

“(i) has the same characteristics as the predicate tobacco product; or

“(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

“(B) CHARACTERISTICS.—In subparagraph (A), the term ‘characteristics’ means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

“(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

“(4) HEALTH INFORMATION.—

“(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product

or state that such information will be made available upon request by any person.

“(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

“(b) APPLICATION.—

“(1) CONTENTS.—An application under this section shall contain—

“(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

“(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

“(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

“(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

“(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

“(F) specimens of the labeling proposed to be used for such tobacco product; and

“(G) such other information relevant to the subject matter of the application as the Secretary may require.

“(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

“(A) may, on the Secretary’s own initiative; or

“(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

“(c) ACTION ON APPLICATION.—

“(1) DEADLINE.—

“(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under subsection (b)(2), shall—

“(i) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Secretary finds that none of the grounds specified in paragraph (2) of this subsection applies; or

“(ii) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

“(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order under subparagraph (A)(i) may require that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a

tobacco product may be restricted under a regulation under section 906(d).

“(2) DENIAL OF APPLICATION.—The Secretary shall deny an application submitted under subsection (b) if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

“(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

“(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

“(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

“(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, and there is a lack of adequate information to justify the deviation from such standard.

“(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

“(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the marketing of a tobacco product for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

“(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

“(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

“(5) BASIS FOR ACTION.—

“(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

“(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product, the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

“(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

“(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a tobacco product for which an order was issued under subsection (c)(1)(A)(i), issue an order withdrawing the order if the Secretary finds—

“(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

“(B) that the application contained or was accompanied by an untrue statement of a material fact;

“(C) that the applicant—

“(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

“(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

“(iii) has not complied with the requirements of section 905;

“(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

“(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was reviewed, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

“(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when such order was issued, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

“(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to subsection (c)(1)(A)(i) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 912.

“(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the authority of the manufacturer to market the product. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

“(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

“(1) in person by any officer or employee of the department designated by the Secretary; or

“(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

“(f) RECORDS.—

“(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an order issued pursuant to subsection (c)(1)(A)(i) for an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are

necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

“(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

“(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

“SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

“(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

“(b) DEFINITIONS.—In this section:

“(1) MODIFIED RISK TOBACCO PRODUCT.—The term ‘modified risk tobacco product’ means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

“(2) SOLD OR DISTRIBUTED.—

“(A) IN GENERAL.—With respect to a tobacco product, the term ‘sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products’ means a tobacco product—

“(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

“(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

“(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

“(III) the tobacco product or its smoke does not contain or is free of a substance;

“(ii) the label, labeling, or advertising of which uses the descriptors ‘light’, ‘mild’, or ‘low’ or similar descriptors; or

“(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

“(B) LIMITATION.—No tobacco product shall be considered to be ‘sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products’, except as described in subparagraph (A).

“(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be ‘sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products’ solely because its label, labeling, or advertising uses the following phrases to describe such product and its use: ‘smokeless tobacco’, ‘smokeless tobacco product’, ‘not consumed by smoking’, ‘does

not produce smoke’, ‘smokefree’, ‘smoke-free’, ‘without smoke’, ‘no smoke’, or ‘not smoke’.

“(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act for those products whose label, labeling, or advertising contains the terms described in such paragraph on such date of enactment. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with paragraph (2)(A)(ii).

“(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section if it has been approved as a drug or device by the Food and Drug Administration and is subject to the requirements of chapter V.

“(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

“(1) a description of the proposed product and any proposed advertising and labeling;

“(2) the conditions for using the product;

“(3) the formulation of the product;

“(4) sample product labels and labeling;

“(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

“(6) data and information on how consumers actually use the tobacco product; and

“(7) such other information as the Secretary may require.

“(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

“(f) ADVISORY COMMITTEE.—

“(1) IN GENERAL.—The Secretary shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

“(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Secretary.

“(g) MARKETING.—

“(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall, with respect to an application submitted under this section, issue an order that a modified risk product may be commercially marketed only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

“(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

“(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

“(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

“(A) IN GENERAL.—The Secretary may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

“(i) such order would be appropriate to promote the public health;

“(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b) is limited to an explicit or implicit representation that such tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

“(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

“(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

“(B) ADDITIONAL FINDINGS REQUIRED.—To issue an order under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

“(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

“(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

“(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

“(I) is or has been demonstrated to be less harmful; or

“(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

“(iv) issuance of an order with respect to the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

“(C) CONDITIONS OF MARKETING.—

“(i) IN GENERAL.—Applications subject to an order under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

“(ii) AGREEMENTS BY APPLICANT.—An order under this paragraph shall be conditioned on the applicant's agreement to conduct postmarket surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the order on consumer perception,

behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the order was based in accordance with a protocol approved by the Secretary.

“(iii) ANNUAL SUBMISSION.—The results of such postmarket surveillance and studies described in clause (ii) shall be submitted annually.

“(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

“(A) the scientific evidence submitted by the applicant; and

“(B) scientific evidence and other information that is made available to the Secretary.

“(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

“(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

“(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

“(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

“(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

“(E) comments, data, and information submitted by interested persons.

“(h) ADDITIONAL CONDITIONS FOR MARKETING.—

“(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the marketing of a product under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

“(2) COMPARATIVE CLAIMS.—

“(A) IN GENERAL.—The Secretary may require for the marketing of a product under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

“(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

“(3) LABEL DISCLOSURE.—

“(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

“(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

“(4) TIME.—An order issued under subsection (g)(1) shall be effective for a specified period of time.

“(5) ADVERTISING.—The Secretary may require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the product comply with requirements relating to advertising and promotion of the tobacco product.

“(i) POSTMARKET SURVEILLANCE AND STUDIES.—

“(1) IN GENERAL.—The Secretary shall require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the applicant conduct postmarket surveillance and studies for such a tobacco product to determine the impact of the order issuance on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the order was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of postmarket surveillance and studies shall be submitted to the Secretary on an annual basis.

“(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

“(j) WITHDRAWAL OF AUTHORIZATION.—The Secretary, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Secretary determines that—

“(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

“(2) the application failed to include material information or included any untrue statement of material fact;

“(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

“(A) a tobacco product standard is established pursuant to section 907;

“(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

“(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

“(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

“(5) the applicant failed to meet a condition imposed under subsection (h).

“(k) CHAPTER IV OR V.—A product for which the Secretary has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V.

“(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

“(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required

for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

“(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

“(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

“(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

“(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception;

“(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product; and

“(F) establish a reasonable timetable for the Secretary to review an application under this section.

“(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

“(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

“(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and which the applicant seeks to commercially market under this section.

“(m) DISTRIBUTORS.—Except as provided in this section, no distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

“SEC. 912. JUDICIAL REVIEW.

“(a) RIGHT TO REVIEW.—

“(1) IN GENERAL.—Not later than 30 days after—

“(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

“(B) a denial of an application under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

“(2) REQUIREMENTS.—

“(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

“(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

“(i) the record of the proceedings on which the regulation or order was based; and

“(ii) a statement of the reasons for the issuance of such a regulation or order.

“(C) DEFINITION OF RECORD.—In this section, the term ‘record’ means—

“(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

“(ii) all information submitted to the Secretary with respect to such regulation or order;

“(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

“(iv) any hearing held with respect to such regulation or order; and

“(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

“(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

“(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

“(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

“(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

“SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

“The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

“SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

“(a) JURISDICTION.—

“(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

“(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act and shall be considered a violation of a rule promulgated under section 18 of that Act.

“(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act and sec-

tion 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986—

“(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

“(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

“SEC. 915. REGULATION REQUIREMENT.

“(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations under this Act that meet the requirements of subsection (b).

“(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

“(1) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and subbrand that the Secretary determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand; and

“(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco-related disease.

“(c) AUTHORITY.—The Secretary shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

“(d) SMALL TOBACCO PRODUCT MANUFACTURERS.—

“(1) FIRST COMPLIANCE DATE.—The initial regulations promulgated under subsection (a) shall not impose requirements on small tobacco product manufacturers before the later of—

“(A) the end of the 2-year period following the final promulgation of such regulations; and

“(B) the initial date set by the Secretary for compliance with such regulations by manufacturers that are not small tobacco product manufacturers.

“(2) TESTING AND REPORTING INITIAL COMPLIANCE PERIOD.—

“(A) 4-YEAR PERIOD.—The initial regulations promulgated under subsection (a) shall give each small tobacco product manufacturer a 4-year period over which to conduct testing and reporting for all of its tobacco products. Subject to paragraph (1), the end of the first year of such 4-year period shall coincide with the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers or the end of the 2-year period following the final promulgation of such regulations, as described in paragraph (1)(A). A small tobacco product manufacturer shall be required—

“(i) to conduct such testing and reporting for 25 percent of its tobacco products during each year of such 4-year period; and

“(ii) to conduct such testing and reporting for its largest-selling tobacco products (as determined by the Secretary) before its other tobacco products, or in such other order of priority as determined by the Secretary.

“(B) CASE-BY-CASE DELAY.—Notwithstanding subparagraph (A), the Secretary may, on a case-by-case basis, delay the date by which an individual small tobacco product manufacturer must conduct testing and reporting for its tobacco products under this section based upon a showing of undue hardship to such manufacturer. Notwithstanding the preceding sentence, the Secretary shall not extend the deadline for a small tobacco product manufacturer to conduct testing and reporting for all of its tobacco products beyond a total of 5 years after the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers.

