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# *Senate*

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

## PRAYER

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

Let us pray.

Lord, save us from our disappointments as we realize You can transform setbacks into stepping stones. Remind our Senators that in everything, You are working for the good of those who love You, who are called according to Your purpose. As they persevere through the darkness of challenges, enable our lawmakers to see the stars of Your providential work and to know that nothing can separate them from Your love. Strengthen the Members of this body by Your love. Make them strong in the broken places so that they can become instruments of Your glory. We pray in Your strong Name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL 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 19, 2010.*

*To the Senate:*

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

ROBERT C. BYRD,
*President pro tempore.*

Mr. UDALL of New Mexico 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 any leader remarks, there will be an hour of morning business with Senators permitted to speak for up to 10 minutes each. The Republicans will control the first 30 minutes; the majority will control the next 30 minutes.

Following morning business, the Senate will resume consideration of S. 3217, the Wall Street reform legislation.

The cloture vote on the Dodd-Lincoln substitute amendment will occur at 2 p.m. today. As a reminder, the filing deadline for second-degree amendments is 1 p.m. today. Votes may occur on amendments prior to the cloture vote if agreements can be reached.

## UNFINISHED BUSINESS

Mr. REID. Mr. President, we worked late last night trying to take care of some of the final discussion on this legislation before cloture today. The reason we have an hour of morning business is to give Senators some time to say whatever they want to say as well as to give Senators time to look at the proposed consent agreement that was arrived at last night between the majority and the minority. I hope Senators will allow this agreement to go forward. If people look at what is in it, I think there is a series of amendments that will be accepted by the two managers of the bill. If someone doesn't like something in the consent agreement, be sure and talk to the two managers. It would be good to get some of these matters out of the way. We have had a number of Senators who have waited a long period of time to have their matters resolved. For example, Senator HARKIN last night. We were able to arrive at a conclusion of an amendment that he felt was appropriate. It is an amendment I support and others support it. I just think it wouldn't be—for lack of a better word—fair to not let some of these amendments go forward, but Senators have the right to make whatever decision they feel is appropriate.

As far as the cloture vote, I don't think anyone can criticize our having taken time on this legislation. There are a number of amendments the proponents of which worked to perfect the language on and it took a while for them to do that. There comes a time, however, when we have to put this thing to rest. We have been on this bill for a month. As of tomorrow, it will be 1 month. We have another step we have to go through and that is conference. People have all kinds of opportunities there to make whatever decisions they think are appropriate to make this bill better. It gives both sides all the adequate protection they want when the bill comes back in its conference form.

I hope we can move forward. We have a few hours before cloture. I hope cloture will be invoked. If it isn't, we will continue working until we finish this legislation. As I have told everyone and I will say again, we have to finish this legislation, Wall Street reform; we have to do the supplemental. I wish to get the supplemental started sometime tomorrow. Then we have the extenders we have to do. We have parts of that extenders bill that are essential to the economic recovery. There are many aspects that are important, but one is the tax credit for research and development. Businesses absolutely need that.

The uncertainty of it is hurting the overall economy.

We have to do those before we take the Memorial Day break. We can't let the troops go unfunded and we can't let those provisions expire.

## RECOGNITION OF THE MINORITY LEADER

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

## FINANCIAL REGULATORY REFORM

Mr. MCCONNELL. Mr. President, as I stand here this morning, the U.S. Government is in dire fiscal condition, with the Federal debt now about to break $13 trillion for the first time in history, a level that was unthinkable a few years ago. Meanwhile, Democrats in Washington seem to think there is some law out there that will somehow prevent us from experiencing the same kind of crisis that is currently engulfing Europe.

The fact is, Washington can't even pay its bills. Yet over the last 16 months it has taken over banks, insurance companies, car companies, the student loan business, and health care. Now it has its sights set on anyone in America who engages in a financial transaction. The arrogance of this approach to governing is truly astounding.

Everyone recognizes the need to rein in Wall Street to prevent another crisis, but the bill the majority wants to end debate on today does not do that. Instead, it uses this crisis as yet another opportunity to expand the cost and size and reach of government. It punishes Main Street for the sins of Wall Street. Worst of all, it ignores the root of the crisis by doing nothing whatsoever to reform the GSEs.

But all this should sound very familiar to anyone who followed the health care debate. Remember that the problem with health care was that it cost too much and the administration's solution was to spend even more money on it. This time, the Fed, the SEC, and Treasury all missed the housing bubble and the irresponsible risk-taking that led to the financial crisis, and the administration's solution to this is to hire more of these people to give them even more authority than they had before. So we have been down this road before.

The administration used the cost crisis in health care as an excuse to force a government takeover on a public that didn't want it. Now it is using the financial crisis as a way to intrude into the lives of people and businesses that had absolutely nothing whatsoever to do with the problem, and to hire thousands of government employees and spend billions of dollars in taxpayer money to pay for it all. At the outset of this debate, Republicans argued that getting on to the bill would be a mistake since Democrats had no intention of improving it. As it turns out, we were right. Not only does the bill still contain a massive new government agency with broad new powers over consumer spending and Main Street businesses, it does nothing—nothing—as I indicated, to rein in Fannie Mae and Freddie Mac, the main protagonists in the financial meltdown. This is absolutely worse than irresponsible. It is the legislative equivalent of wrongful conviction.

What is more, Democrats even opposed putting these two government-sponsored companies that were behind the housing crisis on the Federal budget and accounting for the billions they got from taxpayers in bailout funds.

Republicans tried to address the concerns we have been hearing from Main Street, many of them targeted at this new Federal agency that would regulate all aspects—all aspects—of a consumer's life, but Democrats rejected them. We offered an amendment that would sunset this agency if it led to unwanted government intrusion. They rejected it. We offered an amendment that said banks that fail should go bankrupt rather than giving their Wall Street creditors a bailout. They rejected it. We offered an amendment that would have strengthened lending standards. They rejected it. We offered three amendments to rein in Fannie Mae and Freddie Mac. They rejected them.

They can call this bill whatever they want, but there is no way—no way—it can be viewed as a serious effort to rein in Wall Street or to address the problems that caused the crisis. How do you explain to the average American—the average American—that a bill that was meant to rein in Wall Street can be supported—supported—by Goldman Sachs and Citigroup but opposed by car dealers, dentists, florists, furniture salesmen, plumbers, credit unions, and community banks?

Let me say that one more time. How do you explain to the people of this country a bill designed to rein in Wall Street that is supported by Goldman Sachs and Citigroup but opposed by car dealers, dentists, florists, furniture salesmen, plumbers, credit unions, and community banks? How do you explain how a bill that was supposed to target Wall Street now threatens to subject manufacturers to a broad new financial regulation and new layers of government bureaucracy? How do you justify new costs and regulations on small businesses struggling to dig themselves out of a recession, while the biggest banks—the ones that caused it—don't seem to mind it? How do you explain how a bill that was supposed to end bailouts will be used to collect financial data on Americans?

Look, the only thing we need to know about this bill is that a bill that was meant to rein in Wall Street is now being endorsed—now being endorsed—by Goldman Sachs and is opposed by America's small business owners, community banks, credit unions, and auto dealers. A bill that was supposed to rein in Wall Street is opposed by the Chamber of Commerce but supported by Citigroup.

Small businesses don't like it, but the biggest beneficiaries of the bailouts support it, because regulations never hurt them as much as they hurt the little guys. Our friends on the other side are happy as long as they pass something called reform, and the administration is happy because it is bent—absolutely bent—on expanding government at any cost.

But the American people are watching, and they are not happy. They are astonished at the arrogance of elected leaders who seem to do more to create problems up here than to solve them: Health care costs too much, so let's spend more on it. Regulators missed the housing crisis and the financial panic; hire more of them.

The Federal Government has doubled in size over the past decade, and yet every day this administration devises some new way to make it bigger, costlier, and more intrusive. In my view, the administration has lost all perspective about the limits of government and, frankly, it is losing the confidence and the trust of the American people.

Americans look at what is happening in Europe. They feel as though they are seeing the same movie playing out right here. They feel as though the one way to avoid this crisis from spreading across the Atlantic is to stop the spending and the government expansion that led to it; and they feel as though the administration doesn't see any of this and is so bent on its government-knows-best solution to everything that it can't even see when the government itself is the problem.

The goal of legislating is not to say we have solved the problem when we haven't. It is to prevent or alleviate real hardships and expand opportunities for the people who sent us here.

But until the administration actually delivers on that promise, Americans cannot and should not be expected to endorse its plans for even more government because, for most Americans, what all these crises reveal is not a need for more government but a need for less government. I will vote against this so-called reform bill, and I urge my colleagues to do the same.

I yield the floor.

## RESERVATION OF LEADER TIME

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

## MORNING BUSINESS

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

controlling the first half and the majority controlling the final half.

The Senator from New Hampshire is recognized.

## REGULATORY REFORM

Mr. GREGG. Mr. President, first, I congratulate the Republican leader for a superb statement on where we stand relative to the bill on regulatory reform. It is truly a bill that is misnamed. This bill should be called ''The Expansion of Government for the Purposes of Making Us More Like Europe Act.''

As a very practical matter, the bill does almost nothing about the core issues that have created the issue of financial stability in this country. It does nothing in the area of Fannie Mae and Freddie Mac, which is the real estate issue. It does virtually nothing in the area of making sure we have a workable systemic risk situation and structure so we can address the issue of systemic risk. Instead of addressing it in a constructive way, which would actually put some vitality and usefulness in to regulate the derivatives market, it actually steps back and creates a derivatives regulation that all the major regulators, whom we respect, have said simply will not work.

I wish to talk about that. I didn't think there was anything you could do that would make this regulatory proposal on derivatives worse. But now we see an amendment from the chairman of the committee, which I am sure is well intentioned, but it makes it worse. The way the derivatives language of the bill has evolved is it gets worse and worse, in an almost incomprehensible and irrational way, which is rather surreal. It is almost as if we were at the Mad Hatter's tea party the way this derivatives language is evolving.

We now have in the bill itself proposed language which the chairman of the FDIC, the Federal Reserve staff, Chairman Volcker, and the OCC have all said will not work. In fact, not only did they say it will not work, they have said it will have a negative impact on the stability of the derivatives market. It will cause the market to move overseas and make America less competitive. It will cause a contraction in credit in this country, and it will hurt consumers and users of derivatives across this Nation.

Those are the words—paraphrased to some degree but essentially accurate—of the major players who actually discipline and look at this market, in defining the bill as it is presently before us. Now, in some sort of bizarre attempt—as if the Mad Hatter had arrived—to correct this issue, we see an amendment from the chairman of the committee suggesting that we should put into place an even more convoluted system, tied to uncertainty of no decision occurring for 2 years. The proposal says we will have the stability council, which is made up of, I think, nine different regulators, take a look at what is in the language of the bill now, relative to taking swap desks out of financial institutions and determine whether that language makes sense. Well, it doesn't. We know that already because a group of regulators has already said it doesn't make sense. So we are going to wait for 2 years to determine it doesn't make sense, when we already know it doesn't. Then they are going to make that recommendation to the Congress, so the Congress gets to legislate to correct what we already know is an error in the bill.

Then, to make this an even more Byzantine exercise in regulatory absurdity, the Secretary of the Treasury has the right to overrule the Congress or maybe act independently of the Congress and take action pursuant to whatever the stability council decided.

On top of this convoluted exercise in chaos, the proposal actually undermines the Lincoln proposal, which is in the bill, and makes it even less workable, by saying the swap desk cannot even be retained by affiliates but must be totally separated, which inevitably leads to swap desks that do not have capital adequacy or stability or the necessary strength to defend the derivatives action which they are making markets in. So you weaken and significantly reduce the stability of the market, making it more risky and, at the same time, the estimate is, you would contract credit in this country by close to $¾ trillion less credit.

What that means is John and Mary Jones, who are working on Main Street America producing something they are selling to a company that is maybe a little larger, and then they are selling that product overseas, are probably not going to be able to get the credit they need to produce the product, so they will have to contract the size of their business, and we will reduce the number of jobs in this country or certainly the rate of job creation.

This country's great and unique advantage is that we are the best place in the world for an entrepreneur and risk-taker—somebody who is willing to go out there and do something to create jobs—to get capital and credit at a reasonable price and in a reasonably efficient way. This bill fundamentally undermines that unique advantage that we have in this language, and this language compounds that event, undermining that unique situation. It is, as I said, similar to participating in the Mad Hatter's tea party to watch the way this bill has evolved on the issue of derivatives regulation. The product—I guess the Queen of Hearts would be proud of it, but I can tell you the effect on the American people, on commerce, and on Main Street will be extraordinarily negative should we pass it.

I yield the floor.

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

Mr. ROBERTS. Mr. President, I ask unanimous consent that I may be recognized for 15 minutes.

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

## BERWICK NOMINATION

Mr. ROBERTS. Mr. President, recently, Leader MCCONNELL and Dr. JOHN BARRASSO, the distinguished Senator from Wyoming, and I engaged in a colloquy regarding President Obama's nominee for the head of CMS, the Centers for Medicare Services, Dr. Donald Berwick.

Simply put, Dr. Berwick has a long history of interesting statements—pertinent statements—that support government rationing of health care, an issue I have vigorously fought against throughout the entire health care debate.

The White House response to our colloquy, it seems to me, was most unfortunate, if not rather incredible. Here is what the Obama administration had to say:

> No one is surprised that Republicans plan to use this confirmation process to trot out the same arguments and scare tactics they hoped would block health insurance reform.
>
> The fact is, rationing is rampant in the system today, as insurers make arbitrary decisions about who can get the care that they need. Dr. Don Berwick wants to see a system in which those decisions are transparent—and that the people who make them are held accountable.

This is a fascinating response. Instead of flatout denials of government rationing, we have excuses. If you read between the lines, you will notice that for the first time ever in this debate, the Obama White House is admitting their health care plan will ration health care. It just doesn't make it transparent.

Remember, when Republicans, such as myself and JON KYL and Dr. COBURN, the Senator from Oklahoma, tried to warn that health care reform would result in government-rationed care, we were dismissed as crazy reactionaries or even worse. President Obama accused us of trying to scare people, and no less than the American Association of Retired Persons, AARP—that organization that purports to represent Medicare patients and seniors all across our great Nation—said our rationing concerns were a mere ''myth''—that ''none of the health care reforms . . . would stand between individuals and their doctors or prevent any American from choosing the best possible care.''

How interesting that now, after the health care bill has become law, the President is admitting we were right all along. Here is the quote:

> Don Berwick wants to see a system in which those [rationing] decisions are transparent—and that the people who make them are held accountable.

That is a complete and utter about-face.

Although cloaked in the typical straw man arguments that have come to characterize this administration,

the statement is undeniable. The government is going to ration your health care.

To set the record straight, I don't accept rationing, whether it be transparent or otherwise. I am opposed to rationing whether it is done by the government or by an insurance company. I am not defending any of the practices of insurance companies that have unjustly denied claims.

I am against rationing whether it is proposed by Republicans or Democrats or think tanks or the special interest sidelines in this city.

But the Obama administration's response does nothing to address my concerns that our government will ration health care. Instead, we finally have an admission from the White House that this is what they plan to do.

I am not holding my breath for an apology or a correction from the President or the AARP or any of the other organizations that demonized our concerns for the past year. But I do intend to ask some very tough questions of Dr. Berwick, the President's pick to implement and enforce literally thousands of regulations that will soon come pouring out of the Department of Health and Human Services, and that will inevitably include rationing.

It is nothing personal, as I have said before. I have met Dr. Berwick. He is a very personable, affable, intelligent man. I don't doubt that he has support from his peers who know him. I am not questioning his honor or his motives or his love for this country.

As an aside, I would appreciate it—and I know a lot of other Members of this body would as well—if the White House extended the same courtesy to me and, for that matter, anybody else raising serious policy questions.

But we have a fundamental disagreement about the future of our health care delivery system. I happen to think it is important that we have this conversation so the American people can understand what is going on.

Please quit attacking my motives and the motives of others. Accentuate the policy, eliminate the politics, and don't mess with those in between raising reasonable questions. That is an old song that rather dates me, but I think it is appropriate. Questions such as this: What did Dr. Berwick mean when he said:

> I am a romantic about the [British] National Health Service; I love it. All I need to do to rediscover the romance is to look at the health care in my own country.

So he is both romantic and supportive of the British National Health Service.

With cancer survival rates for women 10 percentage points higher in the United States than in England and over 20 points higher for men, why does he think their government-run system is superior to our system?

Please explain this quote:

> If I could wave a magic wand . . . health care [would be] a common good—single payer . . . health care [would be] a human right—universality is a nonnegotiable starting place . . . justice [would be] a prerequisite to health equity as a primary goal.

While that may sound very nice, very idealistic, the reality is, declaring health care to be a human right necessarily places some citizens' rights above others—suppressing the rights of some in favor of another government-favored group.

If you are saying health care is a universal right, what you are essentially saying is that some people have a right to someone else's property, whether that be taxable income or doctor services or their health care.

I disagree with this argument. Health care has become an entitlement for some in this country, but it cannot be properly described as a right without egregious government coercion and income redistribution and patient care consequences.

But maybe that is OK with Dr. Berwick. After all, he did say that ''any health care funding plan that is just, equitable, civilized, and humane must—must—redistribute wealth from the richer among us to the poorest and less fortunate.'' I want to hear more from Dr. Berwick on this point.

Furthermore, what did he mean when he said that ''equity'' is a necessary component of ''quality''? Does that mean high-quality care should not be available unless it is available to all? This certainly seems to square with the United Kingdom's practice of delaying access to the latest breakthrough drugs and technologies because of their high costs. What does Dr. Berwick think this attitude will do to investments and innovations in life-saving treatments?

And what about this quote:

> Limited resources require decisions about who will have access to care and the extent of their coverage. The complexity and cost of health care delivery systems may set up a tension between what is good for the society as a whole and what is best for an individual patient . . . Hence, those working in health care delivery may be faced with situations in which it seems that the best course is to manipulate the flawed system for the benefit of a specific patient . . . rather than to work to improve the delivery of care of all.

Is this a suggestion that it is a doctor's duty to concentrate on the good of society or the good of his or her patient? That certainly sounds like a proponent of socialized medicine to me. I use that word very carefully.

Finally, this is a question about the following statement by Dr. Berwick:

> Most people who have serious pain do not need advanced methods; they just need the morphine and counseling that have been around for centuries.

That is an amazing statement. I know Dr. Berwick is familiar with the Liverpool Care Pathway to death that is employed in the British health care system and its reliance on morphine and counseling. He should also be aware of the growing concerns of many British doctors that this so-called pathway to death is being overused for patients who would have otherwise recovered, especially stroke patients. Is this what is being advocated for the American health care system? For Medicare patients? This certainly sounds like the ''death panels'' that became so roundly ridiculed and dismissed by ObamaCare supporters during last year's debate.

I know that ''socialized medicine'' and ''death panels'' have become loaded terms. I understand that. But if that is what you are for, you should just say so. Don't be afraid to have this discussion. Dr. Berwick certainly has not been shy about his views in the past.

Maybe this is a comment more appropriately directed at the administration than at Dr. Berwick, but do not hide behind straw men and name-calling of those who disagree with you.

I have legitimate concerns—many of us have legitimate concerns—about the direction we are taking in this country with particular regard to health care. The thousands of people in Kansas who have contacted me over the last year have very legitimate concerns, too, and if you do not think I deserve some answers, they certainly do.

The American people are sick and tired of being told that they are crazy or racist or that they do not know what they are talking about or being misled or that any question raised is simply partisan politics. Promise after promise has been broken, from the pledge not to raise taxes to the promise that if you like what you have you can keep it, to the falsehood that this new law does not cut Medicare. And remember the one about lowering premiums. The list goes on and on. Now it is beyond a shadow of a doubt that the law will ration health care. I think we are duty-bound to hold this administration and its nominees accountable for these broken promises and for what lies ahead for patient care. That is why I will continue to ask the hard questions that need to be asked of this nominee.

I will continue to fight against what I truly believe is government rationing of health care. I did so on the HELP Committee when we considered it, the Finance Committee when we considered it, and during the reconciliation process when we considered it. All, of course, were defeated by party-line votes. And I will continue to maintain that the American health care system, with all of its flaws, is the best health care system in the world. We need to fix the flaws. We do not need rationing.

In the case of Dr. Berwick, we need answers.

I yield the floor. It appears to me there is not a quorum, so 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. CARDIN. 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. CARDIN. Mr. President, I ask to speak on the Democratic time.

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

## ENERGY POLICY

Mr. CARDIN. Mr. President, what has happened in the Gulf of Mexico makes one thing very clear; that is, America's energy policy is a disaster. I thank Senator KERRY, Senator LIEBERMAN, and Senator BOXER for their leadership in pointing out the need for America to get off its addiction to oil and promote safe and clean energy sources for America so that we can be independent, so that we can achieve the type of economic growth we need and contribute to a cleaner environment. If we do our energy policy right, as Senator KERRY, Senator LIEBERMAN, and Senator BOXER have been telling us, we can solve all three problems.

I must tell you, I think one of the most urgent needs for an energy policy is to make America more secure. We spend almost $1 billion a day on imported oil that goes to many countries that disagree with our way of life. Americans are actually helping to fund those who are trying to compromise America's security. That makes no sense whatsoever.

The Department of Defense has pointed out that our energy policy actually contributes to international instability. We spend a lot of money trying to figure out how we can make the world safer. One way we can make the world safer is to develop an energy policy where we are self-sufficient, where we do not have to rely on imported oil.

We can also solve the second problem, and that is economic growth. Take a look at what is happening in China. They are investing heavily in solar and wind power because they know they are going to create jobs. We want to create these clean jobs in America. We want to manufacture the component parts for solar and wind. We want to be able to manufacture component parts for nuclear. We believe we can create jobs in America by having a policy that relies more on clean energy. There are more jobs to be created, much more so than in oil. For the sake of our economy, we need to develop a comprehensive energy policy.

Then, for our environment, I can talk a great deal about why we need to move forward and get the pollutants out of our air and reward those who use clean technologies. Climate change is real. Tell the people on Smith Island, as they see their island disappearing because of the rising sea level, or tell those who see the traditional seafood industry go in decline because of warmer waters. We know climate change is real, and it is causing instability around the world. We need to deal with it.

If we need a reminder, take a look at what is happening in the Gulf of Mexico. BP originally told us there was 1,000 barrels a day leaking. Now they tell us it is 5,000. We do not know whether that is accurate. We know one thing: It has caused an environmental disaster in the Gulf of Mexico. We can expect dead zones because of oxygen deprivation. We can expect that our wetlands, which are critically important for our ecosystem and to protect our environment, will be invaded by this oil. As Senator NELSON points out frequently, if it gets into the Loop Current, it could very well go through the Keys and the east coast of the United States.

The tragedy of this is, we all know we cannot drill our way out of our energy problem. We have less than 3 percent of the oil reserves and we use over 25 percent. We know we cannot drill our way out of our energy problems.

Additional exploration will give us very little as far as energy independence. I will talk about the mid-Atlantic because I am most familiar with the mid-Atlantic. We have been told by recent studies that we may have enough oil in the mid-Atlantic to handle our energy needs for 2 months in the United States. Think about that—the risk factor versus the reward. It makes no sense whatsoever.

If we have a Deepwater Horizon episode in the mid-Atlantic, it will be catastrophic to the Chesapeake Bay. Many of us have invested a lot of energy to clean up the Chesapeake Bay. We know we need to do more. EPA has come out with its game plan. I filed legislation with my colleagues to have a stronger effort in cleaning up the bay. But if we had an oilspill in this region anywhere near what happened down in the Gulf of Mexico, it would set us back for generations.

Some say: Is that a real possibility? Could that really happen? Let me tell you about the lease site 220 off of Virginia which is being primed for offshore drilling. That is 60 miles from Assateague Island and 50 miles from the mouth of the Chesapeake Bay. The prevailing winds are toward the coast, which means a spill is likely to come on the coast a lot quicker than we saw in the Gulf of Mexico.

I have a few suggestions for my colleagues. First, we need to stop any further offshore exploration of gas or oil until we have put in place the regulatory structure to make sure we have done adequate environmental assessments before any new drilling is permitted. That is the least we can do.

We know the exploration plans submitted by BP Oil told us there was virtually no risk, and if there was a spill, they had the proven technology to make sure it did not reach our coastlines. The proven technology was these blowout protectors that we note failed in the past, had very little experience at 5,000 feet of water, and as a result we see the disaster that has unfolded.

The regulatory system is not independent. It needs to be changed. We need to make sure other agencies in the Federal Government that are knowledgeable about wildlife are consulted before permits are granted. At least we need to make sure those regulatory changes are in place.

Secondly, we need to protect, as Secretary Salazar has said, those places in America that are environmentally too sensitive to risk drilling. Secretary Salazar points with pride—and I agree—to the west coast of the United States or to the North Atlantic.

The area off the coast of the Chesapeake Bay is environmentally too sensitive to risk drilling for the little bit of oil that may be there. I urge my colleagues to provide protection—permanent protection—from the offshore drilling in the mid-Atlantic.

Then we need to consider legislation for a comprehensive energy policy in this Nation. I applaud Senator KERRY and Senator LIEBERMAN for bringing forward a proposal. It is a good start. I compliment them for the manner in which they handled offshore drilling because they give States, such as Maryland, a veto if the environmental risks are there. To me, that is far better protection than current law and better than what the administration has proposed.

I hope we can do better. There are provisions in the bill I want to strengthen. There are issues I want to make sure are added to it. But unless we get started on energy legislation, unless we bring to the Senate Floor and are willing to debate, as we should, an environmental and energy policy for our country, we won't have a chance to move on these issues.

I can't tell you how many people I have talked to in the State of Maryland who say: Look, we need to be energy independent, we need to create jobs, we need to be sensitive to the environment. But we can't do that unless we have a bill before us.

I want to applaud Senators KERRY and LIEBERMAN for their efforts. I hope we will have a chance to consider that, and I can assure my colleagues that I will have some suggested changes for that legislation in order to strengthen it so we truly can achieve the goals of making America more secure, of creating the jobs we need and being an international leader on preserving our environment to make sure that polluters do not continue to pollute our environment.

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

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

## FINANCIAL REGULATORY REFORM

Mr. FRANKEN. Mr. President, I rise today to clarify some confusion regarding two amendments adopted by the

Senate last week to the Wall Street reform bill. Some in the media have characterized the two amendments as conflicting, incompatible, or rendering one another moot, and I wish to put a quick end to that misunderstanding.

To draw these conclusions means you think there is only one problem with the credit rating industry. In fact, there have been many problems with the credit rating industry, and the two amendments passed last week tackle two different problems. In the end, these two amendments can be implemented concurrently and effectively.

My colleague from Florida offered an amendment that he stated ''writes NRSROs out of the law.'' NRSROs are a select group of credit rating agencies recognized by the SEC. But in fact his amendment does not get rid of credit rating agencies and it does not get rid of the category of NRSROs. This is based on our reading of the text in our office, the Senate legislative counsel's office has confirmed this, and several academics in the field have further confirmed it. The amendment simply does not eliminate NRSROs. Instead, the LeMieux amendment eliminates provisions in Federal laws that require reliance upon ratings from NRSROs.

For example, this amendment eliminates a provision that requires certain State-chartered banks to only buy securities with top NRSRO ratings. It replaces this provision with a requirement that banks may only acquire securities which meet ''creditworthiness standards'' established by the FDIC.

The amendment also changes a provision in which the Director of the Federal Housing Finance Agency may hire an NRSRO to conduct a review of Fannie Mae, Freddie Mac, or the Federal Home Loan Bank. Under Senator LEMIEUX's amendment, the reviewer need not be an NRSRO. So while the amendment eliminates reliance upon NRSROs, it does not eliminate the NRSRO designation or eliminate credit rating agencies.

One can argue that there are benefits to reducing overreliance on NRSROs. Regulators gave little thought to the types of debt held by banks because they were rated AAA. Perhaps the regulators should have looked at factors other than the AAA rating before waving through these volatile securities. This is all true, and the LeMieux amendment seeks to address it.

But here is the problem. Here is the problem. Eliminating federally mandated reliance on NRSRO credit ratings doesn't change the fact that State laws, pension fund policies, and other private market actors will still explicitly rely on NRSRO ratings. Eliminating blind overreliance on NRSRO ratings is a respectable goal, but the amendment will not eliminate reliance on credit ratings entirely, nor should it.

For example, at least 5 of the 10 largest pension funds—California Public Employees, California State Teachers, Texas Teachers, Wisconsin Investment Board, and New Jersey Retirement funds—are required by State law or internal policy to use NRSRO ratings. These are funds totaling over $½ trillion—and that is just the top 10. In fact, in my colleague's home State of Florida, the Local Government Surplus Funds Trust Fund controls $6 billion in assets from 954 local governments and school districts, and the fund explicitly conditions purchases of asset-backed securities on NRSRO credit ratings.

In fact, 42 States, plus the District of Columbia, incorporate NRSRO ratings into their State laws. So NRSRO ratings are not going anywhere. The LeMieux amendment has absolutely no effect on those requirements. The simple fact is that credit rating agencies have a place in the market and they perform a needed function.

Most institutional investors simply lack the capacity to perform the analysis that credit rating agencies perform. For many small institutional investors, such as a school district's pension fund, researching its own investments would be cost prohibitive. It needs to rely at least in part on credit ratings issued by a rating agency.

Let's say we want the LeMieux amendment implemented into law as has been passed. After its implementation we still have the issue of States and pension funds and other investors relying on NRSRO ratings.

I should say, the amendment wasn't passed into law, but it was passed as an amendment to this bill. So we still will have to rely on NRSRO ratings. But not only that, it is also very likely that Federal regulators will continue to use credit ratings as part of their new creditworthiness standards. So it is safe to say that the credit rating agencies will still be very much a part of the market. What is being done to ensure the accuracy of these ratings?

That is where my amendment comes in. Eliminating government-mandated reliance on NRSRO ratings is one thing, but actually changing the way they play the game to eliminate conflicts of interest is entirely another. My amendment gets to the heart of how they play the game.

Right now, credit rating agencies have incentives to hand out top AAA ratings to every product because they need to maintain their business. If they hand out low ratings, issuers of financial products can go shop around for a higher rating from a different rating agency. My amendment finally puts a stop to the rating shopping process and implements a system that would finally reward accuracy instead of grade inflation.

The board created by my amendment—and contrary to some claims, this board will be a self-regulatory organization, not a part of the government—will create a process to assign a credit rating agency to provide a product's initial rating. This will eliminate the rating shopping process and the conflict of interest it creates. The board can take past performance into account in handing out further assignments and finally incentivize accuracy in the market.

The amendment offered by my colleague from Florida has an admirable goal—to eliminate blind overreliance on credit ratings. But it does not go far enough and does not get to the heart of the problem. The heart of the problem is that the current market incentivizes inaccurate ratings, which contributed to the financial crisis—which was a huge part of the financial crisis.

Alone, my colleague's amendment doesn't respond to the reality that the market will still demand credit ratings, whether the Federal Government mandates it or not. State laws, pension fund policies, and private investors will continue to exist and continue to need the expertise credit rating agencies can supply, if given proper incentives.

Our amendments each tackle a different part of the problem, and there is nothing about them that would prevent them from both being implemented. That is why this body passed both of them. Together, these two amendments will both reduce the blind overreliance on credit ratings and ensure that the ratings demanded by the marketplace will finally be accurate.

Any assertion implying that these two amendments cannot be reconciled or are contradictory is ill-informed. In fact, these amendments will go a long way in addressing the multiple problems plaguing the credit rating industry. Together, they will create more stability and certainty in our economy.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, I wanted to share with my colleagues an update on where we are with the bipartisan amendment on which I have been working so hard. I see Senator SANDERS of Vermont is here, and he is one of my cosponsors, as is the Presiding Officer, Senator UDALL of New Mexico.

The amendment, as you know, would allow States to protect their citizens from exorbitant interest rates that are charged by out-of-State banks. There is a trick to this. Years ago, the Supreme Court made a decision saying when a bank is in one State and a consumer in another, the transaction between them is governed by the laws—and here they had to pick one State or the other—the bank's State. It didn't seem like a big deal at the time, but it opened a loophole that crafty bank lawyers figured out, and that is that you could move and redomicile a bank's headquarters in the State with the worst consumer protection laws in the country. Then, from that State, you could market back to other States which have consumer protections, which have interest rate limits honoring the tradition of usury restriction that was at the founding of this country and that lasted for hundreds of years but goes back to all our ancient religions and which is a constant in human civilized

legal codes. This overruled all of that, allowing them to sneak right by it because they have either gone to or perhaps even cut a deal with their home State to have the worst consumer protection and be able to take advantage of people in other States. It is the proverbial race to the bottom. I am confident if you called up on the Senate floor as the government's policy proposal the way it is right now, you would not get a single vote. Who would vote for the notion that the consumer protection policy of the country is going to be set by the worst State and have that be a situation in which the worst State is usually getting rewarded by the industry for being the worst State?

It is a bad situation. This amendment has gotten a lot of attention. It has gotten a lot of support—it has bipartisan support. It is a very practical thing we can do for American consumers.

This is a pretty esoteric piece of legislation in a lot of ways, this Wall Street reform bill. This does things like trying to rebuild the Glass-Steagall firewall. Until I got in the middle of this debate, I couldn't tell what that was. This changes the leverage limits and puts restrictions on what banks can do. That is pretty esoteric stuff. This deals with the regulation of derivatives and collateralized debt obligations and credit default swaps and things that nobody ever heard of until we were drilled into this legislation—esoteric, preventive stuff. But this piece of the bill, this amendment would enable all of us to go home and tell our constituents: You know those 30 percent penalty rates that your out-of-State credit card company drops you into if you make a mistake, if you are late in a payment, for no reason at all? We have done something to protect you against that—consistent with the traditions of our country, our laws, consistent with the doctrine of federalism and States rights, consistent with the Founding Fathers' delegation to the States, the ability to protect consumers in this way. We have restored the States rights. They are no longer trumped by an out-of-State corporation. Now they have the sovereign right they should to protect consumers.

I think it is a meritorious piece of legislation. I think it is an amendment that deserves consideration on the floor. It is beginning to appear that it may not actually even get a vote, notwithstanding that it is pending. We may be edged right out.

I want to explain why. People who have been watching this debate have seen long hours of nothing happening on this floor. There has been a lot of delay. There has been a lot of delay allowing us to get to amendments. Why is that? We are up against a time restriction on this bill. It is a practical time restriction. The leader needs to make sure we pass the supplemental Defense appropriations bill that funds our troops. What could be more important than, when we have troops in the field, overseas, serving our country, putting themselves in harm's way, that we provide them the resources they need to be successful? We have to do that.

We have to do something to increase the strength of our economy. In Rhode Island we are at 12.6 percent unemployment. We have been in the top three States for unemployment every single month of the Obama administration.

I think we are in the 28th month of severe recession. So we know how bad this economy is and how much more we need to do to try to bolster it. So we need to get to the next jobs bill, the jobs and tax extenders bill, to make sure we are providing the necessary support to our economy.

We have to get to those things. Because of all the delay that our friends on the other side have built into the process we are now getting into the end point where we are starting to be squeezed for time.

Now that we are squeezed for time, they are refusing to give time agreements to amendments like mine that would actually make a difference. They do not want to vote in favor of out-of-State corporations and against their home State's ability to protect their home State's fellow citizens. But they do want the out-of-State corporations to win. They don't want to vote in their favor, but they want them to win.

If that is your position, the perfect thing is to delay and delay until it gets to be here at the end, crunch time, then take the amendments that worry you, the amendments that will get after the big banks, the amendments that will be fair to consumers, and refuse to give time agreements and vote agreements on those and basically run out the clock.