“(3) SUBSEQUENT AND ADDITIONAL TESTING AND REPORTING.—The regulations promulgated under subsection (a) shall provide that, with respect to any subsequent or additional testing and reporting of tobacco products required under this section, such testing and reporting by a small tobacco product manufacturer shall be conducted in accordance with the timeframes described in paragraph (2)(A), except that, in the case of a new product, or if there has been a modification described in section 910(a)(1)(B) of any product of a small tobacco product manufacturer since the last testing and reporting required under this section, the Secretary shall require that any subsequent or additional testing and reporting be conducted in accordance with the same timeframe applicable to manufacturers that are not small tobacco product manufacturers.

“(4) JOINT LABORATORY TESTING SERVICES.—The Secretary shall allow any 2 or more small tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

“(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

“(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a small tobacco product manufacturer shall not be considered to be in violation of this section before the deadline applicable under paragraphs (3) and (4), if—

“(A) the tobacco products of such manufacturer are in compliance with all other requirements of this chapter; and

“(B) the conditions described in paragraph (2) are met.

“(2) CONDITIONS.—Notwithstanding the requirements of this section, the Secretary may delay the date by which a small tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a small tobacco product manufacturer provides evidence to the Secretary demonstrating that—

“(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

“(B) the products currently are awaiting testing by the laboratory; and

“(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

“(3) EXTENSION.—The Secretary, taking into account the laboratory testing capacity

that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a small tobacco product manufacturer in accordance with paragraph (2). If the Secretary finds that the conditions described in such paragraph are met, the Secretary shall notify the small tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Secretary has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Secretary finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

“(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Secretary may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Secretary determines, based on evidence properly and timely submitted by a small tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

“(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act or the Family Smoking Prevention and Tobacco Control Act other than this section.

“SEC. 916. PRESERVATION OF STATE AND LOCAL AUTHORITY.

“(a) IN GENERAL.—

“(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

“(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

“(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

“(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of

title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

“(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

“SEC. 917. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

“(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 12-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the ‘Advisory Committee’).

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—

“(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

“(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

“(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

“(iii) 1 individual as a representative of the general public;

“(iv) 1 individual as a representative of the interests of the tobacco manufacturing industry;

“(v) 1 individual as a representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee; and

“(vi) 1 individual as a representative of the interests of the tobacco growers.

“(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv), (v), and (vi) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

“(C) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products.

“(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

“(3) CHAIRPERSON.—The Secretary shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

“(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

“(1) as provided in this chapter;

“(2) on the effects of the alteration of the nicotine yields from tobacco products;

“(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

“(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

“(d) COMPENSATION; SUPPORT; FACA.—

“(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

“(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

“(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

“(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

“SEC. 918. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

“(a) IN GENERAL.—The Secretary shall—

“(1) at the request of the applicant, consider designating products for smoking cessation, including nicotine replacement products as fast track research and approval products within the meaning of section 506;

“(2) consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence; and

“(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention.

“(b) REPORT ON INNOVATIVE PRODUCTS.—

“(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to regulate, promote, and encourage the development of innovative products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

“(A) total abstinence from tobacco use;

“(B) reductions in consumption of tobacco; and

“(C) reductions in the harm associated with continued tobacco use.

“(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Secretary on how the Food and Drug Administration should coordinate and

facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Administration and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant agencies.

“SEC. 919. USER FEES.

“(a) ESTABLISHMENT OF QUARTERLY FEE.—Beginning on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall in accordance with this section assess user fees on, and collect such fees from, each manufacturer and importer of tobacco products subject to this chapter. The fees shall be assessed and collected with respect to each quarter of each fiscal year, and the total amount assessed and collected for a fiscal year shall be the amount specified in subsection (b)(1) for such year, subject to subsection (c).

“(b) ASSESSMENT OF USER FEE.—

“(1) AMOUNT OF ASSESSMENT.—The total amount of user fees authorized to be assessed and collected under subsection (a) for a fiscal year is the following, as applicable to the fiscal year involved:

“(A) For fiscal year 2009, \$85,000,000 (subject to subsection (e)).

“(B) For fiscal year 2010, \$235,000,000.

“(C) For fiscal year 2011, \$450,000,000.

“(D) For fiscal year 2012, \$477,000,000.

“(E) For fiscal year 2013, \$505,000,000.

“(F) For fiscal year 2014, \$534,000,000.

“(G) For fiscal year 2015, \$566,000,000.

“(H) For fiscal year 2016, \$599,000,000.

“(I) For fiscal year 2017, \$635,000,000.

“(J) For fiscal year 2018, \$672,000,000.

“(K) For fiscal year 2019 and each subsequent fiscal year, \$712,000,000.

“(2) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

“(A) IN GENERAL.—The total user fees assessed and collected under subsection (a) each fiscal year with respect to each class of tobacco products shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

“(B) APPLICABLE PERCENTAGE.—

“(1) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage for a fiscal year for each of the following classes of tobacco products shall be determined in accordance with clause (ii):

“(I) Cigarettes.

“(II) Cigars, including small cigars and cigars other than small cigars.

“(III) Snuff.

“(IV) Chewing tobacco.

“(V) Pipe tobacco.

“(VI) Roll-your-own tobacco.

“(ii) ALLOCATIONS.—The applicable percentage of each class of tobacco product described in clause (i) for a fiscal year shall be the percentage determined under section 625(c) of Public Law 108-357 for each such class of product for such fiscal year.

“(iii) REQUIREMENT OF REGULATIONS.—Notwithstanding clause (ii), no user fees shall be assessed on a class of tobacco products unless such class of tobacco products is listed in section 901(b) or is deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter.

“(iv) REALLOCATIONS.—In the case of a class of tobacco products that is not listed in section 901(b) or deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter, the amount of user fees that would otherwise be assessed to such class of tobacco products shall be reallocated to the classes of tobacco products that are subject to this chapter in the same manner and based on the same relative percentages otherwise determined under clause (ii).

“(3) DETERMINATION OF USER FEE BY COMPANY.—

“(A) IN GENERAL.—The total user fee to be paid by each manufacturer or importer of a particular class of tobacco products shall be determined for each quarter by multiplying—

“(i) such manufacturer's or importer's percentage share as determined under paragraph (4); by

“(ii) the portion of the user fee amount for the current quarter to be assessed on all manufacturers and importers of such class of tobacco products as determined under paragraph (2).

“(B) NO FEE IN EXCESS OF PERCENTAGE SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the percentage share of such manufacturer or importer.

“(4) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—The percentage share of each manufacturer or importer of a particular class of tobacco products of the total user fee to be paid by all manufacturers or importers of that class of tobacco products shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 625 of Public Law 108-357.

“(5) ALLOCATION FOR CIGARS.—Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.

“(6) TIMING OF ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

“(7) MEMORANDUM OF UNDERSTANDING.—

“(A) IN GENERAL.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of the information described in paragraphs (2)(B)(ii) and (4) and all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

“(B) ASSURANCES.—Beginning not later than fiscal year 2015, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine the applicable percentages described in paragraph (2) and the percentage shares described in paragraph (4). The Secretary may carry out this subparagraph by entering into a contract with the head of the Federal agency referred to in subparagraph (A) to continue to provide the necessary information.

“(c) CREDITING AND AVAILABILITY OF FEES.—

“(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation

account for salaries and expenses with such fiscal year limitation.

“(2) AVAILABILITY.—

“(A) IN GENERAL.—Fees appropriated under paragraph (3) are available only for the purpose of paying the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter and the Family Smoking Prevention and Tobacco Control Act. No fees collected under subsection (a) may be used for any other costs.

“(B) PROHIBITION AGAINST USE OF OTHER FUNDS.—

“(i) IN GENERAL.—Except as provided in clause (ii), fees collected under subsection (a) are the only funds authorized to be made available for the purpose described in subparagraph (A).

“(ii) STARTUP COSTS.—Clause (i) does not apply until the date on which the Secretary has collected fees under subsection (a) for 2 fiscal year quarters. Any amounts provided to pay the costs described in subparagraph (A) prior to the date described in the previous sentence shall be reimbursed through fees collected under subsection (a).

“(3) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2009 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

“(d) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

“(e) APPLICABILITY TO FISCAL YEAR 2009.—If the date of enactment of the Family Smoking Prevention and Tobacco Control Act occurs during fiscal year 2009, the following applies, subject to subsection (c):

“(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the ‘quarterly fee amounts’).

“(2) For the quarter in which such date of enactment occurs, the amount of fees assessed shall be a pro rata amount, determined according to the number of days remaining in the quarter (including such date of enactment) and according to the daily equivalent of the quarterly fee amounts. Fees assessed under the preceding sentence shall not be collected until the next quarter.

“(3) For the quarter following the quarter to which paragraph (2) applies, the full quarterly fee amounts shall be assessed and collected, in addition to collection of the pro rata fees assessed under paragraph (2).”.

(c) CONFORMING AMENDMENT.—Section 9(1) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408(i)) is amended to read as follows:

“(1) The term ‘smokeless tobacco’ has the meaning given such term by section 900(18) of the Federal Food, Drug, and Cosmetic Act.”.

SEC. 102. FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—On the first day of publication of the Federal Register that is 180 days or more after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register a final rule regarding cigarettes and smokeless tobacco, which—

(A) is deemed to be issued under chapter 9 of the Federal Food, Drug, and Cosmetic Act, as added by section 101 of this Act; and

(B) shall be deemed to be in compliance with all applicable provisions of chapter 5 of

title 5, United States Code, and all other provisions of law relating to rulemaking procedures.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection in accordance with this Act and the amendments made by this Act;

(B) strike Subpart C—Labels and section 897.32(c);

(C) strike paragraphs (a), (b), and (i) of section 897.3 and insert definitions of the terms “cigarette”, “cigarette tobacco”, and “smokeless tobacco” as defined in section 900 of the Federal Food, Drug, and Cosmetic Act;

(D) insert “or roll-your-own paper” in section 897.34(a) after “other than cigarettes or smokeless tobacco”;

(E) include such modifications to section 897.30(b), if any, that the Secretary determines are appropriate in light of governing First Amendment case law, including the decision of the Supreme Court of the United States in *Lorillard Tobacco Co. v. Reilly* (533 U.S. 525 (2201));

(F) become effective on the date that is 1 year after the date of enactment of this Act;

(G) amend paragraph (d) of section 897.16 to read as follows:

“(d)(1) Except as provided in subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes, smokeless tobacco, or other tobacco products (as such term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act).

“(2)(A) Subparagraph (1) does not prohibit a manufacturer, distributor, or retailer from distributing or causing to be distributed free samples of smokeless tobacco in a qualified adult-only facility.

“(B) This subparagraph does not affect the authority of a State or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco.

“(C) For purposes of this paragraph, the term ‘qualified adult-only facility’ means a facility or restricted area that—

“(i) requires each person present to provide to a law enforcement officer (whether on or off duty) or to a security guard licensed by a governmental entity government-issued identification showing a photograph and at least the minimum age established by applicable law for the purchase of smokeless tobacco;

“(ii) does not sell, serve, or distribute alcohol;

“(iii) is not located adjacent to or immediately across from (in any direction) a space that is used primarily for youth-oriented marketing, promotional, or other activities;

“(iv) is a temporary structure constructed, designated, and operated as a distinct enclosed area for the purpose of distributing free samples of smokeless tobacco in accordance with this subparagraph; and

“(v) is enclosed by a barrier that—

“(I) is constructed of, or covered with, an opaque material (except for entrances and exits);

“(II) extends from no more than 12 inches above the ground or floor (which area at the bottom of the barrier must be covered with material that restricts visibility but may allow airflow) to at least 8 feet above the ground or floor (or to the ceiling); and

“(III) prevents persons outside the qualified adult-only facility from seeing into the

qualified adult-only facility, unless they make unreasonable efforts to do so; and

“(vi) does not display on its exterior—

“(I) any tobacco product advertising;

“(II) a brand name other than in conjunction with words for an area or enclosure to identify an adult-only facility; or

“(III) any combination of words that would imply to a reasonable observer that the manufacturer, distributor, or retailer has a sponsorship that would violate section 897.34(c).

“(D) Distribution of samples of smokeless tobacco under this subparagraph permitted to be taken out of the qualified adult-only facility shall be limited to 1 package per adult consumer containing no more than 0.53 ounces (15 grams) of smokeless tobacco. If such package of smokeless tobacco contains individual portions of smokeless tobacco, the individual portions of smokeless tobacco shall not exceed 8 individual portions and the collective weight of such individual portions shall not exceed 0.53 ounces (15 grams). Any manufacturer, distributor, or retailer who distributes or causes to be distributed free samples also shall take reasonable steps to ensure that the above amounts are limited to one such package per adult consumer per day.

“(3) Notwithstanding subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of smokeless tobacco—

“(A) to a sports team or entertainment group; or

“(B) at any football, basketball, baseball, soccer, or hockey event or any other sporting or entertainment event determined by the Secretary to be covered by this subparagraph.

“(4) The Secretary shall implement a program to ensure compliance with this paragraph and submit a report to the Congress on such compliance not later than 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

“(5) Nothing in this paragraph shall be construed to authorize any person to distribute or cause to be distributed any sample of a tobacco product to any individual who has not attained the minimum age established by applicable law for the purchase of such product.”.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with chapter 5 of title 5, United States Code.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with chapter 5 of title 5, United States Code, the regulation promulgated pursuant to this section, including the provisions of such regulation relating to distribution of free samples.

(5) ENFORCEMENT OF RETAIL SALE PROVISIONS.—The Secretary of Health and Human Services shall ensure that the provisions of this Act, the amendments made by this Act, and the implementing regulations (including such provisions, amendments, and regulations relating to the retail sale of tobacco products) are enforced with respect to the United States and Indian tribes.

(6) QUALIFIED ADULT-ONLY FACILITY.—A qualified adult-only facility (as such term is defined in section 897.16(d) of the final rule published under paragraph (1)) that is also a retailer and that commits a violation as a retailer shall not be subject to the limitations in section 103(q) and shall be subject to penalties applicable to a qualified adult-only facility.

(7) CONGRESSIONAL REVIEW PROVISIONS.—Section 801 of title 5, United States Code,

shall not apply to the final rule published under paragraph (1).

(b) **LIMITATION ON ADVISORY OPINIONS.**—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document titled “Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents” (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document titled “Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act” (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document titled “Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents” (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document titled “Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination” (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) **AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.**—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) **SECTION 301.**—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting “tobacco product,” after “device.”;

(2) in subsection (b), by inserting “tobacco product,” after “device.”;

(3) in subsection (c), by inserting “tobacco product,” after “device.”;

(4) in subsection (e)—

(A) by striking the period after “572(i)”;

and

(B) by striking “or 761 or the refusal to permit access to” and inserting “761, 909, or 920 or the refusal to permit access to”;

(5) in subsection (g), by inserting “tobacco product,” after “device.”;

(6) in subsection (h), by inserting “tobacco product,” after “device.”;

(7) in subsection (j)—

(A) by striking the period after “573”;

(B) by striking “708, or 721” and inserting “708, 721, 904, 905, 906, 907, 908, 909, or 920(b)”;

(8) in subsection (k), by inserting “tobacco product,” after “device.”;

(9) by striking subsection (p) and inserting the following:

“(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(3).”;

(10) by striking subsection (q)(1) and inserting the following:

“(q)(1) The failure or refusal—

“(A) to comply with any requirement prescribed under section 518, 520(g), 903(b), 907, 908, or 916;

“(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or 920; or

“(C) to comply with a requirement under section 522 or 913.”;

(11) in subsection (q)(2), by striking “device,” and inserting “device or tobacco product.”;

(12) in subsection (r), by inserting “or tobacco product” after the term “device” each time that such term appears; and

(13) by adding at the end the following:

“(oo) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

“(pp) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

“(qq)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

“(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

“(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

“(rr) The charitable distribution of tobacco products.

“(ss) The failure of a manufacturer or distributor to notify the Attorney General and the Secretary of the Treasury of their knowledge of tobacco products used in illicit trade.

“(tt) With respect to a tobacco product, any statement or representation, express or implied, directed to consumers through the media or through the label, labeling, or advertising that is false or would reasonably be expected to mislead consumers into believing that the product is approved by the Food and Drug Administration, or that the Food and Drug Administration deems the product to be safe for use by consumers, or that the product is endorsed by the Food and Drug Administration for use by consumers, or that is false or would reasonably be expected to mislead consumers regarding the harmfulness of the product because of the Food and Drug Administration’s regulation or inspection of it or because of its compliance with regulatory requirements set by the Food and Drug Administration.”

(c) **SECTION 303.**—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) in paragraph (1)(A), by inserting “or tobacco products” after the term “devices” each place such term appears;

(2) in paragraph (5)—

(A) in subparagraph (A)—

(i) by striking “assessed” the first time it appears and inserting “assessed, or a no-tobacco-sale order may be imposed.”;

(ii) by striking “penalty” the second time it appears and inserting “penalty, or upon whom a no-tobacco-sale order is to be imposed.”;

(B) in subparagraph (B)—

(i) by inserting after “penalty,” the following: “or the period to be covered by a no-tobacco-sale order.”;

(ii) by adding at the end the following: “A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.”;

(C) by adding at the end the following:

“(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.”;

(3) in paragraph (6)—

(A) by inserting “or the imposition of a no-tobacco-sale order” after the term “penalty” each place such term appears; and

(B) by striking “issued,” and inserting “issued, or on which the no-tobacco-sale order was imposed, as the case may be.”;

(4) by adding at the end the following:

“(8) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1). Prior to the entry of a no-sale order under this paragraph, a person shall be entitled to a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer’s request a hearing by telephone, or at the nearest regional or field office of the Food and Drug Administration, or at a Federal, State, or county facility within 100 miles from the location of the retail outlet, if such a facility is available.”

(d) **SECTION 304.**—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking “and” before “(D)”;

(B) by striking “device,” and inserting the following: “device, and (E) Any adulterated or misbranded tobacco product.”;

(2) in subsection (d)(1), by inserting “tobacco product,” after “device.”;

(3) in subsection (g)(1), by inserting “or tobacco product” after the term “device” each place such term appears; and

(4) in subsection (g)(2)(A), by inserting “or tobacco product” after “device”.

(e) **SECTION 505.**—Section 505(n)(2) (21 U.S.C. 355(n)(2)) is amended by striking “section 904” and inserting “section 1004”.

(f) **SECTION 523.**—Section 523(b)(2)(D) (21 U.S.C. 360m(b)(2)(D)) is amended by striking “section 903(g)” and inserting “section 1003(g)”.