That is the position we are in right now. It appears there is no willingness on the other side of the aisle to give this a vote—not just at a 50-vote margin, even at a 60-vote margin. They don't want to be on record supporting these out-of-State credit card companies that are gouging their own citizens. They just want them to win, and they figured out this way to do it.

The only alternative is to call up the bill, what is called postcloture, which means I have to be technically something called germane. Right now we are working with the Parliamentarian to argue as strongly as we can that we are indeed germane. It is an open question whether we are indeed germane, and I hope it gets resolved in our favor before the bill comes up in its regular order postcloture.

That is the situation. If people are wondering why this amendment does not appear to be on any list, is not going anywhere, it is because there is a blockade of it on the other side. They are taking advantage of the time crunch that they created with all the delays that led us to this time crunch to squeeze out the amendments where they do not want to vote for the big banks, they don't want to vote for the big credit card companies, but they do want the big banks and the big credit card companies to win. So it is the squeeze play at the end to try to drive these impactful amendments that will make a tangible, immediate difference in the lives of Rhode Islanders and the lives of their home State citizens, the ones paying that 30-plus percent interest rate that until very recently would be a matter to bring to the authorities of this country, not a matter that the Senate tried to defend. So that is where we are.

I will continue to work with the Parliamentarian to make sure we are germane postcloture, and I will continue to argue to try to get a vote. But forces are arrayed against us at this point, and I want to be perfectly candid about it.

I yield the floor.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. BOND. Mr. President, I ask unanimous consent to speak as in morning business for 10 minutes.

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

Mr. BOND. Mr. President, for weeks now we have been debating the financial reform bill, which is being sold to the American people as the solution to holding Wall Street accountable for the economic crisis that hurt every American family and business in every community across the Nation.

Unfortunately, in this current form, the so-called reform bill will actually punish Main Street America, the families who suffered from and did not cause the financial meltdown. It should be a wakeup call when Lloyd Blankfein of Goldman Sachs says Wall Street will be the big winner under this bill, and we know the people who provide jobs, essentially small business, and the people who provide credit to the rest of America are warning of dire consequences.

Let me make this clear. This bill was meant to rein in Wall Street. Yet it is supported by Goldman Sachs and Citigroup. It is opposed by small business and community bankers. I think that tells you all you need to know about this bill. That is why I rise today in strong opposition to cloture on this bill. Yes, we made some improvements on the bill, and I congratulate the leadership for allowing us to have amendments and debate them, and I thank and I am grateful to my colleague from Connecticut, Senator DODD, for working across the aisle to remove an onerous provision that unintentionally

would have killed small business startups. Senator DODD has worked in good faith in a bipartisan fashion to make real changes in the bill. But despite the progress we have made, the provisions most destructive and harmful to taxpayers, families, and small business still remain.

First, it is completely unbelievable and unacceptable that so many of my colleagues want to turn a blind eye to the government-sponsored enterprises Fannie Mae and Freddie Mac which contributed to the financial meltdown by buying the high-risk loans that banks were pushed to make to people who could not afford them.

They were the enablers of the issuance of bad mortgages. Everyone here knows what I am talking about. Despite the bill's 1,400-plus pages, it completely ignored the 900-pound gorilla in the room. The need to reform Fannie Mae and Freddie Mac, or the ''toxic twins'' as I refer to them, is completely ignored. How can you ignore the major government-sponsored enterprises that were the enablers for the bad mortgages that brought our system and much of the world's system down?

To add insult, Fannie Mae and Freddie Mac devastated entire neighborhoods and communities as property values diminished. But when they bought up loans and encouraged issuance of loans to people who could not afford them, that turned the American dream of home ownership into the American nightmare for far too many families.

Fannie Mae and Freddie Mac went belly up, and now it is the very Americans who suffered from their irresponsible actions who are left footing the bill for them, because, if it were not bad enough, unless we act now to reform the toxic twins, over the next 10 years, Fannie Mae and Freddie Mac will run up hundreds of billions of dollars.

Let me put that into perspective. Freddie Mac lost $8 billion in the first quarter, one quarter of this year, and an additional $10 billion from taxpayers, and warned that it will need more in the future. That comes on top of the $126 billion that Fannie Mae and Freddie Mac had already lost through the end of 2009.

To make matters worse, this administration has taken off the $400 billion credit card limit on Fannie Mae and Freddie Mac, and it is our credit card they took the limit off. How much more does the administration think Freddie Mac and Fannie Mae can lose? How much more are they going to force not just us as taxpayers but our children and grandchildren to pay to bail out these toxic twins?

Next, a great concern I have is that this bill lumps in the good guys with the bad guys and treats them all the same, particularly when it comes to derivatives. When it comes to derivatives, this bill lumps in those folks who try to manage risk and control costs by making long-term contracts with their suppliers or with their purchasers to even out the prices at which goods are exchanged. These are normal hedging contracts, and they are very different from the people who are speculating in the market to make a buck by shady bets with money they did not have or they were making insurance bets on property they did not own.

I would urge my colleagues, if they have not read it, to read ''The Big Short'' which talks about how this whole scam unfolded with the bad underlying mortgages that caused the meltdown.

I have heard some folks say, what actually does this bill mean to you and me? Well, it means, for instance, that utility companies may not be able to lock in steady rates for their customers, leaving them instead at the whim of the volatile market. They will have to clear all of their long-term contracts and pay billions of dollars to Wall Street or Chicago to clear the normal long-term contracts with energy suppliers whom they work with on a regular basis, and whose contracts never contributed a nickel to the volatility.

As a matter of fact, by locking in prices, they were able to produce their energy at a reasonable rate. The billions of dollars these utility companies will be forced to cough up to Wall Street and Chicago will come down to each and every one of us on our utility bills. When the utility companies have to pay more, guess what. We, as ratepayers, get it in the wallet. That is where we will feel it, and that is what it means in every community in this country. You will be paying a higher cost every time you flip on the light switch, turn on the air conditioning, or use a computer. You will pay more for that energy.

For family farms, the backbone, the agricultural backbone of our country, they will not be able to get long-term financing. That may force some of them to quit farming and prevent others from even getting started.

Frankly, I am stunned that any Senator in good conscience would vote for a bill that would increase costs for every American, especially at a time when working families are struggling to make ends meet. What will this do to business? These businesses, who will be forced to pay higher energy costs, who will have requirements on derivatives that have to be cleared, may not create the jobs.

The community bankers who make the loans that families need or that small businesses need may be so strapped they cannot make the loans. That credit will dry up. I cannot vote for a bill that creates a massive new superbureaucracy with unprecedented authority to impose government mandates and micromanage any entity that extends credit.

We are not talking just about the Goldman Sachs and AIGs of the world, the ones at the center of this crisis. No, in the real world we are talking about this organization, this Consumer Finance Protection Board or Bureau, regulating the community banks, your car dealers, even your dentist or orthodontist who has to extend some credit to a few people for expensive orthodontic features.

Don't be fooled. Any of the new costs as a result of the new mandates and regulations will be passed on to the consumers. The very people the bill was supposed to protect—you and I—will get to pay for it.

Under this new superbureaucracy misnamed the Consumer Financial Protection Bureau, will safety and soundness requirements for healthy banks give way to a prevailing agenda of the new bureaucracy? There will be political appointees of the President who will be looking over everything as consumer protectors.

Some of these consumer protectors were the ones who forced banks to make loans to people who could not afford them in the past. Will the safety and soundness which is key to assuring a sound banking system be overridden by these rules and regulations?

These regulations can be enforced by every attorney general in the Nation. Attorneys general may decide it is an abusive practice if a community bank does not follow the mandates, the credit allocations, mandated to this CFPB. How would the community banks be able to operate if the attorneys general are suing them? This bill, regrettably, is much like the health care bill recently signed into law, because I fear that small businesses will soon learn that there are many more unintended consequences which have yet to be seen.

I ask unanimous consent that at the end of my remarks, I have printed in the RECORD an article by Meredith Whitney that appeared in yesterday's Wall Street Journal, one of the people who foresaw this crisis coming, who warned of the impact on small business.

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

(See exhibit 1.)

Mr. BOND. To sum up my view on this bill, if the goal here is to enact real reform that ensures we never have another financial crisis such as the one we had 18 months ago, this bill falls woefully short of the goal. The bill is light on reform of Wall Street and the bad actors, it is heavy on overreach and unintended consequences throughout our economy, which will affect the ability of people to get and hold jobs.

It will affect the budgets of every family. My colleagues I hope will oppose cloture and continue to work to pass bipartisan amendments that will make changes to the destructive provisions I have outlined above.

Let us not forget about the rating agencies. The book I mentioned, ''The Big Short,'' pointed out that the braindead analysts at the ratings firms routinely put AAA ratings on some of the

most toxic, worthless paper, and then other people managed to buy insurance on those bad contracts even though they did not have any interest in them and made millions.

This amendment takes out the rating agencies, but the rating agencies still need to be overlooked and they ought to be funded not by the people who issue the paper but by the people who are buying the paper.

There is no doubt that everybody here knows we need to protect Americans from falling victim to another Wall Street gone wild. This is government gone wild. It benefits Wall Street. It harms small business, community bankers, your local utility company, which sends you your utility bill. Is that on the right track? I do not see how anybody can say it is.

We do not want—and this is why this debate is so important—to punish the everyday Americans for a crisis they did not cause and whose impact they feel the burden, and our children will feel it, for years to come. Unless we succeed in it, the Democrats' bill will do just that. The cost will be paid by Main Street and by each and every one of us. Therefore, I urge my colleagues to oppose cloture and let us get to work on regulating what went bad and not messing with things that work.

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, May 17, 2010]

THE SMALL BUSINESS CREDIT CRUNCH

(By Meredith Whitney)

The next several weeks will be critically important for politicians, regulators and the larger U.S. economy. First, over the next week Capitol Hill will decide on potentially game-changing regulatory reform that could result in the unintended consequences of restricting credit and further damaging small businesses.

Second, states will approach their June fiscal year-ends and, as a result of staggering budget gaps, soon announce austerity measures that by my estimates will cost between one million to two million jobs for state and local government workers over the next 12 months.

Typically, government hiring provides a nice tailwind at this point in an economic recovery. Governments have employed this tool through most downturns since 1955, so much so that state and local government jobs have ballooned to 15% of total U.S. employment.

However, over the next 12 months, disappearing state and local government jobs will prove to be a meaningful headwind to an already fragile economic recovery. This is simply how the math shakes out. Collectively, over 40 states face hundreds of billions of dollars in budget gaps over the next two years, and 49 states are constitutionally required to balance their accounts annually. States will raise taxes, but higher taxes alone will not be enough to make up for the vast shortfall in state budgets. Accordingly, 42 states and the District of Columbia have already articulated plans to cut government jobs.

So the burden on the private sector to create jobs becomes that much more crucial. Just to maintain a steady level of unemployment, the private sector will have to create one million to two million jobs to offset government job losses.

Herein lies the challenge: Small businesses, half of the private sector (and the most important part as far as jobs are concerned), have been heavily impacted by this credit crisis. Small businesses created 64% of new jobs over the past 15 years, but they have cut five million jobs since the onset of this credit crisis. Large businesses, by comparison, have shed three million jobs in the past two years.

Small businesses continue to struggle to gain access to credit and cannot hire in this environment. Thus, the full weight of job creation falls upon large businesses. It would take large businesses rehiring 100% of the three million workers laid off over the past two years to make a substantial change in jobless numbers. Given the productivity gains enjoyed recently, it is improbable that anything near this will occur.

Unless real focus is afforded to re-engaging small businesses in this country, we will have a tragic and dangerous unemployment level for an extended period of time. Small businesses fund themselves exactly the way consumers do, with credit cards and home equity lines. Over the past two years, more than $1.5 trillion in credit-card lines have been cut, and those cuts are increasing by the day. Due to dramatic declines in home values, home-equity lines as a funding option are effectively off the table. Proposed regulatory reform—specifically interest-rate caps and interchange fees—will merely exacerbate the cycle of credit contraction plaguing small businesses.

If banks are not allowed to effectively price for risk, they will not take the risk. Right now we need banks, and particularly community banks, more than ever to step in and provide liquidity to small businesses. Interest-rate caps and interchange fees will more likely drive consumer credit out of the market and many community banks out of business.

Clearly, the issue of recharging the securitization market as an alternative source of liquidity is one that needs to be addressed over time, but politicians should not force rash regulatory reforms when significant portions of our economy remain fragile. The very actions designed to ''protect'' the consumer, such as rate caps and interchange fees, will undoubtedly take more credit away from the consumer.

It is important now to support any and all lending activities that would enable small businesses to begin hiring again. If the regulatory reform passes with rate-cap and interchange regulation amendments incorporated, small businesses will be hurt rather than helped. Politicians and regulators need to appreciate the core structural challenges facing unemployment in the U.S.

Elected officials know better than most that an employed voter is better than an unemployed voter. They should improve their odds of re-election and do the right thing on regulatory reform.

Mr. HATCH. Mr. President, I rise today to express my opposition to S. 3217, the Restoring American Financial Stability Act. I am not opposed to financial regulatory reform, but there is precious little of that in this misnamed bill.

No, real financial regulatory reform is something that should have been done a year ago, but, instead, Democratic leaders and the Obama administration opted to focus on a Washington takeover of our Nation's health care system.

There are a few parts to the Restoring American Financial Stability Act that are worthy of support. In particular, I believe we need to monitor derivatives to require more capitalization and demand issuers maintain a stake in the game when creating and selling certain financial instruments. However, I think this bill is going to do more harm than good to our economy. It will weaken our financial system rather than strengthen it. Furthermore, it not only preserves the fragmented financial regulatory structure that is already in place but adds even more burdensome, costly, and misguided regulations. Before I list my concerns about the bill, I am going to address the specious accusations I have heard from the other side of the aisle that Republicans are being obstructionist or trying to protect the interests of Wall Street over those of Main Street. Give me a break.

These accusations are not only false, they are aimed at diverting attention from our solutions to a bad bill by attacking our credibility and motivations. We are not trying to protect anyone except the American people who are the victims of this economic collapse.

Let me be clear that every Senate Republican and I want financial regulatory reform in order to prevent a recurrence of what happened a couple of years ago with the collapse of our financial markets. But the problem with this proposal is that it not only regulates Wall Street but also Main Street. It goes beyond regulating large financial institutions that caused the problem and proposes to regulate community banks and credit unions, payday lenders, and other small businesses and almost any business that provides financing to their customers. If the other side is implying that we are trying to protect Wall Street because we have some sort of special relationship with large financial institutions, that is blatantly false on its face and simply not true.

Large financial institutions contributed way more to Democrats than Republicans in the last election and elections before that. If anyone is guilty of trying to do a special favor for Wall Street, it certainly isn't this side. That is all I can say. If you look at the financial filings, it is pretty darn clear who Wall Street supported.

If anything, I believe this bill will benefit Wall Street in the sense that it is something they can always get around. It would provide a perpetual bailout for large financial institutions. I know there is an argument against that, but look at the bill. It would require higher capitalization for many of the companies in which these institutions invest and place larger financial institutions at an unfair advantage over smaller financial institutions.

But don't take it from me. Take it from the CEO of Goldman Sachs, Lloyd Blankfein, who said ''the biggest beneficiary of reform is Wall Street itself.'' He is a smart guy. He deserves to be the president of Goldman Sachs, one of

the more important companies on Wall Street. There isn't any way they would not get around whatever we do today. They are the smartest people on Earth. So the claim that Republicans are trying to protect Wall Street doesn't hold very much water at all.

Some on the other side of the aisle have claimed our objective is to obstruct passage of any financial regulatory reform bill. I can't agree with that. In fact, I cannot disagree more. Not only did a Democrat join Republicans in voting against proceeding to this bill, another Democrat who serves on the Banking Committee and has been involved in negotiations noted that the concerns being raised by Republicans about potential bailouts of large financial institutions are legitimate. He validated our concerns by stating that ''there are parts that need to be tightened.'' So at the very least, both Democrats and Republicans believe this bill leaves a lot of room for improvement.

I would like to turn my attention to the substance of the bill. The reasons I am opposed to this legislation are because, along with many others, I have serious misgivings about its effectiveness, specifically the FDIC's orderly liquidation authority, the overregulation of the consumer protection agency, and the lack of reforming Freddie Mac and Fannie Mae. The meltdown of our financial markets highlights a major flaw in our financial regulatory system—the expeditious dissolution of a financial institution.

I recently finished reading former Treasury Secretary Hank Paulson's book, ''On The Brink,'' which details the time leading up to the catastrophic failures and the handling of the crisis. I would like to read a short passage:

> Back in my temporary office on the 13th floor, a jolt of fear suddenly overcame me as I thought of what lay ahead of us. Lehman was as good as dead, and AIG's problems were spiraling out of control. With the U.S. sinking deeper into recession, the failure of a large financial institution would reverberate throughout the country—and far beyond our shores. It would take years for us to dig ourselves out from under such a disaster.

What I took away from this book was the enormity and complexity of trying to dissolve these large financial institutions before their assets disappeared. There is no doubt that our current system is incapable of handling such a complicated task. In fact, over the last few weeks, I not only read ''On The Brink,'' but I read ''The Ascent of Money.'' I read ''The Panic of 1907'' and was amazed at the correlation between 1907 and 2007. I read ''On The Brink'' by Hank Paulson. I read Sorkin's book, ''Too Big To Fail.'' Just last weekend I read the book, ''The Big Short,'' by Michael Lewis, which is an excellent read. They have all been excellent reads. That is in the last few weeks.

The Federal Deposit Insurance Corporation, or FDIC, was established in 1933 to insure bank deposits. It mainly deals with the common brick-and-mortar bank that most of us use on a daily basis. It oversees roughly 8,000 depository institutions and $9 trillion in deposits. In the aftermath of the economic collapse, the FDIC administered 25 bank failures in 2008 and 140 in 2009. That is approximately 2 percent of all the banks they oversee.

Despite such a low percentage, the FDIC's deposit insurance fund was nearly depleted. According to the Federal Reserve, there are approximately 5,000 top-tier bank holding companies with roughly $17 trillion in assets. The top 10 largest financial institutions hold $9 trillion in assets. The current financial regulatory reform bill proposes to provide the FDIC with an orderly liquidation authority to unwind not only depository institutions but now large financial institutions that pose a systemic risk to our financial system.

With the passage of this bill, the FDIC would be responsible for unwinding nearly double the total number of assets. However, the magnitude of the task is the least of my concerns. By taking the resolution out of the bankruptcy courts, with all of their expertise, and putting it in an executive branch administrative proceeding conducted by politically appointed bureaucrats, we definitely lose transparency and accountability. It is ridiculous.

If you would like to see a glimpse of the consequences of losing transparency and accountability, just look at the FDIC's behind-closed-doors handling of Washington Mutual. During a Senate investigatory hearing last month, former Washington Mutual Chief Executive Kerry Killinger denounced the FDIC's handling of the bank failure as ''unnecessary'' and ''unfair,'' partly because the thrift was shut out of hundreds of meetings and phone calls with financial industry executives who determined the ''winners and losers'' in the crisis.

Our current bankruptcy courts avoid many of the problems associated with creating a government resolution authority and are a superior way of dealing with failed or failing nonbank financial firms. The bankruptcy courts make dissolving large institutions transparent. That is why we have them. They are experts at it. They know what they are doing. We can all watch what they are doing. We can read the pleadings. We can do a lot of things that bring transparency. The other way will not.

That brings me to my next concern with this bill, the creation of the Consumer Financial Protection Agency. Of course, I think we can all agree we need to strengthen consumer protection within our financial system. But I first believe we need to ask what went wrong with the current system before we create yet another government agency to create more regulations and oversight.

This will only make it more difficult for consumers and small businesses to obtain a loan, a line of credit, or a credit card. The entire alphabet soup of Federal Government agencies—the FDIC, OCC, SEC, FTC, and the Fed—all have consumer protection divisions. However, these divisions did not meet the standard of protection we need. Extracting these consumer protection arms from each of the agencies and putting them in a new agency is like taking the worn parts from several clunkers and using them to build another car. You will still have a clunker.

Furthermore, think of the costs that new local banks, credit unions, payday lenders, and other industries that deal with credit, such as auto dealers and other small businesses, will incur when trying to comply with all these new, overly burdensome regulations.

But the worst part of this legislation is what it is missing—reform of Fannie Mae and Freddie Mac. These two mortgage agencies caused the financial crisis by backing loans to people who couldn't afford them. But that certainly didn't stop Uncle Sam from bailing them out at a cost to taxpayers of some $145 billion. This financial abuse is swept under the rug because the debt is not put on our books. These companies, which the government now fully owns, are not considered government agencies and, therefore, are not included when tallying up our outrageous trillion-dollar deficits. I might add, that is just the beginning. We all know Fannie and Freddie are about to explode into all kinds of bigger problems, some estimate as much as $500 billion. That is scary. Yet we are not doing a doggone thing about it in this bill.

We should have faced the music and done whatever we could. A lot of games are played with the budget.

As I said before, I support financial regulatory reform. However, this bill falls short of reform and opens the way for another economic collapse to occur. It will unjustly protect companies that are deemed too big to fail by providing them preferential treatment during FDIC-conducted liquidations. It will create costly burdens for the 99 percent of financial institutions that did not cause the financial collapse, and it misses the mark by not addressing the reform of Fannie Mae and Freddie Mac.

There are other reasons, but I think I will limit my remarks today to those few. Those few involve trillions of dollars, involve all kinds of future problems for our country, and I think will lead us even further down the path of poor economics, higher debt, higher spending, more and more government, and less and less control by the people.

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

The PRESIDING OFFICER (Mr. BURRIS). 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.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

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

The bill clerk read as follows:

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

Pending:

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Oregon is recognized.

AMENDMENT NO. 3789

Mr. MERKLEY. Mr. President, I ask for the regular order in regard to amendment No. 3789.

The PRESIDING OFFICER. The amendment is now pending.

AMENDMENT NO. 4115 TO AMENDMENT NO. 3789

(Purpose: To prohibit certain forms of proprietary trading, and for other purposes)

Mr. MERKLEY. Mr. President, I offer a second-degree amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Oregon [Mr. MERKLEY], for himself and Mr. LEVIN, proposes an amendment numbered 4115 to amendment No. 3789.

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

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator does not have the floor. The Senator from Oregon has the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

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

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

Mr. DODD. Madam President, I ask unanimous consent that at 2 p.m. today, the Senate consider the Snowe amendment No. 3883 and a Landrieu side-by-side, No. 4075, and that they be debated concurrently for a total of 30 minutes, with the time equally divided and controlled in the usual form; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Landrieu amendment No. 4075, to be followed by a vote in relation to the Snowe amendment No. 3883; that no amendment be in order to either amendment prior to a vote; that upon disposition of these amendments, the Senate then resume the Whitehouse amendment No. 3746, as modified, and there be 2 minutes of debate equally divided and controlled with respect to the amendment; that upon the use of time, the Senate proceed to vote in relation to the amendment, with the amendment subject to an affirmative 60-vote threshold, and that if the amendment achieves the threshold, it be agreed to and the motion to reconsider be laid upon the table; that if it does not achieve that threshold, then it be withdrawn; that no amendment be in order to the Whitehouse amendment; that upon disposition of the Whitehouse amendment, Senator VITTER be recognized to call up his amendment No. 4003, which is in order to be called up per a previous order; that once the amendment is pending, it be modified with the language of the Pryor amendment No. 4087, and that as modified the amendment be agreed to and the motion to reconsider be laid upon the table; that once this agreement is entered, Senator BARRASSO be recognized to speak in morning business, with no amendments or motions in order during this period; that the cloture vote be delayed until disposition of the above-mentioned amendments; and that upon the conclusion of Senator BARRASSO's remarks, the Senate stand in recess until 2 p.m.

The PRESIDING OFFICER. Is there objection? The Senator from Michigan.

Mr. LEVIN. I object and suggest the absence of a quorum.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The legislative clerk continued with the call of 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.

Mr. REID. Madam President, I ask unanimous consent the Senator from Wyoming, Mr. BARRASSO, be recognized for up to 15 minutes; that following his remarks, the Senator from Ohio, Mr. BROWN, be recognized for up to 15 minutes; that following that, the Senate go into a recess at that time, after the two Senators finish their speeches, until 3:15 today. The two Senators are going to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Wyoming is recognized.

HEALTH CARE REFORM

Mr. BARRASSO. Madam President, I come to the floor as someone who has practiced medicine in Casper, WY, since 1983, as an orthopedic surgeon taking care of many of the families in the great State of Wyoming. I come to you to talk about the health care bill that has been signed into law and to provide a doctor's second opinion about what is now the law of the land.

I come to you as someone who has worked very hard for many years, working with preventive medicine and early detection of problems as a medical director of the Wyoming Health Fairs, a program designed to give people information to stay healthy and keep down the cost of their care.

I come to you with a second opinion on what is now the health care law because I believe the goal of health care reform should be to lower costs, improve quality, and increase access to care.

Unfortunately, the new health care law, in my opinion, is going to be bad for patients, for providers—the nurses and doctors who take care of them—and for the payers, the people paying the bills—the patients as well as the American taxpayers.

I am concerned that the health care bill signed into law is going to increase the cost of care, provide less access to care, and is going to lessen the quality of the available care in this country.

I come to you with new information that has come to light on the health care bill and, specifically, an article that was in Politico this Monday, May 17, written by Kathleen Sebelius, the

Secretary of Health and Human Services. What she said in this article is:

We are collaborating with States to set up federally funded high-risk insurance pools to make sure that the Americans with the greatest need for health insurance will be able to get it.

Madam President, you know as well as I that there is an old phrase in politics that goes: ''How does it play in Peoria?'' It is referring to Peoria, IL, and means what is the average American thinking about this. Regarding this health care law, it is not playing very well in Peoria. Peoria is a place that President Clinton referred to when he was running, as did George W. Bush, Ronald Reagan, and President Obama. Those Presidents went to Peoria to talk with people. Yet, when you look at what the Peoria Journal Star has reported about this health care bill, which is now law, in the President's home State, a place that is felt to be the bellwether for political thought in the country, Peoria, IL, the verdict is not good about this health care bill which is now law. I will start with an article that appeared in the Peoria Journal Star that talks about what is happening in Illinois today. It says:

For thousands of Illinois residents who pay high health insurance premiums because of medical problems, the new federal health care legislation won't offer relief.

It will not offer relief, this says. Continuing:

The 16,000 residents who already pay into Ilinois' high-risk health insurance pool will keep paying high rates, while others who enroll this summer under a new, similar program will get coverage at lower, more reasonable prices.

What happened here? This is one of the fundamental flaws. Only the people who have been uninsured for 6 months are eligible—meaning those in the current State pool cannot switch and save money. How do the people of Illinois feel about this? How is it playing in Peoria? Quite poorly.

Julie Kramer is quoted in the article. She is 53. She said she is ''feeling a bit cheated,'' in her words, by this health care law. She has paid high premiums for nearly 7 years in the Illinois high-risk pool; she has played by the rules and has done what she needed to do. Is she being helped by the new health care law? Not at all, and she is feeling cheated.

She went on to say that:

. . . it feels very unfair. It goes against the spirit of what health care reform was supposed to be.

Ms. Kramer is a self-employed writer and owner of Full Moon Marketing Communications in Vernon Hills. She said: ''This does seem like a low blow.''

Members of the Senate voted for the bill about which this person says she feels a bit cheated, it seems unfair, and it seems like a low blow. The existing program is called the Illinois Comprehensive Health Insurance Program. Thirty-four other States have similar programs.

People in this Illinois program pay 25 to 50 percent higher—more than standard rates. So they pay their premium; they pay every month. They continue to pay. Yet they are feeling cheated, they feel it is unfair and is a low blow.

Even the Illinois Department of Insurance—their director—understands this lady's frustrations. To even the playing field, the director said the State legislature would have to act to reduce the premiums. You cannot rely on Washington. Illinois expects to receive money from the Federal Government to start the new high-risk pool. The insurance department says there might be enough money to cover about 5,000 people in the new plan. How does that compare? Far fewer—according to the article in the Peoria, IL, paper, far fewer than the number of people who may qualify. A Government Accountability Office report said about 218,000 people might be eligible for a high-risk pool in Illinois.

Well, what does the Illinois high-risk pool Web site say? They sent a letter to enrollees—the people who pay their premiums month after month and play by the rules—and it says it is unlikely Federal funds will be available to reduce premiums paid by the current enrollees—the people who have played by the rules and have continued to pay the bills. They didn't actually send out this letter. They put it on their Web site. They wanted to send it out, but they didn't have the $5,000 for postage to send this letter to the people who have been sending thousands and thousands of dollars into this high-risk pool every year.

The director said: No, we have not mailed the letter because the cost of mailing was prohibitive, given that we have, at this point, not received any actual funding. He said it would be inappropriate to withdraw funds to send such a letter.

Well, Julie Kramer was shown the letter on the Web site, and she said: You know, I did feel a little flash of anger and disappointment when I read it.

I say to the Secretary of Health and Human Services—who wrote a letter to those in Washington via Politico, who said we are doing what we can to make sure we are helping these people—the people of Peoria do not agree and do not believe what she has to say.

That is why, across the board, a majority of the Americans who need health care, who are concerned about the cost of care, look at this health care law and believe, in terms of a law this Congress has passed and this President has signed, that it is going to actually make the cost of their own care go up and the quality of their own care go down. That is why, overwhelmingly, the American people have rejected this health care law.

That is why I come to the floor again with my second opinion, and my opinion is it is time to repeal this law and replace it—replace it with solid ideas that will help people lower the cost of their care, improve the quality of their care, and increase their access to care. That would be patient-centered health care, health care that allows people to buy insurance across State lines, that gives people who buy their own policies the opportunity to get the same tax relief that big companies get, to provide individuals incentives to stay healthy and get the cost of their care down by lowering their risk factors for disease because half the money we spend in health care in this country goes to 5 percent of the people—those who eat too much, exercise too little, and smoke. We need to find solutions that deal with lawsuit abuse, to get down the cost of all the defensive medicine that is practiced in this country and allow small businesses to join together to provide less expensive insurance for the people who work for those businesses.

Those are the things we know will work, the things we know will be able to allow us to deliver higher quality care, that will allow us to lower the cost of care. That is why it is my opinion, as a physician who has practiced medicine since 1983, that we need to repeal this health care law and replace it with something that will work for the people of America.

I yield the floor.

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

Mr. BROWN of Ohio. Mr. President, I came to speak on the Merkley-Levin amendment, which I think is so important. I will speak about that in a moment.

I am a little surprised to hear another health care debate comment. Last year, through much of the year, there was opposition—a lot of opposition—to the health care bill. Most of the opposition came about because of the kinds of things that were said on the Senate floor that simply weren't true: that this bill would mean the government would put a bureaucrat between your doctor and yourself as a patient, that it was a government takeover, that it was socialism.

In fact, the arguments they used last year against the health care bill were the same arguments they used against Medicare in 1965: socialism, government takeover, and bureaucrat between you and your doctor. Those things didn't pan out with Medicare. The same arguments were used, but they clearly weren't true in 1965, when conservatives, including the John Birch Society and others similar to that, did everything they could to defeat Medicare. They were not successful then and they weren't successful on the health care bill now.

When I hear that kind of discussion from colleagues on the other side of the aisle, when I hear the most conservative Members of this institution saying we should repeal the new health care bill, I guess the questions to ask are: Do they want to repeal the provision when my friend's 22-year-old daughter comes home from college or his son comes home from the military

and they can't find a job with insurance? Are they going to repeal the section that says they can stay on their parents' health insurance? It was a great idea that the young men and women coming home from the Army or from school can stay on their parents' health care insurance until they are 27. I guess they want to repeal that.

I guess they want to repeal the tax breaks that this health care bill gave to small businesses so they can insure their employees. I guess they want to repeal the support for those who fall into the doughnut hole for prescription drugs, those seniors continuing to pay their premiums and get that benefit from it. They want to repeal the benefit this bill is going to give them. They want to repeal the prohibition on preexisting conditions. During much of last year, I would come to the floor and read letters from constituents—Ohioans from Ravenna, Toledo, Hillsboro, to Wilmington.

These letters would be mostly from people who thought they had good health insurance until they got sick and needed it. This legislation will not let insurance companies knock people off the rolls because of a preexisting condition or knock them off the rolls because they got too sick and expensive, will not let them knock them off the rolls if they had a child born with a preexisting condition. All of those issues were resolved, and we are beginning to see all of these benefits from this health care bill. The American public knows that.

I wish my colleagues, rather than advocate for repeal of something that has moved this country forward, would work with us on issues such as the Merkley-Levin amendment. Let me for a moment discuss that amendment.

It is a good amendment. It will make this final bill stronger. It is worthy of an independent up-or-down vote. It is worthy of a majority vote. If we get 51 votes, we ought to be able to adopt an amendment in this body to add to this legislation.

Republicans have criticized this bill for weeks. They have blocked us from bringing it up for debate because they said it did not address the problem of too big to fail. But the first major amendment we considered which would have addressed the problem of too big to fail—that is, too big to fail is too big—would have meant those huge banks would have had to sell off a part of their assets.

Let me give a number. The total assets of the six largest banks in this country 15 years ago was 17 percent of gross domestic product. The total assests of those six largest banks today are 63 percent of the gross domestic product. Too big to fail is, in fact, too big.

Every Republican, with the exception of Senator ENSIGN from Nevada, Senator COBURN from Oklahoma, and Senator SHELBY from Alabama, every single Republican voted against that, again siding with the big banks, the six big banks, against the country, against manufacturers in Dayton, OH, against the small-town bank in Dover or New Philadelphia, OH, against the regional banks in Cleveland, Cincinnati, or Columbus, against the small business guy or woman who wants to get a loan. By voting for the big banks and giving them even more advantage, it was discriminating against the regional banks, the community banks. It was hurting the manufacturer in Shelby, OH, or Mansfield, OH, that needs a loan to build their business. That was the first chance.

I cannot think of another proposal that deals with the problem of too big to fail better than the Merkley-Levin amendment. There are all kinds of parliamentary shenanigans going on around this amendment trying to block it. Let me talk about the amendment for a moment.

If they are successful in beating this amendment, it is clearly a win for the Wall Street banks. For too long these banks used their own capital or borrowed billions of dollars to invest in risky financial products. We know they did that. We know the damage it caused to our system, to our economy, to our country. After telling their clients to buy these risky products, big banks turned around and bet against their own clients to cushion their profits. With one hand, they sold a client a risky financial product—a subprime mortgage or a large debt obligation. With the other hand they placed bets on those products underperforming. That is how proprietary trading works. That is what they want to continue.

It is like me selling you a house and then taking out a fire insurance policy on it and starting the fire. Whether it was greed or arrogance run amok, these megabanks blew our economy apart—we know what happened—leaving taxpayers to piece it back together.

Proprietary trading is not just a gamble. It is a drag on sectors of our economy that traditionally have been supported by the banks. Propriety trading displaces lending to businesses small and large. It increases Wall Street's bottom line while leaving the rest of the economy behind.

Over the past dozen years, proprietary trading—as this reckless gambling is called—has become an increasingly larger portion of the business conducted by our largest financial institutions.

At the end of 2009, the large banks reported to the FDIC that their trading revenues, as opposed to revenues from lending and other traditional banking activities, accounted for 77 percent of their net operating revenues. At the same time over the last year, FDIC-insured banks' securities holdings have increased by 23 percent. Instead of lending to businesses, they lend to themselves.

It is no coincidence that manufacturing faltered, that millions of jobs were lost, and our Nation's unemployment rate hovers at 9.9 percent and higher in a dozen States such as Ohio. There is no room in the financial sector to absorb good-paying jobs in other sectors; and when banks stop lending, other sectors dry up. That is not sustainable.