(g) **SECTION 702.**—Section 702(a)(1) (U.S.C. 372(a)(1)) is amended—

(1) by striking “(a)(1)” and inserting “(a)(1)(A)”;

(2) by adding at the end the following:

“(B)(i) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within that State in connection with the enforcement of this Act.

“(ii) The Secretary shall not enter into any contract under clause (i) with the government of any of the several States to exercise enforcement authority under this Act on Indian country without the express written consent of the Indian tribe involved.”

(h) **SECTION 703.**—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting “tobacco product,” after the term “device,” each place such term appears; and

(2) by inserting “tobacco products,” after the term “devices,” each place such term appears.

(i) **SECTION 704.**—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)—

(A) by striking “devices, or cosmetics” each place it appears and inserting “devices, tobacco products, or cosmetics”;

(B) by striking “or restricted devices” each place it appears and inserting “restricted devices, or tobacco products”;

(C) by striking “and devices and subject to” and all that follows through “other

drugs or devices" and inserting "devices, and tobacco products and subject to reporting and inspection under regulations lawfully issued pursuant to section 505(i) or (k), section 519, section 520(g), or chapter IX and data relating to other drugs, devices, or tobacco products";

(2) in subsection (b), by inserting "tobacco product," after "device,"; and

(3) in subsection (g)(13), by striking "section 903(g)" and inserting "section 1003(g)".

(j) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting "tobacco products," after "devices,".

(k) SECTION 709.—Section 709 (21 U.S.C. 379a) is amended by inserting "tobacco product," after "device,".

(l) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting "tobacco products," after the term "devices,";

(B) by inserting "or section 905(h)" after "section 510"; and

(C) by striking the term "drugs or devices" each time such term appears and inserting "drugs, devices, or tobacco products";

(2) in subsection (e)(1)—

(A) by inserting "tobacco product" after "drug, device,"; and

(B) by inserting ", and a tobacco product intended for export shall not be deemed to be in violation of section 906(e), 907, 911, or 920(a)," before "if it—"; and

(3) by adding at the end the following:

"(p)(1) Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

"(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

"(B) the public health implications of such exports, including any evidence of a negative public health impact; and

"(C) recommendations or assessments of policy alternatives available to Congress and the executive branch to reduce any negative public health impact caused by such exports.

"(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection."

(m) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(b)) is amended—

(1) by striking "and" after "cosmetics,"; and

(2) inserting ", and tobacco products" after "devices".

(n) SECTION 1009.—Section 1009(b) (as redesignated by section 101(b)) is amended by striking "section 908" and inserting "section 1008".

(o) SECTION 409 OF THE FEDERAL MEAT INSPECTION ACT.—Section 409(a) of the Federal Meat Inspection Act (21 U.S.C. 679(a)) is amended by striking "section 902(b)" and inserting "section 1002(b)".

(p) RULE OF CONSTRUCTION.—Nothing in this section is intended or shall be construed to expand, contract, or otherwise modify or amend the existing limitations on State government authority over tribal restricted fee or trust lands.

(q) GUIDANCE AND EFFECTIVE DATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall issue guidance—

(A) defining the term "repeated violation", as used in section 303(f)(8) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)(8)) as amended by subsection (c), as including at least 5 violations of particular requirements over a 36-month period at a par-

ticular retail outlet that constitute a repeated violation and providing for civil penalties in accordance with paragraph (2);

(B) providing for timely and effective notice by certified or registered mail or personal delivery to the retailer of each alleged violation at a particular retail outlet prior to conducting a followup compliance check, such notice to be sent to the location specified on the retailer's registration or to the retailer's registered agent if the retailer has provided such agent information to the Food and Drug Administration prior to the violation;

(C) providing for a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone or at the nearest regional or field office of the Food and Drug Administration, and providing for an expedited procedure for the administrative appeal of an alleged violation;

(D) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(E) establishing that civil money penalties for multiple violations shall increase from one violation to the next violation pursuant to paragraph (2) within the time periods provided for in such paragraph;

(F) providing that good faith reliance on the presentation of a false government-issued photographic identification that contains a date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(i) adopting and enforcing a written policy against sales to minors;

(ii) informing its employees of all applicable laws;

(iii) establishing disciplinary sanctions for employee noncompliance; and

(iv) requiring its employees to verify age by way of photographic identification or electronic scanning device; and

(G) providing for the Secretary, in determining whether to impose a no-tobacco-sale order and in determining whether to compromise, modify, or terminate such an order, to consider whether the retailer has taken effective steps to prevent violations of the minimum age requirements for the sale of tobacco products, including the steps listed in subparagraph (F).

(2) PENALTIES FOR VIOLATIONS.—

(A) IN GENERAL.—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d), as described in paragraph (1), shall be as follows:

(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, \$0.00 together with the issuance of a warning letter to the retailer;

(II) in the case of a second violation within a 12-month period, \$250;

(III) in the case of a third violation within a 24-month period, \$500;

(IV) in the case of a fourth violation within a 24-month period, \$2,000;

(V) in the case of a fifth violation within a 36-month period, \$5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, \$10,000 as determined by the Secretary on a case-by-case basis.

(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, \$250;

(II) in the case of a second violation within a 12-month period, \$500;

(III) in the case of a third violation within a 24-month period, \$1,000;

(IV) in the case of a fourth violation within a 24-month period, \$2,000;

(V) in the case of a fifth violation within a 36-month period, \$5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, \$10,000 as determined by the Secretary on a case-by-case basis.

(B) TRAINING PROGRAM.—For purposes of subparagraph (A), the term "approved training program" means a training program that complies with standards developed by the Food and Drug Administration for such programs.

(C) CONSIDERATION OF STATE PENALTIES.—The Secretary shall coordinate with the States in enforcing the provisions of this Act and, for purposes of mitigating a civil penalty to be applied for a violation by a retailer of any restriction promulgated under section 906(d), shall consider the amount of any penalties paid by the retailer to a State for the same violation.

(3) GENERAL EFFECTIVE DATE.—The amendments made by paragraphs (2), (3), and (4) of subsection (c) shall take effect upon the issuance of guidance described in paragraph (1) of this subsection.

(4) SPECIAL EFFECTIVE DATE.—The amendment made by subsection (c)(1) shall take effect on the date of enactment of this Act.

(5) PACKAGE LABEL REQUIREMENTS.—The package label requirements of paragraphs (2), (3), and (4) of section 903(a) of the Federal Food, Drug, and Cosmetic Act (as amended by this Act) shall take effect on the date that is 12 months after the date of enactment of this Act. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 903(a)(2), (3), and (4) and section 920(a) of the Federal Food, Drug, and Cosmetic Act.

(6) ADVERTISING REQUIREMENTS.—The advertising requirements of section 903(a)(8) of the Federal Food, Drug, and Cosmetic Act (as amended by this Act) shall take effect on the date that is 12 months after the date of enactment of this Act.

SEC. 104. STUDY ON RAISING THE MINIMUM AGE TO PURCHASE TOBACCO PRODUCTS.

The Secretary of Health and Human Services shall—

(1) convene an expert panel to conduct a study on the public health implications of raising the minimum age to purchase tobacco products; and

(2) not later than 5 years after the date of enactment of this Act, submit a report to the Congress on the results of such study.

SEC. 105. ENFORCEMENT ACTION PLAN FOR ADVERTISING AND PROMOTION RESTRICTIONS.

(a) ACTION PLAN.—

(1) DEVELOPMENT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall develop and publish an action plan to enforce restrictions adopted pursuant to section 906 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this Act, or pursuant to section 102(a) of this Act, on promotion and advertising of menthol and other cigarettes to youth.

(2) CONSULTATION.—The action plan required by paragraph (1) shall be developed in

consultation with public health organizations and other stakeholders with demonstrated expertise and experience in serving minority communities.

(3) **PRIORITY.**—The action plan required by paragraph (1) shall include provisions designed to ensure enforcement of the restrictions described in paragraph (1) in minority communities.

(b) **STATE AND LOCAL ACTIVITIES.**—

(1) **INFORMATION ON AUTHORITY.**—Not later than 3 months after the date of enactment of this Act, the Secretary shall inform State, local, and tribal governments of the authority provided to such entities under section 5(c) of the Federal Cigarette Labeling and Advertising Act, as added by section 203 of this Act, or preserved by such entities under section 916 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this Act.

(2) **COMMUNITY ASSISTANCE.**—At the request of communities seeking assistance to prevent underage tobacco use, the Secretary shall provide such assistance, including assistance with strategies to address the prevention of underage tobacco use in communities with a disproportionate use of menthol cigarettes by minors.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) **AMENDMENT.**—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

“SEC. 4. LABELING.

“(a) **LABEL REQUIREMENTS.**—

“(1) **IN GENERAL.**—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

“**WARNING:** Cigarettes are addictive.

“**WARNING:** Tobacco smoke can harm your children.

“**WARNING:** Cigarettes cause fatal lung disease.

“**WARNING:** Cigarettes cause cancer.

“**WARNING:** Cigarettes cause strokes and heart disease.

“**WARNING:** Smoking during pregnancy can harm your baby.

“**WARNING:** Smoking can kill you.

“**WARNING:** Tobacco smoke causes fatal lung disease in nonsmokers.

“**WARNING:** Quitting smoking now greatly reduces serious risks to your health.

“(2) **PLACEMENT; TYPOGRAPHY; ETC.**—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise the top 50 percent of the front and rear panels of the package. The word ‘WARNING’ shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

“(3) **DOES NOT APPLY TO FOREIGN DISTRIBUTION.**—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not

manufacture, package, or import cigarettes for sale or distribution within the United States.

“(4) **APPLICABILITY TO RETAILERS.**—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

“(A) contains a warning label;

“(B) is supplied to the retailer by a licensee or permit-holding tobacco product manufacturer, importer, or distributor; and

“(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

“(b) **ADVERTISING REQUIREMENTS.**—

“(1) **IN GENERAL.**—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

“(2) **TYPOGRAPHY, ETC.**—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word ‘WARNING’ shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital ‘W’ of the word ‘WARNING’ in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

“(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

“(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

“(3) **MATCHBOOKS.**—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

“(4) **ADJUSTMENT BY SECRETARY.**—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including

smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

“(c) **MARKETING REQUIREMENTS.**—

“(1) **RANDOM DISPLAY.**—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

“(2) **ROTATION.**—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

“(3) **REVIEW.**—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

“(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

“(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

“(4) **APPLICABILITY TO RETAILERS.**—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

(a) **PREEMPTION.**—Section 5(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334(a)) is amended by striking “No” and inserting “Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 903(a)(2) or section 920(a) of the Federal Food, Drug, and Cosmetic Act, no”.

(b) **CHANGE IN REQUIRED STATEMENTS.**—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended

by section 201, is further amended by adding at the end the following:

“(d) CHANGE IN REQUIRED STATEMENTS.—The Secretary through a rulemaking conducted under section 553 of title 5, United States Code—

“(1) shall issue regulations within 24 months of the date of enactment of the Family Smoking Prevention and Tobacco Control Act that require color graphics depicting the negative health consequences of smoking to accompany label requirements; and

“(2) may thereafter adjust the format, type size, color graphics, and text of any of the label requirements, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.”.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

“(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.”.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

“SEC. 3. SMOKELESS TOBACCO WARNING.

“(a) GENERAL RULE.—

“(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

“WARNING: This product can cause mouth cancer.

“WARNING: This product can cause gum disease and tooth loss.

“WARNING: This product is not a safe alternative to cigarettes.

“WARNING: Smokeless tobacco is addictive.

“(2) Each label statement required by paragraph (1) shall be—

“(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

“(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

“(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

“(4) The provisions of this subsection do not apply to a tobacco product manufacturer

or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

“(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

“(A) contains a warning label;

“(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

“(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

“(b) REQUIRED LABELS.—

“(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

“(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

“(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

“(C) The word ‘WARNING’ shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

“(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

“(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital ‘W’ of the word ‘WARNING’ in the label statements.

“(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

“(G) The label statements shall be in English, except that—

“(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

“(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

“(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

“(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for

each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

“(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

“(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

“(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

“(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

“(4) The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

“(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a).

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

(a) IN GENERAL.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 204, is further amended by adding at the end the following:

“(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.”.

(b) PREEMPTION.—Section 7(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4406(a)) is

amended by striking "No" and inserting "Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no".

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by sections 201 and 202, is further amended by adding at the end the following:

"(e) TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE.—

"(1) IN GENERAL.—The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

"(2) RESOLUTION OF DIFFERENCES.—Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

"(3) CIGARETTE AND OTHER TOBACCO PRODUCT CONSTITUENTS.—In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act.

"(4) RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section."

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 101, is further amended by adding at the end the following:

"SEC. 920. LABELING, RECORDKEEPING, RECORDS INSPECTION.

"(a) ORIGIN LABELING.—

"(1) REQUIREMENT.—Beginning 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'sale only allowed in the United States'.

"(2) EFFECTIVE DATE.—The effective date specified in paragraph (1) shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after

such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with such paragraph.

"(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

"(1) IN GENERAL.—The Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

"(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products.

"(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

"(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

"(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

"(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products. The Secretary shall not authorize an officer or employee of the government of any of the several States to exercise authority under the preceding sentence on Indian country without the express written consent of the Indian tribe involved.

"(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—

"(1) NOTIFICATION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

"(A) imported, exported, distributed, or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

"(B) imported, exported, distributed, or diverted for possible illicit marketing, the manufacturer or distributor shall promptly notify the Attorney General and the Secretary of the Treasury of such knowledge.

"(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

"(A) the actual knowledge that the manufacturer or distributor had; or

"(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(e) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Attorney General of the United States and the Secretary of the Treasury, as appropriate."

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising; and

(3) collect data on the health effects (particularly with respect to individuals under 18 years of age) resulting from cross-border trade in tobacco products, including the health effects resulting from—

(A) the illicit trade of tobacco products and the trade of counterfeit tobacco products; and

(B) the differing tax rates applicable to tobacco products.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

(c) DEFINITION.—In this section:

(1) The term "cross-border trade" means trade across a border of the United States, a State or Territory, or Indian country.

(2) The term "Indian country" has the meaning given to such term in section 1151 of title 18, United States Code.

(3) The terms "State" and "Territory" have the meanings given to those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 128—RECOGNIZING THE HISTORICAL SIGNIFICANCE OF THE MEXICAN HOLIDAY OF CINCO DE MAYO

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

S. RES. 128

Whereas May 5, or "Cinco de Mayo" in Spanish, is celebrated each year as a date of great importance by the Mexican and Mexican-American communities;

Whereas the Cinco de Mayo holiday commemorates May 5, 1862, the date on which the Battle of Puebla was fought by Mexicans who were struggling for their independence and freedom;

Whereas Cinco de Mayo has become one of Mexico's most famous national holidays and is celebrated annually by nearly all Mexicans and Mexican-Americans, north and south of the United States-Mexico border;

Whereas the Battle of Puebla was but one of the many battles that the courageous Mexican people won in their long and brave struggle for independence and freedom;

Whereas the French, confident that their battle-seasoned troops were far superior to

the almost amateurish Mexican forces, expected little or no opposition from the Mexican army;

Whereas the French army, which had not experienced defeat against any of Europe's finest troops in over half a century, sustained a disastrous loss at the hands of an outnumbered, ill-equipped, and ragged, but highly spirited and courageous, Mexican force;

Whereas after three bloody assaults upon Puebla in which over a thousand gallant Frenchmen lost their lives, the French troops were finally defeated and driven back by the outnumbered Mexican troops;

Whereas the courageous and heroic spirit that Mexican General Zaragoza and his men displayed during this historic battle can never be forgotten;

Whereas many brave Mexicans willingly gave their lives for the causes of justice and freedom in the Battle of Puebla on Cinco de Mayo;

Whereas the sacrifice of the Mexican fighters was instrumental in keeping Mexico from falling under European domination;

Whereas the Cinco de Mayo holiday is not only the commemoration of the rout of the French troops at the town of Puebla in Mexico, but is also a celebration of the virtues of individual courage and patriotism of all Mexicans and Mexican-Americans who have fought for freedom and independence against foreign aggressors;

Whereas Cinco de Mayo serves as a reminder that the foundation of the United States is built by people from many nations and diverse cultures who are willing to fight and die for freedom;

Whereas Cinco de Mayo also serves as a reminder of the close spiritual and economic ties between the people of Mexico and the people of the United States, and is especially important for the people of the southwestern States where millions of Mexicans and Mexican-Americans make their homes;

Whereas in a larger sense, Cinco de Mayo symbolizes the right of a free people to self-determination, just as Benito Juarez once said, "El respeto al derecho ajeno es la paz" ("The respect of other people's rights is peace"); and

Whereas many people celebrate during the entire week in which Cinco de Mayo falls: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the historical struggle for independence and freedom of the people of Mexico; and

(2) calls upon the people of the United States to observe Cinco de Mayo with appropriate ceremonies and activities.

SENATE RESOLUTION 129—COM-MENDING LOUISIANA JOCKEY CALVIN BOREL FOR HIS VICTORY IN THE 135TH KENTUCKY DERBY

Ms. LANDRIEU (for herself, Mr. VITTER, and Mr. MCCONNELL) submitted the following resolution; which was considered and agreed to:

S. RES. 129

Whereas Calvin Borel, born and raised in St. Martin Parish, Louisiana, began riding match horse races in the State of Louisiana at the age of 8;

Whereas Mr. Borel began his professional career as a jockey at the age of 16;

Whereas Mr. Borel has won more than 4,500 career starts;

Whereas Mr. Borel won the 135th Kentucky Derby by a 6-¾ length, the greatest winning margin since 1946;

Whereas Mr. Borel is the only jockey since 1993 to win the Kentucky Oaks and the Kentucky Derby in the same year; and

Whereas in 2 minutes and 2.66 seconds, Mr. Borel and Mine that Bird completed the race and placed first place, making it Mr. Borel's second Kentucky Derby victory: Now, therefore, be it

Resolved, That the Senate commends Calvin Borel and Mine that Bird, for their victory at the 135th Kentucky Derby.

SENATE RESOLUTION 130—TO CONSTITUTE THE MAJORITY PARTY'S MEMBERSHIP ON CERTAIN COMMITTEES FOR THE ONE HUNDRED ELEVENTH CONGRESS, OR UNTIL THEIR SUCCESSORS ARE CHOSEN

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 130

Resolved, That the following shall constitute the majority party's membership on the following committees for the One Hundred Eleventh Congress, or until their successors are chosen:

COMMITTEE ON APPROPRIATIONS: Mr. Inouye (Chairman), Mr. Byrd, Mr. Leahy, Mr. Harkin, Ms. Mikulski, Mr. Kohl, Mrs. Murray, Mr. Dorgan, Mrs. Feinstein, Mr. Durbin, Mr. Johnson, Ms. Landrieu, Mr. Reed, Mr. Lautenberg, Mr. Nelson (Nebraska), Mr. Pryor, Mr. Tester, and Mr. Specter.