We know in this country that 30 years ago one-third of our GDP was in manufacturing. Financial services accounted for only 10 or 11 percent of our gross domestic product. That really tells the story. As manufacturing declined as a percentage of GDP and financial services went up so much, that is clearly why we are where we are today. Financial services has accounted for 44 percent of corporate profits in recent years, again, instead of manufacturing, instead of contributing wealth to our country.

The support of the Merkley-Levin amendment makes sense. It is not a time to play games with the financial well-being of hard-working, middle-class Americans.

I urge my colleagues to support the amendment.

I yield the floor.

## RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 3:15 p.m.

Thereupon, the Senate, at 2:06 p.m., recessed until 3:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. MERKLEY).

## RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. KLOBUCHAR). Without objection, it is so ordered.

Mr. REID. Madam President, we have been trying now for many hours to get a consent agreement to let us move forward on some of these amendments, important amendments—some not so important but amendments. I do not know if we will ever arrive at that now, so I think it would be in the best interests of the body, both Democrats and Republicans, to go ahead and have the cloture vote.

There is a commitment made by the chair of the Banking Committee—and, of course, the Agriculture Committee, but most of the concern right now is with the matters dealing with the Banking Committee jurisdiction—that both the chairman and ranking member will continue. We know what the consent agreement is. We will try to work through all that. I think that is the best way to do it. We have the word

of the two managers that is what they will do.

I think that when we get this cloture out of the way, the Republican leader already told me yesterday he wanted to use some time postcloture. We might have some people who will want to talk a little postcloture, and we will continue working.

We have really worked hard together. I think there has been a show of bipartisanship in this bill. We disagree on a number of very important issues, but that doesn't mean we cannot work together, and we have shown that is possible.

I ask that we move to the cloture vote.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Dodd substitute amendment No. 3739 to S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Jon Tester, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F. Kerry, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, Sheldon Whitehouse, John D. Rockefeller IV, Michael F. Bennet.

Mr. FEINGOLD. Madam President, 3 weeks ago I supported invoking cloture on the motion to proceed to this bill. Proceeding to this measure was essential to being able to debate, amend, and strengthen it. But as I noted at that time, after 30 years of acquiescing to the wishes of Wall Street lobbyists, it is essential that Congress get it right this time, and finally enact tough reforms to prevent Wall Street from driving our economy into the ditch again. In particular, that means eliminating the risk posed to our economy by the massive financial firms that are considered ''too big to fail.''

Over the last few weeks, this body has repeatedly rejected amendments that address ''too big to fail.'' And perhaps the most important amendment in this respect—one offered by the Senator from Washington, Ms. CANTWELL, to reinstate the protective firewalls of the Glass-Steagall Act—may not be considered if we invoke cloture on the underlying measure.

Three weeks ago, I said that for me the test for this legislation is a simple one—whether or not it will prevent another financial crisis. And central to that test is how this bill will address ''too big to fail.'' Right now, this bill fails that test, and for that reason I will not support ending debate on the measure.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on the Dodd substitute amendment No. 3739 to S. 3217, the Restoring American Financial Stability Act of 2010, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Pennsylvania (Mr. SPECTER) is necessarily absent.

The yeas and nays resulted—yeas 57, nays 42, as follows:

[Rollcall Vote No. 158 Leg.]

YEAS—57

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

NAYS—42

| | | |
|---|---|---|
| Alexander | Crapo | LeMieux |
| Barrasso | DeMint | Lugar |
| Bennett | Ensign | McCain |
| Bond | Enzi | McConnell |
| Brown (MA) | Feingold | Murkowski |
| Brownback | Graham | Reid |
| Bunning | Grassley | Risch |
| Burr | Gregg | Roberts |
| Cantwell | Hatch | Sessions |
| Chambliss | Hutchison | Shelby |
| Coburn | Inhofe | Thune |
| Cochran | Isakson | Vitter |
| Corker | Johanns | Voinovich |
| Cornyn | Kyl | Wicker |

NOT VOTING—1

Specter

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Mr. REID. Madam President, I enter a motion to reconsider the vote.

The PRESIDING OFFICER. The motion to reconsider is entered.

Mr. REID. I ask unanimous consent that the cloture vote on the bill be withdrawn.

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

Mr. REID. Madam President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3883

Mr. DODD. Mr. President, I ask unanimous consent to call up the Snowe amendment No. 3883. It is already pending.

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

Is there further debate?

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

The amendment (No. 3883) was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

WALSH NOMINATION

Mr. DORGAN. Mr. President, I will have a unanimous-consent request that has been cleared on both sides. This is a unanimous-consent request about a nomination that has been on the calendar since September 27, which was reported out of the Armed Services Committee by Senators LEVIN and MCCAIN—reported out unanimously—for the promotion of BG Michael J. Walsh.

On October 27, it was determined that the Armed Services Committee agreed with the President for the recommended promotion for the second star for this soldier. It has regrettably been held up; there has been a hold on it since late last year. I have been to the floor several times asking unanimous consent that this nomination for General Walsh be approved.

Our colleague, Senator VITTER, from Louisiana, has been upset with the Corps of Engineers for other reasons and has held this nomination for a period of time now. It has been about 7 months. I have indicated on the floor how unfair I think it is to hold the nomination of a promotion of a soldier who has served this country for 30 years. He has gone to war for this country. I know this soldier. He has done an extraordinary job. On a unanimous vote, the Armed Services Committee decided he should be promoted. But month after month, it has sat on this calendar because of the objection of one Senator.

My understanding is now the Senator has released the hold as of today. I indicated yesterday I would be on the floor today to ask unanimous consent once again. This morning, it is my understanding that the Senator from Louisiana released his hold.

Following yielding to Senator LEVIN, the chairman of the committee that moved this nomination out—and, by the way, who has also been on the floor and asked unanimous consent to move this nomination—if appropriate, I

would allow him to say a few words, and then I will ask unanimous consent to move the nomination. I ask unanimous consent that Senator LEVIN be recognized, following which I will move the nomination by consent.

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

The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Senator from North Dakota. He has been dogged in his determination to get this nomination before the Senate. It is unconscionable that a military officer in the uniform of the United States, who has put his life on the line for this country, month after month after month, has had his promotion held up by one Senator. It is only one Senator. All the Senators of the Armed Services Committee on both sides wanted to confirm this general. But the rules of the Senate permit one Senator to threaten a filibuster or a so-called hold. In this case, it was an open hold, not a secret hold. He was able to thwart the Senate because we cannot take 2 or 3 or 4 days to take up every nomination of every soldier or civilian because we would get even less done than we do now.

Those are the rules of the Senate. They should not be used this way. We expressed that to Senator VITTER. That hold has been lifted. So a well-qualified soldier is going to be promoted 6 months late by the Senate. We can thank him for his service, but the best way we could have thanked him would have been to have promptly promoted him. Short of that, he knows he has, on a bipartisan basis, the support of the Senate. It is very important to us as an institution that he knows that. He also knows full well the power of one Senator. He should also understand that when it comes to the defense of this country, Republicans and Democrats are going to stand together.

I, again, thank the Senator from North Dakota for his determination. He is kind of the 27th member of the Armed Services Committee, if my memory is correct. I thank the Senator.

Mr. DORGAN. Mr. President, again, Michael Walsh is a good soldier, who served 30 years and has gone to war for this country. The demand that existed and resulted in holding this nomination is a demand that could not be met. He could not possibly do what he was asked to do. He does a good job.

## EXECUTIVE SESSION

### NOMINATION OF BRIGADIER GENERAL MICHAEL J. WALSH TO BE MAJOR GENERAL

Mr. DORGAN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 526, the nomination of BG Michael J. Walsh; that the nomination be confirmed; that the motion to reconsider be laid upon the table; that any statements related to the nomination be printed in the RECORD, as if read; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nomination considered and confirmed is as follows:

IN THE ARMY

The following named officers for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

*To be major general*

Brigadier General Michael J. Walsh

## LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

Mr. DORGAN. Mr. President, I thank my colleagues, Senator LEVIN and Senator MCCAIN, and the rest of the Armed Services Committee. I think all of us would say to General Walsh: Congratulations to you. We are sorry it took the time it took. It was unfair. Nonetheless, as of today, you should understand this Senate very much values and respects your duty and dedication to this great country.

## RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

Mr. DORGAN. My understanding is that we would now yield 6 minutes to the Senator from Illinois, after which I have been asked to call for a quorum call.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. BURRIS. Mr. President, I am proud to join my colleagues on the floor of this Chamber today.

Here, in our Nation's Capital, we gather to confront shared challenges. We celebrate our great leaders, and mourn fallen heroes. Here, we carry out the hard work of self-government. We try to make this union a little more perfect every day. It is messy. It is difficult. We make mistakes, and at times we fall short.

In any other country, these flaws and missteps might be fatal—but not in the United States of America. Here, we are defined by our ability to correct injustice to confront problems and move ahead peacefully, with respect for the rule of law even when those problems are great.

Mr. President, much of our history has been written right here in this city. But in some ways, the city itself tells two divergent stories:

More than two centuries ago, the foundation of this country was laid by a group of American patriots, who chose this land for their new Capitol.

They fought—and many died—for principles of freedom and equality. They framed the greatest, most progressive system of government in the history of the world.

And then, in an irony both tragic and unjust, the foundation of this very building the heart of our democracy was laid by enslaved African Americans.

So, from the very beginning, our Nation has struggled to live up to its highest ideals.

But, in many ways, I believe that is where our greatness truly lies: in our ability to determine our own course, and correct the mistakes of the past.

That is why the American civil rights movement is perhaps one of the greatest periods in our history.

During the 1950s and the 1960s, citizens and activists joined together with lawmakers to overturn policies of hatred and discrimination that created a powerful nonviolent movement for civil rights under the rule of law which brought about one of the most significant social and cultural changes in our Nation's history.

Earlier today, I spoke before the Subcommittee on National Parks, chaired by my friend, the distinguished Senator from Colorado, Mr. UDALL, to advocate for a piece of legislation that is very important to me. I am proud to sponsor the United States Civil Rights Trail Special Resource Study Act, S. 1802, a bill that will help identify and preserve the history of the people and places that defined the civil rights movement. This bill joins a bipartisan companion measure from the House of Representatives, H.R. 685, which passed unanimously last September.

It will honor folks who forever changed the landscape of this Nation. Their stories deserve to be told. In any other country, this kind of progress would have been impossible, but not in America. We have the capacity for sweeping change woven into our very identity, and that is what my bill would recognize, celebrate, and preserve.

This Capitol Building was constructed under slavery. Yet it embodies a system of government that allows subsequent generations to correct this terrible wrong. During the civil rights movement, thanks to ordinary people with extraordinary vision, we witnessed a revolution of values and ideas that changed this Nation forever.

I come to this floor today in celebration of the pioneers who made these changes possible. My bill would direct the Secretary of the Interior to identify the places, the resources, and the themes associated with this movement and consider adding them to the National Trails System. This would include the sites of the famous march in Selma and Montgomery, AL, the Greensboro sit-in, and the Montgomery bus boycotts. We would commemorate these places where peaceful protesters demonstrated for equal rights, and even in some places where violence broke out and lives were lost in the cause of freedom.

My bill would also recognize folks such as the citizens and elected leaders

of Savannah, GA, who were ahead of the rest of the country and took peaceful action to desegregate local communities well before Federal laws were passed.

We need to make sure the next generation learns and does not forget the story of the civil rights movement and the ideals it strove to achieve. That is why this legislation is so important.

This bill, with the companion bill in the House, would highlight this powerful legacy. Yes, these injustices were great and they must never be forgotten, but it would be a mistake to dwell exclusively on the errors of our past. Instead, I believe we should celebrate the progress we have made. We accomplished what many other countries find impossible. We corrected the greatest mistakes of our history. We encountered obstacles and overcame them. We took control of our shared destiny and redefined it.

Our Union remains far from perfect, but challenges persist, and it will be up to future generations to address these challenges. But there is no denying we have come a very long way.

Two centuries ago, my ancestors would not have been allowed in this building except as laborers. Today I stand on the floor of the Senate as a Member of the highest ranking body in this land. That is a powerful affirmation of what this country stands for.

Let's preserve this history and pass it on to the next generation.

I thank Chairman UDALL, Ranking Member BURR, and other members of the Subcommittee on National Parks for allowing me to offer a statement earlier today.

I ask my colleagues to join me in supporting this bill before the full committee and the full Senate so we can send it to the President's desk.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I wish to spend a few minutes talking about our previous vote this evening.

I know many of my colleagues worked hard on regulatory reform legislation, but I also think it is important that we keep our eye on a very critical part of solving this problem. I know many of my colleagues, particularly on the Banking Committee, have had a long history with banking issues and may see things a little differently from the context of the issues they have been dealing with in the committee.

It has been clear to me for a long time that the deregulation of the derivatives market in 2000 led to a very unfortunate situation. Before deregulation, we actually had transparent trades in reporting to the CFTC. We had capital requirements. We had speculation limits. We had antifraud and antimanipulation. We had trader licensing and registration. And we had public exchange trading.

The reason I bring that up is because to me, if the derivative crisis brought on basically a world economic implosion, then the principles of this underlying bill ought to adhere to the principles that have been laid out by the White House and others on what would help us fix this problem.

We know it was deregulated, and we know these things were eliminated. But I take the Treasury Secretary at his word when he wrote earlier this year:

> To contain systemic risks, the CEA and the securities laws should be amended to require clearing of all standardized derivatives through regulated central counterparties.

The reason I bring that up is because the underlying bill before us—even though the Agriculture Committee corrected this—the language coming from the Banking Committee created a loophole and basically says that if you go to a clearinghouse and they say you do not need to be cleared, don't worry about it, you don't need to be cleared.

It should be no surprise to anybody that the swaps dealers are the people who own the clearinghouses. In that context, a fundamental tenet of derivative regulatory reform, exchange trading, clearing, aggregate position limits, and transparency, one of those pillars is missing from this bill.

Look at what happened because of this deregulation in 1999. There was less than $100 billion in the derivatives market, and today we are at a $600 trillion derivatives market—$600 trillion. Before deregulation it was a very small amount of money, and now we have this incredible market.

The question is whether we are going to regulate it to have the basic tenets of true competition, which means there is some oversight and some transparency to make sure that there are not manipulative devices or contrivances in this legislation.

The good news is we have tried to say that of these principal tenets of exchange trading, we have to have transparency, real-time monitoring—all these things should be in there. But you also have to have capital behind the trades. That means we have to have a clearinghouse to make sure this type of activity is being cleared.

There were many times before the Senate Finance Committee where the Treasury Secretary said:

> I'm fully supportive of moving the standard part of those markets onto central clearinghouses and exchanges . . . We want to make sure that the standardized part of those markets moves into central clearinghouses and onto exchanges as quickly as possible . . .

That was in January.

We had another time where the administration said:

> . . . we need to establish a comprehensive framework of oversight, protections and disclosure for the OTC derivatives market, moving the standardized parts of those markets to central clearinghouses, and encouraging further use of exchange-traded instruments.

That was in March.

I don't know why we are still having this debate as to whether we are going to have clearing of these derivatives. To me it is critical.

I know there are other good parts of this legislation about which people care deeply. But if we have this $600 trillion market and we are not truly going to have exchange trading and clearing and aggregate position limits across all exchanges, we are not going to rein in the derivatives problem. We are not.

I hope my colleagues will take these words from the Treasury Secretary and from the White House and hopefully get a piece of legislation on this floor that will take care of this clearinghouse loophole.

I know my colleagues think we can talk about building a dam against this wall of dark derivatives. But even something such as Hoover Dam, with all the great concrete and all the great engineering and all the great things that make that structure work, still has a problem if somebody drills a hole in the bottom of it. Over time, that is where all the water will flow, and that is where this derivative market is, too. If we do not have a regime of exchange trading and clearing, we will have money seeping into a continuation of a dark market.

Would I like other amendments, would I like a vote on an amendment by my colleague from Arizona and me that is the reinstatement of Glass-Steagall? Sure, I would. Sure, I would like to have many other amendments that my colleagues have been talking about, and hopefully they will get votes on them, whether it is Merkley-Levin or other pieces of legislation people have been offering. But this issue is a fundamental one. We will not have reform if we do not have exchange trading and clearing, if we do not bring derivatives onto the same kind of mechanisms we have for other products in the financial markets. If we do not do that, then I don't know what we are doing out here in the context of what brought us to this crisis.

Trading of dark market derivatives is what has brought this challenge to our U.S. economy. Let's bring some transparency into that market. Let's adhere to these words and actually implement this so we can move on with this legislation.

I yield the floor.

Mr. SHELBY. 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. DURBIN. 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. DURBIN. Mr. President, what is the order of business before the Senate?

The PRESIDING OFFICER. The Merkley amendment is pending.

Mr. DURBIN. Mr. President, I stand in support of the Merkley amendment.

This is an effort by JEFF MERKLEY of Oregon and CARL LEVIN of Michigan to try to strengthen the bill that is before us on Wall Street reform; to try to minimize the types of investments made by banks which could, in fact, jeopardize those government institutions that guarantee the deposits at banks because some bankers make bad decisions and bad investments. What Senator MERKLEY is trying to do is to reduce that likelihood, which means banks are less likely to fail and taxpayers are less likely to be holding the bag.

Senator LEVIN of Michigan, you will remember, 3 or 4 weeks ago held a historic hearing with Goldman Sachs representatives, including Mr. Lloyd Blankfein, their CEO, to discuss some of their practices. Those of us who know Senator LEVIN know he is a very studious and thoughtful individual and he doesn't take on complex issues lightly. He spent months in preparation for that hearing, and coincidentally it came up just as we began the debate here on Wall Street reform. It was quite a hearing. It went on for many hours because there was an effort by the witnesses to avoid answering questions, so the committee decided they would keep the witnesses there until the questions were answered. As a result, they stayed into the night. At the end of the day, I think people had a better understanding of some of the practices at Goldman Sachs, one of the largest financial institutions on Wall Street. I think they also may have had some second thoughts about some of the standards being used by that firm and others.

We know Goldman Sachs is currently being investigated by the government for alleged wrongdoing when it comes to the sale of investment products. It turns out, as best I understand it, that this Wall Street firm of Goldman Sachs was selling investments to individuals and then basically betting they would fail—with their own money. It strikes me as a complete abdication of any financial or fiduciary responsibility, to put their customers in that kind of compromised position. It is interesting that I have had a conversation with people in other firms on Wall Street who think this is routine and not extraordinary. That makes it all the more troubling.

The Levin portion of the Merkley-Levin amendment addresses this issue about the ethical considerations of these companies that, in fact, are selling products to their customers and then turning around and secretly, quietly betting with their own investments that those products will fail.

So that sort of thing should be addressed in this bill. The Merkley-Levin amendment is an amendment which would have been considered regardless of whether today's cloture motion had passed.

For those who do not follow the Senate, the cloture motion is an attempt to at least bring a close to the beginning of a debate and start to wind down the debate toward a vote. So we had a vote today. We needed 60 votes in the Senate out of 100 Members to vote in favor of the cloture vote.

After 4 weeks on the floor of the Senate on this Wall Street reform bill, the majority leader and many of us felt we had reached a point where we needed to start winding this bill down and bring it to a final vote. Well, we needed 60 votes to do it. There are 59 Democratic Senators here when all are present and accounted for. One of our Senators, Mr. SPECTER of Pennsylvania, was not here today, and as a consequence we found ourselves needing help from the other side of the aisle.

We needed at least one—it turns out three—Republican vote in order to move forward and to bring this bill to a vote. At the end of the day, we did not have them. We fell one vote short. We had two Republican Senators who crossed the aisle and voted with us—that would be the two Senators from Maine, SUSAN COLLINS and OLYMPIA SNOWE—and no other Republicans who would join us in trying to bring this bill to a close with some closing amendments and a vote.

If you followed the debate on this bill, it is no surprise that the Republicans are reluctant to be part of Wall Street reform. When the debate started, it started with three—not one but three—straight filibuster votes. Those were efforts by the Republicans to stop us from even bringing this issue and subject to the floor of the Senate. Many of us felt this discussion and debate over this bill was long overdue. We know this recession has cost us dearly in the United States. We know it extracted $17 trillion out of the American economy.

We felt it personally. You felt it in your savings account, your IRA, your retirement account. You saw it when the business down the street started to lay off its employees and another one closed. You noticed the home across the street going into foreclosure.

You heard all the stories about unemployed people, maybe some in your own family. So we knew what this recession meant and what it cost us, $17 trillion. What we are trying to do with this Wall Street reform bill is to change the way they do business on Wall Street so we never face another recession such as the one we are in, brought on by the greed and stupidity of the so-called banking experts on Wall Street.

We know what happened. Wall Street got away with murder for years, and taxpayers ended up holding the bag. Hundreds of billions of dollars out of the Treasury, out of the wallets of families across America in terms of tax payments, that ultimately found their way to Wall Street to rescue the failing businesses there.

Why were they failing? Well, try reading ''The Big Short'' by Michael Lewis, one of the most popular books now in America. Mr. LEWIS was in my office today. He has written a number of books, and he is pretty good at it. He talked about his experience sitting down with people who were insiders on Wall Street who were describing what went on literally for years.

What you think is that when you get to the top, you will find the smartest people. I guess that is possible and likely. But in this case, when you got to the top, you found some of the dumbest people who were involved in constructing investment ideas that were fundamentally flawed, taking failing mortgages across the United States and packaging them together and then trying to sell them locally and globally and watching the bottom eventually fall out.

Lewis wrote this in this his book, ''The Big Short.'' Many of us have read it. He and I had a chance to talk about it today. But it was that kind of conduct that led to this recession that cost us all these jobs, that wrecked the savings accounts of American families, that has set us back on our heels, and we are finally coming out of it slowly. But it has cost us dearly as a nation.

We are trying to change the way Wall Street does business so we never have to face a recession such as this again. The Republicans in the Senate, with only a few exceptions, have resisted our efforts to pass this bill.

First, with three straight filibusters to stop us from bringing the Wall Street reform bill to the floor, three efforts to stop us from even debating the bill, then 4 weeks of debate on the floor of the Senate, and I will tell you, that is rare. I have been around here for a few years. It is very rare that you would spend 4 weeks on one bill. Well, this is our fourth week on this bill.

During that time, Senator DODD, the chairman of the Senate Banking Committee, has been working with Senator SHELBY, the ranking Republican from Alabama, who is on the floor, and they have been going back and forth with amendments.

I think Senator DODD said today almost 60 amendments have been considered, pretty close. A lot of different ideas have come to the floor back and forth. Some Democratic amendments have been considered and failed, some passed. Some Republican amendments were considered and failed. There were bipartisan rollcalls. It has been a real Senate debate.

It feels good. It does not happen enough around here. This so-called deliberative body spends a lot of time, such as at this moment, where nothing is going on, on the floor except some profound speeches by the Members. What we have tried to do, during the course of this debate, is give everybody a chance to bring out their point of view. Points of view are much different. That is OK. That is why we are here. We are supposed to debate these things and vote on them.

I had an amendment last week, one that I have been working on for literally 3 years or more, that deals with

the credit card companies' charges to merchants and retailers. When a customer uses a credit card, they not only get credit to buy a meal, for example, that restaurant has to pay a percentage of the bill, the cost of the meal, back to the credit card company. This interchange fee has become unfair to small businesses.

Well, after working at it for more than a week, we finally had the amendment called 6 days ago, and it was enacted, passed by the Senate, with a vote of 64 to 33, 17 Republicans joined me. So it was a good bipartisan amendment. It was a surprise to many because the credit card companies and the banks that support them are very powerful. In this case, they came up short. The retailers, the merchants, the convenience stores, the gas stations, the restaurants, grocery stores all across America finally prevailed in this long battle against the credit card companies.

But that was the best of the Senate, I thought, and of course I am partial because my amendment passed. But it was the best of the Senate because it was a real debate and a real vote and an outcome which was bipartisan.

We felt this was a good time, in the course of the debate, to start winding it down and come down to a handful of amendments, vote on them, and then vote for final passage so we can conference this bill, work it out with the House, send to it the President to be signed into law. But we could not get the votes.

The Republicans, but for two Senators, refused to give us the votes to end this part of the debate and bring this bill to a final vote. It is frustrating. I do not know that they can argue that we have been unfair. We have given pretty wide berth to the Republican side to offer the amendments they wanted to offer. They have offered quite a few, and we have, too, on our side of the aisle.

So I do not think you can argue that we should not stop debate over fairness in the course of the debate. They might be arguing they do not want a bill at all. That is possible. First, they filibustered to stop us from bringing the bill to the floor. Now they are basically filibustering to stop us from ending the debate on the bill and bring it to a final vote.

I only know of several groups across the country that want to stop the debate on this bill: Wall Street, the biggest credit card companies, and the biggest banks. They want to stop this bill. They want to kill it. They have spent a fortune on lobbyists, roaming around our offices on Capitol Hill, to try to convince Members to stop this Wall Street reform bill.

Well, they at least were successful today. They convinced all but two Republican Senators to come to their side of the issue and to stop this debate on Wall Street reform. That is unfortunate because I think the American people expect us to get something done. They expect us to hold Wall Street accountable, to make sure the reckless gambling by Wall Street institutions that led to the loss of more than 8 million American jobs comes to an end.

They want to end taxpayer bailouts once and for all. They do not ever want to hear the word ''TARP'' again, unless it is something you can put over the top of your station wagon. They certainly do not want us in a situation where we are coming up with hundreds of billions of dollars to bail out these banks. Thanks to an amendment by Senator BARBARA BOXER of California, one of the first, we made it clear that we are prohibiting any future bank bailouts under this bill. Senator BOXER was a real leader on that issue.

I think most Americans believe we need to have an agency that is going to be here in Washington which will administer the strongest consumer financial protection law in the history of the United States, a law that will empower consumers when they go through a real estate closing or sign a credit card agreement or sit down next to their son or daughter to sign the student loan forms or take out a loan for a car, knowing they are not going to be cheated and treated poorly.

This agency is there to empower consumers so they are not, in fact, swindled out of their life savings and are not brought into legal deals which are totally unfair. We want to bring sunlight and transparency to shadowy markets. Some of the things we voted on will move us in that direction, to start eliminating some of the trading that has gone on that is an outrage.

I do not think business as usual is the right way to go. But the Republican votes today, all but two Republican Senators voted to continue business as usual on Wall Street. They do not want this bill to pass. So they voted that way today. At the end of the day, 39 out of 41 Republican Senators voted for the status quo, keep things as they are on Wall Street.

In addition, of course, we understand that Wall Street is powerful. When my amendment came up on interchange fees, the banks warned Senators: If you vote for the Durbin amendment, we are not going to support you; that is, contribute, in the next election campaign. That was on the front page of the New York Times last Saturday. It is the most bald-faced admission I have ever seen by special interest groups that they are putting the pressure on Members who vote for Wall Street reform.

So I say to my colleagues: They may have won today and kept the banks happy. But, ultimately, it is more than the bankers who will be voting in November. It is people all across America who are angry at what happened on Wall Street and do not want it to happen again. They are going to remember the Senators who voted with Wall Street and those who voted for reform, and today we have a rollcall that indicates it.

We have to make sure we make the changes that make the difference across America. Some of the things that have happened here are pretty graphic. Paul Krugman, a writer from the New York Times, wrote a few weeks ago:

> The main moral you should draw from the charges against Goldman, though, doesn't involve the fine print of reform; it involves the urgent need to change Wall Street. Listening to financial industry lobbyists and the Republican politicians who have been huddling with them, you'd think that everything will be fine as long as the federal government promises not to do any more bailouts. But that's totally wrong—and not just because no such promise would be credible.
>
> For the fact is that much of the financial industry has become a racket—a game in which a handful of people are lavishly paid to mislead and exploit consumers and investors. And if we don't lower the boom on those practices, the racket will just go on.

That is why this vote today was so critically important. Those who want to stick with the status quo, who want to reward the special interests, who want to load up this bill with lobbyists' loopholes, prevailed today on this vote today by one vote on the floor of the Senate. There will be another vote tomorrow and maybe the day after too. The question is, Will any other Republicans, aside from the two Senators from Maine, break ranks and join the Democrats for Wall Street reform?

This is a once-in-a-political-lifetime opportunity. If they want to stand with the special interests and Wall Street to stop this reform, they will certainly have to answer for it when the time comes and they face the voters.

This attempt we are making to change the rules on Wall Street is an attempt to empower the people of this country to help them make the right decisions personally and to make certain that they do not end up losing their savings and their homes and their jobs because of the greed and selfishness of those on Wall Street.

I can remember many years ago on the floor of the Senate, when I was a brand new Senator, way in the back row there, and offered an amendment to a bankruptcy bill. The amendment said: If you are a predatory lender; that is, if you violated the laws of America in the loans that you are making, such as mortgages, you cannot then turn around in bankruptcy court and recover from the debtor who has been the victim of your predatory lending practices.

I was arguing on the floor with Senator Phil Gramm of Texas, who was here arguing against my amendment. He was high ranking on the Senate Banking Committee. He said: If the Durbin amendment passes, it is going to kill the subprime mortgage market in America. Well, I lost by one vote. If my amendment had prevailed, who knows, history might have been a little different. That is why one vote makes a difference.

Today, we needed one more Republican Senator to vote for Wall Street reform. We had two. We needed one more. I understand two of our Democratic Senators withheld their votes

because they want this bill to be stronger. I hope they will come around. I hope they will vote with us. But at the end of the day, we only had two Republican Senators who stepped up and said they favored Wall Street reform.

Well, I lost my amendment by one vote that might have changed a little bit of financial history if it had passed. Today, we lost by one vote when it came to Wall Street reform.

We are not going to quit. President Obama is committed to it. Democrats in the Senate are committed to it. Democrats in the House already passed their bill. We need to get this done. It is time to stop the obstructionism. It is time to stop the stonewalling. It is time to bring this to a close with a handful of amendments on both sides of the aisle. Let's have an up-or-down vote, and let's get on with it. Let's pass this bill.

On final passage, a number of Republicans who have been holding back and would not support this bill may have second thoughts. They may decide they don't want to be found on the wrong side of history again; that it isn't worth standing up with the special interest groups or Wall Street lobbyists when America is crying for basic reform and accountability.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, I appreciate the distinguished majority whip. I voted with him last week on the interchange fees on debit cards. I thought it was a good amendment. But I have to take issue. Don't generically accuse those of us in this body of stonewalling a bill or more or less being interested in looking out for Wall Street or anybody else.

A little history lesson is due. First, what brought us into this recession was the subprime market, which the distinguished Senator mentioned, and the housing market. It happened because Members of this body and the body down the way, 13 years ago, began to direct Fannie Mae and Freddie Mac to include in their portfolios a portion of affordable housing loans which were the words for what became subprime loans.

Freddie Mac and Fannie Mae created the market that allowed Wall Street to go find capital and collect that capital, put a high premium on the capital, high interest rate, maybe 200 basis points over the going rate, but then make it a higher credit risk to lenders because that is the way credit works. What happened is, those loans became popular, and because of a government-sponsored entity that began the consumption of those loans, they proliferated. Those securities were sold around the world. When they collapsed, and we went all through that, it was a terrible collapse. But the root of this problem is that Freddie Mac and Fannie Mae were under the direction of the Congress as to what they should do in terms of the securities they owned. I am saying the Congress of the United States, not pointing fingers at any particular party.

With that being true—and I don't think anybody can dispute it—we have a financial reform bill before us that exempts Freddie Mac and Fannie Mae from reform. That doesn't make any sense. If you listen to the arguments to why they weren't there, it is because it was too hard.

These are hard times. Americans are having hard times. It is time we did the hard things. It is time we not try and politically label Members as friends of Wall Street or friends of Main Street. We are all Americans. It is our economy. It is not just part of the economy. I take issue with the labeling that takes place sometimes. Let's talk about the facts that are there, one way or another. Let's let the facts determine what we do.

I didn't vote for cloture because I don't think it is right to leave Freddie Mac and Fannie Mae outside the equation and incorporate every other business on Main Street and on Wall Street to the extent we have. It is right for us to take some of the blame in the Congress. A lot of this wouldn't have happened had we not directed the government-sponsored entities with which we had influence, and the implied full faith and credit of the taxpayers would be the consumers that would create the liquidity for subprime loans.

My only statement to the majority whip is this: I understand facts. The facts are that Freddie Mac and Fannie Mae started this. They are exempt from this piece of legislation. I, for one, take issue with that. We cannot reform and address the concerns that happened if we don't address the root of the problem.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, at the risk of a real debate, I invite the Senator from Georgia to stay, if he would, for a moment so we can engage.

Mr. ISAKSON. I am happy to.

Mr. DURBIN. I have the highest respect for the Senator from Georgia personally, and I thank him for his support on my interchange amendment. We have worked on many other issues, and we will in the future. I will concede what he pointed to as a fundamental flaw, a mistake that was made. There was a presumption made that owning a home was such a valuable American ideal—and I know your background; you certainly agree with that—but we went too far. We extended the opportunity for home ownership to people who were not ready. We believed if we pushed them to the limit of how much they could pay, the home would appreciate in value, their incomes would go up, and everything would work out. It turned out that gamble was wrong for some people. Certainly, Fannie Mae and Freddie Mac, as the ultimate guarantors of mortgages, were part of that. There is a government element here. I don't question that for a moment. Certainly some blame lies there.

Blame lies with those people who overextended, bought more than they could afford. They may have been misled into it, but the fact is, they did it. They made mistakes.

Having said that, though, there were a lot of people involved in financial institutions which led them into this, misled them into this. No-doc closings, where people didn't have to present a document proving the amount of income they had, basically telling people: We will give you a mortgage where it is; you will be paying just interest for a few years, and everything will be just fine.

These mortgages where the interest rates would explode in the outyears, and people would not be able to pay, there was a lot of things that went wrong there. But I hope the Senator from Georgia will agree that behind this bill is the notion that some things happened on Wall Street which were outrageous. The fact that we ended up coming up with somewhere in the range of $700 or $800 billion to save most Wall Street institutions is an indication that things were out of hand on Wall Street, that we never want to return to that again.

I will concede to the Senator from Georgia his premise. Do we need to reform Fannie Mae and Freddie Mac? Yes, we do. If we don't, we will pay dearly for it. I don't know if we can accomplish it in this bill, accomplish it at this moment, but it literally has to be done. I have never quarreled with that premise in the debate, nor do I question his starting point that this was part of the problem that led to where we are today.

It is always the best is the enemy of the good around here. We have a good Wall Street reform bill that moves in the right direction to avoid some of the abuses there. To argue that it doesn't include Fannie Mae and Freddie Mac and therefore we can't support it, perhaps we just have a different point of view. I think this is a valuable thing to do to move forward. I will concede his point. He is right in what he said.

Mr. ISAKSON. Will the Senator yield?

Mr. DURBIN. Yes.

Mr. ISAKSON. I appreciate his comment. That was my point. When I was listening to the Senator's speech, I got a little irritated. Then I realized I have probably done the same thing before too. I leaped over some facts that belong in the debate. The fact that the Congress directed Freddie and Fannie to own a percentage of their portfolio in subprime loans was the source of the capital that bought the first securities that created the subprime securities. I do not argue that there are not good things in this bill.

In fact, when the Senator was referring to the liar loans, it was the Isakson-Landrieu amendment that we

successfully added to this bill that defined that a qualified loan is to be exempt from risk potential because it requires income verification, requires an employer statement that the employee is hired, and it requires an income ratio that is sufficient to retire debt that is borrowed. I agree with the Senator.

My point was that when all of us make these remarks of what bills are and they are not, we ought to include all of the facts that are in there, not just a select few. I appreciate the Senator's comments. I was proud to be a part of his amendment.