COMMITTEE ON THE ENVIRONMENT AND PUBLIC WORKS: Mrs. Boxer (Chairman), Mr. Baucus, Mr. Carper, Mr. Lautenberg, Mr. Cardin, Mr. Sanders, Ms. Klobuchar, Mr. Whitehouse, Mr. Udall (New Mexico), Mr. Merkley, Mrs. Gillibrand, and Mr. Specter.

COMMITTEE ON THE JUDICIARY: Mr. Leahy (Chairman), Mr. Kohl, Mrs. Feinstein, Mr. Feingold, Mr. Schumer, Mr. Durbin, Mr. Cardin, Mr. Whitehouse, Mr. Wyden, Ms. Klobuchar, Mr. Kaufman, and Mr. Specter.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Akaka (Chairman), Mr. Rockefeller, Mrs. Murray, Mr. Sanders, Mr. Brown, Mr. Webb, Mr. Tester, Mr. Begich, Mr. Burris, and Mr. Specter.

SPECIAL COMMITTEE ON AGING: Mr. Kohl (Chairman), Mr. Wyden, Mrs. Lincoln, Mr. Bayh, Mr. Nelson (Florida), Mr. Casey, Mrs. McCaskill, Mr. Whitehouse, Mr. Udall (Colorado), Mr. Bennet, Mrs. Gillibrand, Mr. Specter, and Majority Leader Designee.

SENATE RESOLUTION 131—MAKING MINORITY PARTY APPOINTMENTS FOR CERTAIN COMMITTEES FOR THE 111TH CONGRESS

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 131

Resolved, That the following be the minority membership on the following committees for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON APPROPRIATIONS: Mr. Cochran, Mr. Bond, Mr. McConnell, Mr. Shelby, Mr. Gregg, Mr. Bennett, Mrs. Hutchison, Mr. Brownback, Mr. Alexander, Ms. Collins, Mr. Voinovich, and Ms. Murkowski.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: Mr. Inhofe, Mr. Voinovich, Mr. Vitter, Mr. Barrasso, Mr. Crapo, Mr. Bond, and Mr. Alexander.

COMMITTEE ON THE JUDICIARY: Mr. Sessions, Mr. Hatch, Mr. Grassley, Mr. Kyl, Mr. Graham, Mr. Cornyn, and Mr. Coburn.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Burr, Mr. Isakson, Mr. Wicker, Mr. Johanns, and Mr. Graham.

SPECIAL COMMITTEE ON AGING: Mr. Martinez, Mr. Shelby, Ms. Collins, Republican Leader designee, Mr. Corker, Mr. Hatch, Mr. Brownback, and Mr. Graham.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1042. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 1040 proposed by Mr. REED (for himself and Mr. BOND) to the amendment SA 1018 submitted by Mr. Dodd (for himself and Mr. SHELBY) to the bill S. 896, to prevent mortgage foreclosures and enhance mortgage credit availability.

SA 1043. Mr. ENSIGN (for himself, Mr. PRYOR, Mrs. BOXER, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 1038 proposed by Mrs. BOXER (for herself and Mr. REID) to the amendment SA 1018 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill S. 896, supra.

TEXT OF AMENDMENTS

SA 1042. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 1040 proposed by Mr. REED (for himself and Mr. BOND) to the amendment SA 1018 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill S. 896, to prevent mortgage foreclosures and enhance mortgage credit availability; as follows:

At the end, add the following:

SEC. ____ FEDERAL REAL PROPERTY DISPOSAL PILOT PROGRAM.

(a) IN GENERAL.—Chapter 5 of subtitle I of title 40, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—EXPEDITED DISPOSAL OF REAL PROPERTY

"§ 621. Definitions

"In this subchapter:

"(1) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.

"(2) EXPEDITED DISPOSAL OF A REAL PROPERTY.—The term 'expedited disposal of a real property' means a demolition of real property or a sale of real property for cash that is conducted under the requirements of section 545.

"(3) LANDHOLDING AGENCY.—The term 'landholding agency' means a landholding agency as defined under section 501(i)(3) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(i)(3)).

"(4) REAL PROPERTY.—

"(A) IN GENERAL.—The term 'real property' means—

"(i) a parcel of real property under the administrative jurisdiction of the Federal Government that is—

"(I) excess;

"(II) surplus;

"(III) underperforming; or

"(IV) otherwise not meeting the needs of the Federal Government, as determined by the Director; and

"(ii) a building or other structure located on real property described under clause (i).

"(B) EXCLUSION.—The term 'real property' excludes any parcel of real property or building or other structure located on such real property that is to be closed or realigned under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

“(5) REPRESENTATIVE OF THE HOMELESS.—The term ‘representative of the homeless’ means a representative of the homeless as defined under section 501(i)(4) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

“§ 622. Pilot program

“(a) The Director of the Office of Management and Budget shall conduct a pilot program, to be known as the ‘Federal Real Property Disposal Pilot Program’, under which real property that is not meeting Federal Government needs may be disposed of in accordance with this subchapter.

“(b) The Federal Real Property Disposal Pilot Program shall terminate 5 years after the date of the enactment of this subchapter.

“§ 623. Selection of real properties

“(a) Agencies shall recommend candidate disposition real properties to the Director for participation in the pilot program established under section 622.

“(b) The Director, with the concurrence of the head of the executive agency concerned and consistent with the criteria established in this subchapter, may then select such candidate real properties for participation in the pilot program and notify the recommending agency accordingly.

“(c) The Director shall ensure that all real properties selected for disposition under this section are listed on a website that shall—

“(1) be updated routinely; and

“(2) include the functionality to allow members of the public, at their option, to receive such updates through electronic mail.

“(d) The Secretary of Housing and Urban Development shall ensure that efforts are taken to inform representatives of the homeless about—

“(1) the pilot program established under section 622; and

“(2) the website under subsection (c).

“(e) The Secretary of Housing and Urban Development shall—

“(1) make available to the public upon request all information (other than valuation information), regardless of format, in the possession of the Department of Housing and Urban Development relating to the properties listed on the website under subsection (c), including environmental assessment data; and

“(2) maintain a current list of agency contacts for making referrals to inquiries for information relating to specific properties.

“§ 624. Suitability determination

“(a) After the Director selects the candidate real properties that may participate in the pilot program under section 623, the Secretary of Housing and Urban Development shall determine whether each such real property is suitable for use to assist the homeless.

“(b) The Secretary of Housing and Urban Development shall base the suitability determination required under subsection (a)—

“(1) on the suitability criteria identified by the Secretary of Housing and Urban Development under section 501(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(a));

“(2) for real properties located within a Federal installation, campus, or compound, on whether such property can easily be transported to an off-site location; and

“(3) for real properties where the predominant use is other than housing, on whether the size of the real property is equal to or greater than 100,000 square feet.

“(c) Immediately after a determination of suitability is made under this section, the Director shall publish, on the website described in section 623(c) the following information:

“(1) The address of each such real property.

“(2) The result of the suitability determination required under subsection (a) for each such real property.

“(3) The date on which the suitability determination was made.

“§ 625. Unsuitable real property

“(a) If a real property is determined unsuitable under section 624, such real property may not be disposed of or otherwise used for any other purpose for at least 20 days after such determination was made.

“(b)(1) Not later than 20 days after a real property has been determined unsuitable under section 624 and before disposal of the real property in accordance with subsection (d), any representative of the homeless may appeal to the Secretary of Housing and Urban Development for a secondary review of such determination.

“(2) Not later than 20 days after a real property has been determined unsuitable under subsection (b)(3) of section 624, the Secretary of Housing and Urban Development shall deem such real property suitable notwithstanding the requirements of that subsection if a representative of the homeless has produced clear and convincing evidence that such property can be utilized for the benefit of the homeless. Any determination under this paragraph shall be committed to the unreviewable discretion of the Secretary of Housing and Urban Development.

“(c) Not later than 20 days after the receipt of any appeal under subsection (b), the Secretary of Housing and Urban Development shall respond to such appeal and shall make a final suitability determination regarding the real property.

“(d)(1) If at the end of the 20-day period required under subsection (a), no appeal for review of a determination of unsuitability is received by the Secretary of Housing and Urban Development, such real property shall be disposed of in accordance with section 627.

“(2) If after conducting a secondary review of a determination of unsuitability under subsection (b), the Secretary of Housing and Urban Development determines that the real property remains unsuitable under subsection (c), such real property shall be disposed of in accordance with section 627.

“(3) If after conducting a secondary review of a determination of unsuitability under subsection (b), the Secretary of Housing and Urban Development determines that the real property is suitable under subsection (c), such real property shall be treated as suitable property for purposes of section 626.

“§ 626. Suitable real property

“(a)(1) If a real property is determined suitable under section 624 or upon a secondary review under section 625(d), any representative of the homeless shall have not more than 90 days after such determination to submit an application to the Secretary of Health and Human Services for the transfer of the real property to that representative. If an application cannot be completed within the 90-day period due to non-material factors, the Secretary of Health and Human Services, with the concurrence of the appropriate landholding agency, may grant reasonable extensions.