Mr. DURBIN. I thank my colleague from Georgia. It depends on one's perspective. The amendment he just described that he added to the bill is a valuable part of this bill. It wasn't there originally. It is now. I am glad it is. I am happy to support it. That is what we are trying to do today, to move its passage so it becomes the law of the land. But because we fell short by only two Republican votes coming forward today, we can't move forward.

If the position of the Senator is we should not pass his amendment or this underlying bill until we reform Fannie Mae and Freddie Mac, I am with him in terms of the reformation. I don't believe it is reasonable to require this bill to do everything that needs to be done. That is my only difference with the Senator from Georgia.

Mr. ISAKSON. The Senator and I might differ on points, but I defer to the Senator. I wish I had the control to control votes, but I don't. There were two on his side and two on ours. There are people with higher pay grades who were responsible for that. I wanted to make the point about what is, to me, a serious issue with regard to the bill and something that should be considered in the debate.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I don't mean to jump into these things, but I wanted to make a couple comments. First, no one knows real estate like JOHNNY ISAKSON. I have had the privilege of working with the Senator from Georgia over the last year or so on a couple of proposals, one of which I think made a big difference. That was the $8,000 tax credit for home buyers to go out and encourage home purchases and sales. It has proven to be pretty worthwhile. I haven't seen the latest data. My friend is far more familiar than I. But, clearly, for most Americans, home ownership is the single largest and most important acquisition they ever have. It is the greatest wealth creator for most Americans.

As the Senator from Illinois points out, that additional trajectory is where we increased this, and people used that equity to help with retirement and student loans, a variety of things they need as a family.

As my friend from New Hampshire pointed out the other day, there is a history here. I acknowledge that we in Congress have failed in this responsibility, actually going back to around 2003. The Senator from Alabama can correct me. There were various attempts. A good friend of ours, the former chairman of the House Financial Services Committee, Mike Oxley, a Republican, offered one as chairman. They actually got one done.

It was a bipartisan bill in the House on Fannie and Freddie in 2005. It then came to the Senate, and things got bogged down over here. There were attempts, including the former chairman from Alabama, who offered a proposal. Senator Sarbanes did. It went back and forth. We didn't get the job done.

It is important to remember during times such as this, when we are not hesitant to point an accusing finger at other institutions for having helped create this problem, we in Congress collectively did not get the job done with Fannie and Freddie. I join with my colleague from Illinois, it is important we acknowledge that if we are going to be accusing other institutions for malfeasance or misfeasance. In this case, we should have done a better job.

Here is the problem. As the Senator from New Hampshire pointed out—I am quoting him—this issue was ''too complex'' for this bill. The reason is, we don't know what to replace it with at this point. There are a number of ideas floating around because all of us recognize we need to have a housing financing system in place. In the absence of having any in place, around 97 percent of all home mortgages are backed by the Federal Government today. If we pull that rug out at this particular juncture, I don't know what the implications would be. I think they would be pretty profound.

We are caught in this quandary, acknowledging the need to reform and replace Fannie and Freddie, the present structure, but doing so without replacing it with something could pose serious problems in the very area the Senator from Georgia is so knowledgeable in; that is, how do we continue to promote home ownership.

What we did—and I would be the first to admit it, being the author of the provision—is fairly anemic in light of what we need to be doing. We have said we are mandating that there be a study completed with options presented within 6 months. The President of the United States I have heard say on one occasion, maybe more, this is a top priority come next January for him and this Congress to grapple with.

Again, there is nothing there that absolutely requires it, but it will be essential that we come up with options.

I recall the previous Secretary of the Treasury advocating for a public utility concept to replace Fannie and Freddie. I would be the last one to tell others whether that is a good idea or a bad one. But it is one option. Clearly, we have conflicting goals—one of home ownership, which is the very one we all support, combined with the goal of satisfying shareholder interests. What happened is, shareholder interests trumped in a sense the kind of manageable, sensible policy that would promote home ownership at the expense of returning investments for shareholders. That is also a laudable goal. But to have the same entity have the two missions, one for home ownership, one for a return on investment, they collided with each other. We have ended up in the situation we are in without a great answer—yet—as to how to replace it.

The point I guess I am making is, I totally agree with the Senator's premise. The question is, as chairman of this committee, how do we fix this thing at this point? And I have never suggested with this bill we were dealing with every financial problem in the country. It would be an impossible task for us to take that on.

So all I can say to the Senator, as someone who will not be here next January, is, I hope whoever sits at this desk—or at this desk, across from my good friend from Alabama chairing the committee—that this will be a priority of our Banking Committee. I cannot dictate that. I cannot even bind the next Congress constitutionally with anything we require here. But my fervent hope would be—I cannot think of a more important priority for the Banking Committee of the Senate than to have the reform of Fannie and Freddie because I think we are going to be in deeper and deeper trouble both financially and in terms of home ownership if we do not. So whatever else happens here in the next few days with regard to this bill, I want to thank my friend from Georgia for his continuing commitment to the issue and to say that I associate myself with his concerns. I would also plead that failure to deal with that issue in this bill ought not to be justification for walking away from all the other good things we are trying to accomplish in this legislation.

I thank the Senator for hanging around and listening to this filibuster.

Mr. ISAKSON. Mr. President, will the Senator yield for one comment?

Mr. DODD. I am happy to yield to my friend.

Mr. ISAKSON. First of all, my comments were directed specifically to the speech of the Senator from Illinois.

Mr. DODD. I did not hear it. I apologize.

Mr. ISAKSON. They were not a criticism of the chairman, first of all. I think the ranking member would certainly agree with that.

Second of all, there is some good news that was received today, thanks to the Senator's help, because I could not have done it if it were not for him. We had the tax credit we extended and ultimately passed, which terminated April 30. As to the numbers from the most recent month: the average sales price in the 20 top markets in America, for the first time in 36 months, went up by six-tenths of 1 percent. So the distinguished chairman deserves a lot of credit for that contribution as well.

I was just making sure there was a voice over here that reminded everybody of what got us in this to begin with in the context of the speech of the Senator from Illinois. It was never a criticism of the chairman of the committee.

Mr. DODD. I thank my friend from Georgia.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. ISAKSON. 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. 3746, AS MODIFIED

Mr. ISAKSON. Mr. President, I understand the body may, in a little bit, take up the Whitehouse amendment, and out of an abundance of caution, to be sure my statement is in the RECORD, I want to speak to that amendment for a second.

I have the greatest respect for the Senator from Rhode Island, Mr. WHITEHOUSE, and all of his work. But the amendment he has proposed basically says that the usury rate to apply to any loan shall be the usury rate in the State, which will take us back to a period of time post 1982 or 1983, when interest rates went to 16 and three-quarters percent. And because usury rates in the United States were 8, 9, or 10 percent in most of the States, there was no money. Usury rates are the maximum ceiling that a loan can do.

Now we have South Dakota and Delaware where there are no usury rates. Most banks are chartered there and, therefore, interest rates on loans are negotiable and competitive. There are a lot of people in public life who think: Well, if you put a ceiling on interest rates, you are guaranteeing the consumer that they are not going to pay a high rate. What you are usually guaranteeing the consumer is, they are going to pay a fixed rate, which is whatever the government says is the usury rate. Floors set by government become ceilings, and ceilings by government become rates.

So I want to caution the body, in considering the Whitehouse amendment, to be very careful what you ask for. Because what you will do is you will put an end to credit in the housing business and in many other types of instruments in the United States, and you will have 50 different usury regimens in 50 different States. You will create a fixed-rate environment by the government, not by competition. What effectively happens is a rise in the cost of credit, a rise in the cost to the consumer, and in the end what I am sure is intended to be beneficial to the consumer will, in fact, cost the consumer more money and be disastrous to the expansion of credit in a time where there is very little credit as it is.

I would respectfully ask the body to consider what we went through in the mid-1980s and early 1980s with interest rates. We hope they will not go up again, but if they do, credit is more important than no credit at all, and usury rates can assure you have no credit at all and end up having the unintended consequence of having a negative impact on the economy.

I would oppose the Whitehouse amendment, should it come up tonight, and I hope the Members of the body will consider the history lesson from the early 1980s.

Mr. President, I yield back and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3746, AS FURTHER MODIFIED

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now resume consideration of the Whitehouse amendment No. 3746 and that the amendment be further modified with the changes at the desk; that it also be in order for the Ensign amendment to be considered; that they be debated for a total of 10 minutes, with time equally divided and controlled between Senators WHITEHOUSE and ENSIGN or their designees; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Whitehouse amendment, to be followed by a vote in relation to the Ensign amendment; that each of these amendments be subject to an affirmative 60-vote threshold; that if they achieve that threshold, then they be agreed to and the motion to reconsider be laid upon the table; that if they do not achieve that threshold, then they be withdrawn; further, that prior to the second vote, there be 4 minutes of debate, divided as specified above, and the second vote be limited to 10 minutes.

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

The amendment, as further modified, is as follows:

On page 1325 between lines 20 and 21 insert the following:

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update not less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

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

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

(c) USURIOUS LENDERS.—Section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) is amended—

(1) by striking ''Any association'' and inserting the following:

''(a) IN GENERAL.—Any association''; and

(2) by adding at the end the following:

''(b) LIMITS ON ANNUAL PERCENTAGES RATES.—Effective 12 months after the date of enactment of this subsection, the interest applicable to any consumer credit transaction, as that term is defined in section 103 of the Truth in Lending Act (other than a transaction that is secured by real property), including any fees, points, or time-price differential associated with such a transaction, may not exceed the maximum permitted by any law of the State in which the consumer resides. Nothing in this section may be construed to preempt an otherwise applicable provision of State law governing the interest in connection with a consumer credit transaction that is secured by real property.''.

Mr. DODD. Mr. President, I further ask unanimous consent that there be no further amendments to those amendments.

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

Mr. DODD. Further, Mr. President, I ask unanimous consent that it be in order for the Cantwell amendment No. 4086 to be called up for consideration.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

The Whitehouse amendment is now the pending question.

The Senator from Connecticut.

Mr. DODD. Mr. President, I commend the Senator from Rhode Island for his passionate and persistent advocacy for his amendment. He has been extremely eloquent.

However, I have to oppose the Senator's amendment. I do it with some reluctance.

Nobody has been more concerned about credit card abuses in this body than I have.

We passed strong, new legislation to address many of these abuses just last year, and the Federal Reserve has written regulations to implement these protections.

In addition, the Wall Street Reform Act includes a strong new consumer financial protection bureau that will, for the first time, create an independent entity devoted to empowering consumers with clear, transparent, easy-to-understand disclosures so that they can make smart financial decisions for themselves.

This bureau will help achieve the goals that Senator WHITEHOUSE hopes to accomplish with his amendment, though it will not be done in exactly the way he seeks to do it.

By creating better disclosures, by eliminating confusing fine print, the consumer bureau will help consumers become better shoppers. This will help drive down credit card interest rates.

In addition, as Senator WHITEHOUSE knows, the Wall Street Reform Act will use States as partners in enforcing new rules under the consumer title. This will put additional cops on the beat to make sure American families are not lured into buying unfair, deceptive, or abusive financial products.

In sum, the underlying legislation would be a giant leap forward for consumer protection.

But as I have said earlier, I reluctantly oppose Senator WHITEHOUSE's amendment. One of the reasons is that this amendment does not actually address the problems that it is supposed to solve. It would only stop national banks from exporting interest rates. Out-of-state savings associations and state-chartered banks can still charge a higher interest rate. So it does not restore the states ability to enforce interest rate caps against all out-of-state lenders. And it does not level the playing field for local lenders as intended.

I believe that the Wall Street Reform Act represents an important step forward for consumer protection. If, indeed, the Whitehouse amendment is even the right thing to do, we should not make the perfect the enemy of the very good.

Finally, let me say that the abuses of which Senator WHITEHOUSE speaks are very real. The interest rates so many of these banks charge are outrageous. However, it is a complex issue that will not be solved in this debate.

I urge my colleagues, let's pass the Wall Street reform bill into law, so the consumer bureau can start doing its work and start helping the American people make smart financial choices.

Mr. President, I have great respect for our colleague. He has worked hard on this amendment. He has been trying to get attention over the past 2 weeks, probably as much as anyone in this Chamber, and he is anxious to be heard. So I am grateful to my colleagues for giving him the opportunity to have this debate on a legitimate issue; that is, interest rates. All of us, of course, hear from our constituents about the rising and higher cost of interest rates.

This amendment takes an approach that would, in effect, repeal the so-called Marquette decision reached a number of years ago that allowed for interest rates to basically be determined by the home State of a corporation. That the corporation actually does business in other States is not terribly relevant to whatever the rates would be, but whatever the rate is in the State where their corporate headquarters is domiciled is what would determine that. I may not be stating that quite as eloquently as the author of the amendment will, but it is words to that effect. I am getting tired after days of describing these.

While I respect the effort here, there are some problems associated with this, in my view, so I will vote against the Whitehouse amendment. But, again, I respect my colleague's proposal. I respect the efforts he has made and believe there is legitimacy to the issue. I am not sure, however, the approach is the correct one to pursue.

With that, I see my colleague and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. I thank the chairman. I guess as the old song goes, what a long, strange trip it has been to get to this vote. But I appreciate very much the chairman's efforts and the ranking member's efforts that have allowed this vote.

I thank the cosponsors who have helped me work so hard on this legislation: Senators COCHRAN, MERKLEY, DURBIN, SANDERS, LEVIN, BURRIS, FRANKEN, BROWN of Ohio, MENENDEZ, Chairman LEAHY, Senators WEBB, CASEY, WYDEN, my distinguished senior colleague from Rhode Island, JACK REED, Senator UDALL of New Mexico, and Senator BEGICH, who is now Presiding.

I am very proud of that support and very proud of the support of over 200 consumer groups for this legislation, including AARP, Consumers Union, National Consumer Law Center, Public Citizen, and Common Cause. That is a blue ribbon group of consumer supporters, and it is just the tip of the iceberg of a large organizational push to correct an inequity in American society that arises out of an inadvertent loophole that the Supreme Court created 30 years ago.

This vote presents all of my colleagues a clear, stark choice. Whose side you are on will be defined by your vote on this amendment. If you are on the side of the big out-of-State banks that are marketing into your home State and that are forcing your home State citizens to pay 30 percent and over interest rates even though those interest rates might be illegal under your home State laws, then you will cast your vote against this amendment and in favor of those big out-of-State banks charging that exorbitant interest. If you support it, you are taking the side of your home State citizens who are being gouged right now by banks over which they have no control because they are pitching their business into the home State from elsewhere and the home State laws, because of this peculiar Supreme Court loophole, have been held not to apply. If you vote in favor of this amendment, you are voting in favor of your home State's laws.

This is not a reach of Federal authority. This is traditional federalism and States rights to honor the laws of the States whose citizens sent us here and who wish to protect them from abusive interest rates.

If you vote in favor of this amendment, you are also voting in favor of your community banks, your local State-chartered banks, which don't take advantage of this loophole, which don't create their headquarters in a faraway State that gives them zero consumer protection restriction and allows them to target their marketing against the laws of the home State. The home State banks have to play by the laws of the home State, and this would level the field for your home State banks.

So it is a pretty clear and stark choice: Are you for your home State citizens, are you for your home State's laws, are you for your home State's banks or do you want to take your stand today with the big out-of-State banks whose interest rates are unregulated, whose behavior is in conflict with 200 years of American history and every civilized legal tradition dating back into the mists of time? Every major religion has limited usury. Every civilized legal code has restricted the ability of one individual to harm another by charging them exorbitant interest rates when they are in need.

This is the aberration we are facing right now. We have the chance to fix it. We have the chance to fix it in a way that is justified and proven by 202 years of history in the United States and thousands of years of tradition before that. I urge my colleagues to stand up for their fellow citizens against these out-of-State banks.

Mr. President, I yield the floor, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. MENENDEZ), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

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

The result was announced—yeas 35, nays 60, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—35

| | | |
|---|---|---|
| Akaka | Feinstein | Reed |
| Begich | Franken | Reid |
| Bennet | Gillibrand | Rockefeller |
| Boxer | Harkin | Sanders |
| Brown (OH) | Lautenberg | Schumer |
| Burris | Leahy | Stabenow |
| Cardin | LeMieux | Udall (CO) |
| Casey | Levin | Udall (NM) |
| Cochran | McCaskill | Webb |
| Dorgan | Merkley | Whitehouse |
| Durbin | Mikulski | Wyden |
| Feingold | Nelson (FL) | |

NAYS—60

| | | |
|---|---|---|
| Alexander | DeMint | Landrieu |
| Barrasso | Dodd | Lincoln |
| Baucus | Ensign | Lugar |
| Bayh | Enzi | McCain |
| Bennett | Graham | McConnell |
| Bingaman | Grassley | Murkowski |
| Bond | Gregg | Murray |
| Brown (MA) | Hagan | Nelson (NE) |
| Brownback | Hatch | Pryor |
| Bunning | Hutchison | Risch |
| Burr | Inhofe | Roberts |
| Cantwell | Inouye | Sessions |
| Carper | Isakson | Shaheen |
| Chambliss | Johanns | Shelby |
| Coburn | Johnson | Snowe |
| Collins | Kaufman | Tester |
| Conrad | Kerry | Thune |
| Corker | Klobuchar | Vitter |
| Cornyn | Kohl | Voinovich |
| Crapo | Kyl | Wicker |

NOT VOTING—5

| | | |
|---|---|---|
| Byrd | Menendez | Warner |
| Lieberman | Specter | |

The PRESIDING OFFICER. Under the previous order requiring 60 votes in

the affirmative, the amendment is not agreed to.

AMENDMENT NO. 4146 TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, the pending business is the Ensign amendment; is that correct?

The PRESIDING OFFICER. It has not been called up at this time.

Mr. DODD. I would suggest that we call up the Ensign amendment. I understand the Senator from Nevada has a modification.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. I ask that the amendment be called up for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 4146 to amendment No. 3739.

Mr. ENSIGN. 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:

On page 1273, delete lines 17–18.

Mrs. MCCASKILL. Mr. President, I wish to be recorded as opposing the Ensign amendment. Whether I have been speaking to community banks, consumer advocates, or businesses, I have been clear that the purpose of the Consumer Financial Protection Bureau would be to ensure that everyone plays by the same rules. I said I would not support carve-outs. It was clear from the initial drafts of the Ensign amendment that this was intended to exempt certain lending by casinos from the jurisdiction of the bureau. The underlying bill already clearly exempts sellers of nonfinancial products who offer financing in support of those sales. It is my belief that the Ensign amendment could undermine that goal and I therefore oppose it.

Mr. ENSIGN. Mr. President, from what I understand the amendment is agreeable to both sides.

Mr. DODD. With the modification.

Mr. ENSIGN. It is already modified. I would tell the chairman of the committee, through the Chair, the modification was the amendment we called up. So it is actually the modified amendment at the desk.

Mr. DODD. I understand there is no need for a recorded vote, we can have a voice vote?

Mr. ENSIGN. That is correct. I ask for a voice vote.

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

The amendment (No. 4146) was agreed to.

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

The motion to lay upon the table was agreed to.

Mr. REID. Mr. President, I have an announcement to make. Members of the Senate, we have made progress today. We are going to come in at 9:30 tomorrow. There will be amendments processed until we leave to go to the joint session. We will come back as soon as that is over and continue working on this bill.

At 2:30 I will move to reconsider the vote we had earlier today. So we will have a cloture vote at 2:30 tomorrow. Following that, of course, we have to look forward to when we are going to move to the bill of Senator INOUYE and Senator COCHRAN, on which I understand they have done some good work. That will be the next matter we move to. No further votes this evening.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 4003, AS MODIFIED, TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now consider the Vitter amendment No. 4003, and that the amendment then be modified with the Pryor amendment No. 4087; that the amendment, as modified, then be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4003) is as follows:

(Purpose: To protect manufacturers and entrepeneurs from unintended regulation)

On page 19, strike line 16 and all that follows through page 21, line 22 and insert the following:

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States as, a bank holding company or a subsidiary thereof), that is—

(i) incorporated or organized in a country other than the United States; and

(ii) the consolidated revenues of which from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) constitute 85 percent or more of the total consolidated revenues of such company.

(B) U.S. NONBANK FINANCIAL COMPANY.—The term ''U.S. nonbank financial company'' means a company (other than a bank holding company or a subsidiary thereof, or a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et. seq.)), that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) the consolidated revenues of which from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) constitute 85 percent or more of the total consolidated revenues of such company.

(C) INCLUSION OF DEPOSITORY INSTITUTION REVENUES.—In determining whether a company is a financial company for purposes of this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

(5) OFFICE OF FINANCIAL RESEARCH.—The term ''Office of Financial Research'' means the office established under section 152.

(6) SIGNIFICANT INSTITUTIONS.—The terms ''significant nonbank financial company'' and ''significant bank holding company'' have the meanings given those terms by rule of the Board of Governors.

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the criteria to determine, consistent with the requirements of subsection (a)(4), whether a company is substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) for purposes of the definitions of the terms ''U.S. nonbank financial company'' and '' 'foreign nonbank financial company'' under subsection (a)(4).

The amendment (No. 4003), as modified, was agreed to, as follows:

(Purpose: To address nonbank financial company definitions and to provide for anti-evasion authority)

On page 20, line 1, strike ''substantially'' and insert ''predominantly''.

On page 20, beginning on line 2, strike ''activities'' and all that follows through line 5, and insert ''financial activities, as defined in paragraph (6).''.

On page 20, line 17, strike ''substantially'' and all that follows through the end of line 20, and insert ''predominantly engaged in financial activities as defined in paragraph (6).''.

On page 21, line 11, strike ''(6)'' and insert the following:

(6) PREDOMINANTLY ENGAGED.—A company is ''predominantly engaged in financial activities'' if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7)

On page 21, line 16, strike ''criteria'' and all the follows through line 22, and insert ''requirements for determining if a company is predominantly engaged in financial activities, as defined in paragraph (6).''.

On page 37, line 3, strike ''(c)'' and insert the following:

(c) ANTI-EVASION.—

(1) DETERMINATIONS.—In order to avoid evasion of this Act, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United

States would pose a threat to the financial stability of the United States based on consideration of the factors in subsection (b)(2);

(B) the company is organized or operates in a manner that evades the application of this Act; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title.

(2) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d), (f), and (g) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(3) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term ''financial activities'' means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and related to the ownership or control of one or more insured depository institutions and shall not include internal financial activities conducted for the company or any affiliates thereof including internal treasury, investment, and employee benefit functions.

(4) TREATMENT AS A NONBANK FINANCIAL COMPANY.—

(A) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

(B) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title.

(d)

On page 37, line 15, strike ''(d)'' and insert ''(e)''.

On page 39, line 3, strike ''(e)'' and insert ''(f)''.

On page 40, line 13, strike ''(f)'' and insert ''(g)''.

On page 40, line 21, strike ''(g)'' and insert ''(h)''.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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 at 2:30 p.m. Thursday, May 20, the motion to proceed to the motion to reconsider be agreed to, the motion to reconsider be agreed to, and the Senate then proceed to vote on the motion to invoke cloture on the Dodd-Lincoln substitute, amendment No. 3739.

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

CLOTURE MOTIONS

Mr. DODD. Mr. President, I have two cloture motions at the desk.

The PRESIDING OFFICER. The cloture motions having been presented under rule XXII, the Chair directs the clerk to read the motions.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Dodd substitute amendment No. 3739 to S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F. Kerry, Jon Tester, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, John D. Rockefeller, IV, Sheldon Whitehouse, Michael F. Bennet.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Jon Tester, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F. Kerry, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, John D. Rockefeller, IV, Sheldon Whitehouse, Michael F. Bennet.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

BUREAU OF CONSUMER PROTECTION

Mr. JOHANNS. Mr. President, it is my understanding that title X of the bill would give the Bureau of Consumer Financial Protection the power to regulate not only businesses that provide financial products and services to consumers but also companies that provide services to these businesses. I understand that the purpose of giving the bureau the power to regulate these service providers is to prevent a financial service company's use of a service provider to frustrate the efforts of the bureau to protect consumers because important functions that bear directly on consumers are contracted out to service providers. I also understand that this approach is designed to provide the bureau with authority comparable to the authority that Federal bank regulators have over service providers to banks under the Bank Service Company Act.

Am I correct in understanding that it is the intent of the service provider provisions for the bureau to focus on the service contracted out, not the terms of the service contract? Further, am I correct that it is not the intent of the service provider provisions for the bureau to subject the terms of business-to-business contracts, or the agreements between providers of consumer financial products and services and their own service providers, to the jurisdiction of the bureau, even when there may be disputes between these business parties?

Mr. DODD. Mr. President, the gentleman is correct; the purpose of the Bureau of Consumer Protection is to protect consumers and not to address disputes between businesses over the terms of their business relationships.

Ms. COLLINS. Mr. President, I rise to speak in support of an amendment that Appropriations Committee Chairman INOUYE, Vice Chairman COCHRAN, Financial Services and General Government Appropriations subcommittee Chairman DURBIN and I filed to the Restoring American Financial Stability Act regarding funding for the Securities and Exchange Commission—SEC.

This amendment would strike the section that would permit the Securities and Exchange Commission to be ''self-funded''. I have serious concerns with this provision because it would allow the SEC to self finance and thus avoid the scrutiny and oversight of the appropriations process. Our bipartisan amendment would keep SEC funding as part of the appropriations process and maintain critical congressional oversight.

The financial crisis and its consequences have served to remind us all of the critical requirement for more robust oversight and heightened transparency throughout our regulatory environment and financial system. As we have seen, most recently in the review of the SEC's actions in the Bernie Madoff Ponzi scheme, there is clearly a demonstrated need for more Congressional oversight. The annual budget and appropriations process ensures congressional oversight of vital enforcement agencies such as the SEC. As noted by Vice Chairman COCHRAN, our amendment recognizes the need to ''regulate the regulators'' and to hold accountable those regulators who fail do their jobs correctly.

And the recent inspector general investigation revealing that high-level SEC employees spent their days looking at porn rather than pursuing wrong-doing demonstrates the need for oversight.

The appropriations process subjects the SEC to a review which must balance the requests of the Commission against the competing needs of other Federal agencies. That process, however, is grounded in the Constitution and the very foundation of our government is based on the concept of checks and balances. While I appreciate the accomplishments Chairman Shapiro has achieved during her tenure as chairman, funding decisions and the process by which they are made, cannot be based on any particular holder of an office, but rather on government-

wide needs and the best interests of the taxpayers.

Allowing the SEC to have sole authority to negotiate the fees that support its operations with the institutions they regulate precludes any meaningful oversight by Congress and invites conflicts of interest. Reports by the Government Accountability Office and the SEC Inspector General regarding enforcement procedures and internal controls over financial reporting highlight the need for congressional oversight. Also, the GAO has noted that SEC's current system of transaction-based fees could provide revenues that are less predictable and more difficult to estimate than the assessments used by bank regulators to fund their operations.

While the budget and appropriations process is challenging for all Federal agencies, Senator DURBIN and I, in our roles as Chairman and ranking member of the Financial Services and General Government Appropriations subcommittee, have given careful review to all resource requests from the SEC and consistently placed a high priority on its requests, recognizing the agency's critical enforcement role. For the current fiscal year, Congress provided $1.11 billion, a 25 percent increase over the fiscal year 2007 level and $85 million above the amount that the President and the SEC requested.

The financial reform bill passed by the House of Representatives does not include a provision for the SEC to be self-funding. I share the hope of Chairman INOUYE and all of the cosponsors of this amendment that the conference agreement on the bill before the Senate will preserve the critical oversight function inherent in the appropriations process. I urge that the SEC self-funding provision be dropped from the bill in conference to ensure that Congress can continue to play an important role in the oversight of our financial regulators.

Mr. LEAHY. Mr. President, last week, I filed two important amendments to the pending Wall Street reform legislation to protect the identity of whistleblowers and to ensure transparency and accountability to the American public when the government investigates allegations of financial fraud. My amendments on whistleblower confidentiality strike a careful balance between the need to protect the identity of whistleblowers and the public interest in transparency. I hope the Senate will work to include these amendments in the bill.

The recent economic crisis has revealed how corporate greed must be reigned in on Wall Street. While average Americans were suffering, many Wall Street investment banks and insurance companies went to great lengths to hide their shaky finances from stockholder and government regulators. Whistleblowers serve an important role in exposing financial fraud. This underscores the importance of ensuring that whistleblowers are provided the necessary protections to come forward with allegations of financial fraud and ensuring that the American public has access to critical information about corporate financial wrongdoing.

My amendments addresses two key problems with the whistleblower provisions in the bill: First, the bill would prevent whistleblowers from obtaining information that they themselves have provided to government regulators under any circumstances. Second, the bill creates an unnecessary exemption to the Freedom of Information Act, FOIA, that would, in some cases, shield critical information about financial fraud from the public indefinitely.

To strengthen the protections for whistleblowers, my amendments strike the well-intended, but overbroad confidentiality provisions in sections 748(h) and 922(h) of the bill, and replace those provisions with new language that both protects the confidentiality of whistleblower identity information and ensures the public's right to know. Specifically, the amendments require that government regulators may not disclose whistleblower identity information without the whistleblower's consent. My amendments also require that the government notify the whistleblower if information about the whistleblower's identity will be shared with other government agencies, or foreign authorities assisting with an investigation.

To ensure the public's right to know, my amendments remove language from the bill that, in some cases, would change law and could indefinitely shield critical information about financial fraud from the public. My amendments do not change existing disclosure requirements and exemptions under FOIA, but, rather, they require that government regulators treat information that reveals the identity of whistleblowers as confidential. Other information that a whistleblower provides to the government would remain subject to the existing disclosure requirements and exemptions under FOIA and other Federal laws.

My amendments are modeled after whistleblower protection provisions that Congress has previously and overwhelmingly enacted in other recent legislation. The amendments also complement the whistleblower protections already included in the bill.

My amendments are supported by a broad coalition of open government organizations, including—the Project on Government Oversight, Citizens for Responsibility and Ethics in Washington, OpenTheGovernment.org, Public Citizen, the Progressive States Network, Common Cause, National Community Reinvestment Coalition, Consumer Action, OMB Watch, National Fair Housing Alliance, and Americans for Financial Reform. I thank each of these organizations for their support of the amendments and for their work on behalf of whistleblowers and the public's right to know.

As the Senate concludes debate on critical reforms to head off the Wall Street fraud and abuses, we must work to ensure accountability and openness in how the government responds to this crisis. The improvements in my amendments will ensure that whistleblowers have the protection that they deserve and that financial firms will be held accountable. I urge all Senators to support these open government amendments.

I ask unanimous consent that a copy of a support letter signed by several open government organizations be printed in the RECORD.

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

MAY 11, 2010.

Hon. PATRICK LEAHY,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR LEAHY: We, the undersigned organizations, write to thank you and share our support for the amendment (SA 3297) you have offered to the Restoring American Financial Stability Act, S. 3217. The amendment will replace two dangerous provisions that would unnecessarily limit public access to critical information and place a gag on whistleblowers with language that instead would provide authentic confidentiality and protection of the identity of whistleblowers. We believe that in order to both preserve government accountability and encourage whistleblowers to come forward this amendment must be incorporated into S. 3217.

Tucked inside two provisions to establish whistleblower incentives and protections to rightly encourage the flow of information of wrongdoing to the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) are poison pill secrecy measures. Sections 748(h)(2) and 922(h)(2) bar the public and the whistleblower from ever being able to obtain information about investigations if the government never acts. If a whistleblower faces retaliation there would be no access to government records needed to prove status as a whistleblower. If there is no action due to inept bureaucracy, fraud, collusion, or worse, there would be no way to hold the government accountable.

We must preserve the ability of the whistleblower to gain access to the information if retaliation occurs, as well as public access to hold the Commission and other government agencies accountable, especially if there is no investigation or the investigation leads to no further judicial or administrative action. Your amendment would do just that, and would remove the blanket gag orders creating a permanent seal and government secrecy.

Moreover, as you know, it is unnecessary to add additional exemptions to the Freedom of Information Act (FOIA) in these whistleblower provisions. Forty years of jurisprudence have proven the FOIA's exemptions (amended in 1986 to expand protection for law enforcement records) have stood the test of time, fairly and effectively balancing the agency's interests in confidentiality and personal privacy rights with the public's right to know.

Investigations occur across the federal government every day and information pertaining to the administrative stages of these investigations is protected. In more than two decades, no agency has expressed concern over unwarranted access to investigative information during an open investigation. We not only see no justification to hide closed

investigations of possible wrongdoing in the financial industry, whether or not provided by a whistleblower, but find this to be at cross-purposes with making government regulation of the financial industry more transparent and effective.

We thank you for this amendment to preserve whistleblower rights, public access to information, and government accountability, and for your commitment to protecting the public's right to know.

Sincerely,

Project on Government Oversight (POGO); Citizens for Responsibility and Ethics in Washington (CREW); Government Accountability Project (GAP); OpenTheGovernmentorg; Public Citizen; Progressive States Network; Common Cause; National Community Reinvestment Coalition; Consumer Action; OMB Watch; National Fair Housing Alliance; Americans for Financial Reform.

Mr. ENZI. Mr. President, I would like to make a point of clarification on my GASB amendment. This amendment creates a new and stable funding source for the Governmental Accounting Standards Board. The GASB serves an important function to provide pronouncements on accounting and financial reporting for State and local governments, and their work should be commended. However, I must clearly make a point that for the purpose of this amendment, and the work of the GASB, that financial reporting be defined as the ''presentation of objective historical financial data on the financial position and resource inflows and outflows of State and local governments, as well as information necessary to demonstrate compliance with finance-related legal or contractual provisions.''

Mr. FEINGOLD. Mr. President, I am pleased to be an original cosponsor of two amendments to the Restoring American Financial Stability Act that seek to ensure there is greater transparency around how international companies are addressing issues of foreign corruption and violent conflict that relate to their business. Creating these mechanisms to enhance transparency will help the United States and our allies more effectively deal with these complex problems, at the same time that they will also help American consumers and investors make more informed decisions.

Mr. President, I am very pleased that my colleagues agreed yesterday to accept the first amendment, sponsored by Senator BROWNBACK. This amendment specifically responds to the continued crisis in the eastern region of the Democratic Republic of Congo. Despite efforts to curb the violence, mass atrocities and widespread sexual violence and rape continue at an alarming rate. Some have justifiably labeled eastern Congo as ''the worst place in the world to be female.'' Several of us in this body, including Senators BROWNBACK and DURBIN and I, have traveled to this region and seen firsthand the tragedy of this relentless crisis. Increasingly, American citizens are also learning of the devastating situation in eastern Congo and are actively engaged to bring about policy changes. I am pleased to see Americans so engaged on this issue.

One of the underlying reasons this crisis persists is the exploitation and illicit trade in natural resources, specifically cassiterite, columbite-tantalite, wolframite and gold. The United Nations Group of Experts has reported for years how parties to the conflict in eastern Congo continue to benefit and finance themselves by controlling mines or taxing trading routes for these minerals. In response to these reports, the U.N. Security Council adopted Resolution 1857, 2008, encouraging Member States ''to ensure that companies handling minerals from the DRC exercise due diligence on their suppliers.'' Over a year ago, Senator BROWNBACK, Senator DURBIN, and I teamed up to author legislation that would do just that: the Congo Conflict Minerals Act, S. 891.

Senator BROWNBACK's amendment is taken from that bill, but includes modifications based on discussions with representatives from industry, U.S. Government agencies, and the Banking Committee. The amendment applies to companies on the U.S. stock exchanges for which these minerals constitute a necessary part of a product they manufacture. It will require those companies to make public and disclose annually to the Securities and Exchange Commission if the minerals in their products originated or may have originated in Congo or a neighboring country. Furthermore, it will require those companies to provide information on measures they have taken to exercise due diligence on the source and chain of custody to ensure activities involving such minerals did not finance or benefit armed groups.