“(2) If at the end of the time period described under paragraph (1), no representative of the homeless has submitted an application, such real property shall be disposed of in accordance with section 627.

“(b)(1) Not later than 20 days after the receipt of any application under subsection (a)(1), the Secretary of Health and Human Services shall assess such application and determine whether to approve or deny the request for the transfer of the real property to such applicant.

“(2) If the application of a representative of the homeless is denied by the Secretary of

Health and Human Services under paragraph (1), such real property shall be disposed of in accordance with section 627.

“(3) If the application of a representative of the homeless is approved by the Secretary of Health and Human Services under paragraph (1), such real property shall be made promptly available to that representative by permit or lease, or by deed, as a public health use under subsections (a) through (d) of section 550.

“§ 627. Expedited disposal requirements

“(a) Real property sold under the pilot program established under this subchapter shall be sold at not less than the fair market value, as determined by the Director in consultation with the head of the executive agency. Costs associated with such disposal may not exceed the fair market value of the property unless the Director approves incurring such costs.

“(b) A real property may be sold under the pilot program established under this subchapter only if the property will generate monetary proceeds to the Federal Government, as provided in subsection (a). A disposal of real property under the pilot program may not include any exchange, trade, transfer, acquisition of like-kind property, or other non-cash transaction as part of the disposal.

“(c) Nothing in this subchapter shall be construed as terminating or in any way limiting authorities that are otherwise available to agencies under other provisions of law to dispose of Federal real property, except as provided in subsection (d).

“(d) Any expedited disposal of a real property conducted under this subchapter shall not be subject to—

“(1) subchapter IV of this chapter;

“(2) sections 550 and 553 of this title;

“(3) section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411);

“(4) any other provision of law authorizing the no-cost conveyance of real property owned by the Federal Government; or

“(5) any congressional notification requirement other than that in section 545.

“§ 628. Special rules for deposit and use of proceeds from disposal of real property

“(a) Agencies that conduct the disposal of real properties under this subchapter shall be reimbursed from the proceeds, if any, from such disposal for the administrative expenses associated with such disposal. Such amounts shall be credited as offsetting collections to the account that incurred such expenses, to remain available until expended.

“(b)(1) After payment of such administrative costs, the balance of the proceeds shall be distributed as follows:

“(A) 80 percent shall be deposited into the Treasury as miscellaneous receipts.

“(B) 20 percent shall be deposited into the account of the agency that owned the real property and initiated the disposal action.

“(2) Funds deposited under paragraph (1)(B) shall remain available until expended for the period of the pilot program, for activities related to Federal real property capital improvements and disposal activities. Upon termination of the pilot program, any unobligated amounts shall be transferred to the general fund of the Treasury.

“§ 629. Limitation on number of permissible cash sales

“The total number of cash sales of real properties to be disposed of under this subchapter over the 5-year term of the Federal Real Property Disposal Pilot Program shall not exceed 750.

“§ 630. Government Accountability Office study

“(a) Not later than 36 months after the date of enactment of this subchapter, the

Comptroller General of the United States shall submit to Congress and make publicly available a study of the effectiveness of the pilot program.

“(b) The study described under subsection (a) shall include at a minimum—

“(1) recommendations for permanent reforms to statutes governing real property disposals and no cost conveyances; and

“(2) recommendations for improving the permanent process by which Federal properties are made available for use by the homeless.”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 5 of subtitle I of title 40, United States Code, is amended by inserting after the item relating to section 611 the following:

“SUBCHAPTER VII—EXPEDITED DISPOSAL OF REAL PROPERTY

“Sec. 621. Definitions.

“Sec. 622. Pilot program.

“Sec. 623. Selection of real properties.

“Sec. 624. Suitability determination.

“Sec. 625. Unsuitable real property.

“Sec. 626. Suitable real property.

“Sec. 627. Expedited disposal requirements.

“Sec. 628. Special rules for deposit and use of proceeds from disposal of real property.

“Sec. 629. Limitation on number of permissible cash sales.

“Sec. 630. Government Accountability Office study.”.

SA 1043. Mr. ENSIGN (for himself, Mr. PRYOR, Mrs. BOXER, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 1038 proposed by Mrs. BOXER (for herself and Mr. REID) to the amendment SA 1018 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill S. 896, to prevent mortgage foreclosures and enhance mortgage credit availability as follows:

On page 1, strike line 6 and all that follows through page 6 line 5, and insert the following:

(a) **SHORT TITLE.**—This section may be cited as the “Public-Private Investment Program Improvement and Oversight Act of 2009”.

(b) **PUBLIC-PRIVATE INVESTMENT PROGRAM.**—

(1) **IN GENERAL.**—Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Trouble Asset Relief Program (in this section referred to as the “Special Inspector General”), impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests (which conflict of interest rules shall be implemented by the manager of a public-private investment fund prior to such fund receiving Federal Government financing);

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury (in this section referred to as the “Secretary”) that discloses the 10 largest positions of such fund (which reports shall be publicly disclosed at such time as the Secretary of the Treasury determines that such disclosure will not harm the ongoing business operations of the fund);

(C) allow the Special Inspector General access to all books and records of a public-private investment fund, including all records of financial transactions in machine read-

able form, and the confidentiality of all such information shall be maintained by the Special Inspector General;

(D) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(E) require each manager of a public-private investment fund to acknowledge, in writing, a fiduciary duty to both the public and private investors in such fund;

(F) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(G) require strict investor screening procedures for public-private investment funds; and

(H) require each manager of a public-private investment fund to identify for the Secretary each investor that, individually or together with its affiliates, directly or indirectly holds equity interests in the fund acquired as a result of—

(i) any investment by such investor or any of its affiliates in a vehicle formed for the purpose of directly or indirectly investing in the fund; or

(ii) any other investment decision by such investor or any of its affiliates to directly or indirectly invest in the fund that, in the aggregate, equal at least 10 percent of the equity interests in such fund.

(2) **INTERACTION BETWEEN PUBLIC-PRIVATE INVESTMENT FUNDS AND THE TERM-ASSET BACKED SECURITIES LOAN FACILITY.**—The Secretary shall consult with the Special Inspector General and shall issue regulations governing the interaction of the Public-Private Investment Program, the Term-Asset Backed Securities Loan Facility, and other similar public-private investment programs. Such regulations shall address concerns regarding the potential for excessive leverage that could result from interactions between such programs.

(3) **REPORT.**—Not later than 60 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General shall submit a report to Congress on the implementation of this section.

(c) **ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL.**—

(1) **IN GENERAL.**—Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), \$15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) **PRIORITIES.**—In utilizing funds made available under this section, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under the Public Private Investment Program established by the Secretary of the Treasury or the Term Asset Loan Facility established by the Board of Governors of the Federal Reserve System (including any successor thereto or any other similar program established by the Secretary or the Board), to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.

(d) **RULE OF CONSTRUCTION.**—Notwithstanding any other provision of law, nothing in this section shall be construed to apply to any activity of the Federal Deposit Insur-

ance Corporation in connection with insured depository institutions, as described in section 13(c)(2)(B) of the Federal Deposit Insurance Act.

(e) **DEFINITION.**—In this section, the term “public-private investment fund” means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury or the Federal Deposit Insurance Corporation.

(f) **OFFSET OF COSTS OF PROGRAM CHANGES.**—Notwithstanding the amendment made by section 202(b) of this Act, paragraph (3) of section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225) is amended by inserting “, as such amount is reduced by \$2,331,000,000,” after “\$700,000,000,000”.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, May 12, 2009, at 2:30 p.m., in room SD-366 of the Dirksen Senate office building.

The purpose of the legislative hearing is to receive testimony on S. 967, the Strategic Petroleum Reserve Modernization Act of 2009, and S. 283, a bill to amend the Energy Policy and Conservation Act to modify the conditions for the release of products from the Northeast Home Heating Oil Reserve Account.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510-6150, or by e-mail to Rosemarie_Calabro@energy.senate.gov.

For further information, please contact Tara Billingsley at (202) 224-4756 or Rosemarie Calabro at (202) 224-5039.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, May 5, 2009, at 9:30 a.m.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a hearing on

Tuesday, May 5, at 9:45 a.m., in room SD-366 of the Dirksen Senate office building.

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

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, May 5, 2009, in room 106 of the Dirksen Senate office building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 5, 2009, at 2:15 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DODD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 5, 2009, at 3:30 p.m.

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

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY AND SECURITY

Mr. DODD. Mr. President, I ask unanimous consent that the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, May 5, 2009, at 3 p.m., in room 253 of the Russell Senate office building.

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

SUBCOMMITTEE ON TERRORISM AND HOMELAND SECURITY

Mr. DODD. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary, Subcommittee on Terrorism and Homeland Security, be authorized to meet during the session of the Senate, to conduct a hearing entitled "The Passport Issuance Process: Closing the Door to Fraud" on Tuesday, May 5, 2009, at 2:30 p.m., in room SD-226 of the Dirksen Senate office building.

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

PRIVILEGES OF THE FLOOR

Mr. REED. Mr. President, I ask unanimous consent that Randy Fasnacht, a detailee from the Subcommittee on Securities, Insurance, and Investment, be granted the privilege of the floor for the remainder of the day during consideration of this bill.