I recognize that this conflict minerals problem is a complex one, given the importance of this trade to the local economy in eastern Congo and given the extensive supply chains and processing stages between the source and end use of these minerals. The Brownback amendment was narrowly crafted in consideration of those challenges, and it includes waivers and a sunset clause after 5 years. However, I believe strongly that the status quo in eastern Congo is unacceptable to the people there and it should be to us as well. We have put financial resources toward mitigating this crisis, but we need to get serious about addressing the underlying causes of conflict. The Brownback amendment is a significant, practical step toward doing that, and I thank my colleagues for their support of it. I thank Senator BROWNBACK for his longstanding leadership on these important humanitarian issues.

The second amendment, led by Senator CARDIN and Senator LUGAR, is different than the Congo amendment but would complement it. This amendment would require companies listed on U.S. stock exchanges to disclose in their SEC filings extractive payments made to foreign governments for oil, gas, and mining. This information would then be made public, empowering citizens in resource-rich countries in their efforts to combat corruption and hold their governments accountable. In far too many countries, natural resource wealth has fueled corruption and conflict rather than growth and development. This so-called ''resource curse'' is especially problematic in Africa, and in 2008, I chaired a subcommittee hearing on this very topic. I said then that we must look for ways that the United States can use our leverage to push for greater corporate transparency in Africa's extractive industries.

In addition to helping countries combat the ''resources curse,'' it is also in our national interest to improve transparency in the extractive industries. The amendment was drawn from an important piece of legislation, the Energy Security through Transparency Act, S. 1700. The bill was given this title because enhancing transparency in the extractive industries can have real benefits for U.S. energy security. This will ultimately create a more open investment environment and increase the reliability of commodity supplies. Energy security is a topic that Senator LUGAR and his staff have worked on for years, and we all know how central it is to our national security. I thank Senator LUGAR and Senator CARDIN for their work on this important amendment, and I urge my colleagues to support it.

Mr. DURBIN. Mr. President, I rise today to commend and thank Senators DODD and SHELBY for their extraordinary leadership and tenacity in shepherding this complex bill through the arduous floor consideration process over the past several weeks, and for their years of work to reach this point. Their task has not been an easy one. The amendment process was delicate at times, but certainly collegial and fair. The fruits of our labor are an improved product emerging from the Senate, albeit not a perfect one. Invariably, in a bill of this scope and significance, some matters were not fully addressed or resolved to everyone's satisfaction.

I am disappointed that we did not consider an important bipartisan amendment submitted by Senators INOUYE and COCHRAN relating to the funding of the Securities and Exchange Commission.

Section 991 of the bill would permit the Securities and Exchange Commission to be ''self-funded,'' thus removing a critical oversight role for the Appropriations Committee. The Inouye-Cochran amendment would have stricken this section.

Retention of the language in the bill is objectionable for a host of reasons. Section 991 removes the role of Congress in dictating how potentially limitless funds, up to whatever level is generated in fees under a budget that would be set by the SEC itself, are to be spent. It would make the agency potentially less, rather than more, responsive to congressional priorities.

Spending would go unmonitored. The critical role of the Office of Management and Budget for apportionment of funds would also disappear.

Congress oversees Federal agencies primarily through two distinct but complementary processes—authorizations and appropriations. The authorizing committees are responsible for creating a program, mandating the terms and conditions under which it operates, and establishing the basis for congressional oversight and control. The appropriations committees and subcommittees are charged with assessing the need for, amount of, and period of availability of appropriations for agencies and programs under their jurisdiction.

Exempting an agency from the appropriations process reduces opportunities for annual congressional oversight. The appropriations process, with its annual budget justifications, hearings, and markups, provides a useful layer of congressional review and scrutiny of agency operations, in addition to what is provided by the authorizing process. In the appropriations subcommittee I am privileged to chair, I have conducted annual hearings on the SEC's budget through which I have learned much about this agency's requirements, particularly its staffing and information technology needs.

Allowing an agency to set its own budget is an abdication of the constitutional responsibility of the legislative branch of government. It is a dangerous surrender of the congressional power of the purse.

It does not make sense—in this comprehensive bill aimed at bolstering oversight, transparency, and accountability of the world that the SEC regulates—that we would weaken, in fact, abolish, the vital role of the appropriations committee to evaluate the resource needs and spending by this agency.

This comprehensive bill confers significant new responsibilities on the SEC as a financial regulator. Shouldn't we evaluate on a regular basis whether this agency is responsive to the mandates we impose? Shouldn't Congress determine if the SEC has adequate funds and is using those resources wisely, in the right places, to accomplish its mission? Under section 991, we toss out the important, longstanding role and responsibility of appropriators to do just that.

Public opinion of the SEC as a vigilant investor-protector has been less than stellar in recent years. The SEC has been under withering criticism over the past years with the release of the inspector general's report chronicling the SEC's failure to identify Madoff's Ponzi scheme as far back as 1992. The recent IG report on the Stanford case is another example of years of SEC inaction to act against a Ponzi scheme.

Under the leadership of Chairman Mary Schapiro, the SEC is making strides to turn things around. I think Chairman Schapiro is doing a commendable job leading the charge for reform. However, she herself admits that there's more to do and much room for improvement. Our interest in leaving the appropriations oversight process intact is not a verdict on Chairman Schapiro's ability to effect meaningful change.

Those who contend that the SEC ought to set its own budget argue that requiring the agency to compete for funding in the annual appropriations process will lead to chronic underfunding and limited flexibility. Recent experience suggests to the contrary. My Financial Services and General Government Appropriations Subcommittee has placed high priority on the budgets of several agencies including healthy and justified increases above the President's request. For the current fiscal year, Congress provided $1.111 billion, a 25-percent increase over the fiscal year 2007 level—and $85 million above the amount that the President and the SEC requested. We have also acted promptly to consider and approve reprogramming and internal reorganization requests.

Those who claim that the SEC has been shortchanged in past years should consider that in each of the past 7 years, the SEC has had substantial amounts of unobligated balances from prior years. This means there were appropriations provided that the SEC was not able to use.

The SEC has not been reauthorized since the Sarbanes-Oxley Act of 2002, when Congress authorized $776 million for fiscal year 2003. Instead of putting this agency beyond the reach and oversight of appropriators, we should act to authorize levels of robust funding for each of the ensuing 5 years—like the House did—and thus clearly express the intent of Congress that this agency be adequately funded.

Reauthorization of suitable and reasonable funding levels would certainly send a strong signal about the amount of resources that Congress believes are necessary for this agency to thrive and grow to meet its important mission and satisfy its many new responsibilities. Leaving this agency unchecked in its budgeting and spending activities is simply the wrong way to go.

I trust that as we reconcile this bill with the version adopted in the House that this matter will be favorably resolved and that the conference agreement will acknowledge and preserve the critical oversight role of the appropriations process.

Mr. DODD. Mr. President, I rise to further discuss the reasons for my votes against two amendments relating to credit rating agencies, amendment No. 3991 creating a new credit rating agency board and amendment No. 3774 which eliminates references to requiring credit ratings from certain financial laws.

First, I want to emphasize that I agree with my colleagues that erroneous credit ratings on asset backed securities played a central role in the financial crisis and that we need to improve the regulation of credit ratings.

Credit rating agency reform is an extremely important area of the Restoring American Financial Stability Act of 2010 passed by the Banking Committee. It has 40 pages of carefully constructed credit rating reforms to improve regulation, transparency and accountability. Let me highlight some of these strong provisions, as they would improve the SEC, reform rating agencies and empower investors.

The SEC will have a new Office of Credit Ratings to regulate and promote accuracy in ratings, staffed with experts in structured, corporate and municipal debt finance. The office's own examination staff will conduct annual inspections and the essential findings will be available to the public. The SEC will have expanded authority to suspend the registration of agencies that consistently produce ratings without integrity. The SEC will also have more authority to sanction ratings agencies that violate the law, including managers who fail to supervise employees.

Credit rating agencies will have to comply with tough new requirements. Rating agency boards will be subject to new rules for independence. Rating analysts must work separately from those who sell the firm's services. Agencies must publicly disclose when they materially change their procedures or methodologies or make significant errors, and update their credit ratings accordingly. Agencies must establish strong internal controls for following procedures and methodologies and have these attested to by their CEO. The agencies must establish hotlines for whistleblowers and retain complaints about the firm's work for regulators to examine. Agency compliance officers must report annually to the SEC. Agencies must consider credible information they receive from sources other than the issuers in making the ratings, rather than relying only on the issuer's representations.

Investors will be empowered. Agencies must disclose their track record of ratings in a way that is comparable so that users can compare ratings for accuracy across different agencies. The agencies must disclose more about their ratings assumptions, limitations, risks, historic accuracy and factors that might lead to changes in ratings. Investors will also have access to due diligence reports prepared at the request of underwriters on asset backed securities, as well as have the benefit of having a new pleading standard when they need to file suit.

The recommendations and ideas underlying these provisions have been considered by the Banking Committee over the course of more than 3 years. The committee held hearings and received analyses from countless experts, regulators, ratings agencies, investors and other users. The provisions in this bill have been extensively vetted, improved and refined.

Regarding conflicts of interest, when I served as ranking member of the Securities Subcommittee, I worked with then-Banking Committee Chairman SHELBY and others to enact legislation to control or eliminate credit rating agency conflicts of interest. Through the Credit Rating Agency Reform Act of 2006, we added section 15E to the Securities Exchange Act of 1934 so that they are controlled or eliminated if they cannot be effectively managed. It gave to the SEC the power:

to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

The SEC has adopted several rules under the act to address NRSRO conflicts of interest, amending those rules twice since they took effect in 2007. The first set of amendments took effect in 2009, and the second set of amendments will go live in a few weeks. Among other things, in addition to prohibiting certain conflicts of interest outright, these rules require each NRSRO—issuer-pay and subscriber-pay—to publicly disclose certain additional conflicts, as well as the policies and procedures it has adopted to address those conflicts. Pursuant to these rules, NRSROs must separate their business activities from their rating activities, so that the analysts, who operate in teams, to reduce the influence of any one person, do not negotiate, arrange or discuss fees. Commission rules designed to address the issuer-pay conflict include prohibitions on issuing credit ratings in certain circumstances, such as when: the NRSRO has received 10 percent or more of its revenue from an issuer or underwriter; the NRSRO makes recommendations on how to structure an instrument; the analyst has participated in fee negotiations with the issuer; or the analyst has received gifts from the issuer. There also is a new requirement that information provided to a hired NRSRO to rate a structured finance product be made available to any other NRSRO to allow the other NRSRO to determine an unsolicited—i.e., non-issuer-paid—credit rating.

Since these rules have been in effect for only a short time, we have yet to see their full benefits. And if more regulation is needed, the SEC has authority to go farther under the 2006 law.

During the consideration of S. 3217, amendment No. 3808 was introduced and passed to direct the SEC to set up a new credit rating agency board, which prohibits the private selection by issuers of rating agencies for initial asset-backed securities ratings and creates a system in which the board makes semi-random ratings assignments to nationally recognized statistical ratings organizations that it deems to be qualified. The intention is to eliminate negative effects of conflicts of interest in the issuer pay business model.

I applaud my colleague's goal of developing a solution to this problem of poor credit ratings. And I appreciate his devoting a tremendous amount of effort in a short period of time to craft his solution.

However, this novel approach raises many questions which have yet to be answered. While I support Senator FRANKEN's goal, I could not vote for this amendment while many questions and uncertainties remained about the impact of this new type of ''self-regulatory organization.''

Credit ratings have a tremendous impact on the credit markets nationally and internationally. Any significant change in their preparation should be the subject of full examination before enactment. Unresolved questions raise the potential for unintended or unforeseen consequences. In addition to my own concerns, I have received communications from many interested parties, such as a letter from the Investment Company Institute that I will ask to be printed in the RECORD.

Let me identify some of the questions that, it seems to me, exist with respect to the board and its operations:

Will the board's semi-random assignment of ratings work cause the rating agencies to lose their incentive to do a superior job, which otherwise might get them more initial ratings business?

Will the ''reasonable'' fees that the legislation directs the SEC to set for QNRSROs to charge issuers generate sufficient revenues for rating agencies of different types of securities to perform the quality of ratings they would like? In this connection, a technical question, what standards should the SEC use to determine the fees—a ''reasonable'' return on capital? prices comparable to other ratings agencies? sufficient to hire staff at compensation levels comparable to other businesses or to Federal regulatory agencies?

How many of the 10 nationally recognized statistical rating agencies are expected to register as ''qualified nationally recognized statistical ratings organizations''? Will the registrants be sufficient to make the board meaningful? Will some ratings agencies choose not to register with the board, to avoid board assessments, costs, regulatory burden or for other reasons, and would this affect the quality of ratings? Will some smaller rating agencies not register because they are unable to meet the board's qualification standards? I understand that after the passage of the amendment, one of the NRSROs has deregistered from providing ratings on asset-backed securities.

The amendment uses an issuer-pay business model. How would the amendment affect the rating agencies that use a different business model, such as a subscriber pay model, and want to provide ratings on asset backed securities?

What will be the costs of operating the new board? The legislation authorizes the board to assess QNRSROs, and how much is the board expected to assess the QNRSROs to cover its budget? How much would it add to the current cost of ratings? What is the expected budget of a board that must hire financial experts who evaluate rating agencies' qualities, institutional and technical capacity and performance and implement systems that can make ratings assignments to QNRSROs on potentially hundreds of thousands of securities in a timely fashion?

How many different categories of securities are expected to be rated and how many rating agencies are expected to be qualified to rate each type? If only two agencies have the capacity or experience to rate some complex types of securities, and an issuer wants two ratings, what will be the purpose of the SRO randomly choosing a rating agency?

How will the board attract, afford and retain top experts who would be needed to perform its statutory mandates to assess the effectiveness of ratings methodologies and assess the accuracy of ratings?

The board would be given substantial powers such as rulemaking authority over NRSROs, allocating business to NRSROs or rejecting an NRSRO's ability to obtain business. Is it certain that the board's establishment and exercise of authority are consistent with the Constitution?

The legislation states that the board will be a ''self-regulatory organization.'' What will be the impact on the new board on the numerous statutory and regulatory restrictions and obligations in the Securities Exchange Act of 1934 affecting ''self-regulatory organizations''?

What will be the interaction of the legislation's mandate that the board assess the accuracy of the credit ratings provided by QNRSROs and the ''effectiveness of the methodologies used by'' QNRSROs and the existing Federal law that states the SEC may not ''regulate the substance of credit ratings or the procedures and methodologies by

which any nationally recognized statistical rating organization determines credit ratings''?

In this legislation, the Federal Government will obligate one private party to deal with another private party of the government's choosing in a private business transaction. Does this raise any potential legal questions?

It is my understanding that beginning in June, all NRSROs will also have to publish a history of their rating actions since the NRSRO regulatory regime was instituted in June of 2007. When enough data becomes available, issuers can see which NRSRO's ratings were more reliable. Would the board be expected to be better able to identify better QNRSROs than issuers who examine this data on their own?

These are some of the questions that existed at the time of the vote. While I am sure these questions will be fully addressed in the months and years ahead, and hope that the board is successful, these questions are significant and created uncertainty, with the potential for significant unintended consequences. Accordingly, I felt it inappropriate as chairman of the Banking Committee to support the amendment.

Amendment No. 3774, which the Senate passed, removes provisions in banking and securities statutes that use credit ratings of NRSROs to distinguish the creditworthiness of obligors or debt instruments and would replace these provisions with standards promulgated by banking agencies—in the case of the banking statutes—and the SEC—in the case of securities statutes.

I agree with the intent of the provision to reduce investor reliance on NRSRO ratings in making investment decisions. However, I feel that it is unwise to eliminate all of these statutory requirements without a prior study of the consequences. Therefore, I voted against this provision.

I think it more prudent to carefully study this matter and remove ratings that are found to be unnecessary. This is why I included in S. 3217 passed by the Banking Committee a required 2-year GAO study to examine the scope of provisions in Federal and State law as to the necessity and purposes of NRSRO ratings requirement; which requirements could be removed with minimal disruption to the financial markets; the potential impacts on the financial markets and on investors if the rating requirements were rescinded; and whether the financial markets and investors could benefit from the removal of such requirements. This would be followed by reviews by the Federal financial regulators of all regulations requiring the use of an assessment of a security, requirements related to credit ratings and alternative standards of creditworthiness that are based on market-generated indicators. The bill required each agency to modify references to credit ratings in their regulations and, when removed, to use an appropriate standard of creditworthiness not related to credit ratings, if possible and consistent with the statute or the public interest. This seems to me the more appropriate way to improve the ratings situation while taking appropriate steps to avoid unforeseen and unintended consequences.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from the Investment Company Institute to which I referred.

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

INVESTMENT COMPANY INSTITUTE,
*Washington, DC, May 13, 2010.*

Hon. HARRY REID,
*Senate Majority Leader, The Capitol, Washington, DC.*
Hon. MITCH MCCONNELL,
*Senate Minority Leader, The Capitol, Washington, DC.*
Hon. CHRISTOPHER J. DODD,
*Chairman, Senate Banking Committee, Dirksen Senate Office Building,*
*Washington, DC.*
Hon. RICHARD C. SHELBY,
*Ranking Minority Member, Senate Banking Committee, Russell Senate Office Building,*
*Washington, DC.*

Re Senate Amendment #3991, Credit Ratings.

DEAR SENATORS: I am writing on behalf of the Investment Company Institute, the national association of U.S. investment companies, to express our concerns with elements of Senate Amendment 3991 to S. 3217 of the Restoring American Financial Stability Act of 2010 (RAFSA). The Institute is highly supportive of the majority of rating agency reforms contained in the RAFSA, which focus primarily on disclosure and transparency of ratings and the ratings process. As long as ratings continue to play an important role in the investment process, they should provide investors and other market participants with high-quality, reliable assessments of the credit risks of a particular issuer or financial instrument. We are concerned, however, that Amendment 3991, which would create a Credit Rating Agency Board to regulate structured finance product ratings, may conflict with the RAFSA, create confusion for investors, and hinder competition in the rating agency space. Presented at the last minute, the changes contemplated by the Amendment would significantly alter the current regulatory regime for rating structured finance products and could, ultimately, affect the rating process for other debt securities.

First, to properly address concerns about conflicts of interest, poor disclosure, and lack of accountability, the Institute believes the reform of the regulatory structure for rating agencies must be applied in a uniform and consistent manner and should apply equally to all types of rated securities. This uniformity and consistency is not only critical to improving ratings quality and allowing investors to identify and assess potential conflicts of interest, but also to increasing competition among rating agencies. By focusing solely on structured finance securities, the Amendment would create a different set of rules for different segments of the rated marketplace which, among other issues discussed below, could create confusion among investors.

Second, establishing an additional and distinct oversight system for ratings of structured finance securities, as outlined in the Amendment, does not improve investor access to information about these securities. The Institute believes that issuers, in addition to credit rating agencies, have a role to play in the effort to increase transparency and disclosure about structured finance products, as well as for other debt instruments. To this end, we have recommended that the Commission expand the disclosure of information to investors by rating agencies. We also have recommended that the Commission take additional steps to provide investors with increased information by requiring increased disclosure directly by issuers to investors, and requiring the disclosure be in a standardized format where appropriate. In its recent proposal to revise the asset-backed securities regulatory regime, for example, the Commission has proposed to do just that—expand and standardize issuer disclosure in public and private offerings of asset-backed securities—and we commend the Commission for its efforts.

Third, we are concerned that having a Board assign a rating agency to a structured finance product stifles competition by denying the market of two or more ratings on a security and perhaps differing opinions and insights. Investors should be encouraged to pick and choose investment transactions using, to the extent they desire, the ratings they receive from the various rating agencies, not a single agency. Further, this approach creates the appearance of a ''seal of approval'' for the assigned rating by placing a government imprimatur on the rating, regardless of the proposed disclaimer contemplated by the Amendment. The fact that the Amendment would permit unsolicited ratings of an assigned security becomes meaningless under the proposed framework; as in the status quo, it will rarely, if ever, be done.

Fourth, a Board designating a rating agency allows for politicizing the rating process, even if it is by a lottery or rotation, whereby the Board could be biased on how it chooses the ''preferred'' rating agency. Conflicts can arise because Board members may have a strong interest in ensuring favorable ratings for a particular issuer or security. Consequently, we do not perceive an advantage to the proposed Board-model over the existing rating agency models, all of which possess various beneficial and detrimental characteristics.

Fifth, what will be the criteria used for determining the ''best performer'' for purposes of assigning a rating agency to a new issue? Is an ''A1'' rating more correct than an ''A'' rating? How would the Board define success or failure? Performance of debt securities in the municipal market, for example, has as much to do with structure and maturity of the security as with its credit. Drawing a line in the structured finance market would be even more difficult because of the complexity, diversity, and novelty of this market. Further, who would be responsible for surveillance under this model—the Board, the Commission, the rating agencies?

We believe that education regarding the characteristics and limitations of a rating would be of more value to investors than the operational and policy concerns raised by the Amendment. In the end, credit ratings are informed opinions which play a significant role in the investment process. Accordingly, the Institute has repeatedly stated that improving disclosure and transparency about ratings and the ratings process may be the most important reform for improving the quality and reliability of ratings. Public disclosure of this information allows investors and market participants—the consumers of ratings—to more effectively evaluate a rating agency's independence, objectivity, capability, and operations. Such disclosure also serves as an additional mechanism for ensuring the integrity and quality of the credit ratings themselves.

We appreciate the substantial progress made in the RAFSA to improve the ratings

process and we look forward to continuing to work with the Senate for the benefit of investors in this area.

Sincerely,

PAUL SCHOTT STEVENS,
*President and Chief Executive Officer.*

## MORNING BUSINESS

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

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

## TRIBUTE TO FORMER NEVADA SUPREME COURT CHIEF JUSTICE E.M. ''AL'' GUNDERSON

Mr. REID. Mr. President, Al Gunderson was a paratrooper, a blackjack dealer, a sailor and a voracious reader. He was a lawyer, a justice, a mentor and a teacher. He was a humanitarian. And he was a loving husband to Lupe for 45 years and a wonderful father to Randy. Of all the determined leaders I have met in Nevada, no one was tougher than Al. No one was funnier. And no one worked harder than he did.

His wife, Lupe, told me this week about one memory from their time in Carson City. A young man came up to her once and asked why he kept seeing Al's Jeep at the courthouse at 3 a.m. But everyone knew the answer: Al Gunderson worked round the clock. It would be more strange not to see his car at the office.

The man who as chief justice presided for 6 years over the highest court in our State believed strongly in the phrase that watches over the entryway of the highest court in our Nation: Equal justice under law. He dedicated his life in public service to making sure everyone got a fair hearing and a just ruling. During his 18 years on the court, he steered it away from elitism and shaped it as a forum for everyday Nevadans. And if that meant standing up for the little guy, all the better.

He was a staunch advocate for civil rights. He used his passion for the law to groom future lawyers and judges as a professor at California's Southwestern University. And the same year Al was sworn in and joined the Nevada Supreme Court, he established the Nevada Judges Foundation to extend to more in our State the opportunity to serve as judges, especially in rural communities.

Al found his way to Nevada by way of Minnesota, where he was born of humble means; Nebraska, where he earned his law degree; and Chicago, where he began his legal and public service career with the Federal Trade Commission. We are fortunate that he did.

My friend and mentor and our State's former Governor, Mike O'Callaghan, used to call Al Gunderson a human being first and an outstanding legal mind second. He was right. Al Gunderson brought honor not only to the title of justice but also the pursuit of justice. We were honored to know him and learn from him.

## THE PRESIDENT'S POLICY: LEADERS WITHOUT FOLLOWERS

Mr. KYL. Mr. President, I ask unanimous consent that the text of my remarks today to the National Policy Conference of The Nixon Center and The Richard Nixon Foundation be printed in the RECORD.

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

A central tenet of the Obama Administration's security policy is that, if the U.S. ''leads by example'' we can ''reassert our moral leadership'' and influence other nations to do things. It is the way the President intends to advance his goal of working toward a world free of nuclear weapons and to deal with the stated twin top priorities of the Administration: nuclear proliferation and nuclear terrorism. This morning, I want to test this thesis—to explore whether, for example, limiting our nuclear capability will cause others who pose problems to change their policies.

To begin the discussion, let me mention just three specific examples of things the administration has done to ''lead by example.''

First, the Administration's Nuclear Posture Review (NPR) changed U.S. declaratory policy to limit the circumstances under which the U.S. would use nuclear weapons to defend the nation on the theory that if we appear to devalue nuclear weapons, other states will similarly devalue them and choose not to obtain them. The downside, of course, is that such emphasis on nuclear weapons only reminds states, including rogue regimes, of their value.

Second, the central point of the START agreement, was a significant draw down of our nuclear stockpiles. And, the Administration has already been talking about a next phase that could even include reductions by countries in addition to the U.S. and Russia.

Third, President Obama wants to commit the U.S. never again to test nuclear weapons under the CTBT so that, hopefully, others will follow our example.

I'll discuss these three examples in more detail in a minute.

Obviously, if the theory is wrong, we could be risking a lot. For example, we could be jeopardizing our own security and the nuclear umbrella that assures 31 other countries of their security. Ironically, as our capacity is reduced, their propensity to build their own deterrent is increased—the opposite of what we intend.

We could be sacrificing our freedom to deploy the full range of missile defenses we need by agreeing to arms control agreements like START or other agreements or unilateral actions like the U.S. statement on missile defense accompanying the START treaty.

Were we to ratify the CTBT, we would forever legally give up our right to test weapons. That's a very serious limitation.

The point is, leading by example means sacrifices on our part that could have significant consequences. The question is whether the risks are justified.

Zero nukes: what does President Obama want to achieve with this strategy? Barack Obama has long advocated zero nuclear weapons going all the way back to his writings as a college student in 1983. In fact, he wrote then that the drive to achieve a ban on all nuclear weapons testing would be ''a powerful first step towards a nuclear free world.'' He's even cast it in moral terms, saying that ''as a nuclear power, as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act.''

There are four big assumptions here: that the Global Zero idea, a world without nuclear weapons, is necessarily a good thing; that such a world could realistically be achieved; that our leadership here will help to reestablish previously lost moral force behind U.S. policy; and that, if we lead by example, others will follow.

The first three assumptions need to be carefully examined; though this morning, I will focus only on the last.

Suffice it to say the following about the first three assumptions: first, is ''zero'' really desirable? If nuclear deterrence has kept the peace between superpowers since the end of World War II, which itself cost over 60 million lives by some estimates, are nuclear weapons really a risk to peace or a contributor to peace?

Second, since the know-how exists to build nuclear weapons and they can't be disinvented, is it really realistic to think they could be effectively eliminated? For example, if we get near to zero, any nation that can breakout and build even a few nuclear weapons will become a superpower.

And the superpowers themselves will find it difficult to get close to zero. For example, if Russia deploys ten extra nuclear weapons today, that's not a big deal, we have 2,200 deployed. If, however, each side is at 100 weapons, and one side deploys an extra ten, that's a significant military breakout. And while we will have 1,550 deployed weapons under the new treaty, and China will still have only several hundred, as we go lower, China has every incentive to build up quickly and become a peer competitor to the U.S. How do we deal with these problems? It's not clear we know.

Third, do we really have to ''restore our moral leadership'' and is it necessarily more moral or moral at all to eschew weapons that have been a deterrent to conflict, but the elimination of which could make the world again safe for conventional wars between the great powers? Again, World War 2 cost an estimated 60 million lives. After 1945, the great powers have been deterred from war with each other.

These three questions deserve full debate—but, it is the last assumption I want to explore today—that if we lead, others will follow.

Put another way: is the world just waiting for the U.S. to further limit or eliminate its nuclear weapons? Is it true that if we lead by example, others will follow, and nuclear weapons will cease to exist? And, does our credibility in the world depend on taking these actions?

The President outlined his vision in an interview with the New York Times last year: ''it is naïve for us to think that we can grow our nuclear stockpiles, the Russians continue to grow their nuclear stockpiles, and our allies grow their nuclear stockpiles, and that in that environment we're going to be able to pressure countries like Iran and North Korea not to pursue nuclear weapons themselves.''

The first problem with that is that it's factually wrong—we are not growing our nuclear stockpiles, we're reducing them, and we have been for years. The second problem is that, notwithstanding our reductions, others are not following suit.

One of the first places President Obama chose to lead was to modify our approach to the use of nuclear weapons in his new Nuclear Posture Review. I previously mentioned his new policy of non-use against certain kinds of non-nuclear attacks.

A second feature of the NPR was to artificially take off the table some necessary options like replacement of nuclear components to make them more reliable and safe. This is leading by example that other nuclear powers aren't following and we shouldn't be doing if we want to ensure that our weapons will do what we want them to do.

The Administration's next step was signing the NEW START treaty, with significant reductions to our deployed warheads and delivery vehicles and potential limitations on missile defense. But Russia was going to reduce its numbers with or without the treaty—so we should not conclude their acts were because we led by example. And it remains to be seen whether what we gave up will be worth the ostensible ''reset'' in our relations.

And, after NEW START, there is another arms control treaty. Let me quote Assistant Secretary of State Rose Gottemoeller in a speech titled ''The Long Road from Prague'': ''The second major arms control objective of the Obama Administration is the ratification of the Comprehensive Nuclear Test-Ban Treaty (CTBT). There is no step that we could take that would more effectively restore our moral leadership and improve our ability to reenergize the international nonproliferation consensus than to ratify the CTBT.''

Is it true we have acted badly and must atone to restore our moral leadership? Here's what we've done in disarmament already: the U.S. has reduced its nuclear weapons stockpile by 75 percent since the end of the Cold War and 90 percent since the height of the Cold War (this doesn't even include the NEW START figures). The U.S. has not conducted a nuclear weapons test since 1992. It has not designed a new warhead since the 80s nor has it built one since the 1990s. We have pulled back almost all of our tactical nuclear weapons, and in the new NPR, we will retire our sea launched cruise missile.

And what has this ''leadership'' gotten us? Has it impressed Iran and North Korea? Has it kept Russia and China and France and Great Britain and India and Pakistan from modernizing (and in some cases growing) their nuclear weapons stockpiles?

Russia is, in fact, deploying a new multipurpose attack submarine that can launch long range cruise missiles with nuclear warheads against land targets at a range of 5,000 kilometers . . . just barely missing the threshold to be considered a strategic weapon under the New START treaty. Of course, a tactical nuclear weapon has a strategic effect if it is detonated above a U.S. or allied city.

Will Pakistan or North Korea ratify the CTBT just because the U.S. does? Not likely. In fact, both nations continued their nuclear weapons tests after the U.S. unilaterally stopped testing and even after the U.S. signed the CTBT.

Have these steps motivated our allies to be more helpful in dealing with real threats like Iran and North Korea and with nuclear terrorism? If we ratify CTBT, would Great Britain suddenly have a new motivation to help us more on Iran? If we cut more nuclear weapons from our stockpile would France now be willing to cut back on its force de frappe?

Was Russia willing to discuss its tactical nuclear weapons as part of the current START treaty? Russia's President has said that ''possessing nuclear weapons is crucial to pursuing independent policies and to safeguarding sovereignty.'' In fact, Russia appears to be as difficult as ever, announcing that it will build a nuclear reactor in Syria on the same day that the U.S. announced it will begin nuclear cooperation with Russia.

Has all of our work toward disarmament impressed Turkey to play a constructive or obstructive role in reining in Iran?

The recent Nuclear Security Summit saw no meaningful new commitments because of our newfound moral leadership. In fact the most the Administration could say for it is 47 nations signed a non-binding communiqué.

And with regard to the Non Proliferation Treaty review conference, which is underway as we speak in New York, will our moral leadership bring us any benefit there? It is not encouraging to see the conference devolve into a discussion of Israel's nuclear weapons program as opposed to Iran's.

When countries have cut back their nuclear weapons programs, it was for other reasons, namely, their own security interests or economic requirements. Nations, with the exception of the U.S. it seems, take actions that they perceive to be in their best interests. They do not change their national security posture merely because of U.S. disarmament. They may even observe these steps as weakness and opt to double down on their aggressive outlaw actions as a result.

For example, Russia agreed to the limits in the new START treaty, but, as I noted, that was only because it was already going down to those levels, not because of some U.S. moral leadership.

Nor did South Africa abandon its nuclear weapons program because of our leadership—it was because of the fall of the apartheid regime.

Did Libya end its program because we opted not to go ahead with RNEP or RRW? No, Libya saw 160,000 U.S. troops in Iraq enforcing UN Security Council Resolutions on nuclear proliferation and feared it would be next.

These same interests, security and commercial, also dictate nations' actions with regard to the nuclear terrorism and proliferation issues. For example, Russia says that an Iran with nuclear weapons is a threat. And it will go along with some sanctions, e.g., sanctions that raise the global price of energy, of which Russia is the world's leading exporter—but it won't go along with sanctions cutting off Iran's flow of weapons, which Russia sells in great quantity.

And even a European country like Germany would like the U.S. to remove from that country the tactical nuclear weapons we deploy there for the defense of NATO, but, at the same time, is actually growing its economic links to Iran—and it appears willing only to impose sanctions agreed to by the U.N. and the E.U.

Bottom line: there is no evidence our moral leadership in arms control and disarmament will convince countries to set aside their calculations of the impact of nuclear proliferation and nuclear terrorism on their national security, and help us address these threats.

The Administration's security agenda is based on the notion of the U.S. making substantive changes to our national security posture in the hopes of persuading others to act, frequently contrary to their economic or security interests.

But this good faith assumption that others will reciprocate is not supported by any evidence—it is certainly not informed by any past experience. Before big changes are made to our security posture, the President owes it to the American people to explain exactly how the changes will improve our security. It cannot just be a matter of change and hope. Too much is at stake.

I also think the American people will be quite surprised to learn that their nation lost its moral leadership somewhere and that concessions to their security are now necessary to reestablish it.

As a complete aside, the most recent example of the Obama Administration's thinking in this regard is the Assistant Secretary of State for Democracy and Human Rights' comparison of the immigration law passed by my state of Arizona to the systematic policy of abuse and repression by the ''People's Republic of China.''

As you can tell by now, I am not much impressed with the notion that we can achieve important U.S. security goals by leadership which stresses concession by the U.S. Rather than change and hope, I adhere to the philosophy of President Reagan epitomized in the words ''peace through strength.''

A strong America is the best guarantor of a peaceful world that has ever been known. And there is nothing immoral about strength that keeps the peace.

## NOMINATION OF ELENA KAGAN

Mr. LEAHY. Mr. President, earlier today I announced that the Senate Judiciary Committee will hold its confirmation hearing on the nomination of Solicitor General Elena Kagan to be Associate Justice on the U.S. Supreme Court beginning June 28.

I have reached out to Senator SESSIONS, the committee's ranking Republican, to discuss the scheduling of this hearing, and we were finally able to meet yesterday. We worked cooperatively to send a bipartisan questionnaire to the nominee last week. We joined together to send a letter yesterday to the Clinton Library asking for files from Solicitor General Kagan's work in the White House during the Clinton administration. I will continue to consult with Senator SESSIONS to ensure that we hold a fair hearing.