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

RECOGNIZING THE HISTORICAL SIGNIFICANCE OF THE MEXICAN HOLIDAY OF CINCO DE MAYO

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed

to the immediate consideration of S. Res. 128, submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 128) recognizing the historical significance of the Mexican holiday of Cinco de Mayo.

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

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

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

The resolution (S. Res. 128) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 128

Whereas May 5, or "Cinco de Mayo" in Spanish, is celebrated each year as a date of great importance by the Mexican and Mexican-American communities;

Whereas the Cinco de Mayo holiday commemorates May 5, 1862, the date on which the Battle of Puebla was fought by Mexicans who were struggling for their independence and freedom;

Whereas Cinco de Mayo has become one of Mexico's most famous national holidays and is celebrated annually by nearly all Mexicans and Mexican-Americans, north and south of the United States-Mexico border;

Whereas the Battle of Puebla was but one of the many battles that the courageous Mexican people won in their long and brave struggle for independence and freedom;

Whereas the French, confident that their battle-seasoned troops were far superior to the almost amateurish Mexican forces, expected little or no opposition from the Mexican army;

Whereas the French army, which had not experienced defeat against any of Europe's finest troops in over half a century, sustained a disastrous loss at the hands of an outnumbered, ill-equipped, and ragged, but highly spirited and courageous, Mexican force;

Whereas after three bloody assaults upon Puebla in which over a thousand gallant Frenchmen lost their lives, the French troops were finally defeated and driven back by the outnumbered Mexican troops;

Whereas the courageous and heroic spirit that Mexican General Zaragoza and his men displayed during this historic battle can never be forgotten;

Whereas many brave Mexicans willingly gave their lives for the causes of justice and freedom in the Battle of Puebla on Cinco de Mayo;

Whereas the sacrifice of the Mexican fighters was instrumental in keeping Mexico from falling under European domination;

Whereas the Cinco de Mayo holiday is not only the commemoration of the rout of the French troops at the town of Puebla in Mexico, but is also a celebration of the virtues of individual courage and patriotism of all Mexicans and Mexican-Americans who have fought for freedom and independence against foreign aggressors;

Whereas Cinco de Mayo serves as a reminder that the foundation of the United

States is built by people from many nations and diverse cultures who are willing to fight and die for freedom;

Whereas Cinco de Mayo also serves as a reminder of the close spiritual and economic ties between the people of Mexico and the people of the United States, and is especially important for the people of the southwestern States where millions of Mexicans and Mexican-Americans make their homes;

Whereas in a larger sense, Cinco de Mayo symbolizes the right of a free people to self-determination, just as Benito Juarez once said, "El respeto al derecho ajeno es la paz" ("The respect of other people's rights is peace"); and

Whereas many people celebrate during the entire week in which Cinco de Mayo falls: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the historical struggle for independence and freedom of the people of Mexico; and

(2) calls upon the people of the United States to observe Cinco de Mayo with appropriate ceremonies and activities.

COMMENDING LOUISIANA JOCKEY CALVIN BOREL

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 129, submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 129) commending Louisiana jockey Calvin Borel for his victory in the 135th Kentucky Derby.

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

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

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

The resolution (S. Res. 129) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 129

Whereas Calvin Borel, born and raised in St. Martin Parish, Louisiana, began riding match horse races in the State of Louisiana at the age of 8;

Whereas Mr. Borel began his professional career as a jockey at the age of 16;

Whereas Mr. Borel has won more than 4,500 career starts;

Whereas Mr. Borel won the 135th Kentucky Derby by a 6¼ length, the greatest winning margin since 1946;

Whereas Mr. Borel is the only jockey since 1993 to win the Kentucky Oaks and the Kentucky Derby in the same year; and

Whereas in 2 minutes and 2.66 seconds, Mr. Borel and Mine that Bird completed the race and placed first place, making it Mr. Borel's second Kentucky Derby victory: Now, therefore, be it

Resolved, That the Senate commends Calvin Borel and Mine that Bird, for their victory at the 135th Kentucky Derby.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President of the Senate, and after consultation with the Republican leader, pursuant to Public Law 106-286, appoints the following Members to serve on the Congressional-Executive Commission on the People's Republic of China: the Honorable BOB CORKER of Tennessee, and the Honorable JOHN BARRASSO of Wyoming.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d-276g, as amended, appoints the following Senators as members of the Senate Delegation to the Canada-U.S. Interparliamentary Group conference during the 111th Congress: the Honorable JEFF SESSIONS of Alabama, the Honorable SUSAN COLLINS of Maine, and the Honorable GEORGE V. VOINOVICH of Ohio.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONSTITUTING THE MAJORITY PARTY'S MEMBERSHIP ON CERTAIN COMMITTEES FOR THE ONE HUNDRED ELEVENTH CONGRESS

MAKING MINORITY PARTY APPOINTMENTS FOR CERTAIN COMMITTEES FOR THE 111TH CONGRESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 130 and S. Res. 131, which are at the desk.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 130) to constitute the majority party's membership on certain committees for the One Hundred Eleventh Congress, or until their successors are chosen.

A resolution (S. Res. 131) making minority appointments for certain committees for the 111th Congress.

The PRESIDING OFFICER. Without objection, the two resolutions are agreed to, en bloc.

The resolutions (S. Res. 130 and S. Res. 131) were agreed to, as follows:

S. RES. 130

Resolved, that the following shall constitute the majority party's membership on the following committees for the One Hundred Eleventh Congress, or until their successors are chosen:

COMMITTEE ON APPROPRIATIONS: Mr. Inouye (Chairman), Mr. Byrd, Mr. Leahy, Mr. Harkin, Ms. Mikulski, Mr. Kohl, Mrs. Murray, Mr. Dorgan, Mrs. Feinstein, Mr. Durbin, Mr. Johnson, Ms. Landrieu, Mr. Reed, Mr. Lautenberg, Mr. Nelson (Nebraska), Mr. Pryor, Mr. Tester, and Mr. Specter.

COMMITTEE ON THE ENVIRONMENT AND PUBLIC WORKS: Mrs. Boxer (Chairman), Mr. Baucus, Mr. Carper, Mr. Lautenberg, Mr. Cardin, Mr. Sanders, Ms. Klobuchar, Mr. Whitehouse, Mr. Udall (New Mexico), Mr. Merkley, Mrs. Gillibrand, and Mr. Specter.

COMMITTEE ON THE JUDICIARY: Mr. Leahy (Chairman), Mr. Kohl, Mrs. Feinstein, Mr. Feingold, Mr. Schumer, Mr. Durbin, Mr. Cardin, Mr. Whitehouse, Mr. Wyden, Ms. Klobuchar, Mr. Kaufman, and Mr. Specter.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Akaka (Chairman), Mr. Rockefeller, Mrs. Murray, Mr. Sanders, Mr. Brown, Mr. Webb, Mr. Tester, Mr. Begich, Mr. Burris, and Mr. Specter.

SPECIAL COMMITTEE ON AGING: Mr. Kohl (Chairman), Mr. Wyden, Mrs. Lincoln, Mr. Bayh, Mr. Nelson (Florida), Mr. Casey, Mrs. McCaskill, Mr. Whitehouse, Mr. Udall (Colorado), Mr. Bennet, Mrs. Gillibrand, Mr. Specter, and Majority Leader Designee.

S. RES. 131

Resolved, That the following be the minority membership on the following committees for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON APPROPRIATIONS: Mr. Cochran, Mr. Bond, Mr. McConnell, Mr. Shelby, Mr. Gregg, Mr. Bennett, Mrs. Hutchison, Mr. Brownback, Mr. Alexander, Ms. Collins, Mr. Voinovich, and Ms. Murkowski.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: Mr. Inhofe, Mr. Voinovich, Mr. Vitter, Mr. Barrasso, Mr. Crapo, Mr. Bond, and Mr. Alexander.

COMMITTEE ON THE JUDICIARY: Mr. Sessions, Mr. Hatch, Mr. Grassley, Mr. Kyl, Mr. Graham, Mr. Cornyn, and Mr. Coburn.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Burr, Mr. Isakson, Mr. Wicker, Mr. Johanns, and Mr. Graham.

SPECIAL COMMITTEE ON AGING: Mr. Martinez, Mr. Shelby, Ms. Collins, Republican Leader designee, Mr. Corker, Mr. Hatch, Mr. Brownback, and Mr. Graham.

MAJORITY PARTY APPOINTMENT

Mr. REID. Mr. President, under S. Res. 18, I have the authority to make a majority party appointment to the HELP Committee. I now ask unanimous consent that the appointment be made on a temporary basis and that I still retain the authority to make a permanent appointment in the 111th Congress.

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

Mr. REID. I now temporarily appoint Sheldon Whitehouse of Rhode Island.

The PRESIDING OFFICER. The RECORD will so note.

UNANIMOUS CONSENT AGREEMENT—S. 454

Mr. REID. Mr. President, I ask unanimous consent that upon disposition of S. 896, the Senate proceed to Calendar No. 45, S. 454.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDERS FOR WEDNESDAY, MAY 6, 2009

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m. Wednesday, May 6; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business for up to 1 hour, with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the second half; further, that following morning business, the Senate resume consideration of S. 896, the Helping Families Save Their Homes Act, under the previous order.

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

PROGRAM

Mr. REID. Mr. President, there will be a series of votes beginning at 10:40 in the morning relating to the housing bill we have been working on for several days.

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 7:35 p.m., adjourned until Wednesday, May 6, 2009, at 9:30 a.m.