This is a reasonable schedule that is in line with past practice. The hearing on the nomination of Justice Kennedy was held just 33 days after his designation. The hearing on the nomination of Justice Ginsburg was held 36 days after her nomination. And the hearing on the nomination of Justice Rehnquist to be Chief Justice was held 42 days after his nomination. When John Roberts was first nominated to succeed Justice O'Connor, I agreed with the Republican Chairman to proceed 49 days after his designation even though he had not yet even received his answer to the committee's questionnaire. After Hurricane Katrina, the death of Chief Justice Rehnquist, and the withdrawal of that initial nomination and his nomination, instead, to be Chief Justice, the committee proceeded just days after his nomination and only 55 days from his earlier designation. Of course, last year we proceeded with the hearing on the nomination of Justice Sotomayor 48 days after she was designated. Senate Republicans said that hearing was fair and was conducted fairly. This year, I am scheduling the hearing to start 49 days after Elena Kagan's nomination.

There is no reason to unduly delay consideration of this year's nomination. Justice Stevens announced on April 9 that he would be leaving the Court. He wrote that he would resign effective the day after the Supreme

Court concludes its summer session at the end of June. He noted that ''it would be in the best interests of the Court to have [his] successor appointed and confirmed well in advance of the commencement of the Court's next Term,'' and I wholeheartedly agree with Justice Stevens. That is in the best interests of the Court and the country.

Since Justice Stevens' announcement in early April, there has been a good deal of work done in preparation. The President announced his choice a month later, on May 10. During that month, much was written and said about the eventual nominee who was identified from the outset as a leading candidate for nomination. When the President made it official, Senate Republicans were quick to react. Indeed, one Senate Republican announced on the very day that the President announced his selection that the Senator opposed Solicitor General Kagan's nomination and would be voting against confirmation. Extreme right-wing interest groups and commentators have been savaging her since before the nomination was announced, and that has not subsided. The misstatements and harsh characterizations make proceeding sooner rather than later all the more important. Solicitor General Kagan deserves the earliest opportunity to respond to these attacks and to set the record straight. The American people deserve a process that is fair and thorough but not needlessly prolonged. In selecting this hearing date, I am trying to be fair to all concerned.

I also want to conclude the process without unnecessary delay so that Solicitor General Kagan might participate fully in the deliberations of the Supreme Court in selecting cases and preparing for its new term. I want to complete Senate consideration, as Justice Stevens suggested, so that the new Justice is confirmed well in advance of the commencement of the Supreme Court's next term, so that she may organize her chambers, select her clerks, and fully participate in the work of the Court.

This schedule is also in keeping with the time line Senator MCCONNELL recommended in 2005, when President Bush made his first nomination to the Supreme Court and Senator MCCONNELL, then the Republican whip and now the Senate Republican leader, said that the Senate should consider and confirm the President's Supreme Court nomination within 60 to 70 days. We worked hard to achieve that. The final Senate vote on Chief Justice Roberts' nomination was 72 days after he was designated. Justice Sotomayor was likewise confirmed 72 days after she was named. Seventy-two days after the nomination of Elena Kagan will be July 21.

Unlike the late July nomination of John Roberts, this nomination by President Obama was announced on May 10. Unlike the resignation of Justice O'Connor, which was not announced until July, the retirement of Justice Stevens was made official on April 9. So in this instance the vacancy arose almost 3 months earlier than in 2005. After bipartisan consultation, President Obama made his nomination more than 2 months earlier than President Bush did in 2005.

One of the Republican criticisms of this nomination is that Solicitor General Kagan has not been a judge and does not have years of opinions to be considered. That should make Senators' preparation for the hearing less labor intensive than that for Justice Sotomayor. In addition, we thoroughly reviewed and considered her record just last year when the Senate, by a bipartisan majority vote, confirmed her nomination to serve as the Solicitor General of the United States, often called the ''Tenth Justice.''

To delay the confirmation hearing until July, as some have suggested, would mean extending the preparation time from 49 to 63 days. But Republicans complain that there is less to review, nothing like the thousands of opinions they complained about last year. Accordingly, we could actually proceed more quickly to the hearing. This last weekend, Republican Senators said that Solicitor General Kagan's answers at the hearing were going to be the key. If that is true and they will approach the hearing with open minds and listen to her answers to their questions, we should not needlessly delay getting to those questions and answers.

The hearing is the opportunity for all Senators on the Judiciary Committee, both Republicans and Democrats, to ask questions, raise concerns, and evaluate the nomination. It seems to me that Republican Senators are ready to ask questions now. At last week's consideration of the nomination of Goodwin Liu to the Ninth Circuit, much of the discussion from Republican Senators seemed, instead, to be about the Kagan nomination to the Supreme Court. The Republican Senators say that they want to ask her about her actions as the dean of Harvard Law School and about her judicial philosophy. It does not take 2 months to prepare to ask those questions. They have already raised them. They will surely be prepared to ask them by late June. This is a schedule that I think is both fair and adequate—fair to the nominee and adequate for us to prepare for the hearing and Senate consideration. There is no reason to indulge in needless and unreasonable delay.

We already have received Solicitor General Kagan's response to the committee's questionnaire. Senator SESSIONS and I have sent a letter to the National Archives requesting documents related to Elena Kagan's service in the Clinton administration and there should be no cause for concerns that we will have these records before the committee in light of the White House Counsel's request over the weekend for the release of thousands of pages of records from that time. We will be prepared to proceed to a hearing on June 28, almost 6 weeks from today.

The purpose of the hearing is to allow Senators to ask questions and raise their concerns. It is also the time the American people can see the nominee, consider her thoughtfulness, her temperament, and evaluate her character. I am disappointed that some Republican Senators have already declared that they will vote no on Solicitor General Kagan's nomination and have made that announcement before giving the nominee a fair chance to be heard. It is incumbent on us to allow the nominee an opportunity to be considered fairly and allow her to respond to false criticism of her record and her character. Those who are critical and have doubts should support the promptest possibly hearing. That is where questions can be asked and answered. That is why we hold hearings.

President Obama handled the selection process with the care that the American people expect and deserve and met with Senators from both sides of the aisle. I suggested that he nominate someone outside the judicial monastery, whose experiences were not limited to those in the rarified air of the Federal appellate courts. The Supreme Court's decisions have a fundamental impact on Americans' everyday lives. One need look no further than the Lilly Ledbetter and Diana Levine cases to understand how just one vote can determine the Court's decision and impact the lives and freedoms of countless Americans. One need look no further than the Citizens United decision to know that the decisions of the Supreme Court can drown out the voices of individual Americans in favor of wealthy corporate interests. I believe that Solicitor General Kagan understands that our courthouse doors must remain open to hard-working Americans.

President Obama is to be commended for having consulted with Senators from both sides of the aisle. Now the Senate must fulfill its responsibility. The nominee has returned the Judiciary Committee questionnaire and will be completing her meetings with Senators on the Judiciary Committee very soon. I hope that all Senators now will work with me to move forward to consider this nomination in a fair and timely manner.

## COMMENDING PRIME MINISTER KOSOR OF CROATIA

Mr. BEGICH. Mr. President, today I honor Madame Jadranka Kosor, the Prime Minister of Croatia, on the occasion of her visit to Washington, DC. I congratulate her on becoming the first female Prime Minister of Croatia. Additionally, I commend Croatia for its promotion of genuine cooperation in southeast Europe fostering strong relations, stability and prosperity with her

neighbors. As a graduate of the Faculty of Law in Zagreb, Vice Prime Minister, Minister of the Family, Veterans' Affairs and Intergenerational Solidarity, she is a woman of much accomplishment.

Prime Minister Kosor is dedicated to leading Croatia on its final stages of accession toward membership in the European Union. This is an action strongly supported by the United States. I recognize Prime Minister Kosor's efforts and determination in carrying out all the necessary reforms in this process. She has helped to strengthen the rule of law and the economy of her country in order for it to flourish and enter into the European Union.

Croatia is a strong supporter of the United States and its efforts to restore stability and peace to many parts of the world. Croatia is one of the two newest NATO members and a staunch ally of the United States. In Afghanistan Croatia has assisted the United States for years with troops and other ground personnel.

Many years ago my paternal grandfather left Croatia for a new life in America. His son, my father, was the first Croatian American elected to the House of Representatives. I am proud to be the first Croatian American elected to the U.S. Senate. I am honored to meet with Prime Minister Kosor to discuss our nations' mutual support for democracy around the world.

Mr. President and colleagues, please join me in welcoming Prime Minister Kosor to the United States and honoring the friendship our two countries have.

## ADDITIONAL STATEMENTS

### RECOGNIZING THE PUJOLS FAMILY FOUNDATION

● Mrs. MCCASKILL. Mr. President, today I commemorate the work and commitment of the Pujols Family Foundation. We all know Albert Pujols as one of today's most notable baseball players and, of course, the first baseman for my home team, the St. Louis Cardinals. However, in addition to his commitments as a professional athlete, Albert has chosen to invest his time and compassion for the past 5 years in the Pujols Family Foundation. In its efforts to provide education, medical relief, and supplies to impoverished children, the Pujols Family Foundation has funded Haitian disaster relief, family-oriented events in St. Louis, and mission trips to the Dominican Republic. Through their efforts and service, the Pujols Family Foundation has become a saving grace for families living with Down's syndrome, disabilities, and life-threatening illnesses without means to afford many of the necessities we take for granted.

Albert Pujols also uses baseball as a way to bring new joy and relief to children in the Dominican Republic. Batey Baseball is a new joint venture for 2010 and is spearheaded by Albert Pujols, the Pujols Family Foundation, and Compassion International. Its mission is to teach responsibility, teamwork, and leadership to young men in the Dominican Republic through the sport of baseball. Set to launch in the summer of 2010, this program will bring joy and hope to many young baseball enthusiasts in the Dominican Republic.

It is a welcome occurrence when I have the honor to come before this body and acknowledge the selfless and tireless work done by Missourians on behalf of those less fortunate.

On behalf of myself and the people of Missouri, I would like to recognize and congratulate Albert Pujols, his wife Derdre, and the Pujols Family Foundation on their 5 years of service to the people of St. Louis, MO, and the world.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

At 10:47 a.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1782. An act to provide improvements for the operations of the Federal courts, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2288. An act to amend Public law 106–392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023.

H.R. 4491. An act to authorize the Secretary of the Interior to conduct a study of alternatives for commemorating and interpreting the role of the Buffalo Soldiers in the early years of the National Parks, and for other purposes.

H.R. 4614. An act to amend part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide for incentive payments under the Edward Byrne Memorial Justice Assistance Grant program for States to implement minimum and enhanced DNA collection processes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 211. Concurrent resolution recognizing the 75th anniversary of the establishment of the East Bay Regional Park District in California, and for other purposes.

ENROLLED BILLS SIGNED

At 4:02 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1782. An act to provide improvements for the operations of the Federal courts, and for other purposes.

H.R. 5014. An act to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage.

## MEASURES REFERRED

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

H.R. 4491. An act to authorize the Secretary of the Interior to conduct a study of alternatives for commemorating and interpreting the role of the Buffalo Soldiers in the early years of the National Parks, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4614. An act to amend part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide for incentive payments under the Edward Byrne Memorial Justice Assistance Grant program for States to implement minimum and enhanced DNA collection processes; to the Committee on the Judiciary.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 211. Concurrent resolution recognizing the 75th anniversary of the establishment of the East Bay Regional Park District in California, and for other purposes; to the Committee on the Judiciary.

## MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2288. An act to amend Public Law 106–392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023.

## 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. VITTER:

S. 3384. A bill to direct the General Accountability Office to conduct a full audit of hurricane protection funding and cost estimates associated with post-Katrina hurricane protection; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BENNETT (for himself, Mr. BARRASSO, Mr. ENZI, and Mr. HATCH):

S. 3385. A bill to amend the Mineral Leasing Act to require the Secretary of the Interior to determine the impact of any proposed modification to the policy of the Department of the Interior relating to any onshore oil or natural gas preleasing or leasing activity, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER (for himself, Mr. PRYOR, Mr. NELSON of Florida,

Ms. KLOBUCHAR, Mrs. MCCASKILL, and Mr. LEMIEUX):

S. 3386. A bill to protect consumers from certain aggressive sales tactics on the Internet; to the Committee on Commerce, Science, and Transportation.

By Mr. UDALL of Colorado:

S. 3387. A bill to provide for the release of water from the marketable yield pool of water stored in the Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River, and for other purpose; to the Committee on Energy and Natural Resources.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BOND (for himself and Mrs. MCCASKILL):

S. Res. 534. A resolution expressing support for designation of May 1, 2010, as ''Silver Star Service Banner Day''; considered and agreed to.

By Mr. DODD (for himself, Mr. LUGAR, Mr. BINGAMAN, Mr. DURBIN, Mrs. GILLIBRAND, and Mr. MENENDEZ):

S. Res. 535. A resolution honoring the President of Mexico, Felipe Calderon Hinojosa, for his service to the people of Mexico, and welcoming the President to the United States; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 28

At the request of Mr. SCHUMER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 28, a bill to ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons.

S. 354

At the request of Mr. WEBB, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 354, a bill to provide that 4 of the 12 weeks of parental leave made available to a Federal employee shall be paid leave, and for other purposes.

S. 504

At the request of Mr. ROBERTS, the names of the Senator from Montana (Mr. BAUCUS), the Senator from Alaska (Mr. BEGICH), the Senator from Nevada (Mr. ENSIGN), the Senator from South Carolina (Mr. GRAHAM), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Vermont (Mr. SANDERS) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 504, a bill to redesignate the Department of the Navy as the Department of the Navy and Marine Corps.

S. 632

At the request of Mr. BAUCUS, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from North Dakota (Mr. CONRAD) were added as cosponsors of S. 632, a bill to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly.

S. 941

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

S. 987

At the request of Mr. DURBIN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1055

At the request of Mr. BENNETT, his name was added as a cosponsor of S. 1055, a bill to grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

S. 1651

At the request of Mr. LEVIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1651, a bill to modify a land grant patent issued by the Secretary of the Interior.

S. 2781

At the request of Ms. MIKULSKI, the names of the Senator from Rhode Island (Mr. REED) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of S. 2781, a bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability.

S. 2854

At the request of Mr. KOHL, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 2854, a bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for new qualified hybrid motor vehicles, and for other purposes.

S. 2862

At the request of Ms. SNOWE, the names of the Senator from Illinois (Mr. BURRIS), the Senator from California (Mrs. BOXER), the Senator from Oregon (Mr. MERKLEY), the Senator from Pennsylvania (Mr. SPECTER) and the Senator from New Mexico (Mr. UDALL) were added as cosponsors of S. 2862, a bill to amend the Small Business Act to improve the Office of International Trade, and for other purposes.

S. 2905

At the request of Mr. INOUYE, the names of the Senator from Mississippi (Mr. COCHRAN), the Senator from Nevada (Mr. ENSIGN) and the Senator from Mississippi (Mr. WICKER) were added as cosponsors of S. 2905, a bill to amend the Internal Revenue Code of 1986 to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 3106

At the request of Mrs. HAGAN, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 3106, a bill to authorize States to exempt certain nonprofit housing organizations from the licensing requirements of the S.A.F.E. Mortgage Licensing Act of 2008.

S. 3213

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

S. 3246

At the request of Mr. WYDEN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 3246, a bill to exclude from consideration as income under the Native American Housing Assistance and Self-Determination Act of 1996 amounts received by a family from the Department of Veterans Affairs for service-related disabilities of a member of the family.

S. 3248

At the request of Mr. BINGAMAN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 3248, a bill to designate the Department of the Interior Building in Washington, District of Columbia, as the ''Stewart Lee Udall Department of the Interior Building''.

S. 3278

At the request of Mr. BENNET, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 3278, a bill to establish the Meth Project Prevention Campaign Grant Program.

S. 3305

At the request of Mr. MENENDEZ, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 3305, a bill to amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills, and for other purposes.

S. 3306

At the request of Mr. MENENDEZ, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 3306, a bill to amend the Internal Revenue Code of 1986 to require polluters to pay the full cost of oil spills, and for other purposes.

S. 3319

At the request of Mr. DODD, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 3319, a bill to amend the Internal Revenue Code of 1986 to provide recruitment and retention incentives for volunteer emergency service workers.

S. 3339

At the request of Mr. KERRY, the name of the Senator from Massachusetts (Mr. BROWN) was added as a cosponsor of S. 3339, a bill to amend the Internal Revenue Code of 1986 to provide a reduced rate of excise tax on beer produced domestically by certain small producers.

S. 3363

At the request of Mr. CARDIN, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 3363, a bill to amend the Water Resources Research Act of 1984 to reauthorize grants for and require applied water supply research regarding the water resources research and technology institutes established under that Act.

S. 3372

At the request of Mrs. BOXER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3372, a bill to modify the date on which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels.

S. 3381

At the request of Mr. BAUCUS, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 3381, a bill to amend the Clean Air Act to modify certain definitions of the term ''renewable biomass'', and for other purposes.

S.J. RES. 29

At the request of Mrs. FEINSTEIN, the names of the Senator from Ohio (Mr. BROWN), the Senator from Iowa (Mr. HARKIN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S.J. Res. 29, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

At the request of Mr. MCCONNELL, the names of the Senator from Maine (Ms. SNOWE), the Senator from Maine (Ms. COLLINS), the Senator from Ohio (Mr. VOINOVICH) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S.J. Res. 29, supra.

AMENDMENT NO. 3799

At the request of Mrs. HAGAN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of amendment No. 3799 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3922

At the request of Mr. MERKLEY, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 3922 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3923

At the request of Mr. SCHUMER, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of amendment No. 3923 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4003

At the request of Mr. PRYOR, his name was added as a cosponsor of amendment No. 4003 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4085

At the request of Mr. HARKIN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of amendment No. 4085 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4087

At the request of Mr. PRYOR, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of amendment No. 4087 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 534—EXPRESSING SUPPORT FOR DESIGNATION OF MAY 1, 2010, AS ''SILVER STAR SERVICE BANNER DAY''

Mr. BOND (for himself and Mrs. MCCASKILL) submitted the following resolution; which was considered and agreed to:

S. RES. 534

Whereas the Senate has always honored the sacrifices made by the wounded and ill members of the Armed Forces;

Whereas the Silver Star Service Banner has come to represent the members of the Armed Forces and veterans who were wounded or became ill in combat in the wars fought by the United States;

Whereas the Silver Star Families of America was formed to help the American people remember the sacrifices made by the wounded and ill members of the Armed Forces by designing and manufacturing Silver Star Service Banners and Silver Star Flags for that purpose;

Whereas the sole mission of the Silver Star Families of America is to evoke memories of the sacrifices of members and veterans of the Armed Forces on behalf of the United States through the presence of a Silver Star Service Banner in a window or a Silver Star Flag flying;

Whereas the sacrifices of members and veterans of the Armed Forces on behalf of the United States should never be forgotten; and

Whereas May 1, 2010, is an appropriate date to designate as ''Silver Star Service Banner Day'': Now, therefore, be it

*Resolved,* That the Senate designates May 1, 2010, as ''Silver Star Service Banner Day'' and calls upon the people of the United States to observe the day with appropriate programs, ceremonies, and activities.

### SENATE RESOLUTION 535—HONORING THE PRESIDENT OF MEXICO, FELIPE CALDERON HINOJOSA, FOR HIS SERVICE TO THE PEOPLE OF MEXICO, AND WELCOMING THE PRESIDENT TO THE UNITED STATES

Mr. DODD (for himself, Mr. LUGAR, Mr. BINGAMAN, Mr. DURBIN, Mrs. GILLIBRAND, and Mr. MENENDEZ) submitted the following resolution; which was considered and agreed to:

S. RES. 535

Whereas the relationship between the people and Governments of the United States and Mexico is based on trust, mutual respect, and cultural exchanges that have enriched both nations;

Whereas our two nations share not just a border, but also common values and common aspirations;

Whereas millions of Americans proudly claim Mexican ancestry, and the United States is home to the world's second largest Mexican community;

Whereas, when the American people look to their south, they see not only a neighbor, but an ally and a friend;

Whereas mutual interests, including border security, economic prosperity, and clean energy, rely on the continuing development and deepening of the United States-Mexico relationship;

Whereas drug trafficking and related violence has taken a significant toll on both countries, resulting in the deaths of more than 22,000 people in Mexico in the last 3 years, including a number of law enforcement agents and public officials, highlighting the enormous problem of illegal drug use and gang violence in America;

Whereas the Governments of Mexico and the United States have worked together under the principle of shared responsibility to address this scourge through the Merida Initiative and through programs such as cooperative intelligence, border security, and anti-corruption efforts and efforts to stop the flow of weapons and illicit money from the United States into Mexico; and

Whereas the future security and prosperity of both nations depends on our continuing ability to work together in the spirit of our common values and long friendship: Now, therefore, be it

*Resolved,* That the Senate—

(1) warmly welcomes the President of Mexico, Felipe Calderon Hinojosa;

(2) believes that together, the Governments of Mexico and the United States can bring immense benefits to their people and make enormous contributions to addressing the global challenges of the 21st century;

(3) looks forward to the continuing progress in relations between the Governments and people of Mexico and the United States; and

(4) appreciates the social, economic, and cultural contributions of the Mexican community in the United States and desires closer relations between the people of the United States and the people of Mexico.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 4115. Mr. MERKLEY (for himself and Mr. LEVIN) proposed an amendment to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

SA 4116. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4117. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3794 submitted by Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, and Mr. KAUFMAN) and intended to be proposed to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4118. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4119. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4120. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4121. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3746 proposed by Mr. WHITEHOUSE (for himself, Mr. MERKLEY, Mr. DURBIN, Mr. SANDERS, Mr. LEVIN, and Mr. BURRIS) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4122. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4123. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4124. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4125. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4126. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4127. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4128. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4129. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4130. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4131. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4132. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4133. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4134. Mr. REED submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4135. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4136. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4137. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4138. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4139. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4140. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4141. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4142. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4050 submitted by Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4143. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4144. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4145. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3776 proposed by Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4146. Mr. ENSIGN proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4147. Mr. DODD (for Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. VOINOVICH)) proposed an amendment to the bill S. 920, to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes.

## TEXT OF AMENDMENTS

**SA 4115.** Mr. MERKLEY (for himself and Mr. LEVIN) proposed an amendment to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

At the appropriate place, insert the following:

**SEC. ___. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board

shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

**SEC. ____. CONFLICTS OF INTEREST.**

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4116.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

(g) FEDERAL RESERVE MAXIMUM RESERVE RATIOS.—Effective 90 days after the date of enactment of this Act, the authority of the Federal Reserve to vary the maximum reserve ratios for depository institutions shall be—

(1) 0 to 25 (with respect to transaction deposits); and

(2) 0 to 25 (with respect to time) deposits.

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**SA 4117.** Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3794 submitted by Mr. LEAHY (for himself, Mr. GRASSLEY, and Mr. SPECTER, and Mr. KAUFMAN) and intended to be proposed to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, strike line 24 and all that follows through page 11, line 8, and insert the following:

(c) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking ''or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter'' and inserting ''agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter''; and

(2) by adding at the end the following:

''(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.''.

(d) PROMOTING CRIMINAL ACCOUNTABILITY.—

(1) DEFINITIONS.—In this subsection, the terms ''Bureau'', ''consumer financial product or service'', ''designated transfer date'', and ''Federal consumer financial law'' have the meanings given those terms in section 1002.

(2) NOTICE AND COORDINATION.—

(A) NOTICE OF OTHER ACTIONS.—In addition to any notice required under section 1054(d), the Bureau shall notify the Attorney General concerning any action, suit, or proceeding to which the Bureau is a party, except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services.

(B) COORDINATION.—In order to avoid conflicts and promote consistency regarding litigation of matters under Federal law, the Attorney General and the Bureau shall consult regarding the coordination of investigations and proceedings, including by negotiating an agreement for coordination by not later than 180 days after the designated transfer date. The agreement under this subparagraph shall include provisions to ensure that parallel investigations and proceedings involving the Federal consumer financial laws are conducted in a manner that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Bureau under title X, including the authority to interpret Federal consumer financial law.

**SA 4118.** Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after (a), add the following:

**EXCLUSION FOR AUTO DEALERS.**

(a) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages and self-financing transactions involving real property;

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(A) the extension of retail credit or retail leases are provided directly to consumers; and

(B) the contract governing such extension of retail credit or retail leases is not predominantly assigned to a third-party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of this Act, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

(e) COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

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**SA 4119.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1032, strike lines 7 through 11 and insert the following:

(7) CREDIT.— The term ''credit'' means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

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**SA 4120.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1032, strike lines 7 through 11 and insert the following:

(7) CREDIT.—The term ''credit'' means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

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**SA 4121.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3746 proposed by Mr. WHITEHOUSE (for himself, Mr. MERKLEY, Mr. DURBIN, Mr. SANDERS, Mr. LEVIN, and Mr. BURRIS) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN))

to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1032, strike lines 7 through 11 and insert the following:

(7) CREDIT— The term ''credit'' means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

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**SA 4122.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4123.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4124.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4125.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include

a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4126.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. _. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this

section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

**SEC. __. CONFLICTS OF INTEREST.**

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4127.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. __. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no

force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**"SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity

fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

**SEC. (i). CONFLICTS OF INTEREST.**

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4128.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. _. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that

such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

**SEC. __. CONFLICTS OF INTEREST.**

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4129.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. __. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent

application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and commited to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership

interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies,

the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

**SEC. __. CONFLICTS OF INTEREST.**

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4130.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4131.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4132.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. __. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment

Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

**SEC. ___—.(i) CONFLICTS OF INTEREST.**

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4133.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. _. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as

defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered,

directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes,

the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

**SEC. __. CONFLICTS OF INTEREST.**

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

**''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.**

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

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**SA 4134.** Mr. REED submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

(g) EXCLUSION NOT APPLICABLE TO MILITARY LENDING.—

(1) IN GENERAL.—Subsection (a) shall not apply to any person that extends credit or arranges for the extension of retail credit or retail leases—

(A) subject to paragraph (2), to a consumer who is a covered member of the Armed Forces or a dependent of a covered member of the Armed Forces, as such terms are defined in section 670(a) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 987(i)(1) and 10 U.S.C. 987(i)(2)); or

(B) for the purchase or lease of motor vehicles if such person sells, leases, or otherwise delivers motor vehicles to consumers from a physical location that is within 50 miles of a United States military installation.

(2) RULE OF CONSTRUCTION.—A person shall be deemed to comply with the exclusion under subparagraph (1)(A) if such person uses reasonable and appropriate procedures, in accordance with rules prescribed by the Bureau, to determine that all applicants are not consumers described in subparagraph (1)(A).

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**SA 4135.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. _____. PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.**

(a) PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end following:

''(n) PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.—

''(1) IN GENERAL.—Any person who sells, transfers, or plans to sell or transfer at least 1,000 mortgages, mortgage-backed securities, or similar financial instruments within a calendar year shall not include or reference in any of such financial instruments any mortgage in which the loan balance may negatively amortize.

''(2) APPLICABILITY.—This subsection does not apply to home equity conversion mortgages, as defined under section 255 of the National Housing Act (commonly referred to as 'reverse mortgages') that are otherwise regulated by a Federal or State agency.

''(3) RULE OF CONSTRUCTION.—As used in this section, the term 'mortgage' shall not be construed to be restricted or limited only to mortgages referred to in section 103(aa).''.

(b) EFFECTIVE DATE.—The requirements under subsection (n)(1) of section 129 of the Truth in Lending Act (as added by subsection (b)) shall take effect not later than 180 days after the date of the enactment of this Act.

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**SA 4136.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. ___. RELIANCE ON REPORTS.**

Notwithstanding section 932, section 15E(s)(4) of the Securities Exchange Act (15 U.S.C. 78o-7), as amended by section 932, is amended by adding at the end the following:

''(E) NO RELIANCE ON INADEQUATE REPORT.—A nationally recognized statistical rating organization may not rely on a third-party due diligence report if the nationally recognized statistical rating organization has reason to believe that the report is inadequate.''.

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**SA 4137.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. ___. STANDARDS AND OVERSIGHT.**

Notwithstanding section 932, section 15E(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(c)(2)) is amended to read as follows:

''(2) STANDARDS AND OVERSIGHT.—The Commission shall set standards and exercise oversight of the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations, to ensure that the credit ratings issued by the nationally recognized statistical rating organizations have a reasonable foundation.''.

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**SA 4138.** Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. ___. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G, as added by this Act, the following new section:

**''SEC. 15H. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.**

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holder of the security.

''(b) RESTRICTION.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no substantial or material economic purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine whether a synthetic asset-backed security meets the requirements of this section. A determination by the Commission under the preceding sentence is not subject to judicial review.''.

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**SA 4139.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. ___. FDIC EXAMINATION AUTHORITY.**

(a) EXAMINATION AUTHORITY FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ''whenever the Board'' and all that follows through the period at the end and inserting the following: ''or depository institution holding company whenever the Chairperson or the Board of Directors determines that a special examination of any such depository institution or depository institution holding company is necessary to determine the condition of such depository institution or depository institution holding company for insurance purposes or for purposes of title II of the Restoring American Financial Stability Act of 2010.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1)—

(A) by striking ''based on an examination of an insured depository institution'' and inserting ''based on an examination of an insured depository institution or depository institution holding company''; and

(B) by striking ''with respect to any insured depository institution or'' and inserting ''with respect to any insured depository institution, depository institution holding company, or'';

(2) in paragraph (2)—

(A) by striking ''Board of Directors determines, upon a vote of its members,'' and inserting ''Board of Directors, upon a vote of its members, or the Chairperson determines'';

(B) in subparagraph (B), by striking ''or'' at the end;

(C) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund or of the exercise of authority under title II of the Restoring American Financial Stability Act of 2010, or may prejudice the interests of the depositors of an affiliated institution.'';

(3) in paragraph (3)(A), by striking ''upon a vote of the Board of Directors'' and inserting ''upon a determination by the Chairperson or upon a vote of the Board of Directors'';

(4) in paragraph (4)(A)—

(A) by striking ''any insured depository institution'' and inserting ''any insured depository institution, depository institution holding company,''; and

(B) by striking ''the institution'' and inserting ''the institution, holding company,'';

(5) in paragraph (4)(B), by striking ''the institution'' each place that term appears and inserting ''the institution, holding company,''; and

(6) in paragraph (5)(A), by striking ''an insured depository institution'' and inserting ''an insured depository institution, depository institution holding company,''.

(c) BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

**''SEC. 51. BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.**

''The Corporation may conduct a special examination of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, if the Chairperson or the Board of Directors determines an examination is necessary to determine the condition of the company for purposes of title II of that Act.''.

(d) ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act is amended by adding at the end the following:

**''SEC. 52. ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.**

''(a) ACCESS TO INFORMATION.—The Corporation may, if the Corporation determines that such action is necessary to carry out its responsibilities relating to deposit insurance or orderly liquidation under this Act, title II of the Restoring American Financial Stability Act of 2010, or otherwise applicable Federal law—

''(1) obtain information from an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010;

''(2) obtain information from the appropriate Federal banking agency, or any regulator of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, including examination reports; and

''(3) participate in any examination, visitation, or risk-scoping activity of an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010.

''(b) ENFORCEMENT.—The Corporation shall have the authority to take any enforcement action under section 8 against any institution or company described in paragraph (1) of subsection (a) that fails to provide any information requested under that paragraph.

''(c) USE OF AVAILABLE INFORMATION.—The Corporation shall use, in lieu of a request for information under subsection (a), information provided to another Federal or State regulatory agency, publicly available information, or externally audited financial statements to the extent that the Corporation determines such information is adequate to the needs of the Corporation.''.

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**SA 4140.** Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. ___. PROPRIETARY TRADING.**

(a) DEFINITION.—Notwithstanding section 619(a), for purposes of section 619, the term ''insured depository institution'' does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

(b) EXCEPTIONS.—Notwithstanding section 619(c), for purposes of section 619, an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company may sponsor or invest in a hedge fund or a private equity fund, if—

(1) such institution, company, or subsidiary provides trust, fiduciary, or advisory services to the fund;

(2) the fund is sponsored and offered in connection with the provision of trust, fiduciary, or advisory services by such institution, company, or subsidiary to persons who are, or may be, customers or clients of such institution, company, or subsidiary;

(3) such institution, company, or subsidiary—

(A) does not acquire or retain an equity, partnership, or ownership interest in the fund; or

(B) acquires or retains an equity, partnership, or ownership interest, if—

(i) on the date that is 12 months after the date on which the fund is established, the equity, partnership, or ownership interest is not greater than 10 percent of the total equity of the fund; and

(ii) the aggregate equity investments by such institution, company, or subsidiary in the fund do not exceed 5 percent of Tier 1 capital of such institution, company, or subsidiary;

(4) such institution, company, or subsidiary does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), except on terms and under circumstances specified in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1);

(5) the obligations of the fund are not guaranteed, directly or indirectly, by such institution, company, or subsidiary any affiliate of such institution, company, or subsidiary; and

(6) such institution, company, or subsidiary does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

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**SA 4141.** Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SEC. 1030. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.**

(a) REPEAL.—Notwithstanding any other provision of this Act, section 911 of this Act is repealed, effective on the date of enactment of this Act, and shall have no force or effect on or after that date of enactment.

(b) INVESTOR ADVISORY COMMITTEE ESTABLISHED.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

**''SEC. 39. INVESTOR ADVISORY COMMITTEE.**

''(a) ESTABLISHMENT AND PURPOSE.—

''(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the 'Committee').

''(2) PURPOSE.—The Committee shall—

''(A) advise and consult with the Commission on—

''(i) regulatory priorities of the Commission;

''(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

''(iii) initiatives to protect investor interests, including initiatives to protect investors against the material risks to investors associated with companies in the extractive industries sector, including—

''(I) unique tax and reputational risks, in the form of country-specific taxes and regulations;

''(II) the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments; and

''(III) the potential for unstable and high-cost operating environments for multinational companies operating in foreign countries; and

''(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

''(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The members of the Committee shall be—

''(A) the Investor Advocate;

''(B) a representative of State securities commissions;

''(C) a representative of the interests of senior citizens; and

''(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

''(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

''(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

''(iii) are knowledgeable about investment issues and decisions; and

''(iv) have reputations of integrity.

''(2) TERM.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

''(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

''(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

''(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

''(A) a chairman, who may not be employed by an issuer;

''(B) a vice chairman, who may not be employed by an issuer;

''(C) a secretary; and

''(D) an assistant secretary.

''(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

''(d) MEETINGS.—

''(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

''(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

''(B) from time to time, at the call of the Commission.

''(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

''(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

''(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

''(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

''(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

''(g) REVIEW BY COMMISSION.—The Commission shall—

''(1) review the findings and recommendations of the Committee

''(2) make recommendations to the Commission on the advisability of making public the information required to be disclosed under section 13(p)(2); and

''(3) each time the Committee submits a finding or recommendation to the Commission under paragraph (1), issue a public statement—

''(A) assessing the finding or recommendation of the Committee; and

''(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

''(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

''(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.''.

(c) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) AVAILABILITY OF INFORMATION.—

''(A) PUBLIC AVAILABILITY OF INFORMATION.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).''.

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**SA 4142.** Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4050 submitted by Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following: ''effective.

**SEC. 995. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.**

(a) REPEAL.—Notwithstanding any other provision of this Act, section 911 of this Act is repealed, effective on the date of enactment of this Act, and shall have no force or effect on or after that date of enactment.

(b) INVESTOR ADVISORY COMMITTEE ESTABLISHED.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

**''SEC. 39. INVESTOR ADVISORY COMMITTEE.**

''(a) ESTABLISHMENT AND PURPOSE.—

''(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the 'Committee').

''(2) PURPOSE.—The Committee shall—

''(A) advise and consult with the Commission on—

''(i) regulatory priorities of the Commission;

''(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

''(iii) initiatives to protect investor interests, including initiatives to protect investors against the material risks to investors associated with companies in the extractive industries sector, including—

''(I) unique tax and reputational risks, in the form of country-specific taxes and regulations;

''(II) the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments; and

''(III) the potential for unstable and high-cost operating environments for multinational companies operating in foreign countries; and

''(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

''(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The members of the Committee shall be—

''(A) the Investor Advocate;

''(B) a representative of State securities commissions;

''(C) a representative of the interests of senior citizens; and

''(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

''(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

''(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

''(iii) are knowledgeable about investment issues and decisions; and

''(iv) have reputations of integrity.

''(2) TERM.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

''(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

''(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

''(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

''(A) a chairman, who may not be employed by an issuer;

''(B) a vice chairman, who may not be employed by an issuer;

''(C) a secretary; and

''(D) an assistant secretary.

''(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

''(d) MEETINGS.—

''(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

''(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

''(B) from time to time, at the call of the Commission.

''(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

''(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

''(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

''(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

''(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

''(g) REVIEW BY COMMISSION.—The Commission shall—

''(1) review the findings and recommendations of the Committee

''(2) make recommendations to the Commission on the advisability of making public the information required to be disclosed under section 13(p)(2); and

''(3) each time the Committee submits a finding or recommendation to the Commission under paragraph (1), issue a public statement—

''(A) assessing the finding or recommendation of the Committee; and

''(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

''(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

''(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.''.

(c) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) AVAILABILITY OF INFORMATION.—

''(A) PUBLIC AVAILABILITY OF INFORMATION.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).''.

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**SA 4143.** Mr. DODD submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1, after ''page 1235,'' strike ''line 10'' and all that follows through line 3, and insert: ''on line 6, strike ''the Bureau'' and all that follows through line 10 and insert: ''the Bureau shall consider the potential benefits and costs to covered persons and to consumers, including costs arising from the potential reduction of access by consumers to consumer financial products or service resulting from such rule and, when promulgating a final rule, shall set forth in the adopting release such consideration of the potential benefits and costs of the rule;''.''

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**SA 4144.** Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

**SEC. 122. DISCLOSURE OF CONFLICTS OF INTERESTS.**

(a) RECOMMENDATION BY COUNCIL.—The Council shall issue recommendations to the primary financial regulatory agencies to require, as applicable, bank holding companies or nonbank financial companies under their respective jurisdictions to make appropriate disclosures to any purchaser or prospective purchaser of financial products from such companies, if such companies have a direct financial interest that is in material conflict with the interests of the purchaser or prospective purchaser with respect to the transaction involving such financial products.

(b) PROCEDURES AND IMPLEMENTATION.—The procedural and implementation provisions of subsection (b) and (c) of section 120 shall apply to recommendations of the Council under this section. In issuing such recommendations, the Council shall take into account the existence of, and firewalls between, separate business units of such companies.

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**SA 4145.** Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3776 proposed by Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SEC. 929D. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.**

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following:

''(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

''(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person, if the Commission finds, on the record, after notice and opportunity for hearing, that—

''(A) the person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) the imposition of the penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless

disregard of a regulatory requirement, the maximum amount of penalty for each act or omission shall be $75,000 for a natural person or $375,000 for any other person.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $150,000 for a natural person or $725,000 for any other person, if—

''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

''(ii) the act or omission directly or indirectly resulted in—

''(I) substantial losses or created a significant risk of substantial losses to other persons; or

''(II) substantial pecuniary gain to the person who committed the act or omission.

''(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.''.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) by striking the undesignated matter immediately following paragraph (4);

(2) in the matter preceding paragraph (1), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(3) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

''(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking the matter immediately following subparagraph (C);

(2) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest, and'';

(3) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the clause margins accordingly;

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) by striking the undesignated matter immediately following subparagraph (D);

(2) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(3) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the clause margins accordingly;

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

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**SA 4146.** Mr. ENSIGN proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 1273, delete lines 17–18.

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**SA 4147.** Mr. DODD (for Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. VOINOVICH)) proposed an amendment to the bill S. 920, to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009''.

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) The effective deployment of information technology can make the Federal Government more efficient, effective, and transparent.

(2) Historically, the Federal Government has struggled to properly plan, manage, and deliver information technology investments on time, on budget, and performing as planned.

(3) The Office of Management and Budget has made significant progress overseeing information technology investments made by Federal agencies, but continues to struggle to ensure that such investments meet cost, schedule, and performance expectations.

(4) Congress has limited knowledge of the actual cost, schedule, and performance of agency information technology investments and has difficulty providing the necessary oversight.

(5) In July 2008, an official of the Government Accountability Office testified before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security of the Committee on Homeland Security and Governmental Affairs of the Senate, stating that—

(A) agencies self-report inaccurate and unreliable project management data to the Office of Management and Budget and Congress; and

(B) the Office of Management and Budget should establish a mechanism that would provide real-time project management information and force agencies to improve the accuracy and reliability of the information provided.

**SEC. 3. REAL-TIME TRANSPARENCY OF IT INVESTMENT PROJECTS.**

Section 11302(c)(1) of title 40, United States Code, is amended by striking the period at the end and inserting the following: '', including ensuring the effective operation of a Web site, updating the Web site, at a minimum, on a quarterly basis, and including on the Web site, not later than 90 days after the date of the enactment of the Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009—

''(1) the accurate cost, schedule, and performance information since the commencement of the project of all major information technology investments reported in a manner consistent with policy established by the Office of Management and Budget on the use of earned-value management data, which should be based on the ANSI–EIA–748–B standard or another objective performance-based management system approved by the E-Government Administrator;

''(2) a graphical depiction of trend information, to the extent practicable, since the commencement of the major IT investment;

''(3) a clear delineation of major IT investments that have experienced cost, schedule, or performance variance greater than 10 percent over the life cycle of the investment, and the extent of the variation;

''(4) an explanation of the reasons the investment deviated from the benchmark established at the commencement of the project; and

''(5) the number of times investments were rebaselined and the dates on which such rebaselines occurred.''.

**SEC. 4. IT INVESTMENT PROJECTS.**

(a) SIGNIFICANT AND GROSS DEVIATIONS.—Section 11317 of title 40, United States Code, is amended to read as follows:

**''SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.**

''(a) DEFINITIONS.—In this subchapter:

''(1) AGENCY HEAD.—The term 'Agency Head' means the head of the Federal agency that is primarily responsible for the IT investment project under review.

''(2) ANSI EIA–748–B STANDARD.—The term 'ANSI EIA–748–B Standard' means the measurement tool jointly developed by the American National Standards Institute and the

Electronic Industries Alliance to analyze Earned Value Management systems.

''(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

''(B) the Committee on Oversight and Government Reform of the House of Representatives;

''(C) the Committee on Appropriations of the Senate;

''(D) the Committee on Appropriations of the House of Representatives; and

''(E) any other relevant congressional committee with jurisdiction over an agency required to take action under this section.

''(4) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer designated under section 3506(a)(2) of title 44 of the Executive department (as defined in section 101 of title 5) that is primarily responsible for the IT investment project under review.

''(5) CORE IT INVESTMENT PROJECT.—The terms 'core IT investment project' and 'core project' mean a mission critical IT investment project designated as such by the Chief Information Officer, with approval by the Agency Head under subsection (b).

''(6) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.

''(7) EARNED VALUE MANAGEMENT.—The term 'Earned Value Management' means the cost, schedule, and performance data used to determine project status and developed in accordance with the ANSI EIA–748-B Standard.

''(8) GROSSLY DEVIATED.—The term 'grossly deviated' means cost, schedule, or performance variance that is at least 40 percent from the Original Baseline.

''(9) INDEPENDENT COST ESTIMATE.—The term 'independent cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with acquisitions related to an IT investment project, which—

''(A) is based on programmatic and technical specifications provided by the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(B) is formulated and provided by an entity other than the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(C) contains sufficient detail to inform the selection of an Earned Value Management baseline benchmark measure under the ANSI EIA–748-B standard; and

''(D) accounts for the full life cycle cost plus associated operations and maintenance expenses over the usable life of the project's deliverables.

''(10) LIFE CYCLE COST.—The term 'life cycle cost' means the total cost of an IT investment project for planning, research and development, modernization, enhancement, operation, and maintenance.

''(11) MAJOR IT INVESTMENT PROJECT.—The terms 'major IT investment project' and 'project' mean an information technology system or information technology acquisition that—

''(A) requires special management attention because of its importance to the mission or function of the agency, a component of the agency, or another organization;

''(B) is for financial management and obligates more than $500,000 annually;

''(C) has significant program or policy implications;

''(D) has high executive visibility;

''(E) has high development, operating, or maintenance costs;

''(F) is funded through other than direct appropriations; or

''(G) is defined as major by the agency's capital planning and investment control process.

''(12) ORIGINAL BASELINE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management benchmark or an equivalent benchmark approved by the Office of Management and Budget and established at the commencement of an IT investment project.

''(B) GROSSLY DEVIATED PROJECT.—If an IT investment project grossly deviates from its Original Baseline (as defined in subparagraph (A)), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management benchmark or an equivalent benchmark approved by the Office of Management and Budget and established under subsection (e)(3)(C).

''(13) SIGNIFICANTLY DEVIATED.—The term 'significantly deviated' means cost, schedule, or performance variance that is at least 20 percent from the Original Baseline.

''(b) CORE IT INVESTMENT PROJECTS DESIGNATION.—Each Chief Information Officer, with approval by the Agency Head, shall—

''(1) identify the major IT investments that are the most critical to the agency; and

''(2) designate any project as a 'core IT investment project' or a 'core project', upon determining that the project is a mission critical IT investment project that—

''(A) represents a significant high dollar value relative to the average IT investment project in the agency's portfolio;

''(B) delivers a capability critical to the successful completion of the agency mission, or a portion of such mission;

''(C) incorporates unproven or previously undeveloped technology to meet primary project technical requirements; or

''(D) would have a significant negative impact on the successful completion of the agency mission if the project experienced significant cost, schedule, or performance deviations.

''(c) COST, SCHEDULE, AND PERFORMANCE REPORTS.—

''(1) QUARTERLY REPORTS.—Not later than 14 days after the end of each fiscal quarter, the project manager designated by the Agency Head for an IT investment project shall submit information to the Chief Information Officer that includes, as of the last day of the applicable quarter—

''(A) a description of the cost, schedule, and performance of all projects under the project manager's supervision;

''(B) the original and current project cost, schedule, and performance benchmarks for each project under the project manager's supervision;

''(C) the quarterly and cumulative cost, schedule, and performance variance related to each IT investment project under the project manager's supervision since the commencement of the project;

''(D) for each project under the project manager's supervision, any known, expected, or anticipated changes to project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

''(E) the current cost, schedule, and performance status of all projects under supervision that were previously identified as significantly deviated or grossly deviated; and

''(F) any corrective actions taken to address problems discovered under subparagraphs (C) through (E).

''(2) INTERIM REPORTS.—If the project manager for an IT investment project determines that there is reasonable cause to believe that an IT investment project has significantly deviated or grossly deviated since the issuance of the latest quarterly report, the project manager shall submit to the Chief Information Officer, not later than 21 days after such determination, information on the project that includes, as of the date of the report—

''(A) a description of the original and current program cost, schedule, and performance benchmarks;

''(B) the cost, schedule, or performance variance related to the IT investment project since the commencement of the project;

''(C) any known, expected, or anticipated changes to the project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

''(D) the major reasons underlying the significant or gross deviation of the project; and

''(E) a corrective action plan to correct such deviations.

''(d) DETERMINATION OF SIGNIFICANT DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving information under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has significantly deviated; and

''(B) report such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has significantly deviated and the Agency Head has not submitted information to the appropriate congressional committees of a significant deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit information to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

''(A) notification of such determination;

''(B) the date on which such determination was made;

''(C) the amount of the cost increases and the extent of the schedule delays with respect to such project;

''(D) any requirements that—

''(i) were added subsequent to the original baseline; or

''(ii) were originally contracted for, but were changed by deferment or deletion from the original baseline, or were otherwise no longer included in the requirements contracted for;

''(E) an explanation of the differences between—

''(i) the estimate at completion between the project manager, any contractor, and any independent analysis; and

''(ii) the original budget at completion;

''(F) a statement of the reasons underlying the project's significant deviation; and

''(G) a summary of the plan of action to remedy the significant deviation.

''(3) DEADLINE.—

''(A) NOTIFICATION BASED ON QUARTERLY REPORT.—If the determination of significant deviation is based on information submitted under subsection (c)(1), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the end of the quarter upon which such information is based.

''(B) NOTIFICATION BASED ON INTERIM REPORT.—If the determination of significant deviation is based on information submitted under subsection (c)(2), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the submission of such information.

''(e) DETERMINATION OF GROSS DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving information under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has grossly deviated; and

''(B) report any such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated and the Agency Head has not submitted information to the appropriate congressional committees of a gross deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit information to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

''(A) notification of such determination, which—

''(i) identifies the date on which such determination was made; and

''(ii) indicates whether or not the project has been previously reported as a significant or gross deviation by the Chief Information Officer, and the date of any such report;

''(B) incorporations by reference of all prior reports to Congress on the project required under this section;

''(C) updated accounts of the items described in subparagraphs (C) through (G) of subsection (d)(2);

''(D) the original estimate at completion for the project manager, any contractor, and any independent analysis;

''(E) a graphical depiction that shows monthly planned expenditures against actual expenditures since the commencement of the project;

''(F) the amount, if any, of incentive or award fees any contractor has received since the commencement of the contract and the reasons for receiving such incentive or award fees;

''(G) the project manager's estimated cost at completion and estimated completion date for the project if current requirements are not modified;

''(H) the project manager's estimated cost at completion and estimated completion date for the project based on reasonable modification of such requirements;

''(I) an explanation of the most significant occurrence contributing to the variance identified, including cost, schedule, and performance variances, and the effect such occurrence will have on future project costs and program schedule;

''(J) a statement regarding previous or anticipated rebaselining or replanning of the project and the names of the individuals responsible for approval;

''(K) the original life cycle cost of the investment and the expected life cycle cost of the investment expressed in constant base year dollars and in current dollars; and

''(L) a comprehensive plan of action to remedy the gross deviation, and milestones established to control future cost, schedule, and performance deviations in the future.

''(3) REMEDIAL ACTION.—

''(A) IN GENERAL.—If the Chief Information Officer determines under paragraph (1)(A) that an IT investment project has grossly deviated, the Agency Head, in consultation with the Chief Information Officer and the appropriate project manager, shall develop and implement a remedial action plan that includes—

''(i) a report that—

''(I) describes the primary business case and key functional requirements for the project;

''(II) describes any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

''(III) includes a certification by the Agency Head, after consultation with the Chief Information Officer, that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case;

''(IV) describes any changes to the primary business case or key functional requirements which have occurred since project inception; and

''(V) includes an independent government cost estimate for the project conducted by an entity approved by the Director;

''(ii) an analysis that—

''(I) describes agency business goals that the project was originally designed to address;

''(II) includes a gap analysis of what project deliverables remain in order for the agency to accomplish the business goals referred to in subclause (I);

''(III) identifies the 3 most cost-effective alternative approaches to the project which would achieve the business goals referred to in subclause (I); and

''(IV) includes a cost-benefit analysis, which compares—

''(aa) the completion of the project with the completion of each alternative approach, after factoring in future costs associated with the termination of the project; and

''(bb) the termination of the project without pursuit of alternatives, after factoring in foregone benefits; and

''(iii) a new baseline of the project is established that is consistent with the independent government cost estimate required under clause (i)(V); and

''(iv) the project is designated as a core IT investment project and subjected to the requirements under subsection (f).

''(B) SUBMISSION TO CONGRESS.—The remedial action plan and all corresponding reports, analyses, and actions under this paragraph shall be submitted to the appropriate congressional committees and the Director.

''(C) REPORTING AND ANALYSIS EXEMPTIONS.—

''(i) IN GENERAL.—The Chief Information Officer, in coordination with the Agency Head and the Director, may forego the completion of any element of a report or analysis under clause (i) or (ii) of subparagraph (A) if the Chief Information Officer determines that such element is not relevant to the understanding of the challenges facing the project or that such element does not further the remedial steps necessary to ensure that the project is completed in a timely and cost-efficient manner.

''(ii) IDENTIFICATION OF REASONS.—The Chief Information Officer shall include the reasons for not including any element referred to in clause (i) in the report submitted to Congress under subparagraph (B).

''(4) DEADLINE AND FUNDING CONTINGENCY.—

''(A) NOTIFICATION AND REMEDIAL ACTION BASED ON QUARTERLY REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(1), the Agency Head shall—

''(I) not later than 45 days after the end of the quarter upon which such report is based, notify the appropriate congressional committees and the Director in accordance with paragraph (2); and

''(II) not later than 180 days after the end of the quarter upon which such report is based, ensure the completion of remedial action under paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled, except for expenditures to address reporting notifications, remedial actions, and other requirements under this Act.

''(B) NOTIFICATION AND REMEDIAL ACTION BASED ON INTERIM REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(2), the Agency Head shall—

''(I) not later than 45 days after the submission of such report, notify the appropriate congressional committees in accordance with paragraph (2); and

''(II) not later than 180 days after the submission of such report, ensure the completion of remedial action in accordance with paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled, except for expenditures to address reporting notifications, remedial actions, and other requirements under this Act.

''(f) ADDITIONAL REQUIREMENTS FOR CORE IT INVESTMENT PROJECT REPORTS.—

''(1) INITIAL REPORT.—If a remedial action plan described in subsection (e)(3)(A) has not been submitted for a core IT investment project, the Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall prepare an initial report for inclusion in the first budget submitted to Congress under section 1105(a) of title 31, United States Code, after the designation of a project as a core IT investment project, which includes—

''(A) a description of the primary business case and key functional requirements for the project;

''(B) an identification and description of any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

''(C) an independent cost estimate for the project;

''(D) certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

''(E) any changes to the primary business case or key functional requirements which have occurred since project inception.

''(2) QUARTERLY REVIEW OF BUSINESS CASE.—The Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall—

''(A) monitor the primary business case and core functionality requirements reported to Congress and the Director for designated core IT investment projects; and

''(B) if changes to the primary business case or key functional requirements for a core IT investment project occur in any fiscal quarter, submit a report to Congress and the Director not later than 14 days after the end of such quarter that details the changes and describes the impact the changes will have on the cost and ultimate effectiveness of the project.

''(3) ALTERNATIVE SIGNIFICANT DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have significantly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the significant deviation; and

''(B) the Agency Head shall fulfill the requirements under subsection (d)(2) in accordance with the deadlines under subsection (d)(3).

''(4) ALTERNATIVE GROSS DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have grossly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the gross deviation; and

''(B) the Agency Head shall fulfill the requirements under subsections (e)(2) and (e)(3) in accordance with subsection (e)(4).

''(g) METHOD OF DELIVERY.—Reports and other information required under this section may be submitted through the Web site established under section 11302(c)(1) in a manner consistent with guidance from the Office of Management and Budget to satisfy reporting requirements and to reduce paperwork.

''(h) DEPARTMENT OF DEFENSE ACQUISITIONS.—The requirements of section 2445a of title 10, United States Code, shall apply to the information technology investment projects of the Department of Defense instead of the requirements under this section.''.

(b) INCLUSION IN THE BUDGET SUBMITTED TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''include in each budget the following:'' and inserting ''include in each budget—'';

(2) by redesignating the second paragraph (33) (as added by section 889(a) of Public Law 107–296) as paragraph (35);

(3) in each of paragraphs (1) through (34), by striking the period at the end and inserting a semicolon;

(4) in paragraph (35), as redesignated by paragraph (2), by striking the period at the end and inserting ''; and''; and

(5) by adding at the end the following:

''(36) the reports prepared under section 11317(f) of title 40, United States Code, relating to the core IT investment projects of the agency.''.

(c) IMPROVEMENT OF INFORMATION TECHNOLOGY ACQUISITION AND DEVELOPMENT.—Subchapter II of chapter 113 of title 40, United States Code, is amended by adding at the end the following:

**''SEC. 11319. ACQUISITION AND DEVELOPMENT.**

''(a) PURPOSE.—The objective of this section is to significantly reduce—

''(1) cost overruns and schedule slippage from the estimates established at the time the program is initially approved;

''(2) the number of requirements and business objectives at the time the program is approved that are not met by the delivered products; and

''(3) the number of critical defects and serious defects in delivered information technology.

''(b) OMB GUIDANCE.—The Director of the Office of Management and Budget shall—

''(1) not later than 180 days after the date of the enactment of this section, prescribe uniformly applicable guidance for agencies to implement the requirements of this section, which shall not include any exemptions to such requirements not specifically authorized under this section; and

''(2) take any actions that are necessary to ensure that Federal agencies are in compliance with the guidance prescribed pursuant to paragraph (1) not later than 1 year after the date of the enactment of this section.

''(c) ESTABLISHMENT OF PROGRAM.—Not later than 180 days after the date of the enactment of this section, each Agency Head (as defined in section 11317(a) of title 40, United States Code) shall establish a program to improve the information technology (referred to in this section as 'IT') processes overseen by the Chief Information Officer.

''(d) PROGRAM REQUIREMENTS.—Each program established pursuant to this section shall include—

''(1) a documented process for IT acquisition planning, requirements development and management, project management and oversight, earned-value management, and risk management;

''(2) the development of appropriate metrics that can be implemented and monitored on a real-time dashboard for performance measurement of—

''(A) processes and development status of investments;

''(B) continuous process improvement of the program; and

''(C) achievement of program and investment outcomes;

''(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education, at an institution or institutions approved by the Director, in the planning, acquisition, execution, management, and oversight of IT;

''(4) a process to ensure that the agency implements and adheres to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of IT programs and developments; and

''(5) a process for the Chief Information Officer to intervene or stop the funding of an IT investment if it is at risk of not achieving major project milestones.

''(e) ANNUAL REPORT TO OMB.—Not later than the last day of February of each year, the Agency Head shall submit a report to the Office of Management and Budget that includes—

''(1) a detailed summary of the accomplishments of the program established by the Agency Head pursuant to this section;

''(2) the status of completeness of implementation of each of the program requirements, and the date each such requirement was deemed to be completed;

''(3) the percentage of Federal IT projects covered under the program compared to all of the IT projects of the agency, listed by number of programs and by annual dollars expended;

''(4) a detailed breakdown of the sources and uses of the amounts spent by the agency during the previous fiscal year to support the activities of the program;

''(5) a copy of any guidance issued under the program and a statement regarding whether each such guidance is mandatory;

''(6) the identification of the metrics developed in accordance with subsection (b)(2);

''(7) a description of how paragraphs (3) and (4) of subsection (b) have been implemented and any related agency guidance; and

''(8) a description of how agencies will continue to review and update the implementation and objectives of such guidance.

''(f) ANNUAL REPORT TO CONGRESS.—The Director of the Office of Management and Budget shall provide an annual report to Congress on the status and implementation of the program established pursuant to this section.

''(g) DEPARTMENT OF DEFENSE ACQUISITIONS.—The requirements of section 2223a of title 10, United States Code, shall apply to the information technology investment projects of the Department of Defense instead of the requirements under this section.''.

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 113 of title 40, United States Code, is amended—

(1) by striking the item relating to section 11317 and inserting the following:

''11317. Significant and gross deviations.''; and

(2) by inserting after the item relating to section 11318 the following:

''11319. Acquisition and development.''.

**SEC. 5. MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS OF THE DEPARTMENT OF DEFENSE.**

(a) PROGRAM TO IMPROVE INFORMATION TECHNOLOGY PROCESSES.—Chapter 131 of title 10, United States Code, is amended by adding after section 2223 the following:

**''§ 2223a. Information technology acquisition planning and oversight requirements**

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

''(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

''(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

''(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

''(A) processes and development status of investments in major automated information system programs;

''(B) continuous process improvement of the program; and

''(C) achievement of program and investment outcomes;

''(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

''(4) a process to ensure that military departments and defense agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

''(5) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.''.

(b) ANNUAL REPORT TO CONGRESS.—Section 2445b(b) of title 10, United States Code is amended by adding at the end the following:

''(5) For each major automated information system program for which such information has not been provided in a previous annual report—

''(A) a description of the primary business case and key functional requirements for the program;

''(B) a description of the analysis of alternatives conducted with regard to the program;

''(C) an assessment of the extent to which the program, or portions of the program, have technical requirements of sufficient clarity that the program, or portions of the program, may be feasibly procured under firm, fixed-price contracts;

''(D) the most recent independent cost estimate or cost analysis for the program provided by the Director of Cost Assessment and Program Evaluation in accordance with section 2334(a)(6);

''(E) a certification by a Department of Defense acquisition official with responsibility for the program that all technical and business requirements have been reviewed and validated to ensure alignment with the business case; and

''(F) an explanation of the basis for the certification described in subparagraph (E).

''(6) For each major automated information system program for which the information required under paragraph (5) has been provided in a previous annual report, a summary of any significant changes to the information previously provided.''.

**SEC. 6. IT SWAT TEAM.**

(a) PURPOSE.—The Director of the Office of Management of Budget (referred to in this section as the ''Director''), in consultation with the Administrator of the Office of Electronic Government and Information and Technology at the Office of Management and Budget (referred to in this section as the ''E-Gov Administrator''), shall assist agencies in avoiding significant and gross deviations in the cost, schedule, and performance of IT investment projects (as such terms are defined in section 11317(a) of title 40, United States Code).

(b) IT SWAT TEAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Director shall promulgate policy and guidance for the head of each Federal agency that establishes procedures for the creation of a small group of individuals (referred to in this section as the ''IT SWAT Team'') to carry out the purpose described in subsection (a).

(2) QUALIFICATIONS.—Individuals selected for the IT SWAT Team—

(A) shall be certified at the Senior/Expert level according to the Federal Acquisition Certification for Program and Project Managers (FAC–P/PM);

(B) shall have comparable education, certification, training, and experience to successfully manage high-risk IT investment projects; or

(C) shall have expertise in the successful management or oversight of planning, architecture, process, integration, or other technical and management aspects using proven process best practices on high-risk IT investment projects.

(3) NUMBER.—The Director, in consultation with the E-Gov Administrator and the head of the agency primarily responsible for the IT investment, shall determine the number of individuals who will be selected for the IT SWAT Team.

(c) OUTSIDE CONSULTANTS.—

(1) IDENTIFICATION.—The E-Gov Administrator and representatives of the Chief Information Officers Council shall identify consultants in the private sector who have expert knowledge in IT program management and program management review teams. Not more than 20 percent of such consultants may be formally associated with any 1 of the following types of entities:

(A) Commercial firms.

(B) Nonprofit entities.

(C) Federally funded research and development centers.

(2) USE OF CONSULTANTS.—

(A) IN GENERAL.—Consultants identified under paragraph (1) may be used to assist the IT SWAT Team in assessing and improving IT investment projects.

(B) LIMITATION.—Consultants with a formally established relationship with an organization may not participate in any assessment involving an IT investment project for which such organization is under contract to provide technical support.

(C) EXCEPTION.—The limitation described in subparagraph (B) may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(3) CONTRACTS.—The E-Gov Administrator, in conjunction with the Administrator of the General Services Administration (GSA), may establish competitively bid contracts with 1 or more qualified consultants, independent of any GSA schedule.

(d) INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT OR GROSS DEVIATION.—If the head of the Federal agency primarily responsible for the major IT investment or the E-Gov Administrator determines that there is reasonable cause to believe that a major IT investment project is likely to significantly or grossly deviate (as defined in section 11317(a) of title 40, United States Code), including the receipt of inconsistent or missing data, or if such agency head or the E–Gov Administrator determines that the assignment of 1 or more members of the IT SWAT Team could meaningfully reduce the possibility of significant or gross deviation, such agency head or the E-Gov Administrator shall carry out the following activities:

(1) Recommend the assignment of 1 or more members of the IT SWAT Team to assess the project in accordance with the scope and time period described in section 11317(c)(1) of title 40, United States Code, beginning not later than 14 days after such recommendation. No member of the SWAT Team who is associated with the department or agency whose IT investment project is the subject of the assessment may be assigned to participate in this assessment. Such limitation may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(2) If such agency head or the E-Gov Administrator determines that 1 or more qualified consultants are needed to support the efforts of the IT SWAT Team under paragraph (1), negotiate a contract with the consultant to provide such support during the period in which the IT SWAT Team is conducting the assessment described in paragraph (1).

(3) Ensure that the costs of an assessment under paragraph (1) and the support services of 1 or more consultants under paragraph (2) are paid for by the agency being assessed.

(4) Monitor the progress made by the IT SWAT Team in assessing the project.

(e) REDUCTION OF SIGNIFICANT OR GROSS DEVIATION.—If the agency head described in subsection (d) or the E-Gov Administrator determines that the assessment conducted under subsection (d) confirms that a major IT investment project is likely to significantly or grossly deviate, such agency head or the E-Gov Administrator shall take steps to reduce the deviation, which may include—

(1) providing training, education, or mentoring to improve the qualifications of the program manager;

(2) replacing the program manager or other staff;

(3) supplementing the program management team with Federal Government employees or independent contractors;

(4) terminating the project; or

(5) hiring an independent contractor to report directly to senior management and the E-Gov Administrator.

(f) ENFORCEMENT OF ACCOUNTABILITY.—The Director may use the actions directed under section 11303(b)(5) of title 5, United States Code, to enforce accountability of the head of the agency and for the investments made by the agency in information technology.

(g) REPORT TO CONGRESS.—The Director shall include in the annual Report to Congress on the Benefits of E-Government Initiatives a detailed summary of the composition and activities of the IT SWAT Team, including—

(1) the number and qualifications of individuals on the IT SWAT Team;

(2) a description of the IT investment projects that the IT SWAT Team has worked during the previous fiscal year;

(3) the major issues that necessitated the involvement of the IT SWAT Team to assist agencies with assessing and managing IT investment projects and whether such issues were satisfactorily resolved;

(4) if the issues referred to in paragraph (3) were not satisfactorily resolved, the issues still needed to be resolved and the Agency Head's plan for resolving such issues;

(5) a detailed breakdown of the sources and uses of the amounts spent by the Office of Management and Budget and other Federal agencies during the previous fiscal year to support the activities of the IT SWAT Team; and

(6) a determination of whether the IT SWAT Team has been effective in—

(A) preventing projects from deviating from the original baseline; and

(B) assisting agencies in conducting appropriate analysis and planning before a project is funded.

**SEC. 7. AWARDS FOR PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF INFORMATION SYSTEMS AND INFORMATION TECHNOLOGY.**

(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Director of the Office of Personnel Management shall develop policy and guidance for agencies to develop a program to recognize excellent performance by Federal Government employees and teams of such employees in the acquisition of information systems and information technology for the agency.

(b) ELEMENTS.—The program referred to in subsection (a) shall, to the extent practicable—

(1) obtain objective outcome measures; and

(2) include procedures for—

(A) the nomination of Federal Government employees and teams of such employees for eligibility for recognition under the program; and

(B) the evaluation of nominations for recognition under the program by 1 or more agency panels of individuals from government, academia, and the private sector who have such expertise, and are appointed in such a manner, as the Director of the Office of Personal Management shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES AND OTHER INCENTIVES.—As part of the program referred to in subsection (a), the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall establish policies and guidance for agencies to reward any Federal Government employee or teams of such employees recognized pursuant to the program—

(1) by awarding a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law;

(2) through promotions and other nonmonetary awards;

(3) by publicizing acquisition accomplishments by individual employees and, as appropriate, the tangible end benefits that resulted from such accomplishments; and

(4) through other awards, incentives, or bonuses that the head of the agency considers appropriate.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a meeting during the session of the Senate on May 19, 2010, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. 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 May 19, 2010, at 9:30 a.m., in room SD–366 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 May 19, 2010, at 10 a.m., to hold a hearing entitled ''After the Earthquake: Empowering Haiti to Rebuild Better.''

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 May 19, 2010, at 2:30 p.m., to conduct a hearing entitled ''The History and Lessons of START.''

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

COMMITTEE ON THE JUDICIARY

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on May 19, 2010, at 10 a.m., in room SD–266 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010.''

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on May 19, 2010, at 10 a.m., to conduct a hearing entitled ''Examining the Filibuster: The Filibuster Today and Its Consequences.''

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

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate on May 19, 2010, at 10 a.m. to conduct a hearing entitled ''Confirmation Hearing of Marie Annettee Collins Johns to be the Deputy Administrator of the Small Business Administration.''

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

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate on May 19, 2010, at 11 a.m. to conduct a hearing entitled ''The SBA Disaster Assistance Program and the Impact of the Deepwater Horizon Oil Spill on Small Businesses.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on May 19, 2010. The Committee will meet in room 418 of the Russell Senate Office Building beginning at 9:30 a.m.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. DODD. Mr. President, I ask unanimous consent that the Subcommittee on National Parks be authorized to meet during the session of the Senate in order to conduct a hearing on on May 19, 2010, at 2:30 p.m., in room SD–366 of the Dirksen Senate Office Building.

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

## PRIVILEGES OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that Paul Williams, a detailee in my office from the Food and Drug Administration; Ron Rowe, a detailee in my office from the Secret Service; Ryika Hooshangi, a foreign affairs fellow in my office from the Department of State; MAJ Ken Kuebler, a military fellow in my office from the U.S. Air Force, all be granted the privileges of the floor for the remainder of the second session of the 111th Congress.

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

## INFORMATION TECHNOLOGY (IT) INVESTMENT OVERSIGHT ENHANCEMENT AND WASTE PREVENTION ACT OF 2009

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 364, S. 920.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 920) to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009''.*

***SEC. 2. FINDINGS.***

*Congress finds the following:*

*(1) The effective deployment of information technology can make the Federal Government more efficient, effective, and transparent.*

*(2) Historically, the Federal Government has struggled to properly plan, manage, and deliver information technology investments on time, on budget, and performing as planned.*

*(3) The Office of Management and Budget has made significant progress overseeing information technology investments made by Federal agencies, but continues to struggle to ensure that such investments meet cost, schedule, and performance expectations.*

*(4) Congress has limited knowledge of the actual cost, schedule, and performance of agency information technology investments and has difficulty providing the necessary oversight.*

*(5) In July 2008, an official of the Government Accountability Office testified before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security of the Committee on Homeland Security and Governmental Affairs of the Senate, stating that—*

*(A) agencies self-report inaccurate and unreliable project management data to the Office of Management and Budget and Congress; and*

*(B) the Office of Management and Budget should establish a mechanism that would provide real-time project management information and force agencies to improve the accuracy and reliability of the information provided.*

***SEC. 3. REAL-TIME TRANSPARENCY OF IT INVESTMENT PROJECTS.***

*Section 11302(c)(1) of title 40, United States Code, is amended by striking the period at the end and inserting the following: '', including establishing a Web site, updating the Web site, at a minimum, on a quarterly basis, and including on the Web site, not later than 90 days after the date of the enactment of the Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009—*

*''(1) the cost, schedule, and performance of all major information technology investments using earned-value management data based on the ANSI–EIA–748–B standard;*

*''(2) accurate quarterly information since the commencement of the project;*

*''(3) a graphical depiction of trend information since the commencement of the project;*

*''(4) a clear delineation of investments that have experienced cost, schedule, or performance variance greater than 10 percent over the life cycle of the investment;*

*''(5) an explanation of the reasons the investment deviated from the benchmark established at the commencement of the project; and*

*''(6) the number of times investments were rebaselined and the dates on which such rebaselines occurred.''.*

***SEC. 4. IT INVESTMENT PROJECTS.***

*(a) SIGNIFICANT AND GROSS DEVIATIONS.—Section 11317 of title 40, United States Code, is amended to read as follows:*

***''SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.***

*''(a) DEFINITIONS.—In this subchapter:*

*''(1) AGENCY HEAD.—The term 'Agency Head' means the head of the Federal agency that is primarily responsible for the IT investment project under review.*

*''(2) ANSI EIA–748–B STANDARD.—The term 'ANSI EIA–748–B Standard' means the measurement tool jointly developed by the American National Standards Institute and the Electronic Industries Alliance to analyze Earned Value Management systems.*

*''(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—*

''(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

''(B) the Committee on Oversight and Government Reform of the House of Representatives;

''(C) the Committee on Appropriations of the Senate;

''(D) the Committee on Appropriations of the House of Representatives; and

''(E) any other relevant congressional committee with jurisdiction over an agency required to take action under this section.

''(4) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer designated under section 3506(a)(2) of title 44 of the Federal agency that is primarily responsible for the IT investment project under review.

''(5) CORE IT INVESTMENT PROJECT.—The terms 'core IT investment project' and 'core project' mean a mission critical IT investment project designated as such by the Chief Information Officer, with approval by the Agency Head under subsection (b).

''(6) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.

''(7) EARNED VALUE MANAGEMENT.—The term 'Earned Value Management' means the cost, performance, and schedule data used to determine project status and developed in accordance with the ANSI EIA–748–B Standard.

''(8) GROSSLY DEVIATED.—The term 'grossly deviated' means cost, schedule, or performance variance that is at least 40 percent from the Original Baseline.

''(9) INDEPENDENT GOVERNMENT COST ESTIMATE.—The term 'independent government cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of an IT investment project, which—

''(A) is based on programmatic and technical specifications provided by the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(B) is formulated and provided by an entity other than the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(C) contains sufficient detail to inform the selection of an Earned Value Management baseline benchmark measure under the ANSI EIA–748-B standard; and

''(D) accounts for the full life cycle cost plus associated operations and maintenance expenses over the usable life of the project's deliverables.

''(10) IT INVESTMENT PROJECT.—The terms 'IT investment project' and 'project' mean an information technology system or information technology acquisition, excluding systems or acquisitions of the Department of Defense, that—

''(A) requires special management attention because of its importance to the mission or function of the agency, a component of the agency, or another organization;

''(B) is for financial management and obligates more than $500,000 annually;

''(C) has significant program or policy implications;

''(D) has high executive visibility;

''(E) has high development, operating, or maintenance costs;

''(F) is funded through other than direct appropriations; or

''(G) is defined as major by the agency's capital planning and investment control process.

''(11) LIFE CYCLE COST.—The term 'life cycle cost' means the total cost of an IT investment project for planning, research and development, modernization, enhancement, operation, and maintenance.

''(12) ORIGINAL BASELINE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management benchmark established at the commencement of an IT investment project.

''(B) GROSSLY DEVIATED PROJECT.—If an IT investment project grossly deviates from its Original Baseline (as defined in subparagraph (A)), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management benchmark established under subsection (e)(3)(C).

''(13) SIGNIFICANTLY DEVIATED.—The term 'significantly deviated' means Earned Value Management variance that is at least 20 percent from the Original Baseline.

''(b) CORE IT INVESTMENT PROJECTS DESIGNATION.—Each Chief Information Officer, with approval by the Agency Head, shall—

''(1) identify the major IT investments that are the most critical to the agency; and

''(2) designate any project as a 'core IT investment project' or a 'core project', upon determining that the project is a mission critical IT investment project that—

''(A) represents a significant high dollar value relative to the average IT investment project in the agency's portfolio;

''(B) delivers a capability critical to the successful completion of the agency mission, or a portion of such mission;

''(C) incorporates unproven or previously undeveloped technology to meet primary project technical requirements; or

''(D) would have a significant negative impact on the successful completion of the agency mission if the project experienced significant cost, schedule, or performance deviations.

''(c) COST, SCHEDULE, AND PERFORMANCE REPORTS.—

''(1) QUARTERLY REPORTS.—Not later than 14 days after the end of each fiscal quarter, the project manager designated by the Agency Head for an IT investment project shall submit a written report to the Chief Information Officer that includes, as of the last day of the applicable quarter—

''(A) a description of the cost, schedule, and performance of all projects under the project manager's supervision;

''(B) the original and current project cost, schedule, and performance benchmarks for each project under the project manager's supervision;

''(C) the quarterly and cumulative cost, schedule, and performance variance related to each IT investment project under the project manager's supervision since the commencement of the project;

''(D) for each project under the project manager's supervision, any known, expected, or anticipated changes to project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

''(E) the current cost, schedule, and performance status of all projects under supervision that were previously identified as significantly deviated or grossly deviated; and

''(F) any corrective actions taken to address problems discovered under subparagraphs (C) through (E).

''(2) INTERIM REPORTS.—If the project manager for an IT investment project determines that there is reasonable cause to believe that an IT investment project has significantly deviated or grossly deviated since the issuance of the latest quarterly report, the project manager shall submit to the Chief Information Officer, not later than 14 days after such determination, a report on the project that includes, as of the date of the report—

''(A) a description of the original and current program cost, schedule, and performance benchmarks;

''(B) the cost, schedule, or performance variance related to the IT investment project since the commencement of the project;

''(C) any known, expected, or anticipated changes to the project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

''(D) the major reasons underlying the significant or gross deviation of the project; and

''(E) a corrective action plan to correct such deviations.

''(d) DETERMINATION OF SIGNIFICANT DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving a report under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has significantly deviated; and

''(B) report such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has significantly deviated and the Agency Head has not issued a report to the appropriate congressional committees of a significant deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit a report to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

''(A) written notification of such determination;

''(B) the date on which such determination was made;

''(C) the amount of the cost increases and the extent of the schedule delays with respect to such project;

''(D) any requirements that—

''(i) were added subsequent to the original baseline; or

''(ii) were originally contracted for, but were changed by deferment or deletion from the original baseline, or were otherwise no longer included in the requirements contracted for;

''(E) an explanation of the differences between—

''(i) the estimate at completion between the project manager, any contractor, and any independent analysis; and

''(ii) the original budget at completion;

''(F) a statement of the reasons underlying the project's significant deviation; and

''(G) a summary of the plan of action to remedy the significant deviation.

''(3) DEADLINE.—

''(A) NOTIFICATION BASED ON QUARTERLY REPORT.—If the determination of significant deviation is based on a report submitted under subsection (c)(1), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the end of the quarter upon which such report is based.

''(B) NOTIFICATION BASED ON INTERIM REPORT.—If the determination of significant deviation is based on a report submitted under subsection (c)(2), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the submission of such report.

''(e) DETERMINATION OF GROSS DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving a report under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has grossly deviated; and

''(B) report any such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated and the Agency Head has not issued a report to the appropriate congressional committees of a gross deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit a report to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

''(A) written notification of such determination, which—

''(i) identifies the date on which such determination was made; and

''(ii) indicates whether or not the project has been previously reported as a significant or

gross deviation by the Chief Information Officer, and the date of any such report;

''(B) incorporations by reference of all prior reports to Congress on the project required under this section;

''(C) updated accounts of the items described in subparagraphs (C) through (G) of subsection (d)(2);

''(D) the original estimate at completion for the project manager, any contractor, and any independent analysis;

''(E) a graphical depiction that shows monthly planned expenditures against actual expenditures since the commencement of the project;

''(F) the amount, if any, of incentive or award fees any contractor has received since the commencement of the contract and the reasons for receiving such incentive or award fees;

''(G) the project manager's estimated cost at completion and estimated completion date for the project if current requirements are not modified;

''(H) the project manager's estimated cost at completion and estimated completion date for the project based on reasonable modification of such requirements;

''(I) an explanation of the most significant occurrence contributing to the variance identified, including cost, schedule, and performance variances, and the effect such occurrence will have on future project costs and program schedule;

''(J) a statement regarding previous or anticipated rebaselining or replanning of the project and the names of the individuals responsible for approval;

''(K) the original life cycle cost of the investment and the expected life cycle cost of the investment expressed in constant base year dollars and in current dollars; and

''(L) a comprehensive plan of action to remedy the gross deviation, and milestones established to control future cost, schedule, and performance deviations in the future.

''(3) REMEDIAL ACTION.—

''(A) IN GENERAL.—If the Chief Information Officer determines under paragraph (1)(A) that an IT investment project has grossly deviated, the Agency Head, in consultation with the Chief Information Officer and the appropriate project manager, shall develop and implement a remedial action plan that includes—

''(i) a report that—

''(I) describes the primary business case and key functional requirements for the project;

''(II) describes any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

''(III) includes a certification by the Agency Head, after consultation with the Chief Information Officer, that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case;

''(IV) describes any changes to the primary business case or key functional requirements which have occurred since project inception; and

''(V) includes an independent government cost estimate for the project conducted by an entity approved by the Director;

''(ii) an analysis that—

''(I) describes agency business goals that the project was originally designed to address;

''(II) includes a gap analysis of what project deliverables remain in order for the agency to accomplish the business goals referred to in subclause (I);

''(III) identifies the 3 most cost-effective alternative approaches to the project which would achieve the business goals referred to in subclause (I); and

''(IV) includes a cost-benefit analysis, which compares—

''(aa) the completion of the project with the completion of each alternative approach, after factoring in future costs associated with the termination of the project; and

''(bb) the termination of the project without pursuit of alternatives, after factoring in foregone benefits; and

''(iii) a new baseline of the project is established that is consistent with the independent government cost estimate required under clause (i)(V); and

''(iv) the project is designated as a core IT investment project and subjected to the requirements under subsection (f).

''(B) SUBMISSION TO CONGRESS.—The remedial action plan and all corresponding reports, analyses, and actions under this paragraph shall be submitted to the appropriate congressional committees and the Director.

''(C) REPORTING AND ANALYSIS EXEMPTIONS.—

''(i) IN GENERAL.—The Chief Information Officer, in coordination with the Agency Head and the Director, may forego the completion of any element of a report or analysis under clause (i) or (ii) of subparagraph (A) if the Chief Information Officer determines that such element is not relevant to the understanding of the challenges facing the project or that such element does not further the remedial steps necessary to ensure that the project is completed in a timely and cost-efficient manner.

''(ii) IDENTIFICATION OF REASONS.—The Chief Information Officer shall include the reasons for not including any element referred to in clause (i) in the report submitted to Congress under subparagraph (B).

''(4) DEADLINE AND FUNDING CONTINGENCY.—

''(A) NOTIFICATION AND REMEDIAL ACTION BASED ON QUARTERLY REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(1), the Agency Head shall—

''(I) not later than 45 days after the end of the quarter upon which such report is based, notify the appropriate congressional committees and the Director in accordance with paragraph (2); and

''(II) not later than 180 days after the end of the quarter upon which such report is based, ensure the completion of remedial action under paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled.

''(B) NOTIFICATION AND REMEDIAL ACTION BASED ON INTERIM REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(2), the Agency Head shall—

''(I) not later than 45 days after the submission of such report, notify the appropriate congressional committees in accordance with paragraph (2); and

''(II) not later than 180 days after the submission of such report, ensure the completion of remedial action in accordance with paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled.

''(f) ADDITIONAL REQUIREMENTS FOR CORE IT INVESTMENT PROJECT REPORTS.—

''(1) INITIAL REPORT.—If a remedial action plan described in subsection (e)(3)(A) has not been submitted for a core IT investment project, the Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall prepare an initial report for inclusion in the first budget submitted to Congress under section 1105(a) of title 31, United States Code, after the designation of a project as a core IT investment project, which includes—

''(A) a description of the primary business case and key functional requirements for the project;

''(B) an identification and description of any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

''(C) an independent government cost estimate for the project;

''(D) certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

''(E) any changes to the primary business case or key functional requirements which have occurred since project inception.

''(2) QUARTERLY REVIEW OF BUSINESS CASE.—The Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall—

''(A) monitor the primary business case and core functionality requirements reported to Congress and the Director for designated core IT investment projects; and

''(B) if changes to the primary business case or key functional requirements for a core IT investment project occur in any fiscal quarter, submit a report to Congress and the Director not later than 14 days after the end of such quarter that details the changes and describes the impact the changes will have on the cost and ultimate effectiveness of the project.

''(3) ALTERNATIVE SIGNIFICANT DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have significantly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the significant deviation; and

''(B) the Agency Head shall fulfill the requirements under subsection (d)(2) in accordance with the deadlines under subsection (d)(3).

''(4) ALTERNATIVE GROSS DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have grossly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the gross deviation; and

''(B) the Agency Head shall fulfill the requirements under subsections (e)(2) and (e)(3) in accordance with subsection (e)(4).''.

(b) INCLUSION IN THE BUDGET SUBMITTED TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''include in each budget the following:'' and inserting ''include in each budget—'';

(2) by redesignating the second paragraph (33) (as added by section 889(a) of Public Law 107–296) as paragraph (35);

(3) in each of paragraphs (1) through (34), by striking the period at the end and inserting a semicolon;

(4) in paragraph (35), as redesignated by paragraph (2), by striking the period at the end and inserting ''; and''; and

(5) by adding at the end the following:

''(36) the reports prepared under section 11317(f) of title 40, United States Code, relating to the core IT investment projects of the agency.''.

(c) IMPROVEMENT OF INFORMATION TECHNOLOGY ACQUISITION AND DEVELOPMENT.—Subchapter II of chapter 113 of title 40, United States Code, is amended by adding at the end the following:

**''SEC. 11319. ACQUISITION AND DEVELOPMENT.**

''(a) PURPOSE.—The objective of this section is to significantly reduce—

''(1) cost overruns and schedule slippage from the estimates established at the time the program is initially approved;

''(2) the number of requirements and business objectives at the time the program is approved that are not met by the delivered products; and

''(3) the number of critical defects and serious defects in delivered information technology.

''(b) OMB GUIDANCE.—The Director of the Office of Management and Budget shall—

''(1) not later than 180 days after the date of the enactment of this section, prescribe uniformly applicable guidance for agencies to implement the requirements of this section, which shall not include any exemptions to such requirements not specifically authorized under this section; and

''(2) take any actions that are necessary to ensure that Federal agencies are in compliance with the guidance prescribed pursuant to paragraph (1) not later than 1 year after the date of the enactment of this section.

''(c) ESTABLISHMENT OF PROGRAM.—Not later than 120 days after the date of the enactment of this section, each Chief Information Officer, upon the approval of the Agency Head (as defined in section 11317(a) of title 40, United States Code) shall establish a program to improve the information technology (referred to in this section as 'IT') processes overseen by the Chief Information Officer.

''(d) PROGRAM REQUIREMENTS.—Each program established pursuant to this section shall include—

''(1) a documented process for IT acquisition planning, requirements development and management, project management and oversight, earned-value management, and risk management;

''(2) the development of appropriate metrics that can be implemented and monitored on a real-time dashboard for performance measurement of—

''(A) processes and development status of investments;

''(B) continuous process improvement of the program; and

''(C) achievement of program and investment outcomes;

''(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education, at an institution or institutions approved by the Director, in the planning, acquisition, execution, management, and oversight of IT;

''(4) a process to ensure that the agency implements and adheres to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of IT programs and developments; and

''(5) a process for the Chief Information Officer to intervene or stop the funding of an IT investment if it is at risk of not achieving major project milestones.

''(e) ANNUAL REPORT TO OMB.—Not later than the last day of February of each year, the Agency Head shall submit a report to the Office of Management and Budget that includes—

''(1) a detailed summary of the accomplishments of the program established by the Agency Head pursuant to this section;

''(2) the status of completeness of implementation of each of the program requirements, and the date each such requirement was deemed to be completed;

''(3) the percentage of Federal IT projects covered under the program compared to all of the IT projects of the agency, listed by number of programs and by annual dollars expended;

''(4) a detailed breakdown of the sources and uses of the amounts spent by the agency during the previous fiscal year to support the activities of the program;

''(5) a copy of any guidance issued under the program and a statement regarding whether each such guidance is mandatory;

''(6) the identification of the metrics developed in accordance with subsection (b)(2);

''(7) a description of how paragraphs (3) and (4) of subsection (b) have been implemented and any related agency guidance; and

''(8) a description of how agencies will continue to review and update the implementation and objectives of such guidance.

''(f) ANNUAL REPORT TO CONGRESS.—The Director of the Office of Management and Budget shall provide an annual report to Congress on the status and implementation of the program established pursuant to this section.''.

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 113 of title 40, United States Code, is amended—

(1) by striking the item relating to section 11317 and inserting the following:

''11317. Significant and gross deviations.''; and

(2) by inserting after the item relating to section 11318 the following:

''11319. Acquisition and development.''.

**SEC. 5. MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS.**

(a) DEFINITIONS.—Section 2445a of title 10, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§2445a. Definitions'';**

(2) in subsection (a)—

(A) in paragraph (1), by striking ''or'' at the end;

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

(C) by adding at the end the following:

''(3) the Chief Information Officer, with the approval of the Secretary of Defense, determines that the program—

''(A) delivers a capability critical to the successful completion of the mission of the Department of Defense, or a portion of such mission;

''(B) incorporates unproven or previously undeveloped technology to meet primary program technical requirements; or

''(C) would have a significant negative impact on the successful completion of the mission of the Department of Defense if the program experienced significant cost, schedule, or performance deviations.''; and

(3) by adding at the end the following:

''(d) DEFINITIONS.—In this chapter:

''(1) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer of the Department of Defense, designated under section 3506(a)(2) of title 44.

''(2) EARNED VALUE MANAGEMENT.—The term 'Earned Value Management' means the cost, performance, and schedule data used to determine the status of a major automated information system program that has been developed in accordance with the ANSI EIA–748–B Standard.

''(3) INDEPENDENT GOVERNMENT COST ASSESSMENT.—The term 'independent government cost assessment' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with a major automated information system program developed and submitted by the Director of Independent Cost Assessment.''.

(b) COST, SCHEDULE, AND PERFORMANCE INFORMATION.—Section 2445b of title 10, United States Code, is amended—

(1) in subsection (a), by striking ''Congress'' and inserting ''the Office of Management and Budget, the Government Accountability Office, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives'';

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

''(5) A description of the primary business case and key functional requirements for the program, including an analysis of alternatives;

''(6) An identification and description of any portions of the program that have technical requirements of sufficient clarity that such portions may be feasibly procured under firm, fixed-price contracts;

''(7) An independent government cost assessment for the project provided by the Director of Independent Cost Assessment;

''(8) Certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

''(9) Any changes to the primary business case or key functional requirements which have occurred since the inception of the program.''; and

(3) in subsection (c)—

(A) in paragraph (1), by striking ''to Congress''; and

(B) in paragraph (3), by striking ''the congressional defense committees'' and inserting ''the Office of Management and Budget, the Government Accountability Office, the Committee on Armed Services of the Senate, the Committee on Armed Services of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives''.

(c) QUARTERLY REPORTS.—Section 2445c of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''identifying'' and inserting the following: ''that—

''(1) identifies'';

(B) by striking ''to Congress'';

(C) by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

''(2) describes the cost, schedule, and performance of all programs under the program manager's supervision;

''(3) provides the original and current program cost, schedule, and performance benchmarks for each program under the program manager's supervision; and

''(4) for each program under the program manager's supervision, any known, expected, or anticipated changes to program schedule milestones or program performance benchmarks included as part of the original or current baseline description.'';

(2) in subsection (c)—

(A) in paragraph (1), by striking ''the congressional defense committees'' and inserting ''the Office of Management and Budget, the Government Accountability Office, the Committee on Armed Services of the Senate, the Committee on Armed Services of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives''; and

(B) in paragraph (2), by striking ''to Congress'' each place it appears; and

(3) in subsection (d)—

(A) in paragraph (1)(B), by striking ''the congressional defense committees'' and inserting ''the Office of Management and Budget, the Government Accountability Office, the Committee on Armed Services of the Senate, the Committee on Armed Services of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives''; and

(B) in paragraph (2), by striking ''to Congress'' each place it appears.

(d) REPORT ON SIGNIFICANT CHANGES IN PROGRAM.—Section 2445c(c) of title 10, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking ''or'' at the end;

(B) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(D) the Earned Value Management of the program has changed by at least 15 percent, but less than 25 percent.''; and

(2) by adding at the end the following:

''(3) NOTIFICATION REQUIREMENTS.—The notification required under paragraph (1) shall include—

''(A) the date on which the determination described in paragraph (2) was made;

''(B) the amount of the cost increases and the extent of the schedule delays with respect to such program;

''(C) any requirements that—

''(i) were added subsequent to the original contract; or

''(ii) were part of the original contract, but were changed by deferment or deletion from the original schedule, or were otherwise no longer included in the contract;

''(D) an explanation of the differences between—

''(i) the estimate at completion between the program manager, any contractor, and any independent analysis; and

''(ii) the original budget at completion;

''(E) a statement of the reasons underlying the program's significant changes; and

''(F) a summary of the plan of action to remedy the significant changes.

''(4) ALTERNATIVE SIGNIFICANT CHANGES DETERMINATION.—If the program manager determines, subsequent to a change in the primary business case or key functional requirements, that without such change the program would undergo significant changes—

''(A) the program manager shall notify the Secretary of Defense of the significant changes; and

''(B) the Secretary of Defense shall notify the congressional defense committees in accordance with the requirements of this subsection.''.

(e) REPORT ON CRITICAL CHANGES IN PROGRAM.—Section 2445c(d) of title 10, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (C), by striking ''or'' at the end;

(B) in subparagraph (D), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(E) the Earned Value Management of the program has changed by at least 25 percent.''; and

(2) by adding at the end the following:

''(3) ALTERNATIVE CRITICAL CHANGES DETERMINATION.—If the program manager determines, subsequent to a change in the primary business case or key functional requirements, that without such change the program would undergo critical changes—

''(A) the program manager shall notify the Secretary of Defense of the critical changes; and

''(B) the Secretary of Defense shall fulfill the requirements described in subparagraphs (A) and (B) of paragraph (1).''.

(f) PROGRAM EVALUATION.—Section 2445c(e) of title 10, United States Code, is amended by striking ''cost and schedule'' in paragraphs (1) and (2) and inserting ''schedule and an independent government cost assessment provided by the Director of Independent Cost Assessment''.

(g) REPORT ON CRITICAL PROGRAM CHANGES.—Section 2445c(f) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively;

(2) by striking ''include a written certification'' and inserting the following: ''include—

''(1) a written certification'';

(3) by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(E) all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

''(2) a description of—

''(A) the primary business case and key functional requirements for the program, including an analysis of alternatives;

''(B) any portions of the program that have technical requirements of sufficient clarity that such portions may be feasibly procured under firm, fixed-price type contract; and

''(C) any changes to the primary business case or key functional requirements which have occurred since the inception of the program.''.

(h) CLERICAL AMENDMENT.—The table of sections for chapter 144a of title 10, United States Code, is amended by striking the item relating to section 2445a and inserting the following:

''2445a. Definitions.''.

***SEC. 6. IT SWAT TEAM.***

(a) PURPOSE.—The Director of the Office of Management of Budget (referred to in this section as the ''Director''), in consultation with the Administrator of the Office of Electronic Government and Information and Technology at the Office of Management and Budget (referred to in this section as the ''E-Gov Administrator''), shall assist agencies in avoiding significant and gross deviations in the cost, schedule, and performance of IT investment projects (as such terms are defined in section 11317(a) of title 40, United States Code).

(b) IT SWAT TEAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the E-Gov Administrator shall establish a small group of individuals (referred to in this section as the ''IT SWAT Team'') to carry out the purpose described in subsection (a).

(2) QUALIFICATIONS.—Individuals selected for the IT SWAT Team—

(A) shall be certified at the Senior/Expert level according to the Federal Acquisition Certification for Program and Project Managers (FAC–P/PM);

(B) shall have comparable education, certification, training, and experience to successfully manage high-risk IT investment projects; or

(C) shall have expertise in the successful management or oversight of planning, architecture, process, integration, or other technical and management aspects using proven process best practices on high-risk IT investment projects.

(3) NUMBER.—The Director, in consultation with the E-Gov Administrator, shall determine the number of individuals who will be selected for the IT SWAT Team.

(c) OUTSIDE CONSULTANTS.—

(1) IDENTIFICATION.—The E-Gov Administrator shall identify consultants in the private sector who have expert knowledge in IT program management and program management review teams. Not more than 20 percent of such consultants may be formally associated with any 1 of the following types of entities:

(A) Commercial firms.

(B) Nonprofit entities.

(C) Federally funded research and development centers.

(2) USE OF CONSULTANTS.—

(A) IN GENERAL.—Consultants identified under paragraph (1) may be used to assist the IT SWAT Team in assessing and improving IT investment projects.

(B) LIMITATION.—Consultants with a formally established relationship with an organization may not participate in any assessment involving an IT investment project for which such organization is under contract to provide technical support.

(C) EXCEPTION.—The limitation described in subparagraph (B) may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(3) CONTRACTS.—The E-Gov Administrator, in conjunction with the Administrator of the General Services Administration (GSA), may establish competitively bid contracts with 1 or more qualified consultants, independent of any GSA schedule.

(d) INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines there is reasonable cause to believe that a major IT investment project is likely to significantly or grossly deviate (as defined in section 11317(a) of title 40, United States Code), including the receipt of inconsistent or missing data, or if the E–Gov Administrator determines that the assignment of 1 or more members of the IT SWAT Team could meaningfully reduce the possibility of significant or gross deviation, the E-Gov Administrator shall carry out the following activities:

(1) Recommend the assignment of 1 or more members of the IT SWAT Team to assess the project in accordance with the scope and time period described in section 11317(c)(1) of title 40, United States Code, beginning not later than 14 days after such recommendation. No member of the SWAT Team who is associated with the department or agency whose IT investment project is the subject of the assessment may be assigned to participate in this assessment. Such limitation may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(2) If the E-Gov Administrator determines that 1 or more qualified consultants are needed to support the efforts of the IT SWAT Team under paragraph (1), negotiate a contract with the consultant to provide such support during the period in which the IT SWAT Team is conducting the assessment described in paragraph (1).

(3) Ensure that the costs of an assessment under paragraph (1) and the support services of 1 or more consultants under paragraph (2) are paid by the major IT investment project being assessed.

(4) Monitor the progress made by the IT SWAT Team in assessing the project.

(e) REDUCTION OF SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines that the assessment conducted under subsection (d) confirms that a major IT investment project is likely to significantly or grossly deviate, the E-Gov Administrator shall recommend that the Agency Head (as defined in section 11317(a)(1) of title 40, United States Code) take steps to reduce the deviation, which may include—

(1) providing training, education, or mentoring to improve the qualifications of the program manager;

(2) replacing the program manager or other staff;

(3) supplementing the program management team with Federal Government employees or independent contractors;

(4) terminating the project; or

(5) hiring an independent contractor to report directly to senior management and the E-Gov Administrator.

(f) REPROGRAMMING OF FUNDS.—

(1) AUTHORIZATION.—The Director may direct an Agency Head to reprogram amounts which have been appropriated for such agency to pay for an assessment under subsection (d).

(2) NOTIFICATION.—An Agency Head who reprograms appropriations under paragraph (1) shall notify the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives of any such reprogramming.

(g) REPORT TO CONGRESS.—The Director shall include in the annual Report to Congress on the Benefits of E-Government Initiatives a detailed summary of the composition and activities of the IT SWAT Team, including—

(1) the number and qualifications of individuals on the IT SWAT Team;

(2) a description of the IT investment projects that the IT SWAT Team has worked during the previous fiscal year;

(3) the major issues that necessitated the involvement of the IT SWAT Team to assist agencies with assessing and managing IT investment projects and whether such issues were satisfactorily resolved;

(4) if the issues referred to in paragraph (3) were not satisfactorily resolved, the issues still needed to be resolved and the Agency Head's plan for resolving such issues;

(5) a detailed breakdown of the sources and uses of the amounts spent by the Office of Management and Budget and other Federal agencies during the previous fiscal year to support the activities of the IT SWAT Team; and

(6) a determination of whether the IT SWAT Team has been effective in—

(A) preventing projects from deviating from the original baseline; and

(B) assisting agencies in conducting appropriate analysis and planning before a project is funded.

***SEC. 7. AWARDS FOR PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF INFORMATION SYSTEMS AND INFORMATION TECHNOLOGY.***

*(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Director of the Office of Personnel Management shall develop policy and guidance for agencies to develop a program to recognize excellent performance by Federal Government employees and teams of such employees in the acquisition of information systems and information technology for the agency.*

*(b) ELEMENTS.—The program referred to in subsection (a) shall, to the extent practicable—*

*(1) obtain objective outcome measures; and*

*(2) include procedures for—*

*(A) the nomination of Federal Government employees and teams of such employees for eligibility for recognition under the program; and*

*(B) the evaluation of nominations for recognition under the program by 1 or more agency panels of individuals from government, academia, and the private sector who have such expertise, and are appointed in such a manner, as the Director of the Office of Personal Management shall establish for purposes of the program.*

*(c) AWARD OF CASH BONUSES AND OTHER INCENTIVES.—As part of the program referred to in subsection (a), the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall establish policies and guidance for agencies to reward any Federal Government employee or teams of such employees recognized pursuant to the program—*

*(1) by awarding a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law;*

*(2) through promotions and other nonmonetary awards;*

*(3) by publicizing acquisition accomplishments by individual employees and, as appropriate, the tangible end benefits that resulted from such accomplishments; and*

*(4) through other awards, incentives, or bonuses that the head of the agency considers appropriate.*

Mr. DODD. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be considered; that a Carper-Collins amendment, which is at the desk, be agreed to; that the committee substitute, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4147) was agreed to.

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

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 920), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

## SILVER STAR SERVICE BANNER DAY

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 534, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 534) expressing support for designation of May 1, 2010, as ''Silver Star Service Banner Day.''

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, and the motions to reconsider be laid upon the table.

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

The resolution (S. Res. 534) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 534

Whereas the Senate has always honored the sacrifices made by the wounded and ill members of the Armed Forces;

Whereas the Silver Star Service Banner has come to represent the members of the Armed Forces and veterans who were wounded or became ill in combat in the wars fought by the United States;

Whereas the Silver Star Families of America was formed to help the American people remember the sacrifices made by the wounded and ill members of the Armed Forces by designing and manufacturing Silver Star Service Banners and Silver Star Flags for that purpose;

Whereas the sole mission of the Silver Star Families of America is to evoke memories of the sacrifices of members and veterans of the Armed Forces on behalf of the United States through the presence of a Silver Star Service Banner in a window or a Silver Star Flag flying;

Whereas the sacrifices of members and veterans of the Armed Forces on behalf of the United States should never be forgotten; and

Whereas May 1, 2010, is an appropriate date to designate as ''Silver Star Service Banner Day'': Now, therefore, be it

*Resolved,* That the Senate designates May 1, 2010, as ''Silver Star Service Banner Day'' and calls upon the people of the United States to observe the day with appropriate programs, ceremonies, and activities.

## HONORING THE PRESIDENT OF MEXICO

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 535, 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. 535) honoring the President of Mexico, Felipe Calderon Hinojosa, for his service to the people of Mexico, and welcoming the President to the United States.

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 that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 535) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 535

Whereas the relationship between the people and Governments of the United States and Mexico is based on trust, mutual respect, and cultural exchanges that have enriched both nations;

Whereas our two nations share not just a border, but also common values and common aspirations;

Whereas millions of Americans proudly claim Mexican ancestry, and the United States is home to the world's second largest Mexican community;

Whereas, when the American people look to their south, they see not only a neighbor, but an ally and a friend;

Whereas mutual interests, including border security, economic prosperity, and clean energy, rely on the continuing development and deepening of the United States-Mexico relationship;

Whereas drug trafficking and related violence has taken a significant toll on both countries, resulting in the deaths of more than 22,000 people in Mexico in the last 3 years, including a number of law enforcement agents and public officials, highlighting the enormous problem of illegal drug use and gang violence in America;

Whereas the Governments of Mexico and the United States have worked together under the principle of shared responsibility to address this scourge through the Merida Initiative and through programs such as cooperative intelligence, border security, and anti-corruption efforts and efforts to stop the flow of weapons and illicit money from the United States into Mexico; and

Whereas the future security and prosperity of both nations depends on our continuing ability to work together in the spirit of our common values and long friendship: Now, therefore, be it

*Resolved,* That the Senate—

(1) warmly welcomes the President of Mexico, Felipe Calderon Hinojosa;

(2) believes that together, the Governments of Mexico and the United States can bring immense benefits to their people and make enormous contributions to addressing the global challenges of the 21st century;

(3) looks forward to the continuing progress in relations between the Governments and people of Mexico and the United States; and

(4) appreciates the social, economic, and cultural contributions of the Mexican community in the United States and desires closer relations between the people of the United States and the people of Mexico.

Mr. DODD. Mr. President, that was my resolution, so I am glad it passed unanimously.

## ORDERS FOR THURSDAY, MAY 20, 2010

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, May 20; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be

deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of S. 3217, Wall Street reform; further, that the filing deadline for second-degree amendments be 1:30 p.m.; the mandatory quorum with respect to the substitute amendment No. 3739 and S. 3217 be waived. Finally, I ask unanimous consent that the Senate recess from 10:40 a.m. to 12 noon to allow for a joint meeting of Congress.

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

## PROGRAM

Mr. DODD. Mr. President, tomorrow, His Excellency Felipe Calderon Hinojosa, the President of Mexico, will address a joint meeting of Congress from the Hall of the House of Representatives. Senators are invited to attend the joint meeting. The Senate will gather in the Chamber at 10:30 a.m. and depart at 10:40 a.m. to proceed as a body to the Hall of the House.

Under a previous order, the cloture vote on the Dodd-Lincoln substitute amendment will occur at 2:30 p.m. tomorrow. Votes in relation to amendments prior to the cloture vote are possible.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DODD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 8:27 p.m., adjourned until Thursday, May 20, 2010, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF STATE

PATRICK S. MOON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER—COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BOSNIA AND HERZEGOVINA.

CHRISTOPHER W. MURRAY, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER—COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF THE CONGO.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

*To be lieutenant colonel*

STEPHEN W. AUSTIN
JAMES R. BOULWARE
DAVID S. BOWERMAN
GARY W. BRAGG
DOYLE M. COFFMAN
CLOYD L. COLBY
DAVID E. COOPER
THOMAS W. COX
BETH M. ECHOLS
JONATHAN J. ETTERBEEK
MARK A. FREDERICK
ALBERT J. GHERGICH, JR.
WILLIAM C. HARRISON
DARRYL E. HOLLOWELL
STEVEN R. JERLES
MILTON JOHNSON
MARK R. JOHNSTON
JOHN W. KAISER, JR.
JOSEPH H. KO
RODIE L. LAMB
DAVID M. LOCKHART
ROBERT C. LYONS
GIAN S. MARTIN
ROBERT NAY
KEVIN M. PIES
CHARLES B. RIZER
STEVEN J. ROBERTS
SCOTT R. SHERRETZ
JERRY C. SIEG
SID A. TAYLOR, SR.
ADGER S. TURNER
DAVID E. WAKE
JEFFREY B. WALDEN
DALLAS M. WALKER
STANLEY E. WHITTEN
NATHAN L. ZIMMERMAN

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE GRADES INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

*To be captain*

JAMES L. BROWN
RONALD L. HARRELL
STEPHEN W. PAULETTE

*To be commander*

MARK D. BOWMAN
KENNETH D. SMITH

*To be lieutenant commander*

DAVID K. HAZELHURST
MICHAEL A. OGDEN
MATTHEW B. REED

## CONFIRMATION

Executive nomination confirmed by the Senate, Wednesday, May 19, 2010:

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIGADIER GENERAL MICHAEL J. WALSH

## WITHDRAWAL

Executive Message transmitted by the President to the Senate on May 19, 2010 withdrawing from further Senate consideration the following nomination:

ARMY NOMINATION OF MAJ. GEN. JOSEPH J. TALUTO, TO BE LIEUTENANT GENERAL, WHICH WAS SENT TO THE SENATE ON MAY 12, 2009.